

171 FERC ¶ 61,157  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Natural Gas Pipeline Company of America LLC

Docket No. CP20-14-000

ORDER DENYING PROTEST AND AUTHORIZING CONSTRUCTION

(Issued May 21, 2020)

1. On November 15, 2019, Natural Gas Pipeline Company of America LLC (Natural) filed a prior notice request, pursuant to section 7 of the Natural Gas Act (NGA), and sections 157.205, 157.208(b), and 157.211 of the Commission's Part 157 blanket certificate regulations,<sup>1</sup> seeking authorization to construct and operate an approximately 1.4-mile-long, 12-inch-diameter pipeline lateral and appurtenant facilities in Cook County, Illinois, and Lake County, Indiana (134<sup>th</sup> Street Lateral Project).
2. On February 3, 2020, Mr. Rodney Lopez filed a late motion to intervene and protest. For the reasons discussed below, we find good cause to grant Mr. Lopez's late intervention and to waive the provision of section 157.205(h)(1) of the Commission's regulations authorizing a certificate holder to conduct the noticed activity effective the day after the deadline for filing protests has expired in order to allow the Commission to consider his protest.<sup>2</sup> Accordingly, we have reviewed Natural's filing under the procedures applicable to a case-specific certificate application under section 7 of the NGA. Having done that, for the reasons stated below, we will deny Mr. Lopez's protest and authorize Natural to construct and operate the proposed facilities under its Part 157 blanket certificate.

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<sup>1</sup> 18 C.F.R. §§ 157.205, 157.208(b) and 157.211 (2019).

<sup>2</sup> Section 157.205(h)(1) grants automatic authorization for a holder of a blanket certificate to conduct an activity proposed under its blanket certificate so long as no protests to the activity are filed within 60 days of the date the notice is issued by the Commission. 18 C.F.R. § 157.205(h).

## **I. Background and Proposal**

3. Natural, a limited liability company organized and existing under the laws of the State of Delaware, is a natural gas company as defined in section 2(6) of the NGA.<sup>3</sup> Natural's transmission system is comprised of the Amarillo and Gulf Coast mainlines and the Amarillo and Gulf Coast interconnection (A/G Line). The Amarillo Line extends from gas-producing areas in Texas, Oklahoma, and New Mexico, through Kansas, Nebraska, Iowa, and Illinois, to terminal points in the Chicago metropolitan area. The Gulf Coast Line extends from gas producing areas in Louisiana and Texas, through Arkansas, Missouri, and Illinois, to common terminal points with the Amarillo Line in the Chicago metropolitan area. The A/G Line connects the Amarillo and Gulf Coast mainlines and extends from Oklahoma to Texas.

4. Natural currently leases facilities in the Calumet Area of Chicago from the Peoples Gas Light and Coke Company (Peoples), a local distribution company, pursuant to a Lease Agreement, dated April 5, 2006. The leased facilities include a lateral, traversing 134<sup>th</sup> Street, that is used by Natural to deliver gas to one of its customers, Northern Indiana Public Service Company (NIPSCO).<sup>4</sup> Because the lateral is nearing the end of its useful life, Peoples has provided notice to Natural that it will terminate the Lease Agreement with respect to the Calumet Area facilities, effective November 1, 2020.<sup>5</sup> Accordingly, Natural is proposing in its prior notice request to construct a new pipeline lateral that will replace Peoples' 134<sup>th</sup> Street lateral.

5. The proposed project is designed to provide a continuation of the existing 70,000 dekatherms of firm transportation service to NIPSCO at its delivery location. Natural proposes to construct and operate an approximately 1.4-mile-long, 12-inch-diameter pipeline lateral originating at a proposed 10-inch tap interconnection with the Calumet Line Nos. 1 and 2 stub pipelines, which Natural currently leases, and will continue to lease, from Peoples, to a point of termination at a proposed 10-inch tap interconnection

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<sup>3</sup> 15 U.S.C. § 717a(6) (2018).

<sup>4</sup> NIPSCO serves customers in Northwest Indiana, including BP North America's refinery in Whiting, Indiana.

<sup>5</sup> Natural's Application at 4, 9; Natural's February 28, 2020 Response to Data Request at 1-2. Natural states that upon completion of the project, the existing Lease Agreement between Natural and Peoples will be terminated and a new lease agreement with Peoples will take effect that will include the Calumet Line Nos. 1 and 2 stub pipelines and additional facilities that are used to deliver gas to NIPSCO. Natural Application at 9. Natural states it intends to file the amended agreement with the Commission following the expiration of the 60-day notice period for this project.

with NIPSCO just beyond the Illinois/Indiana state line in the City of Hammond in Lake County, Indiana. Natural also proposes to install the following auxiliary facilities: (1) a new pig launcher and assembly and associated fittings at Natural's existing 138<sup>th</sup> Street Meter Station in Cook County, Illinois; and (2) a flow computer, transmitters, communications equipment, gas chromatograph and sampling system at Natural's climate-controlled building at its new interconnection with NIPSCO. Natural estimates the project cost to be approximately \$16.2 million and anticipates placing the project into service by November 1, 2020.

## II. Public Notice, Interventions, Protest, and Supplemental Filings

6. Notice procedures for prior notice requests, such as this one, require that: (1) the applicant notify affected landowners<sup>6</sup> in writing of the proposed project;<sup>7</sup> and (2) the Commission issue a notice of the request and publish the notice in the *Federal Register*.<sup>8</sup> Notice of Natural's application was issued on November 25, 2019, and published in the *Federal Register* on December 3, 2019,<sup>9</sup> setting January 24, 2020, as the deadline to file motions to intervene and protests. Timely motions to intervene were filed by Northern Illinois Gas Company (d/b/a Nicor Gas Company) and WEC Energy Group, Inc.<sup>10</sup> These timely, unopposed motions to intervene were granted automatically by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>11</sup>

7. On February 3, 2020, Mr. Lopez filed a protest and a motion to intervene, raising a number of environmental concerns, including the failure to consider an alternative, existing pipeline corridor through the Forest Preserve of the District of Cook County

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<sup>6</sup> "Affected landowner" is a defined term in section 157.6(d)(2) of the Commission's regulations. 18 C.F.R. § 157.6(d)(2) (2019).

<sup>7</sup> 18 C.F.R. § 157.203(d)(2) (2019) ("For activities described in paragraph (c) of this section, the company shall make a good faith effort to notify in writing all affected landowners, as defined in § 157.6(d)(2), within at least three business days following the date that a docket number is assigned to the application or at the time it initiates easement negotiations, whichever is earlier.")

<sup>8</sup> 18 C.F.R. § 157.205.

<sup>9</sup> 84 Fed. Reg. 66,182.

<sup>10</sup> WEC Energy Group, Inc. filed the motion to intervene on behalf of its subsidiaries, i.e., North Shore Gas Company, the Peoples Gas Light and Coke Company and Wisconsin Electric Power Company.

<sup>11</sup> 18 C.F.R. § 385.214(c)(1) (2019).

(Forest Preserve). In a declaration attached to his protest, Mr. Lopez asserts that his motion to intervene and protest were timely. In this regard, Mr. Lopez states that he received a landowner notification for the proposed project on November 20, 2019,<sup>12</sup> attached to which was FERC's *Blanket Certificate Program Notice to Landowners* guidance, which states that the 60-day deadline for protests of prior notice requests is based on the date that the notice is published in the *Federal Register*, rather than the date that the notice is issued by the Commission.<sup>13</sup> Alternatively, Mr. Lopez claims that good cause exists to grant his late intervention and protest as late motions, based on his reliance on the guidance.<sup>14</sup> Natural did not file an answer to Mr. Lopez's intervention and protest.

8. The Commission's blanket certificate regulations regarding the filing of interventions and protests provide that "[t]he deadline shall be 60 days after the *date of issuance of the notice of the request*."<sup>15</sup> Staff-issued guidance cannot overrule the Commission's regulations. Accordingly, Mr. Lopez's intervention is out of time. Nonetheless, under Rule 214(d) of the Commission's Rules of Practice and Procedure, the Commission may consider multiple factors when determining whether to grant a late

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<sup>12</sup> This complies with the Commission's regulations for this type of application, which provide that "the company shall make a good faith effort to notify in writing all affected landowners, as defined in § 157.6(d)(2), within at least three business days following the date that a docket number is assigned to the application or at the time it initiates easement negotiations, whichever is earlier." 18 C.F.R. § 157.203. Here, a docket number was assigned to the project on November 15, 2019.

<sup>13</sup> Declaration of Mr. Lopez at 1.

<sup>14</sup> Lopez February 3, 2020 Protest at 4.

<sup>15</sup> 18 C.F.R. § 157.205(d) (emphasis added). The Commission has consistently construed the 60-day deadline under 18 C.F.R. § 157.205 as starting from the date the Commission issues the notice (which is published that day on the Commission's website in eLibrary), rather than from the *Federal Register* publication date. *See, e.g., Enable Gas Transmission, LLC*, 151 FERC ¶ 61,031, at P 6 n.10 (2015) ("Because notice was issued on June 30, 2014, the 60-day notice period ended on August 29, 2014"); *Equitrans, L.P.*, 147 FERC ¶ 61,032, at PP 5, 8 (2014) (recognizing that the 60-day notice period was based on the date the Commission issued the notice); *Transcon. Gas Pipe Line Co., LLC*, 128 FERC ¶ 61,255, at P 7 (2009) ("Pursuant to section 157.205(d) of the regulations, the deadline for the filing of interventions and protests in response to a prior notice filing was *60 days following the date of issuance of the notice*.") (emphasis added).

motion to intervene.<sup>16</sup> Movants for late intervention are required to “show good cause why the time limitation should be waived,”<sup>17</sup> and should also provide justification by reference to the other factors set forth in Rule 214(d) of the Commission’s Rules and Regulations.<sup>18</sup> Because Mr. Lopez received a copy of the *Blanket Certificate Program Notice to Landowners* guidance, which incorrectly stated the start of the 60-day time period, and Mr. Lopez asserts that he relied on this guidance, we find good cause to grant the late intervention and to consider the protest. Commission staff has corrected the *Blanket Certificate Program Notice to Landowners* guidance to accurately state the notice period as defined in section 157.205(h) of the Commission’s regulations.

9. On February 21, 2020, Commission staff issued a data request that Natural provide environmental, engineering and economic analyses of the alternative identified by Mr. Lopez.<sup>19</sup> Natural filed a response on February 28, 2020, and Mr. Lopez filed supplemental comments on March 2, 2020.

10. On February 26, 2020, Ms. Denise Maggio, a resident who lives adjacent to where the project will be constructed, filed a comment expressing concerns that the project will cause disruption in the community, and asserting that environmental documents should be prepared to consider alternatives that would avoid Ms. Maggio’s neighborhood, and that the “shortened process” of this proceeding is inappropriate. We address these issues below.

11. On March 24, 2020, Calumet Pipeline, LLC (Calumet) filed a motion to intervene out of time. Calumet states that it owns a 12-inch-diameter pipeline in Illinois and Indiana, which it alleges could be used as an alternative route for a portion of Natural’s

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<sup>16</sup> 18 C.F.R. § 385.214(d) (stating that the decisional authority may consider whether: (i) the movant had good cause for failing to file a timely motion; (ii) granting the intervention would cause any disruption to the proceeding; (iii) the movant’s interest is adequately represented by other parties to the proceeding; and (iv) granting the motion would result in any prejudice to or additional burdens on the existing parties).

<sup>17</sup> 18 C.F.R. § 385.214(b)(3).

<sup>18</sup> 18 C.F.R. § 385.214(d)(ii)-(iv) (including consideration of the potential disruption caused by such late intervention, whether the movant’s interest is not adequately represented by other parties, and any prejudice to existing parties). *See also Tennessee Gas Pipeline Co., L.L.C.*, 162 FERC ¶ 61,167, at PP 49-50 (2018) (expressing concern regarding late-filed motions to intervene that fail to adequately address the requirements in the Commission’s regulations) and *DTE Midstream Appalachia, LLC*, 162 FERC ¶ 61,238, at P 11 (2018) (same).

<sup>19</sup> February 21, 2020 Data Request at 3.

project. We find that Calumet failed to demonstrate why good cause exists to grant the motion to intervene out of time because it did not state why it was unable to intervene in a timely manner. Accordingly, Calumet's motion to intervene is denied.

### III. Discussion

12. As a holder of a blanket construction certificate, Natural is authorized to undertake various routine activities, subject to certain reporting and notice provisions. The blanket certificate rules set out a class of routine and well-understood activities that the Commission has determined to be in the public convenience and necessity. Through cost limitations and other conditions, the blanket certificate regulations limit the activities authorized under a blanket certificate, such that the scrutiny involved in considering applications for case-specific certificate authorization is not necessary. The blanket certificate program is intended to increase flexibility and reduce regulatory and administrative burdens.<sup>20</sup> The prior notice procedures apply to activities that are not minor enough to qualify for automatic authorization under the blanket certificate regulations, but that are still expected to have relatively minimal impact on the environment, ratepayers, and pipeline operations.<sup>21</sup>

13. The blanket certificate regulations require that prior notice always be given for certain types of blanket certificate projects,<sup>22</sup> while prior notice of other types of blanket certificate projects is only required in the event that the project exceeds the automatic authorization cost limits set forth in section 157.208.<sup>23</sup> The blanket certificate regulations require prior notice, in recognition that covered projects may raise issues of concern for a pipeline company's existing shippers regarding possible effects on their services or may present valid environmental concerns to individual landowners or others.<sup>24</sup> Any person

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<sup>20</sup> *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Notice of Proposed Rulemaking, 115 FERC ¶ 61,338 (2006).

<sup>21</sup> See *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, FERC Stats. & Regs. ¶ 30,368 (1982) (cross-referenced at 19 FERC ¶ 61,216); see also *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, 117 FERC ¶ 61,074 (2006) (Final Rule); 18 C.F.R. Pt. 157 (2019).

<sup>22</sup> For example, all blanket certificate projects under section 157.210 to construct mainline facilities are subject to the prior notice requirement. 18 C.F.R. § 157.210 (2019).

<sup>23</sup> 18 C.F.R. § 157.208(d).

<sup>24</sup> *Equitrans, LP*, 158 FERC ¶ 61,103, at 61,105 (2017).

may file a protest regarding any request filed under the prior notice provisions.<sup>25</sup> If the protest is not withdrawn or dismissed, the activity will not be deemed authorized by the blanket certificate and the Commission will treat the request as an application for section 7 authorization.<sup>26</sup>

14. Further, section 380.5(b)(2) of the Commission's regulations<sup>27</sup> provides that Commission staff will prepare an environmental assessment (EA) for all projects contemplated under the prior notice provision of section 157.208.<sup>28</sup> Preparation of an environmental document determines whether a pipeline company has, in fact, satisfied all of the standard environmental conditions set forth in section 157.206(b),<sup>29</sup> and also confirms whether the standard conditions are adequate to reduce the potential for adverse environmental impact to ensure a finding of no significant impact. In protested prior notice proceedings, such as this one, the Commission addresses any specific environmental concerns or issues raised in order to assess whether additional environmental conditions are needed.<sup>30</sup>

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<sup>25</sup> 18 C.F.R. §§ 157.10, 157.205(e) (2019).

<sup>26</sup> 18 C.F.R. § 157.205(f). Since the facilities to be constructed and operated will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of these facilities are subject to the provisions of section 7(c) of the NGA. 15 U.S.C. § 717f(c).

<sup>27</sup> 18 C.F.R. § 380.5(b)(2) (2019).

<sup>28</sup> Section 157.208 applies to proposed projects for the construction, acquisition, operation, replacement, and/or miscellaneous rearrangement of facilities. See 18 C.F.R. 157.208 (2019).

<sup>29</sup> 18 C.F.R. § 157.206(b) (2019).

<sup>30</sup> Compare *Equitrans, L.P.*, 147 FERC ¶ 61,032, at P 21, and *CenterPoint Energy Gas Transmission Co.*, 121 FERC ¶ 61,180, at P 18 (2007) (authorizing pipeline companies to proceed under their Part 157 blanket certificates with the construction of compression facilities proposed in prior notice filings after addressing protesters' arguments and finding the blanket certificate regulations' standard noise abatement requirements adequate to ensure that the protesters would not be significantly affected by noise from operation of the new compressor station) with *Carolina Gas Transmission Corp.*, 150 FERC ¶ 61,111, at P 21 & n.23 (2015) (issuing case-specific certificate to authorize construction of compression facilities proposed under blanket certificate regulations' prior notice procedures because the Commission found additional

**A. Rate Issues**

15. Mr. Lopez states that the proposed route would adversely impact ratepayers, leaving them to pick up the cost of the 134<sup>th</sup> Street Lateral Project.<sup>31</sup> He states that, in a filing with the Indiana Utility Commission, NIPSCO received approval for funding of a \$10 million Capital Lease Obligation for the 134<sup>th</sup> Street Project.<sup>32</sup> According to Mr. Lopez, the fact that the proposed project is now expected to cost \$16.2 million will adversely impact Indiana ratepayers.<sup>33</sup>

16. The Commission has jurisdiction over the rates Natural can charge for the services in interstate commerce that it provides. Under Commission policy, it is appropriate for the costs of the project to be rolled into Natural's system rates in its next rate case, because the project is designed to maintain Natural's overall reliability and its ability to continue to serve NIPSCO.<sup>34</sup> Issues related to NIPSCO's ability to recover the costs it pays to Natural for the 134<sup>th</sup> Street Project are subject to the jurisdiction of the Indiana Utility Commission, and any issues related to those costs should be addressed there.

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environmental noise abatement conditions were appropriate to address protesters' concerns).

<sup>31</sup> Mr. Lopez March 2, 2020 Supplemental Comments at 5.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* We note that Mr. Lopez does not assert that he is a NIPSCO customer or otherwise indicate how he has any cognizable interest in the rate impacts of the proposed project.

<sup>34</sup> The Commission applies a presumption in favor of rolled-in rate treatment for the costs of blanket certificate projects due to the *de minimis* impact on a pipeline system's overall rates. *Tenn. Gas Pipeline Co.*, 117 FERC ¶ 61,343, at P 12 (2006) (citing *Tenn. Gas Pipeline Co.*, 82 FERC ¶ 61,081 (1998)). *See also Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 at 61,746 n.12 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement) (explaining that it is not a subsidy for existing customers to pay for projects designed to replace existing capacity or improve the reliability or flexibility of existing service).



## B. Environmental Issues

17. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),<sup>35</sup> Commission staff evaluated the potential environmental impacts of the prior notice application in an EA, which was issued on January 23, 2020. The EA addresses soils, land use, cultural resources, ground water, wetlands, vegetation and wildlife, threatened and endangered species, air quality, noise and alternatives.

18. In his protest, Mr. Lopez states that the project will go through a densely populated area and contends that environmental impacts have not been sufficiently disclosed.<sup>36</sup> Specifically, Mr. Lopez raises concerns regarding the impacts on residents, including snarled traffic, noise, fugitive dust and open trenches in proximity to residences, and impacts that he asserts will result from Natural pumping groundwater in the project area.<sup>37</sup> Mr. Lopez also maintains that environmental justice concerns were not evaluated.<sup>38</sup> Finally, Mr. Lopez asserts that alternatives that avoid the impacted neighborhood exist and were not sufficiently considered, e.g., an existing pipeline corridor through the Forest Preserve.<sup>39</sup> To that end, Mr. Lopez states that “under NEPA, robust review of project alternatives is required, however, by invoking a prior notice process, Natural can avoid these NEPA requirements.”<sup>40</sup>

19. We disagree with Mr. Lopez’ suggestion that Natural avoided the NEPA process by using its blanket certificate to construct and operate the proposed facilities. As noted above, to comply with NEPA, the Commission’s regulations require an EA for blanket certificate actions that require prior notice, such as Natural’s proposed 134<sup>th</sup> Street Lateral Project.<sup>41</sup> Commission staff prepared the EA and placed it into the record on

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<sup>35</sup> 42 U.S.C. § 4321 *et seq.* (2018); *see also* 18 C.F.R. pt. 380 (2019) (Commission’s regulations implementing NEPA).

<sup>36</sup> Mr. Lopez February 3, 2020 Protest at 5.

<sup>37</sup> *Id.* at 6-7

<sup>38</sup> *See id.* at 7.

<sup>39</sup> *See id.* at 7-8.

<sup>40</sup> *Id.* at 7.

<sup>41</sup> *See supra* P 14 (citing 18 C.F.R. § 380.5(b)(2) (2019)). In addition, the Commission’s regulations state, “[d]epending on the outcome of the environmental assessment, the Commission may or may not prepare an environmental impact statement.” 18 C.F.R. § 380.5(a) (2019).

January 23, 2020. Mr. Lopez also takes issue with the size and scope of the analysis, which we address below.

### 1. Construction Impacts on Residents

20. Mr. Lopez is concerned that the proposed project would have impacts on traffic, noise, dust, and the safety of open trenches near residential properties.<sup>42</sup> On January 7, 2020, Natural filed an outline of measures that it would follow to address resident needs during construction.<sup>43</sup> These measures are summarized in Commission staff's EA and include landowner notification measures, traffic control and flow measures, safety measures to address open trench hazards, noise mitigation measures, fugitive dust mitigation measures, and measures surrounding the removal and replacement of vegetation. To address traffic concerns, Natural also filed traffic control protection plans for the project and received approval from the City of Chicago for these plans.

21. Natural anticipates that construction of the proposed project will begin in Spring 2020 and be complete and placed into service by November 1, 2020.<sup>44</sup> All construction activities, excluding groundwater dewatering (which is discussed below), will take place on Monday through Saturday between 8:00 a.m. and 7:00 p.m.<sup>45</sup> Natural states that it will minimize impacts in residential areas, and anticipates the construction will occur entirely within publicly-owned land and will not disturb any privately-owned land within the residential neighborhoods<sup>46</sup> and that upon completion of the proposed project, all areas will be restored to preconstruction conditions.<sup>47</sup> Further, Natural states that if

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<sup>42</sup> Mr. Lopez February 3, 2020 Protest at 6.

<sup>43</sup> See Natural January 7, 2020 Response to Data Request (Accession No. 20200107-5157).

<sup>44</sup> Natural Prior Notice Request at 6.

<sup>45</sup> *Id.* at 7-8; see also Natural January 7, 2020 Response to Data Request at 7.

<sup>46</sup> Natural January 7, 2020 Response to Data Request at 4.

<sup>47</sup> Natural states that should "some conditions . . . necessitate removal of private property, landowners will be compensated by Natural for loss of mature trees or landscape areas that cannot be restored to original condition." *Id.* at 8. See also Natural Prior Notice Request, Resource Report 1 at 12 ("Private property that cannot be avoided and is removed, such as mailboxes, fences, and gates, will be restored, to the extent that such private property does not interfere with the safe operation of the pipeline. Sidewalks, driveways, and roads disturbed by pipeline construction will be restored to [existing] or better condition upon completion of construction activities.").

construction will affect private land, Natural will contact landowners to ensure that conditions of all rights-of-way agreements have been met and that landowners are compensated for damage incurred during construction.<sup>48</sup> In addition, Natural indicates that it will work with landowners affected by access issues during construction and will negotiate settlements or remedies with these landowners.<sup>49</sup> If landowners continue to have further concerns or issues with construction, mitigation, or restoration related to the project, landowners may contact the Commission's Landowner Helpline for assistance with resolution of specific landowner concerns.

22. With respect to the noise generated from the dewatering pumps that will be operated 24 hours a day, Natural states that it will locate the pumps as far away from residences as possible in order to reduce potential noise impacts.<sup>50</sup> Further, Natural states that a noise dampening enclosure will be placed around the dewatering pumps to further reduce the potential noise impacts.<sup>51</sup> Natural is also reviewing options with consultants and construction contractors to use a noise attenuating structure that would reduce the noise from the pumps at night.<sup>52</sup> Natural also commits to working with affected landowners that may be impacted by the pump noise to reach an accommodation to address their concerns.<sup>53</sup> As stated in the EA, there are no changes to operational noise levels anticipated.<sup>54</sup>

23. Consistent with the EA and based on the temporary nature of the construction activities and the measures that Natural will put in place, we find that the proposed project will not cause significant impacts on residents in the project area.

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<sup>48</sup> Natural Prior Notice Request, Resource Report 1 at 12.

<sup>49</sup> *See id.* at 6.

<sup>50</sup> Natural January 16, 2020 Supplemental Response to Data Request at 1.

<sup>51</sup> *Id.*

<sup>52</sup> *See id.*

<sup>53</sup> *Id.*

<sup>54</sup> EA at 19.

## 2. Impacts on Groundwater

24. Mr. Lopez maintains that the proposed project will cause negative impacts on local groundwater.<sup>55</sup> Specifically, he asserts that even though the EA finds that dewatering procedures could result in minor changes to the water table, it concludes, with no evidence, that it is anticipated that the aquifer would recharge.

25. As discussed in the EA, Natural's proposed dewatering procedures are based on existing soil conditions, topography, trench depths, geotechnical study results, and nearby storm water infrastructure.<sup>56</sup> Geotechnical investigations completed by Natural found the subsurface along the pipeline alignment to be relatively consistent. The soil profile consists of granular (i.e., silty sand to sand) soils extending to a depth of approximately 20 feet below existing grade, below which the soil profile transitions to gray lean clay. Groundwater was encountered in these investigations at depths ranging from three to six feet below grade. A groundwater depth of three feet was assumed for the dewatering estimates, and Natural's dewatering estimates assumed well points<sup>57</sup> would lower the groundwater table at the trench locations to approximately two feet below the base of excavation.

26. Natural anticipates that each well point system will operate for between four and 27 days, and trench dewatering activities will be consistent with the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan) and *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures), and with a One-Time Discharge permit issued by the Metropolitan Water Reclamation District (MWRD).<sup>58</sup> Further, Lake Michigan is the primary source of municipal water for the local area;<sup>59</sup> there are no designated sole source aquifers in the project area, the project

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<sup>55</sup> See Mr. Lopez February 3, 2020 Protest at 7.

<sup>56</sup> See EA at 7.

<sup>57</sup> A wellpoint system involves a series of small diameter water removal points connected to a pump, and is used for modest depth excavations, especially for trenching.

<sup>58</sup> EA at 12-13.

<sup>59</sup> University of Illinois, *Illinois Municipal Water Use*, Illinois State Water Survey, <https://univofillinois.maps.arcgis.com/apps/webappviewer/index.html?id=a63795fd832f4cc2a725290753e02f46> (last visited Mar. 23, 2020).

does not overlie source water protection areas, and potable water supply wells and springs within 150 feet of the project area were not identified.<sup>60</sup>

27. Due to the high permeability of the surficial aquifer, the abundant availability of shallow groundwater, Natural's adherence to our Plan and Procedures and its MWRD discharge permit, the absence of groundwater use identified in the immediate project vicinity, and the temporary nature of the dewatering, the EA concludes, and we agree that the aquifer would recharge and the impacts on groundwater resources will not be significant.<sup>61</sup>

### 3. Contaminated Soils and Groundwater

28. Mr. Lopez states that the project will cross sites with known soil and groundwater contamination.<sup>62</sup> He claims that no soil or water samples were collected from within the Harbor Estates Mobile Home Park even though this community is located on the site of a former landfill and the project would be traversing this area.<sup>63</sup>

29. As noted in the EA, Natural completed soil and groundwater sampling at five locations along the project that it considered most likely to encounter pre-existing soil or groundwater contamination.<sup>64</sup> These samples were all collected from locations approved by the City of Chicago in accessible areas nearest the public rights-of-way.<sup>65</sup> Except for one surficial soil sample, all samples met Illinois' Clean Construction Demolition Debris Maximum Contaminate Concentrations acceptance criteria and would qualify as clean fill in Illinois.<sup>66</sup> As stated in the EA, the surficial soil sample did not meet acceptance criteria due to an elevated pH of 11.97 and would need to be landfilled as a non-hazardous solid.<sup>67</sup> Groundwater samples were also collected from three of these

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<sup>60</sup> EA at 12.

<sup>61</sup> See EA at 12-13.

<sup>62</sup> See Mr. Lopez March 2, 2020 Supplemental Comments at 3-4.

<sup>63</sup> *Id.* at 4.

<sup>64</sup> EA at 10.

<sup>65</sup> See Natural December 30, 2019 Response to Data Request at 33.

<sup>66</sup> EA at 10.

<sup>67</sup> *Id.*

locations.<sup>68</sup> The results of these samples were determined to meet the MWRD criteria levels for wastewater disposal consistent with location discharge regulations.<sup>69</sup>

30. We conclude that Natural conducted a reasonable soil and groundwater sampling program. If potentially contaminated soils or groundwater are encountered during construction, Natural will follow its Plan for Unanticipated Discovery of Contaminated Media.<sup>70</sup> The EA found that this plan is acceptable<sup>71</sup> and should prevent significant impacts from contaminated groundwater and soils.

#### **4. Environmental Justice and Public Participation**

31. Mr. Lopez notes that the proposed project is located within an environmental justice community, and therefore he is concerned about the impacts on this community.<sup>72</sup> He submits that there is a substantial number of Spanish speakers in the project area and because no community outreach or written notification occurred in Spanish, public participation in the proceeding was hindered.<sup>73</sup> Mr. Lopez also notes that the project is located near a mobile home community and the easement for the proposed lateral extends a half mile through the community, potentially impacting a road there.<sup>74</sup> Mr. Lopez

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<sup>68</sup> See Natural December 30, 2019 Response to Data Request at 34.

<sup>69</sup> *Id.*

<sup>70</sup> EA at 10.

<sup>71</sup> *Id.*

<sup>72</sup> See Mr. Lopez March 2, 2020 Supplemental Comments at 2-4; Mr. Lopez February 3, 2020 Protest at 7.

<sup>73</sup> See Mr. Lopez March 2, 2020 Supplemental Comments at 2

<sup>74</sup> *Id.* at 3. Mr. Lopez also asserts, without support, that the project's impact on this road could potentially conflict with the Illinois Mobile Home Landlord and Tenant Rights Act. *Id.* Notwithstanding this absence of evidence, we note that the Commission encourages pipeline companies to adhere to state conditions for permits, although 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. See 15 U.S.C. § 717r(d) (recognizing that a state or federal agency's failure to act on a permit is 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 the Commission's regulatory authority over the transportation of natural gas is preempted); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it

asserts that “it appears that the residents of the Harbor Points Estates community did not receive notice of the proposed pipeline notwithstanding that it will come as close as 15 feet to some of the homes.”<sup>75</sup> Further, Mr. Lopez states that the construction of the pipeline near the mobile home community could negatively impact the health of residents in that community due to the proposed project potentially crossing contaminated soil and groundwater due to the pipeline traversing a known landfill.<sup>76</sup>

32. As explained in previous Commission orders,<sup>77</sup> Executive Order 12898, which requires certain federal agencies to identify and address disproportionately high and adverse human or environmental health effects on low-income and minority populations, by its terms is not binding on independent agencies such as the Commission.<sup>78</sup> Nonetheless, Commission staff addresses environmental justice concerns in the review of proposed projects when it is warranted or when these concerns are raised during the public environmental review process. Therefore, we do so below.

33. Executive Order 12898 encourages independent agencies to identify and address, as part of their NEPA review, “disproportionately high and adverse human health or environmental effects” of their actions on minority and low-income populations.<sup>79</sup> The

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conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

<sup>75</sup> Mr. Lopez March 2, 2020 Supplemental Comments at 3.

<sup>76</sup> *Id.* at 3-4.

<sup>77</sup> See, e.g., *Jordan Cove Energy Project L.P.*, 170 FERC ¶ 61,202, at P 240 (2020); *E. Shore Nat. Gas Co.*, 169 FERC ¶ 61,228, at P 44 (2019).

<sup>78</sup> Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 11, 1994); see *Dominion Transmission, Inc.*, 155 FERC ¶ 61,106, at P 135 (2016), *reh'g denied*, 163 FERC ¶ 61,128 (2018), *petition for review dismissed sub nom, Otsego 2000 v. FERC*, 767 F. App'x 19 (D.C. Cir. 2019) (per curiam). Section 6-604 of the Executive Order further explains that independent agencies are requested to comply with the Executive Order.

<sup>79</sup> Exec. Order No. 12,898, §§ 1-101, 6-604, 59 Fed. Reg. 7629, at 7629, 7632 (1994). See *Sierra Club v. FERC*, 867 F.3d 1357, at 1368 (D.C. Cir. 2017) (affirming the Commission’s environmental justice analysis without determining “whether Executive Order 12,898 is binding on FERC”). Identification of a disproportionately high and adverse impact on a minority or low-income population “does not preclude a proposed agency action from going forward, nor does it necessarily compel a conclusion that a proposed action is environmentally unsatisfactory.” Council on Environmental Quality

Environmental Protection Agency (EPA) recommends three steps to identify and address such effects: (1) determine the existence of minority and low-income populations; (2) determine if resource impacts are high and adverse; and (3) determine if the impacts fall disproportionately on minority and low-income populations.<sup>80</sup>

34. The EPA's Federal Interagency Working Group on Environmental Justice and NEPA Committee's publication entitled *Promising Practices for EJ Methodologies in NEPA Reviews*<sup>81</sup> provides methodologies for conducting environmental justice analyses. In evaluating environmental justice, the consideration of impacts may include those on human health or the environment, including the natural and physical environment, and associated ecological, aesthetic, historical, cultural, economic, social and health impacts to low-income and minority populations.<sup>82</sup>

35. The Council on Environmental Quality (CEQ) environmental justice guidance under NEPA<sup>83</sup> provides that minorities are those groups that include American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic. CEQ's guidance defines minority populations as where either: "(a) the minority population of the affected area exceeds 50 percent; or (b) the minority population of the affected area is meaningfully greater than the minority population percentage in the

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*Environmental Justice: Guidance Under the National Environmental Policy Act*, at 10 (1997) (CEQ 1997 Environmental Justice Guidance), <https://www.epa.gov/environmentaljustice/ceq-environmental-justice-guidance-under-national-environmental-policy-act>; Federal Interagency Working Group for Environmental Justice and NEPA Committee, *Promising Practices for EJ Methodologies in NEPA Reviews*, at 38 (2016), [https://www.epa.gov/sites/production/files/2016-08/documents/nepa\\_promising\\_practices\\_document\\_2016.pdf](https://www.epa.gov/sites/production/files/2016-08/documents/nepa_promising_practices_document_2016.pdf) (quoting same).

<sup>80</sup> See EPA, *Final Guidance For Incorporating Environmental Justice Concerns In EPA's NEPA Compliance Analysis*, at §§ 3.2.1-3.2.2, [https://www.epa.gov/sites/production/files/2015-02/documents/ej\\_guidance\\_nepa\\_epa0498.pdf](https://www.epa.gov/sites/production/files/2015-02/documents/ej_guidance_nepa_epa0498.pdf) (1998) (EPA 1998 Environmental Justice Guidance).

<sup>81</sup> Federal Interagency Working Group for Environmental Justice and NEPA Committee, *Promising Practices for EJ Methodologies in NEPA Reviews*, [https://www.epa.gov/sites/production/files/2016-08/documents/nepa\\_promising\\_practices\\_document\\_2016.pdf](https://www.epa.gov/sites/production/files/2016-08/documents/nepa_promising_practices_document_2016.pdf).

<sup>82</sup> *Id.* at 29.

<sup>83</sup> CEQ 1997 Environmental Justice Guidance at 25.



general population or other appropriate unit of geographic analysis,”<sup>84</sup> i.e., 10% or greater. The guidance also directs low-income populations to be identified based on the annual statistical poverty thresholds from the U.S. Census Bureau.<sup>85</sup> For this project, low-income populations are populations where the percent of low income population in the identified block group is equal to or greater than that of the county.

36. According to U.S. Census Bureau information, minority and low-income populations exist within the project area. Two counties are affected by the project: Cook County, Illinois and Lake County, Indiana. As reflected in Table A below, two of the three block groups affected by the proposed project support minority populations that exceed that of the overall county. Additionally, two of the three census block groups support low income populations that exceed that of the overall county.

<b>Table A<sup>86</sup></b>		
	<b>Percent Total Minority Population</b>	<b>Percent of Households Below the Poverty Line</b>
<b>Cook County, Illinois</b>	57.5	14.3
<b>Block Group 1, Census Tract 5501</b>	75.5	4.4
<b>Block Group 2, Census Tract 5501</b>	42.0	32.0
<b>Block Group 3, Census Tract 5501</b>	58.3	30.6

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> U.S. Census Bureau, 2018 American Community Survey 5-Year Estimates (Table ID: B03002), *Hispanic or Latino Origin by Race*, [https://data.census.gov/cedsci/table?q=B03002&hidePreview=false&tid=ACSDT5Y2018.B03002&g=1500000US170318257001,170315501002,170315501003,180890203004\\_0500000US17031,18089&vintage=2018&layer=VT\\_2018\\_050\\_00\\_PY\\_D1&cid=B03002\\_001E&moe=falsel](https://data.census.gov/cedsci/table?q=B03002&hidePreview=false&tid=ACSDT5Y2018.B03002&g=1500000US170318257001,170315501002,170315501003,180890203004_0500000US17031,18089&vintage=2018&layer=VT_2018_050_00_PY_D1&cid=B03002_001E&moe=falsel) (last visited Apr. 3, 2020); U.S. Census Bureau, Survey 5-Year Estimates (Table ID: B17017), *Poverty Status in the Past 12 Months by Household Type by Age of Householder*, [https://data.census.gov/cedsci/table?q=B17017&g=1500000US170315501001,180890203004,170315501002,170315501003\\_0500000US17031,18089&tid=ACSDT5Y2018.B17017&vintage=2018](https://data.census.gov/cedsci/table?q=B17017&g=1500000US170315501001,180890203004,170315501002,170315501003_0500000US17031,18089&tid=ACSDT5Y2018.B17017&vintage=2018) (last visited Apr. 3, 2020).

37. As reflected in Table B below, the block group in Lake County affected by the proposed project supports minority populations that exceed that of the overall county. Further, the block group supports a low-income population that slightly exceeds that of the overall county.

<b><u>Table B</u></b> <sup>87</sup>		
	<b>Percent Total Minority Population</b>	<b>Percent of Households Below the Poverty Line</b>
<b>Lake County, Indiana</b>	45.7	15.0
<b>Block Group 4, Census Tract 203</b>	75.0	15.8

38. However, as explained in the EA, any potentially adverse environmental effects on surrounding communities associated with the project will be minimized and/or mitigated, as applicable. This includes any impacts on environmental justice communities. The only aboveground structure associated with the project is a pig launcher and its associated fittings.<sup>88</sup> This launcher will be installed at an existing meter station. Area residents may be temporarily impacted by traffic delays during construction of the project, which is estimated to last approximately seven months. In addition, the potential emissions from the project are only associated with construction activities, and thus, will also be temporary.<sup>89</sup>

39. Construction impacts on residents in proximity to construction work areas will include noise.<sup>90</sup> Noise levels resulting from construction will vary depending on the stages of construction.<sup>91</sup> The variability will depend upon the number and type of

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<sup>87</sup> *Id.*

<sup>88</sup> *See* EA at 11.

<sup>89</sup> *See id.* at 17-19.

<sup>90</sup> EA at 19.

<sup>91</sup> *See id.*

equipment operating, the level of operation, and the distance between sources and receptors. For groundwater pumps that are planned to operate 24 hours per day, Natural states that it will locate the pumps as far from residences as possible and will use, as appropriate, noise attenuating structures that will reduce the noise from the pumps.<sup>92</sup> No permanent noise impacts are anticipated as a result of the project.<sup>93</sup>

40. In sum, although low income and minority populations exist within the project area, since we conclude that the environment impacts of the project will not be significant, we find the project will not result in a disproportionately high and adverse impact on environmental justice populations.

41. With respect to public participation, as noted above, the Commission issued a notice of the request and published the notice in the *Federal Register*, stating that there was an opportunity to comment, intervene, or protest in this proceeding. Natural was also required to notify affected landowners of the project in accordance with section 157.203(d)(2) of the Commission's regulations. In addition, Natural participated in an informal meeting that was organized by a Chicago City Alderman to provide information about the project and address questions and concerns of local residents that may be impacted by the project.<sup>94</sup> Further, Natural states that it has reached out to affected landowners to address any concerns they may have with regard to the project.<sup>95</sup> Therefore, we conclude that there was adequate notice and an opportunity to meaningfully participate in the proceeding. We further note that the Commission does not routinely provide documents in Spanish, and Mr. Lopez has not shown how he has been harmed by not receiving such documents in this proceeding.<sup>96</sup>

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<sup>92</sup> *Id.*

<sup>93</sup> *See id.*

<sup>94</sup> Natural Application at 8.

<sup>95</sup> Mr. Lopez contends that Natural mischaracterized the project as federally mandated, but failed to mention that the existing Peoples' pipeline is a state regulated project which led the public to believe that there was nothing that could be done to influence the route or request an alternative. Mr. Lopez Supplemental Comments at 4-5. While not mandated, construction of the 134<sup>th</sup> Street Lateral Project is subject to the Commission's federal jurisdiction under section 7 of the NGA.

<sup>96</sup> *See, e.g., Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 177 (2016).

## 5. Alternatives

42. Here, the purpose and need for the proposed project is to provide a replacement for the facilities currently leased by Natural from Peoples to allow Natural to continue to provide firm natural gas transportation to its customer once this lease is terminated. The Commission is required by NEPA to take a “hard look” at the potential environmental consequences of its proposed action.<sup>97</sup> However, in carrying out their NEPA responsibilities, agencies are governed by the “rule of reason.”<sup>98</sup> The range of alternatives that must be considered is a matter within an agency’s discretion, but must be sufficient to permit a reasoned choice of alternatives, i.e., reasonable alternatives.<sup>99</sup> CEQ advises, however, that “a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.”<sup>100</sup> An agency need only consider alternatives that will bring about the ends of the proposed action, and the evaluation is “shaped by the application at issue and by the function that the agency plays in the decisional process.”<sup>101</sup>

43. In its application, Natural provided a discussion of alternatives that it considered, but rejected on various grounds. Natural’s application also included an analysis of the no-action alternative.<sup>102</sup> Commission staff’s EA concluded that there were no alternatives to the proposed project that could meet the project purpose and that would provide a significant environmental advantage over the proposed project.<sup>103</sup> Two commenters, Mr. Lopez and Ms. Maggio, assert there was a lack of full consideration of project alternatives. Specifically, Mr. Lopez contends that an alternative which would

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<sup>97</sup> *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n.21 (1976)).

<sup>98</sup> *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 834 (D.C. Cir. 1972).

<sup>99</sup> See 42 U.S.C. § 4332(2)(C)(iii) (2018).

<sup>100</sup> CEQ, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,027 (1981).

<sup>101</sup> *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 199 (D.C. Cir. 1991).

<sup>102</sup> See Natural Prior Notice Request at Resource Report 10.

<sup>103</sup> EA at 19.

run through a pipeline corridor in the Forest Preserve and would utilize an existing pipeline should have been considered.<sup>104</sup>

44. In its February 28, 2020 Data Response, Natural filed an analysis of two alternatives in response to Mr. Lopez's comments: (1) an alternative utilizing a retired liquids pipeline, the Calumet pipeline; and (2) an alternative utilizing a pipeline route immediately adjacent to the Calumet pipeline, the Calumet Alternative.

a. **The Calumet Pipeline**

45. Natural stated that it had been approached by the Calumet pipeline owner with an offer to sell the Calumet pipeline to Natural.<sup>105</sup> The Calumet Pipeline was constructed in 1959 and is currently retired.<sup>106</sup> Natural states that the owner only provided integrity records through 1997, and that it did not receive any information indicating that the pipeline was used to transport natural gas.<sup>107</sup> Natural estimated that it would cost approximately two million dollars to conduct an integrity assessment to determine if it would be viable to use the pipeline to provide natural gas transportation service.<sup>108</sup>

46. Natural also stated that the owner of the Calumet pipeline did not provide it with any right-of-way or easement agreements or related unrecorded permits for the retired liquids pipeline.<sup>109</sup> Natural states that such information is needed to confirm the continued validity of previous right-of-way or easement agreements or permits and whether such agreements or permits are assignable or transferable to Natural, as well as to determine whether such agreements contemplated the use of the Calumet pipeline to transport natural gas.<sup>110</sup>

47. Moreover, the Calumet pipeline is located within the Forest Preserves of Cook County's (FDPCC) managed Powderhorn Marsh and Prairie Nature Preserve and beneath Powderhorn Lake. Natural expressed concern with the possible impact on these sensitive

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<sup>104</sup> Mr. Lopez February 3, 2020 Protest at 8.

<sup>105</sup> Natural February 28, 2020 Response to Data Request at 2.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

resources if maintenance on the pipeline or right-of-way had to occur or during the evaluation of potential issues, including anomaly investigations.<sup>111</sup>

48. For these reasons, Natural concluded that the acquisition of the retired Calumet pipeline was not a viable alternative to meet the purpose and need of the project, and therefore did not further consider the acquisition and use of the Calumet Pipeline in its alternative analysis in its application.

49. In his March 2, 2020 supplemental comments, Mr. Lopez maintains that utilizing the existing Calumet pipeline would minimize environmental impacts.<sup>112</sup> To the extent that any construction in the Forest Preserve Pipeline Corridor is required through use of the existing pipeline, Mr. Lopez claims that any impacts will be mitigated because the corridor has been previously disturbed by the Calumet pipeline, a petroleum pipeline, and a nitrogen pipeline.<sup>113</sup> He also states that the Powderhorn Forest Preserve removed hundreds of trees in the winter of 2018, which would lessen the need to clear additional trees for operations or any required construction along the Forest Preserve Pipeline Corridor.<sup>114</sup> In addition, Mr. Lopez maintains that the Calumet pipeline is a viable alternative because in 2017 Natural made a monetary offer for the acquisition of a section of the Calumet pipeline.<sup>115</sup> However, Mr. Lopez goes on to explain that the owner of the pipeline made a counter-offer to Natural, at which time Natural broke off discussions.<sup>116</sup>

50. We disagree that the acquisition and use of the Calumet pipeline is a viable alternative to the proposed project. As explained herein, Natural and the owner of the Calumet pipeline did not finalize an agreement. Further, Mr. Lopez' assertions regarding the impact of the Calumet Pipeline on the Forest Preserve and the impact of prior tree cutting there are unsupported speculation. We will not substitute our judgment for

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<sup>111</sup> *Id.* at 3.

<sup>112</sup> Mr. Lopez March 2, 2020 Supplemental Comments at 6.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 7.

<sup>116</sup> *Id.* Mr. Lopez's protest included a declaration from Mr. John Klatt, the president of Calumet Pipeline, LLC, stating that Natural offered to lease or acquire the Calumet pipeline in 2017 but later withdrew the offer. *See* Mr. Lopez March 2, 2020 Supplemental Comments at 12-14.

Natural's business decision.<sup>117</sup> For these reasons, and because Natural has no contractual rights to use a portion of the Calumet pipeline, it is not a feasible or practical alternative to the project.

**b. Alternative Calumet Pipeline**

51. In its data response, Natural also examined an additional alternative in which a pipeline is constructed parallel to the existing Calumet Pipeline.<sup>118</sup> Ultimately, Natural determined that this alternative pipeline would be approximately 1.47-miles in length, which is approximately 775 feet longer than the current proposed pipeline.<sup>119</sup> Assuming similar right-of-way dimensions to those Natural used for the proposed alignment, the construction impact of such a pipeline would be 15.1 acres.<sup>120</sup> This calculation includes the right-of-way and additional temporary workspaces. We estimate the permanent right-of-way would be 5.3 acres. We note that the permanent right-of-way acreage includes the permanent right-of-way beneath Powderhorn Lake, which would not be subject to regular maintenance activities. The project, as proposed in Natural's application, would impact approximately 16.6 acres during construction and have a permanent right-of-way of 2.0 acres.

52. No structures are within 50 feet of the alternative's construction workspaces and the alternative pipeline would be collocated with existing pipelines for the majority of its

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<sup>117</sup> See *Kinder Morgan Interstate Gas Transmission LLC*, 133 FERC ¶ 61,044, at P 25 (2010) (stating that the Commission will neither substitute its business judgment for that of the applicants nor require the applicant to acquire facilities that a party asserts is an alternative to the proposed project). Cf. *Gulf South Pipeline Co., LP*, 132 FERC ¶ 61,199, at P 63 (2010) ("the Commission gives deference to pipelines' operational experience and provides pipelines with reasonable discretion to manage their own systems") (citations omitted).

<sup>118</sup> *Id.* at 3. Natural states that it evaluated this pipeline route via desktop sources and information obtained from third parties. *Id.*

<sup>119</sup> Natural February 28, 2020 Response to Data Request at 3.

<sup>120</sup> In calculating impacts resulting from use of the alternative, Natural assumed a 100-foot-wide construction right-of-way and a 75-foot-wide permanent right-of-way and estimated impacts of 19.5 acres during construction and a permanent right-of-way impact of 7.1 acres. See *id.* However, as the project is proposed to have at most a 75-foot-wide construction right-of-way and a 20-foot-wide permanent right-of-way, Commission staff adjusted the alternative's construction and permanent right-of-way impacts down by 25% in order to make the comparison consistent.

route.<sup>121</sup> Natural states that it anticipates a horizontal direction drill (HDD) would be utilized for this alternative to cross Powderhorn Lake.<sup>122</sup>

53. In comparison, approximately 127 structures are within 50 feet of the project proposed in Natural's prior notice request.<sup>123</sup> The proposed project also is collocated with utility and transportation corridors, including the Commonwealth Edison Company right-of-way at the western end of the project.<sup>124</sup> No HDD is proposed for the project, but Natural proposes to cross railroad tracks via a conventional bore.<sup>125</sup>

54. The alternative would cross a large wetland complex and, assuming similar right-of-way dimensions as the proposed project, would impact approximately 3.5 acres of palustrine emergent marsh wetlands and 1.6 acres to palustrine forested wetlands during construction and 1.7 and 0.75 acres during operation, respectively.<sup>126</sup> In comparison, as noted in the EA, the proposed project would impact 0.31 acre of palustrine emergent marsh wetlands during construction and no wetlands during operation.<sup>127</sup>

55. Natural also notes that the alternative would be located on land managed by the Forest Preserves District of Cook County. Consequently, Natural would need to obtain approval to install a pipeline on the Forest Preserves' land. Natural stated that in prior

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<sup>121</sup> Natural February 28, 2020 Response to Data Request at 4.

<sup>122</sup> *Id.*

<sup>123</sup> EA at 7.

<sup>124</sup> *See* EA at 12.

<sup>125</sup> EA at 7.

<sup>126</sup> In calculating impacts resulting from use of the alternative, Natural assumed a 100-foot-wide construction right-of-way and a 75-foot-wide permanent right-of-way. Utilizing these widths, Natural estimates it would impact approximately 4.7 acres to palustrine emergent marsh wetlands and 2.1 acres to palustrine forested wetlands during construction and 2.3 and 1.0 acres during operation, respectively. It should be noted that Natural estimates an additional 2.0 acres of impacts to open water during operation; however, as Powderhorn Lake would be crossed via HDD no permanent impacts to the waterbody are anticipated. As the project is proposed to have at most a 75-foot-wide construction right-of-way and a 20-foot-wide permanent right-of-way, Commission staff adjusted the alternative's construction and permanent impacts down by 25% in order to make the comparison consistent.

<sup>127</sup> EA at 13-14.



communications with the Forest Preserves, it was informed that only those requests that are consistent with the mission statement of the Forest Preserves would qualify for consideration.

56. Natural also stated that the wetlands and waterbody within the Forest Preserves' land provide habitat for the state endangered Blanding's Turtle (*Emydoidea blandingii*). As discussed in our EA, the Illinois Department of Natural Resources states that Blanding's turtle is in the vicinity of the project and utilizes wetlands for foraging and hibernation. The proposed project does not cross Forest Preserves' land, but we acknowledge it would utilize Forest Preserves' property for temporary laydown areas.

57. The alternative route is farther from residential properties than the proposed project. This would result in less noise and traffic impacts on residents. However, the alternative project collocating with the Calumet pipeline would temporarily and permanently affect more acres of wetland habitat, including palustrine forested wetlands. Impacts on forested wetlands would be long lasting and would include long-term or permanent conversion to emergent or scrub shrub wetland types as trees may need to be removed for operational inspections and testing. In contrast, the impacts on residents from the proposed project would be limited to temporary impacts during the approximately seven months of construction.

58. The alternative route constructed parallel to the existing Calumet Pipeline provides both advantages and disadvantages when compared with the proposed route. For most factors, the difference is not significant. In balancing the factors evaluated, we do not find an overall significant environmental advantage for the alternative when compared to the proposed route. Further, Commission staff considered the no-action alternative, and we find that in this instance such an alternative would mean a loss of service to NIPSCO and its customers. Given the significance of such an event and the modest impacts of the proposed project, we find that the no-action alternative is not reasonable and does not warrant further consideration. In sum, we do not find there to be any alternatives to the proposed project that could meet the proposed project purpose and that provide a significant environmental advantage over the proposed project.

### **C. Conclusion**

59. As explained above, when a prior notice filing is protested and the protest is not withdrawn or dismissed, the activity is not deemed authorized by the blanket certification, and instead, the Commission treats the filing as an application for case-specific authorization. However, when the Commission subsequently finds that the protest should be denied, it is Commission policy to authorize the construction and operation of the delivery facilities under the applicant's Part 157 blanket certificate,

rather than grant redundant case-specific certificate authority.<sup>128</sup> For the reasons discussed above, the Commission has determined that the protest to the prior notice filing should be denied and that Natural has complied with the requirements under its blanket certificate. Therefore, consistent with the Commission's policy against granting redundant case specific authority, the Commission will authorize Natural to proceed with construction of the 134<sup>th</sup> Street Project under its part 157 blanket certificate, subject to the blanket certificate regulations' conditions in section 157.206(b) of the Commission's regulations.

60. At a hearing held on May 21, 2020, the Commission, on its own motion, received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, and all comments submitted herein, and upon consideration of the record,

The Commission orders:

(A) Natural Gas Pipeline Company of America LLC (Natural) is authorized, pursuant to its Part 157 blanket certificate, to construct and operate the facilities, as described herein and more fully described in Natural's prior notice request and subsequent filings made by the applicant, including any commitments made therein.

(B) Mr. Rodney Lopez's motion for late intervention is granted, and his protest is denied.

(C) Calumet Pipeline, LLC's motion for late intervention is denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>128</sup> *Columbia Gas Transmission, LLC*, 148 FERC ¶ 61,138, at P 39 (2014). See also *Kinder Morgan Gas Transmission, LLC*, 133 FERC ¶ 61,044, at P 41 (2010) (citing *Tenn. Gas Pipeline Co.*, 125 FERC ¶ 61,258, at P 20 (2008); *Destin Pipeline Co.*, 83 FERC ¶ 61,308, at 62,268 (1998)).