

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PennEast Pipeline Company, LLC

Docket No. CP19-78-001

(Issued June 18, 2020)

GLICK, Commissioner, *dissenting in part*:

1. I dissented from the Commission's order granting PennEast Pipeline Company, LLC (PennEast) a certificate of public convenience and necessity. As I explained, the record did not show a need for the pipeline and the Commission erred by finding that the pipeline was required by the public convenience and necessity when many permits and details about the proposed route remained unanswered.¹ Those issues, as well as a host of others, are now being litigated in the federal courts. The only issue before us today is rehearing of the Commission's order amending PennEast's originally certificated route. While I believe the amendments to the route—proposed in response to landowner and constructability concerns²—are supported by the record, I dissent in part from today's order because it violates both the Natural Gas Act³ (NGA) and the National Environmental Policy Act⁴ (NEPA). The Commission once again refuses to consider the consequences its actions have for climate change. Although neither the NGA nor NEPA permit the Commission to assume away the climate change implications of constructing and operating this project, that is precisely what the Commission is doing here.

2. In today's order, the Commission denies rehearing of its order amending PennEast's certificate to allow for discrete adjustments to the pipeline route (Project),⁵ but continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts. The Commission again refuses to consider whether

¹ *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053 (2018) (Glick, Comm'r, dissenting at 1); see *PennEast Pipeline Co., LLC*, 164 FERC ¶ 61,098 (2018) (Glick, Comm'r, dissenting at 1).

² *PennEast Pipeline Company, LLC*, 170 FERC ¶ 61,198, at P 4 (2020) (Amendment Order).

³ 15 U.S.C. § 717f (2018).

⁴ National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*

⁵ *PennEast Pipeline Company, LLC*, 171 FERC ¶ 61,229 (2020) (Rehearing Order).

the Project's contribution to climate change from GHG emissions would be significant, even though it quantifies the direct GHG emissions resulting from the Project's construction of the amended route.⁶ 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"⁷ and, as a result, conclude that the Project is in the public interest and required by the public convenience and necessity.⁸ Claiming that a 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.

3. The Commission's failure to meaningfully consider climate change forces me into dissenting from orders that I might otherwise support. The EA suggests the construction of the amended route would result in an incremental 31,000 metric tons of CO₂ annually,⁹ which might not be significant. But the Commission refuses to even engage in that analysis.¹⁰ 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.¹¹ Although need for the Project is an important

⁶ Environmental Assessment at Tables B.8.2-5 – B.8.2-8 (EA); *see* Amendment Order, 170 FERC ¶ 61,198 at P 59 & n.126. The Amendment Order did not change the authorized transportation capacity of the PennEast Pipeline, therefore does not increase or change the operational or downstream GHG emissions. *See* Amendment Order, 170 FERC ¶ 61,198 at P 59 n.127; EA at 100; Rehearing Order, 171 FERC ¶ 61,229 at P 25.

⁷ Amendment Order, 170 FERC ¶ 61,198 at P 67; EA at 145.

⁸ Amendment Order, 170 FERC ¶ 61,198 at P 68; Rehearing Order, 171 FERC ¶ 61,229 at P 3.

⁹ EA at Tables B.8.2-6 – B.8.2-8 (EA); *see also* Amendment Order, 170 FERC ¶ 61,198 at P 59 & n.126.

¹⁰ *See* Rehearing Order, 171 FERC ¶ 61,229 at P 23; Amendment Certificate Order, 170 FERC ¶ 61,198 at P 60 (citing *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70 (2018)); *see also* *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128 at P 67 ("Without an accepted methodology, the Commission cannot make a finding whether a particular quantity of greenhouse gas emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change");

¹¹ *See Sabal Trail*, 867 F.3d at 1373 (explaining that section 7 of the NGA requires

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.

For these reasons, and those articulated previously,¹² I respectfully dissent in part.

Richard Glick
Commissioner

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)).

¹² See, e.g., Amendment Order, 170 FERC ¶ 61,198 (Glick, Comm’r, dissenting in part).