

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Portland Natural Gas Transmission System

Docket No. CP20-16-000

ORDER ISSUING CERTIFICATE

(Issued June 18, 2020)

1. On November 18, 2019, Portland Natural Gas Transmission System (Portland) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² seeking authorization to construct, modify, and operate facilities for Phases II and III of its Westbrook XPress Project. The project is designed to increase the certificated capacity on Portland's wholly-owned north system by 80,998 thousand cubic feet per day (Mcf/d) and to increase the certificated capacity on the portion of its system jointly owned with Maritimes & Northeast Pipeline, L.L.C. (Maritimes) by 50,199 Mcf/d.

2. As discussed below, the Commission grants Portland's requested authorizations, subject to certain conditions.

I. Background and Proposal

3. Portland, a general partnership organized and existing under the laws of the State of Maine, with its principal place of business in Portsmouth, New Hampshire, is a natural-gas company as defined by section 2(6) of the NGA³ primarily engaged in the transportation of natural gas in interstate commerce. Portland provides natural gas transportation service for its customers, including gas utilities, industrial facilities, and electric generation plants, in the states of Massachusetts, New Hampshire, Vermont, and Maine.

¹ 15 U.S.C. § 717f(c) (2018).

² 18 C.F.R. pt. 157 (2019).

³ 15 U.S.C. § 717a(6) (2018).

4. Portland's system extends approximately 295 miles from Pittsburg, New Hampshire, at the United States border with Canada to Dracut, Massachusetts. Construction and operation of Portland's interstate pipeline system was authorized by a series of Commission orders.⁴ Portland's system consists of two parts: the north facilities and the joint facilities. The north facilities include 142 miles of mainline from an interconnection with Trans-Québec & Maritimes Pipeline Inc. (Trans-Québec) at the United States-Canada border to Westbrook, Maine, and two laterals. The joint facilities include approximately 101 miles of mainline from Westbrook, Maine, to Dracut, Massachusetts, and three laterals.

5. Portland states that it held open seasons and requests for offers to turnback capacity for the Westbrook XPress Project from December 13 to December 19, 2018, and from March 6 to March 12, 2019. As a result of the open seasons, Portland executed eight binding precedent agreements for a total of 123,973 dekatherms per day (Dth/d)⁵ of firm transportation service pursuant to Portland's existing Rate Schedule FT, with service commencing over three phases. The project shippers include three natural gas local distribution companies, two electric generators serving markets in New Brunswick and Nova Scotia, and three industrial companies in the oil refinery, pulp, and food processing industries.⁶

6. For Phase I of the Westbrook XPress Project, Portland was authorized to increase the certificated capacity on Portland's north facilities by 42,482 Mcf/d.⁷ No facility modifications or additions were required, and Phase I of the project was placed into service on November 1, 2019.

⁴ See *Portland Nat. Gas Transmission Sys.*, 76 FERC ¶ 61,123 (1996); *Portland Nat. Gas Transmission Sys.*, 80 FERC ¶ 61,134 (1997); *Portland Nat. Gas Transmission Sys.*, 80 FERC ¶ 61,136 (1997); and *Portland Nat. Gas Transmission Sys.*, 80 FERC ¶ 61,345 (1997).

⁵ Portland uses a 1.004 volumetric (Mcf/d) to thermal (Dth/d) conversion factor. As proposed, the total certificated capacity of the Westbrook XPress Project is 123,480 Mcf/day: 42,482 Mcf/d for Phase I, 62,990 Mcf/d for Phase II, and 18,008 Mcf/d for Phase III. Portland states that because all contracts reflect Pittsburg receipts, the increase in capacity of 50,199 Mcf/d on the joint facilities is included in the total 123,973 Dth/day contracted for the project. Portland Application at 9 n.13.

⁶ *Id.* at 6 n.10.

⁷ *Portland Nat. Gas Transmission Sys.*, 168 FERC ¶ 62,004 (2019) (delegated order).

7. In this proceeding, Portland is requesting to increase its certificated capacity in order to accommodate the total service commitments reflected in the precedent agreements for Phases II and III of the project. Portland explains that the project shippers' service commitments will be phased-in over two years, with Phase II service commencing on November 1, 2021, and Phase III service commencing on November 1, 2022. Portland states that the capacity subject to the Phase III service commitments will be made available for interim service prior to the effective date of the Phase III firm service agreements.⁸

8. Specifically, Portland proposes to undertake the following installations and modifications, all in Cumberland County, Maine: (1) expanding the existing Westbrook Compressor Station by installing one new 15,900 horsepower (hp) Solar Mars 100 natural gas-fired turbine compressor unit; (2) modifying the existing Westbrook Metering & Regulating (M&R) Station; and (3) installing various appurtenances on the joint facilities in Cumberland County, Maine. Portland estimates the cost of the project to be \$117,343,915.⁹

9. Portland proposes to use its existing rates for firm transportation service under Rate Schedule FT for service using the capacity made available by the project and requests a predetermination that rolled-in rate treatment for the project costs will be appropriate in a future section 4 rate proceeding. The project shippers have elected to pay negotiated rates.

II. Notice and Interventions

10. Notice of Portland's application was published in the *Federal Register* on December 6, 2019.¹⁰ The notice established December 23, 2019, as the deadline for filing comments and interventions.¹¹ The National Grid Gas Delivery Companies filed a timely, unopposed motion to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹²

⁸ Portland Application at 2 n.2

⁹ *Id.* at Exhibit K, Page 1 of 3.

¹⁰ 84 Fed. Reg. 66,896 (Dec. 6, 2019).

¹¹ *Id.*

¹² 18 C.F.R. § 385.214(c)(1) (2019).

III. Discussion

11. Because Portland's proposed facilities will be used to transport natural gas in interstate commerce, subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹³

A. Certificate Policy Statement

12. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.¹⁴ 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.

13. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis where other interests are addressed.

14. As indicated above, the threshold requirement under the Certificate Policy Statement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. As discussed below, we will

¹³ 15 U.S.C. §§ 717f(c), (e) (2018).

¹⁴ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

approve Portland's proposal to use its existing system rates as the initial recourse rates for services utilizing the incremental capacity created by the proposed facilities because those rates exceed illustrative incremental rates calculated to recover the costs of the project. Further, we also grant a predetermination that rolled-in rate treatment for the costs of the project in a future section 4 rate proceeding will be appropriate because the expected revenues from Phases II and III of the project are projected to exceed the project's costs. Accordingly, we find that Portland's existing customers will not subsidize Phases II and III of the Westbrook XPress Project and that the threshold no-subsidy requirement is met.

15. We find that the proposed project will have no adverse effect on service to Portland's existing customers because the proposed facilities are designed to provide incremental service to meet the needs of the proposed project's shippers while maintaining existing services for Portland's existing customers. Nor is there evidence that the proposal will have adverse effects on existing pipelines in the region or their captive customers, and no other pipeline company or their customers have protested Portland's application.

16. Additionally, we find that Phases II and III of the Westbrook XPress Project are designed to minimize adverse impacts on landowners and surrounding communities. Portland notes that modifications at the Westbrook Compressor Station will take place on the compressor station property and in an expansion area on property controlled by Portland. Modifications at the Westbrook M&R Station will occur on previously disturbed land within the station yard.

17. Phases II and III of the Westbrook Xpress Project will enable Portland to serve the demand evidenced by the subscription of 100% of the project's capacity. Accordingly, we find that Portland has demonstrated a need for the project, and the project's benefits will outweigh any adverse economic effects on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities. Therefore, we conclude that the project is consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.¹⁵

¹⁵ See Certificate Policy Statement, 88 FERC at 61,745-46 (explaining that only when the project benefits outweigh the adverse effects on the economic interests will the Commission then complete the environmental analysis).

B. Rates

1. Initial Recourse Rates

18. Portland proposes to use its existing system-wide charges under Rate Schedule FT as the initial recourse rate for firm transportation service on the project capacity. Portland calculated an illustrative incremental cost-based monthly reservation charge of \$13.6628 per Dth based on an estimated first-year incremental reservation cost of service of \$14,308,401 and annual reservation billing determinants of 1,047,252 Dth.¹⁶ Portland calculated an illustrative incremental cost-based usage charge of \$0.0075 per Dth based on an estimated first-year incremental usage cost of service of \$178,302 and annual usage billing determinants of 23,890,436 Dth based on a 75% load factor.¹⁷ Portland states that the cost of service was calculated using the capital structure, cost of debt, return on equity, and depreciation rates underlying its currently effective rates as approved by the Commission in Docket No. RP10-729-000.¹⁸ Portland's currently effective maximum recourse monthly reservation charge is \$25.9843 per Dth, and the maximum recourse usage charge is \$0.0000 per Dth under Rate Schedule FT.¹⁹

19. We have reviewed Portland's proposed cost of service and initial rates and find that they reasonably reflect current Commission policy. Under the Commission's Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion service if the incremental rate exceeds the maximum system recourse rate.²⁰ Where the currently effective system-wide recourse rate is greater than the illustrative incremental cost-based recourse rate, the Commission has found it appropriate to establish the existing system-wide rate as the initial recourse rate for the project.²¹ Because Portland's rate analysis demonstrates that its currently effective maximum recourse reservation charge under Rate Schedule FT is greater than the

¹⁶ Portland Application at Exhibit P, Page 1 of 28.

¹⁷ *Id.*

¹⁸ *Portland Nat. Gas Transmission Sys.*, Opinion No. 524, 142 FERC ¶ 61,197 (2013).

¹⁹ Portland Natural Gas Transmission System, FERC NGA Gas Tariff, Portland Tariffs, [Part 4.1- Stmtnt of Rates, Recourse Reservation and Usage Rates, 6.0.0.](#)

²⁰ Certificate Policy Statement, 88 FERC at 61,746.

²¹ *See, e.g., Tex. Gas Transmission, LLC*, 152 FERC ¶ 61,160, at P 30 (2015); *Millennium Pipeline Co., L.L.C.*, 145 FERC ¶ 61,007, at P 30 (2013).

illustrative incremental cost-based reservation charge, we will approve Portland's request to use its existing reservation charge under Rate Schedule FT as the initial recourse charge for the project. In addition, we will also approve Portland's request to use its existing usage charge for the project.

2. Fuel

20. Portland proposes to establish an incremental fuel rate to recover the fuel costs associated with the project. Portland provided an illustrative fuel study which calculates an estimated range of fuel usage for the project.²² Portland explains that the fuel rate for project shippers will be adjusted on a monthly basis, similar to the method approved for recovering fuel costs associated with its Portland XPress Project,²³ and consistent with the fuel mechanism set forth in its tariff. The fuel mechanism is intended to keep the project shippers and Portland whole on a rolling-monthly basis.²⁴ Portland anticipates an initial project fuel range to be between 0.000% to 1.336%, based on a load factor between 75% and 100%.²⁵

21. We approve Portland's proposal to charge an incremental fuel rate for Phases II and III of the Westbrook XPress Project and address its proposed changes to its tariff below.

3. Negotiated Rates

22. Portland proposes to provide service to the project shippers under negotiated rate agreements. Portland must file either negotiated rate agreements or tariff records setting forth the essential elements of the agreements in accordance with the Alternative Rate

²² See Portland Application at Exhibit Z-2.

²³ See *Portland Nat. Gas Transmission Sys.*, 166 FERC ¶ 61,134, at P 33 (2019).

²⁴ *Id.*

²⁵ *Id.* Portland recovers fuel and lost and unaccounted for gas from its shippers based on separate "Measurement Variance Factors" that are calculated on a monthly basis, as described in section 6.2.26 of the General Terms and Conditions of Portland's FERC Gas Tariff.

Policy Statement²⁶ and the Commission's negotiated rate policies.²⁷ Portland must file the negotiated rate agreements or tariff records at least 30 days, but no more than 60 days, before the proposed effective date for such rates.²⁸

4. Rolled-in Rate Determination

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

24. In Exhibit N of its application, Portland demonstrates that the estimated first-year revenue of \$20,183,431 derived from the negotiated rates paid by the Phase II shippers

²⁶ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194, order on reh'g and clarification, 75 FERC ¶ 61,024, reh'g denied, 75 FERC ¶ 61,066, reh'g dismissed, 75 FERC ¶ 61,291 (1996), petition denied sub nom. *Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

²⁷ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), order on reh'g and clarification, 114 FERC ¶ 61,042, dismissing reh'g and denying clarification, 114 FERC ¶ 61,304 (2006).

²⁸ Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. See, e.g., *Tex. Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014); see also 18 C.F.R. § 154.112(b) (2019).

²⁹ See *Natural Gas Pipeline Co. of America, LLC*, 154 FERC ¶ 61,220, at P 25 (2016); *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

exceeds the project's first-year cost of service of \$14,486,703.³⁰ Therefore, we grant Portland's request for a predetermination favoring rolled-in rate treatment for the costs associated with the proposed project in its next NGA general section 4 rate case, absent any significant change in circumstances.

5. Reporting Incremental Costs

25. We require Portland to keep separate books and accounting of costs and revenues attributable to the capacity created by the project in the same manner as required by section 154.309 of the Commission's regulations.³¹ The books should be maintained with applicable cross-reference 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

6. Tariff

26. Portland proposes *pro forma* revisions to its Part 4-Statement of Rates and Part 6.2 of the General Terms and Conditions (GT&C) of its tariff to modify its fuel retainage mechanism, which was previously approved in its Phase III of the Portland XPress Project in Docket No. CP18-506-000.³³ Portland states that the mechanism, as modified, is designed to keep the project shippers whole on a rolling-month basis. Portland proposes that any fuel-related expenses incurred in relation to the project will be incorporated into Portland's Measurement Variance Factor in section 6.2.26(b) of its GT&C. Additionally, Portland proposes to modify the definition of Company Use Fuel in section 6.2.26 of its GT&C to include the fuel incurred by Portland at its solely-owned compressor site(s) to be located along its system. Portland proposes that Aggregate Company Use Fuel will be defined as, "[q]uantities of fuel gas consumed at Transporter/third-party co-owned compressor site(s) and at Transporter owned

³⁰ Portland Application at Exhibit N, Page 1 of 2.

³¹ 18 C.F.R. § 154.309 (2019).

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

³³ The Commission approved Phase III of the Portland XPress Project on February 21, 2019. *Portland Nat. Gas Transmission Sys.*, 166 FERC ¶ 61,134. Phase III of the Portland XPress Project is anticipated to be placed into service on November 1, 2020. *Id.* P 11.

compressor site(s).” Portland will publish its revised Fuel Retainage percentage via its Interactive Internet Website at least ten days prior to the beginning of each month.

27. As we stated in the order approving Phase III of the Portland XPress Project,³⁴ the Commission's regulations regarding periodic adjustments require pipelines explain their rate adjustments to allow customers and the Commission the opportunity to review and comment or protest any adjustments that have been charged. Portland proposes to publish its Fuel Retainage percentage via its Interactive Internet Website at least ten days prior to the beginning of each month. However, Portland’s proposed *pro forma* tariff records does not state that it will also make an annual filing pursuant to section 4 of the NGA. Accordingly, this proposal, absent clarification in this regard, could compromise a shipper’s rights under the NGA to meaningfully protest the adjustments made thereunder, and narrow the Commission's ability to address and remedy such objections if necessary.³⁵

28. Therefore, consistent with Commission policy,³⁶ we direct Portland to modify its proposed language in the *pro forma* tariff records to include a requirement to file annual reimbursement reports fully detailing the operation of its fuel reimbursement mechanism for the past 12-month period, satisfying the requirements of section 154.403(d) of the Commission's regulations.³⁷ Such annual fuel reimbursement reports shall be filed pursuant to section 4 of the NGA,³⁸ to allow for review, comment, and possible challenge by the Commission and interested parties.³⁹

³⁴ *Portland Nat. Gas Transmission Sys.*, 166 FERC ¶ 61,134 at P 36.

³⁵ *See TransColorado Gas Transmission Co.*, 87 FERC ¶ 61,027, at 61,100-01 (1999). *See also Rockies Express Pipeline LLC*, 163 FERC ¶ 61,011, at P 9 (2018).

³⁶ *See, e.g., Portland Nat. Gas Transmission Sys.*, 166 FERC ¶ 61,134 at P 37.

³⁷ 18 C.F.R. § 154.403(d) (2019).

³⁸ 15 U.S.C. § 717c (2018).

³⁹ *See Rockies Express Pipeline LLC*, 163 FERC ¶ 61,011 at P 10.

29. Therefore, we approve the language contained in the *pro forma* tariff records, subject to the modifications discussed above. Portland must file actual tariff records, consistent with the section 154.403(d) requirements discussed above.⁴⁰

C. Environmental Analysis

30. On December 12, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Westbrook XPress Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the Federal Register on December 19, 2019, and mailed to interested parties including federal, state, and local officials; agency representatives; Native American tribes; local libraries and newspapers; and affected property owners.⁴¹ We received comments in response to the NOI from the U.S. Environmental Protection Agency and Maine Natural Areas Program. The primary issues raised during the scoping process included a request for a hard copy of the environmental assessment (EA)⁴² and project impacts on Pitch Pine Woodland vegetation.

31. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an EA for Portland's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.⁴³ The EA was placed into the public record on April 2, 2020.

Updated Greenhouse Gas Analysis

32. The EA estimates the maximum potential greenhouse gas (GHG) emissions from operations at the Westbrook Compressor Station will increase by 78,322 tons per year of

⁴⁰ The Commission required Portland to make the same modification to its tariff when approving Phase III of the Portland Xpress Project. *See Portland Nat. Gas Transmission Sys.*, 166 FERC ¶ 61,134 at P 38.

⁴¹ 84 Fed. Reg. 69,735 (Dec. 19, 2019).

⁴² As noted in the EA, FERC staff no longer prints hard copies or produces CDs of its EAs or EISs. However, electronic versions of all environmental documents are accessible on FERC's website (www.ferc.gov).

⁴³ In response to concerns raised, the EA found that there would be no impacts on Pitch Pine Woodland vegetation. *See EA at 2-3; 24-25.*

carbon dioxide equivalent (CO₂e)—for a total of 234,560 CO₂e tons per year—following completion of Phases II and III of the project.⁴⁴ The maximum potential downstream GHG emissions associated with the end-use of the gas to be transported to the project's one domestic industrial shipper⁴⁵ is 80,000 metric tons per year. To provide context to these GHG estimates, 5.903 billion metric tons of CO₂e were emitted at a national level in 2018 (inclusive of CO₂e sources and sinks).⁴⁶ The operational and downstream emissions from the completed project could potentially increase CO₂e emissions based on the 2018 levels by 0.003% at the national level.⁴⁷ Currently, there are no national targets to use as a benchmark for comparison.⁴⁸

33. GHG emissions, such as the emissions from the project, will contribute incrementally to climate change, and we have previously disclosed various effects of climate change on the Northeastern region of the United States.⁴⁹ However, as the Commission has previously concluded, it cannot determine a project's incremental

⁴⁴ EA at 41 (Table 7).

⁴⁵ Portland May 28, 2020 Response to Staff's May 21, 2020 Data Request at Attachment 1.

⁴⁶ U.S. Environmental Protection Agency, Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2018 at ES-7 (Table ES-2) (2020), available at <https://www.epa.gov/sites/production/files/2020-04/documents/us-ghg-inventory-2020-main-text.pdf> (accessed May 2020).

⁴⁷ We note that this calculation does not include the total estimated construction-related emissions of 4,450.1 tons per year of CO₂e, as such emissions are temporary and would occur only during construction of the project. EA at 40 (Table 6).

⁴⁸ 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.

⁴⁹ *PennEast Pipeline Company, LLC*, PennEast Pipeline Project Final Environmental Impact Statement at 4-334 to 4-335, Docket Nos. CP15-558-000 (April 2017) (detailing the environmental impacts attributed to climate change in the Northeastern United States from U.S. Global Change Research Program's 2014 Climate Change Impacts in the United States: The Third National Climate Assessment).

physical impacts on the environment caused by GHG emissions.⁵⁰ We have also previously concluded the Commission cannot determine whether an individual project's contribution to climate change would be significant.⁵¹ That situation has not changed.

34. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Portland's application and supplement, and in compliance with the environmental conditions in the appendix to this Order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

D. Conclusion

35. Based on our Certificate Policy Statement determination and environmental analysis, we find under section 7 of the NGA that the public convenience and necessity requires approval of Phases II and III of the Westbrook XPress Project, subject to the conditions in this order.

36. 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.

37. 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.

⁵⁰ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70 (2018) (LaFleur, Comm'r, *dissenting in part*; Glick, Comm'r, *dissenting in part*).

⁵¹ *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 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).

However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by this Commission.⁵²

38. At a hearing held on June 18, 2020, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, as supplemented, and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Portland authorizing it 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) The certificate authority issued in Ordering Paragraph (A) is conditioned on Portland'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, including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- 3) Compliance with the environmental conditions listed in the appendix to this order; and
- 4) Filing of a written statement affirming that it has executed firm service agreements for the capacity levels and terms of service represented in its signed precedent agreements, prior to commencing construction.

⁵² 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).

(C) Portland's existing system-wide reservation and usage charges under Rate Schedule FT are approved as the initial recourse rate for the project, as described above.

(D) Portland's proposal to establish an incremental fuel rate for the project is approved.

(E) Portland's *pro forma* tariff revisions to modify its fuel retainage mechanism are approved, subject to the modifications discussed above.

(F) Portland must file actual tariff records reflecting the incremental fuel rate and tariff revisions at least 30 days but not more than 60 days in advance of the date Portland proposes to make such tariff records effective.

(G) Portland 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 Portland. Portland shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

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

Commissioner McNamee is concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix – Environmental Conditions

Portland Natural Gas Transmission System

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

1. Portland Natural Gas Transmission System (Portland) 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 Commission Order (Order). Portland 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**, Portland 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**, Portland 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.

Portland'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. Portland'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. Portland 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 authorization and before construction begins**, Portland shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the Director's designee. Portland must file revisions to the plan as schedules change. The plan shall identify:

- a. how Portland 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 Portland 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 Portland 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 Portland's organization having responsibility for compliance;
- g. the procedures (including use of contract penalties) Portland 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. Portland shall employ at least one EI for the project. The EI shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. 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
 - e. responsible for maintaining status reports.

8. Beginning with the filing of its Implementation Plan, Portland shall file updated status reports with the Secretary on a **monthly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Portland'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 Portland from other federal, state, or local permitting agencies concerning instances of noncompliance, and Portland's response.

9. Portland 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, Portland must file with the Secretary documentation that it has

received all applicable authorizations required under federal law (or evidence of waiver thereof).

10. Portland 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**, Portland 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 Portland 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. Portland shall file a noise survey with the Secretary **no later than 60 days** after placing the authorized unit at the Westbrook Compressor Station in service. If a full load condition noise survey is not possible, Portland 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 a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any nearby noise sensitive areas, Portland shall:

- a. file a report with the Secretary on what changes are needed, for review and written approval by the Director of the 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

Portland Natural Gas Transmission System

Docket No. CP20-16-000

(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 Portland Natural Gas Transmission System (Portland) to construct and modify facilities for Phases II and III of its Westbrook XPress Project (Project), the Commission continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts.³ The Commission again refuses to consider whether the Project's contribution to climate change from GHG emissions would be significant, even though it quantifies the direct GHG emissions from the Project's construction and operation.⁴ That failure forms an integral part of the Commission's decisionmaking: The refusal to assess the significance of the Project's contribution to the harm caused by climate change is what allows the Commission to state that approval of the Project "would not constitute a major federal action significantly affecting the quality of the human environment"⁵ and, as a result, conclude that the Project is required by the public convenience and necessity.⁶ Claiming that a

¹ 15 U.S.C. § 717f (2018).

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

³ *Portland Nat. Gas Transmission Sys.*, 171 FERC ¶ 61,234 (2020) (Certificate Order).

⁴ Environmental Assessment at Tables 6 & 7 (EA).

⁵ Certificate Order, 171 FERC ¶ 61,234 at P 34; *see* EA at 54.

⁶ Certificate Order, 171 FERC ¶ 61,234 at P 35.

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 certificate orders that I might otherwise support. The operation of the Westbrook Compressor Station alone is expected to increase GHG emissions by 78,322 tons per year—for a total of 234,560 tons per year—following Project completion.⁷ Even though the Commission recognizes these direct emissions, it nonetheless refuses to consider whether the Project's GHG emissions will be significant.⁸ Making matters worse, the Commission again refuses to fully assess the Project's indirect effects. This includes identifying and considering the Project's reasonably foreseeable downstream GHGs emitted by domestic local natural gas distribution companies.⁹ The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has unambiguously interpreted the "public convenience and necessity" standard in section 7 of the NGA to encompass the authority to consider and, if appropriate, act upon "the direct and indirect environmental effects" of a proposed pipeline.¹⁰ The court has repeatedly criticized the Commission for its stubborn refusal to identify and consider the reasonably foreseeable GHG emissions caused by the downstream combustion of natural gas transported through an interstate pipeline. But even so, today's order doubles down on approaches that the D.C. Circuit has already rejected. So long as the Commission refuses to heed the court's unambiguous directives, I have no choice but to dissent.

4. 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

⁷ *Id.* P 32; EA at Table 7.

⁸ Certificate Order, 171 FERC ¶ 61,234 at P 33.

⁹ *See* Certificate Order, 171 FERC ¶ 61,234 at P 34. Although the Commission quantifies the indirect downstream GHG emissions of "one domestic industrial shipper," it fails to acknowledge any indirect GHG emissions resulting from domestic local distribution company shippers. *See id.* P 34 (citing Portland May 28, 2020 Response to Staff's May 21, 2020 Data Request at Attachment 1).

¹⁰ *See Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (*Sabal Trail*); *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019) (explaining that in "the pipeline certification context the Commission does have statutory authority to act" on the reasonably foreseeable GHG emissions caused by the pipeline (citing *Sabal Trail*, 867 F.3d at 1373)).

potential adverse impacts.¹¹ The record here shows that the Project is needed and will provide important benefits, including satisfying growing demand for natural gas in the northeast.¹² Although need for the Project is an important consideration, and demonstrated in today's order,¹³ need alone is not sufficient to find that the Project is consistent with the public interest. Instead, the Commission must also determine that the Project's benefits outweigh its adverse impacts, including its GHG emissions, which the Commission cannot do without meaningfully evaluating the impacts of those emissions. I cannot join an order that countenances such an incomplete assessment of a project's adverse impacts, regardless of what I might otherwise think of that project.

For these reasons, and those articulated previously,¹⁴ I respectfully dissent in part.

Richard Glick
Commissioner

¹¹ 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))).

¹² Portland Application at 4-6.

¹³ Certificate Order, 171 FERC ¶ 61,234 at P 17.

¹⁴ See, e.g., *Transcontinental Gas Pipe Line Co. LLC*, 171 FERC ¶ 61,032 (2020) (Glick, Comm'r, dissenting in part); *Transcontinental Gas Pipe Line Co. LLC*, 171 FERC ¶ 61,031 (2020) (Glick, Comm'r, dissenting in part); *Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,045 (2020) (Glick, Comm'r, dissenting in part).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Portland Natural Gas Transmission System

Docket No. CP20-16-000

(Issued June 18, 2020)

McNAMEE, Commissioner, *concurring*:

1. Today's order issues Portland Natural Gas Transmission System (Portland) a certificate for public convenience and necessity for authorization to construct, modify, and operate facilities for Phases II and III of its Westbrook Xpress Project.¹ The project is designed to increase the certificated capacity on Portland's north system by 80,998 thousand cubic feet per day (Mcf/d) and to increase the certificated capacity on the portion of its system jointly owned with Maritimes & Northeast Pipeline, L.L.C. by 50,199 Mcf/d.²

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 (NEPA). The order determines that the Project is in the public convenience and necessity, finding that the Project will not adversely affect Portland's existing customers or competitor pipelines and their captive customers, and that the Project will have minimal impacts on landowners and communities.³ The order also finds that the Project will not significantly affect the quality of the human environment.⁴ Further, the Commission has quantified and considered the greenhouse gases (GHG) emitted by the construction and operation of the Project,⁵ consistent with the holding in *Sierra Club v. FERC (Sabal Trail)*.⁶

¹ *Portland Natural Gas Transmission System*, 171 FERC ¶ 61,234 (2020) (Certificate Order).

² *Id.* P 1.

³ *Id.* PP 15-17.

⁴ *Id.* P 34.

⁵ *Id.* PP 32-33; Environmental Assessment at 41 (Table 7).

⁶ 867 F.3d 1357 (D.C. Cir. 2017). I note that my concurrence in *Transcontinental Gas Pipe Line Company, LLC (Transco)* in which I incorporate herein, states that

3. As discussed in today's order, the Commission quantified an upper bound estimate of the GHG emissions that could be associated with the Project's industrial end-use shipper.⁷ 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.⁸

4. I write separately today to respond to my colleague's arguments that the Commission should have quantified additional downstream emissions and determined whether the GHGs emitted are significant. In *Transco*, I issued a concurrence explaining that Commission has no standard for determining whether GHG emissions significantly affect the environment, elaborated as to why the Social Cost of Carbon is not a useful tool for determining whether GHG emissions are significant, and explained that the Commission has no authority or reasoned basis to establish its own framework.⁹ Further, in my concurrence in *Transco*, I explain that the text of the NGA does not support denying an application based on the environmental effects related to the upstream production and downstream use of natural gas.¹⁰

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.¹¹

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

Bernard L. McNamee
Commissioner

“[t]hough the D.C. Circuit's holding in *Sabal Trail* is binding on the Commission, it is not appropriate to expand that holding through the dicta in *Birckhead* so as to establish new authorities under the NGA and NEPA. The Commission is still bound by the NGA and NEPA as enacted by Congress, and interpreted by the U.S. Supreme Court and the D.C. Circuit. Our obligation is to read the statutes and case law in harmony.” *Transco*, 171 FERC ¶ 61,032 (2020) (McNamee, Comm'r, concurring at P 13 n.31) (McNamee *Transco* Concurrence).

⁷ Certificate Order, 171 FERC ¶ 61,234 at P 32.

⁸ *Id.* P 33.

⁹ McNamee *Transco* Concurrence PP 63-74.

¹⁰ *Id.* PP 16-52.

¹¹ *Id.* PP 16-74.

