

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.

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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)).

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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).