

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 (*continued ...*)

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.