

169 FERC ¶ 61,050
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Natural Gas Pipeline Company of America LLC

Docket No. CP19-52-000

ORDER ISSUING CERTIFICATE

(Issued October 17, 2019)

1. On January 18, 2019, Natural Gas Pipeline Company of America LLC (Natural) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission regulations² for authorization to construct and operate a new 16.84-mile-long, 30-inch-diameter pipeline extension in Ward, Reeves, and Pecos Counties, Texas (Lockridge Extension Pipeline Project). The Lockridge Extension Pipeline Project is designed to provide up to 500,000 dekatherms per day (Dth/d) of firm transportation service for two customers.

2. For the reasons discussed below, we will grant the requested authorizations, subject to the conditions described herein.

I. Background and Proposal

3. Natural, a Delaware limited liability company, is a natural gas company as defined by NGA section 2(6),³ engaged in the storage and transportation of natural gas in interstate commerce. Natural's gas transmission system consists of two mainlines, the Amarillo mainline (Amarillo Line) and the Gulf Coast mainline (Gulf Coast Line), as well as the A/G Line connecting the two mainlines. 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 existing Lockridge Pipeline is part of the Amarillo Line in Texas. 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 Line in Carter County, Oklahoma, to the Gulf Coast

¹ 15 U.S.C. § 717f(c) (2018).

² 18 C.F.R. pt. 157 (2019).

³ 15 U.S.C. § 717a(6).

Line in Cass County, Texas. Natural serves customers along its entire system, and also delivers natural gas into Indiana and Wisconsin. Natural also owns and operates substantial underground storage facilities in Texas, Oklahoma, Iowa, and Illinois.

4. Natural states that the proposed project will address the need for new pipeline infrastructure to transport natural gas production in the Permian Basin area to a new bi-directional interconnection with Trans-Pecos Pipeline, LLC at Trans-Pecos Pipeline's Waha Hub (TPP Waha Hub) in Pecos County, Texas. Specifically, the Lockridge Extension Pipeline Project would enable Natural to provide 500,000 Dth/d of firm transportation service from a primary receipt point at the existing Lucid Rojo Toro interconnection on Natural's system in Lea County, New Mexico, to a primary delivery point at the TPP Waha Hub. To provide this service, Natural proposes to construct and operate a 16.84-mile-long, 30-inch-diameter pipeline extension on its existing Lockridge Pipeline, and a new bi-directional interconnection at the TPP Waha Hub, including dual 10-inch ultrasonic meters and a 30-inch-diameter tap; and various auxiliary facilities. The proposed meter site will also include two 30-inch-diameter tees, valves, and risers for future bi-directional interconnections. Natural will also relocate the pig receiver from the current end of the Lockridge Pipeline to the end of the new proposed pipeline extension.⁴

5. Natural held a non-binding open season from October 3 to October 26, 2017, resulting in the execution of a binding precedent agreement with Lucid Energy Delaware, LLC (Lucid). Under the terms of the precedent agreement, Natural and Lucid agreed to amend an existing firm transportation service agreement for up to 500,000 Dth/d of firm transportation service (Original FTS Agreement) to allow Lucid to change its primary delivery point from an interconnection between Natural and Oasis Pipeline, L.P. (Oasis) in Ward County, Texas, to a primary delivery point at the TPP Waha Hub. (Amended Lockridge FTS Agreement).

6. Natural held a binding open season from July 24 through August 7, 2018, and received no additional bids for service. Subsequently, Lucid permanently released 40,000 Dth/d of transportation service under its Original FTS Agreement to EOG Resources, Inc. (EOG).⁵ On December 18, 2018, EOG executed a long-term firm transportation agreement with Natural to effectuate this capacity release (EOG FTS Agreement). On the same date, EOG executed a precedent agreement with Natural under which the parties have agreed to amend the EOG FTS Agreement to allow EOG to change its primary delivery point from the interconnection between Natural and Oasis to the TPP Waha Hub. Accordingly, Lucid (460,000 Dth/d) and EOG (40,000 Dth/d) have

⁴ Natural also states that it reserved existing unsubscribed capacity for the project pursuant to Section 5.1 (c) (11) of the General Terms and Conditions of its tariff.

⁵ *Lucid Energy Delaware, LLC & EOG Res., Inc.*, 165 FERC ¶ 61,216 (2018).

signed binding precedent agreements for the entire increment of firm service created by the Lockridge Extension Project.

7. Natural estimates the total cost of the Lockridge Extension Pipeline Project to be approximately \$51.6 million. Natural proposes to charge its existing system recourse reservation and usage charges under Rate Schedule FTS as the initial maximum recourse rates for firm transportation service on the project. Lucid and EOG have elected to pay negotiated rates.

II. Notice, Interventions and Comments

8. Notice of Natural's application was published in the *Federal Register* on February 8, 2019, with comments, interventions and protests due on February 22, 2019.⁶ Antero Resources Corporation, Lucid, and Northern Illinois Gas Company d/b/a Nicor Gas Company filed timely, unopposed motions to intervene.⁷

III. Discussion

9. Because the 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.⁸

A. Application of the Certificate Policy Statement

10. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁹ 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 new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing

⁶ 84 Fed. Reg. 2844 (2019).

⁷ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2019).

⁸ 15 U.S.C. §§ 717f(c) and (e).

⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

customers, the applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

11. 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 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 new 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.

12. As noted above, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Natural proposes to use its existing system reservation and commodity rates as the initial recourse rates to recover the costs of the project. As discussed below, Natural demonstrates that the illustrative rates calculated to recover the incremental costs associated with the project are lower than Natural's existing system rates. Therefore, Natural's proposal to charge its existing recourse rates is appropriate. Moreover, as also discussed below, we are granting a predetermination that Natural may roll the costs of the expansion project into its system rates in a future rate case because Natural's projected revenues exceed the cost of the expansion project. Therefore, we find that the project will not be subsidized by Natural's existing customers and satisfies the threshold no-subsidy requirement under the Certificate Policy Statement.

13. Natural's proposal will not degrade service to existing customers because the proposal is designed to provide the new incremental service while maintaining existing services for its customers. Further, no pipelines or their captive customers have objected to Natural's proposal. Thus, we find that Natural's existing customers, other pipelines, and their captive customers will not be adversely affected by the project.

14. We are further satisfied that Natural has taken appropriate steps to minimize adverse impacts to landowners. Natural has proposed to locate 91 percent of the pipeline parallel and adjacent to existing utility (pipeline and powerline) rights-of-way, which we find will minimize impacts on affected landowners and communities.¹⁰

¹⁰ See Resource Report 1 of Natural's Application.

15. The Lockridge Extension Pipeline Project will enable Natural to provide up to 500,000 Dth/day of firm transportation service for the project shippers. Based on the benefits the project will provide and the lack of, or minimal adverse impacts on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of the project, subject to the environmental and other conditions in this order.

B. Rates

1. Initial Recourse Rates

16. Natural proposes to use its existing reservation and usage charges under Rate Schedule FTS¹¹ as the initial maximum recourse rates for firm transportation service. In addition, Natural proposes to use its existing interruptible transportation charge under Rate Schedule ITS (Interruptible Transportation Service) and Authorized Overrun charge under Rate Schedule FTS for interruptible transportation service provided by the project.

17. Natural calculated an illustrative incremental monthly reservation charge of \$1.5591 per Dth based on an estimated first-year incremental reservation cost of service of \$9,354,819 and annual reservation billing determinants of 6,000,000 Dth.¹² This cost of service is based on the transmission depreciation rate of 2.10 percent and the pre-tax rate of return underlying Natural's currently effective rates.¹³ This illustrative recourse reservation charge is less than Natural's currently effective maximum recourse reservation charge of \$2.8800 under Rate Schedule FTS.¹⁴ Because Natural estimates no variable costs for the project, it calculated a usage charge of \$0.0000 per Dth for this illustrative rate.

18. The Commission has reviewed Natural's proposed cost of service and initial rates and finds them reasonable. Under the Commission's Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion

¹¹ The project facilities are part of Natural's Permian Zone as defined in Part 4.93 of Natural's tariff.

¹² Application, Exhibit P, Part I, page 2 of 7.

¹³ Application, Exhibit P, Part 1, page 4 of 7.

¹⁴ Natural Gas Pipeline Company of America LLC, FERC NGA Gas Tariff, FERC Gas Tariff Part 4.0, Currently Effective Rates-Rate Schedule FTS (Peak), 6.0.0.

capacity if the incremental rate exceeds the maximum system recourse rate.¹⁵ Where the currently-effective system recourse rate is greater than the estimated incremental cost-based recourse rate, the Commission has found it appropriate to establish the existing system rate as the initial recourse rate for the project.¹⁶ Because Natural's rate analysis demonstrates that its maximum Rate Schedule FTS recourse reservation and usage charges are greater than the illustrative incremental reservation and usage charges, we will approve Natural's request to use its existing rates under Rate Schedules FTS as the initial recourse rates for the project facilities.

2. Rolled-in Rate Determination

19. Natural does not request a predetermination that it may roll the costs of the project into its rates in its next NGA section 4 rate case. Nevertheless, and consistent with longstanding Commission policy, we will evaluate whether to issue a predetermination favoring rolled-in rate treatment.¹⁷

20. 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. To determine, in a certificate proceeding, whether it is appropriate to roll a project's costs 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.¹⁸

21. Using the currently effective maximum recourse reservation charge of \$2.8800 under Rate Schedule FTS and contractual maximum daily quantities, Natural's first year revenues will be \$17,280,000, which exceed its estimated first year cost of service of \$9,354,819. Therefore, the Commission will grant a predetermination favoring rolled-in

¹⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 at 61,746 (1999).

¹⁶ *See, e.g., Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160, at P 30 (2015); *Millennium Pipeline Co., LLC*, 145 FERC ¶ 61,007, at P 30 (2013).

¹⁷ *Millennium Pipeline Co., L.L.C.*, 145 FERC ¶ 61,007 at P 31, n.41 (stating that the Certificate Policy Statement contemplates that as a general matter, issues of future rate treatment will be addressed in advance).

¹⁸ *Tennessee Gas Pipeline Co., L.L.C.* 144 FERC ¶ 61,219, at P 22 (2013).

rate treatment for the costs of the project in a future NGA general section 4 rate case, absent any significant change in circumstances.

3. Fuel

22. Natural proposes to use its existing tariff transportation fuel retention rate for the project. In a March 11, 2019 response to a staff data request, Natural submitted a fuel study that shows that charging the project shippers the existing tariff transportation fuel retention rate will not result in existing shippers on the system subsidizing the project. Accordingly, we will approve Natural's request to use its currently effective fuel retention percentages for transportation on the capacity associated with the proposed facilities.

4. Reporting Incremental Costs

23. The Commission will require Natural to keep separate books and accounting of costs and revenues attributable to the proposed incremental services and capacity created by the project in the same manner as required by section 154.309 of the Commission's regulations.¹⁹ The books should be maintained with applicable cross-references, as required by section 154.309. This 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. 710.²⁰

5. Negotiated Rates

24. Natural proposes to provide service to the project shippers under negotiated rate agreements.²¹ Natural must file either the negotiated rate agreements or a tariff record setting forth the essential elements of the agreements in accordance with the Alternative

¹⁹ 18 C.F.R. § 154.309 (2019).

²⁰ See *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC 61,262 (2008).

²¹ The negotiated rate agreements are existing Rate Schedule FTS agreements with the project shippers that contain amended exhibits to reflect the new primary delivery point at the TPP Interconnect.

Rate Policy Statement²² and the Commission's negotiated rate policies.²³ Natural must file the negotiated rate agreements or tariff records reflecting the essential elements of the agreements at least 30 days, but no more than 60 days, before the proposed effective date for such rates.²⁴

6. Request for Predetermination of Non-Conforming Provisions

25. Natural states that the negotiated rate agreements with project shippers contain provisions addressing creditworthiness requirements for the project shippers that are different than the creditworthiness provisions in Natural's tariff. Natural requests a predetermination from the Commission that the non-conforming creditworthiness provisions in the negotiated rate agreements with the project shippers are permissible.

26. In *Columbia Gas Transmission Corporation*, the Commission clarified that a material deviation is any provision in a service agreement that: (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (b) affects the substantive rights of the parties.²⁵ However, not all material deviations are impermissible. As explained in *Columbia*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (a) provisions the Commission must prohibit because they present a significant potential

²² *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 for review denied sub nom. *Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

²³ *Natural Gas Pipeline 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).

²⁴ 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. *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014). 18 C.F.R. § 154.112(b) (2019).

²⁵ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*). See also *ANR Pipeline Co.*, 97 FERC ¶ 61,224 (2001) (*ANR*).

for undue discrimination among shippers; and (b) provisions the Commission can permit without a substantial risk of undue discrimination.²⁶

27. We find that the incorporation of the non-conforming provisions described above constitutes a material deviation from Natural's *pro forma* service agreement. However, the Commission's policy with regards to creditworthiness, as stated in the Commission's 2005 Policy Statement, allows pipelines to enter into alternative credit arrangements for expansion projects.²⁷ Therefore, we find the non-conforming provisions related to creditworthiness identified by Natural are permissible.

IV. Environmental Analysis

28. On March 1, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Lockridge Extension Pipeline Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal Register* and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.²⁸ We received five comment letters in response to the NOI; one from an individual stakeholder concerned with induced seismicity from hydraulic fracturing in the project area and with water quality impacts; two from Native American tribes (Kickapoo Traditional Tribe of Texas and Delaware Nation Historic Preservation Department) stating that they do not currently have concerns with the project; one from the Texas Parks and Wildlife Department recommending general construction best management practices; and one from the U.S. Department of Agriculture stating that pipelines are exempt from provision of the Farmland Protection Policy Act, but recommending erosion controls and topsoil conservation.

29. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),²⁹ our staff prepared an Environmental Assessment (EA) for Natural's proposal. The analysis in the EA addresses geology and soils; groundwater, surface water, and wetlands; fisheries, vegetation, wildlife, and special status species; cultural resources; land use and visual resources; air quality and noise; reliability and safety; cumulative

²⁶ *Columbia*, 97 FERC at 62,002; *ANR*, 97 FERC at 62,022.

²⁷ *Policy Statement on Creditworthiness Issues for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412 (2005).

²⁸ 84 Fed. Reg. 8326 (2019).

²⁹ 42 U.S.C. §§ 4321 *et seq.* (2012). *See also* 18 C.F.R. pt. 380 (2019) (Commission's regulations implementing NEPA).

impacts; and alternatives. The EA addresses all substantive comments received in response to the NOI. On May 31, 2019, Commission staff issued the EA for a 30-day comment period and placed into the public record. We received no comments on the EA.

30. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed and operated in accordance with Natural's application and supplements, including any commitments made therein, 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. 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.

31. 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. However, 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.³⁰

32. At a hearing held on October 17, 2019, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments, and upon consideration of the record,

³⁰ 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).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Natural authorizing it to construct and operate the proposed Lockridge Extension Pipeline Project, 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:

(1) Natural's 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) Natural's compliance with all applicable Commission regulations under the NGA 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) Natural's compliance with the environmental conditions listed in the appendix to this order; and

(4) Natural filing a written statement affirming that it has executed firm service agreements for volumes and service terms equivalent to those in its precedent agreements, prior to commencing construction.

(C) Natural's proposal to use its existing firm and interruptible system rates as the initial recourse rates is approved.

(D) Natural's proposal to use its existing Fuel Retention percentages as the initial recourse fuel rate for the project is approved.

(E) Natural is granted a predetermination supporting rolled-in rate treatment for the costs of the Lockridge Extension Pipeline Project in its next NGA general section 4 rate proceeding.

(F) Natural's request for a predetermination of its non-conforming creditworthiness provisions is approved.

(G) Natural shall keep separate books and accounting of costs attributable to the proposed incremental services, as more fully described above.

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

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

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A – Environmental Conditions

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

1. Natural Gas Pipeline Company of America, LLC (Natural) 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 Order. Natural 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) **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 activities.
3. **Prior to any construction**, Natural 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 locations 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**, Natural 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.

Natural'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. Natural's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Natural 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 **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 Certificate and before construction begins**, Natural shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Natural must file revisions to the plan as schedules change. The plan shall identify:
- a. how Natural 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 Natural 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 (per spread), 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 Natural will give to all personnel involved with construction and restoration;
 - f. the company personnel (if known) and specific portion of Natural's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Natural 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. Natural shall employ at least one EI per construction spread. 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, Natural shall file updated status reports with the Secretary on a **biweekly** 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 Natural'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 Natural from other federal, state, or local permitting agencies concerning instances of noncompliance, and Natural's response.
9. Natural must receive written authorization from the Director of OEP **before commencing construction of any Project facilities**. To obtain such authorization, Natural must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Natural must receive written authorization from the Director of OEP **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**, Natural 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 Natural 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.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Natural Gas Pipeline Company of America, LLC Docket No. CP19-52-000

(Issued October 17, 2019)

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 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. Today's order authorizes Natural Gas Pipeline Company of America, LLC (Natural) to construct and operate the Lockridge Extension Pipeline Project (Project), a 17-mile pipeline that is part of Natural's Amarillo Line in Texas.³ However, in so doing, the Commission continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts. Almost all natural gas produced in this country and transported through the interstate pipeline network is burned.⁴ The combustion of natural gas releases large quantities of GHGs, including carbon dioxide

¹ 15 U.S.C. § 717f (2018).

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

³ *Natural Gas Pipeline Company of America, LLC*, 169 FERC ¶ 61,050, at PP1-3 (2019) (Certificate Order).

⁴ U.S. Energy Info. Admin., *August 2019 Monthly Energy Review* 22, 99 (2019), <https://www.eia.gov/totalenergy/data/monthly/pdf/mer.pdf> (reporting that, in 2018, 778 Bcf of natural gas had a non-combustion use compared to 29,956 Bcf of total consumption).

and methane,⁵ which, along with other anthropogenic GHG emissions, are the “primary contributor” to climate change.⁶

3. Today’s order, however, does say not a single word about climate change or the impact on climate change from the GHG emissions resulting from the Project. The Environmental Assessment (EA) is similarly silent. Unlike past EAs, which at least recited the harms caused by climate change⁷—even as they refused to actually analyze a project’s known impact on climate change—the EA prepared for this proceeding says almost nothing on the matter. Indeed, the EA does not even bother to note that the Project’s GHG emissions will contribute to climate change.⁸ I fail to see how the Commission can omit any discussion of climate change from its assessment of the environmental effects of a natural gas pipeline and then, with a straight face, conclude that the pipeline “would not constitute a major federal action significantly affecting the quality of the human environment.”⁹ Claiming that a project has no significant environmental impacts while at the same time failing to examine or assess that project’s impact on the most important environmental issue of our time is not reasoned decisionmaking.

4. The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has been crystal clear: An interstate natural gas pipeline’s environmental consequences, including its effect on climate change, are relevant to the Commission’s assessment of

⁵ Environmental Assessment at 43 (EA).

⁶ *E.g.*, Environmental Assessment, CP18-102-000, at 78 (2018) (Cheyenne Connector and Cheyenne Hub Enhancement); *see* U.S. Global Change Research Program, Fourth National Climate Assessment, Summary Findings (2018), <https://nca2018.globalchange.gov/> (“Earth’s climate is now changing faster than at any point in the history of modern civilization, primarily as a result of human activities.”)

⁷ *See, e.g.*, Environmental Assessment, Docket No. CP18-538-000, at 52 (2019) (Sendero Gateway Pipeline) (discussing some of the impacts that climate change may have on the southwestern United States).

⁸ Instead, the EA merely describes the primary GHG emissions of the project and explains the concept of CO₂ equivalent as a measure of different gases heat-trapping potential. EA at 43-44. The EA does not even link GHG emissions directly to climate change.

⁹ Certificate Order, 169 FERC ¶ 61,050 at P 30; EA at 60.

whether the pipeline is required by the public convenience and necessity.¹⁰ In *Sabal Trail*, the D.C. Circuit held that the Commission had to identify and consider the reasonably foreseeable GHG emissions caused by its decision to approve an NGA section 7 application *because* the Commission had the authority to act on those emissions when making its substantive determination under the NGA.¹¹ Accordingly, it is arbitrary and capricious for the Commission to entirely ignore a project’s GHG emissions when considering an NGA section 7 application.¹² Although the Commission has resisted that conclusion,¹³ the D.C. Circuit has now multiple times reiterated that *Sabal Trail* means what it says and that the Commission must consider and evaluate the reasonably foreseeable GHG emissions caused by a pipeline, including downstream GHG emissions.¹⁴

¹⁰ See *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*). Section 7 of the NGA requires that, before issuing a certificate for new pipeline construction, the Commission must find both a need for the pipeline and that, on balance, the pipeline’s benefits outweigh its harms. 15 U.S.C. § 717f (2018). Furthermore, NEPA requires the Commission to take a “hard look” at the environmental impacts of its decisions. *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983); see 42 U.S.C. § 4332(2)(C)(iii).

¹¹ *Sabal Trail*, 867 F.3d at 1371-74.

¹² *Id.*; see *Atl. Ref. Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, 391 (1959) (holding that the NGA requires the Commission to consider “all factors bearing on the public interest”).

¹³ See, e.g., *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019) (criticizing the Commission’s argument that *Sabal Trail* “is narrowly limited to the facts of that case”).

¹⁴ *Id.* (“Because the Commission may therefore deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment, the agency is a ‘legally relevant cause’ of the direct and indirect environmental effects of pipelines it approves—even where it lacks jurisdiction over the producer or distributor of the gas transported by the pipeline. Accordingly, the Commission is not excused from considering these indirect effects” in its NEPA analysis” (internal quotation marks, alterations, and citations omitted)); *Allegheny Def. Project v. FERC*, 932 F.3d 940, 945-46 (D.C. Cir. 2019) (explaining that the petitioners were “correct that customers’ burning of the natural gas that the Project transports will produce greenhouse-gas emissions” and that they were “also correct that NEPA required the Commission to consider both the direct and indirect

5. With today's order, however, the Commission again thumbs its nose at the court. This time the Commission does not even bother to discuss the GHG emissions that will be directly caused by constructing and operating the Project. All the EA does is report the number of GHG emissions that will result directly from the Project, without the slightest explanation and devoid of any context for those emissions. There is no discussion of the causal relationship between human activity and climate change. There is no discussion of the likely effects of climate change, either worldwide or in the area that the Project is located. And there is not even a simple acknowledgment that the Project's GHG emissions will contribute to climate change.

6. That is a stark contrast even to recent Commission orders, including one issued just last week involving a substantially similar pipeline—the Sendero Gateway Pipeline.¹⁵ In that EA, the Commission recognized that that project would contribute to climate change and discussed the effects that climate change will have on the southwestern United States.¹⁶ Although I dissented from that order because the Commission made no effort whatsoever to identify the downstream GHG emissions or analyze any of the project's GHG emissions,¹⁷ the Commission at least directly recognized the relationship between GHG emissions caused by human activity—in that case, building and operating the pipeline—and climate change.¹⁸ Today's order and the accompanying EA contain no comparable recognition of that relationship.

7. In addition, the Commission does even mention the downstream GHG emissions from the Project. As noted, the D.C. Circuit has held repeatedly that, at least in some instances, the downstream GHG emissions caused by a new natural gas pipeline are

environmental effects of the Project, and that, despite what the Commission argues, the downstream greenhouse-gas emissions are just such an indirect effect”).

¹⁵ Like the Project, the Sendero Gateway Pipeline is a producer-driven pipeline that will serve the Waha Hub. *Sendero Carlsbad Gateway, LLC*, 169 FERC ¶ 61,020 (2019); Certificate Order, 169 FERC ¶ 61,050 at P 4.

¹⁶ Environmental Assessment, Docket No. CP18-538-000, at 52 (“The construction and operation would increase the atmospheric concentration of GHGs, in combination with past and future emissions from all other sources, and contribute incrementally to future climate change impacts.”); *id.* (discussing some of the impacts that climate change may have on the southwestern United States).

¹⁷ *Sendero Carlsbad Gateway, LLC*, 169 FERC ¶ 61,020 (Glick, Comm’r, dissenting).

¹⁸ Environmental Assessment, Docket No. CP18-538-000, at 52.

reasonably foreseeable effects of building and operating that pipeline.¹⁹ Accordingly, reasoned decisionmaking requires the Commission to at least consider whether the downstream emissions are reasonably foreseeable, which would mean that the Commission must consider them in its NEPA and NGA analysis. The Commission's failure to even assess whether the downstream GHG emissions caused by the Project are reasonably foreseeable is arbitrary and capricious.

8. That failure is particularly surprising in light of the D.C. Circuit's recent decision in *Birckhead*, which roundly criticized the Commission's "less-than-dogged efforts" to build the record needed to assess whether the relevant project's downstream GHG emissions were reasonably foreseeable.²⁰ The court noted that the main reason that the Commission purportedly could not answer that question was that it never bothered to gather the information that it claimed it needed to assess whether the GHG emissions were reasonably foreseeable. The court strongly suggested that a similar failure to seriously consider downstream GHG emissions—including, at the very least, asking the parties for whatever information the Commission claims it needs to assess the foreseeability of those emissions—would be "unreasonabl[e]" and a sufficient basis to grant a petition for review.²¹

9. Today's order takes an even more ignorant approach to climate change. As noted, the Commission does not discuss the Project's downstream GHG emissions or provide any of the Commission's usual excuses for ignoring those emissions. It is just altogether silent on the issue. I recognize that the GHG emissions released through the downstream consumption of natural gas transported through an interstate pipeline are not, "as a categorical matter," something that the Commission must evaluate under NEPA.²² But the Commission must at least consider the possibility that its action will cause reasonably foreseeable downstream GHG emissions and make its "best efforts" to answer that question.²³ After all, if failing to ask the right questions is potentially "unreasonabl[e],"²⁴

¹⁹ See *Allegheny Def. Project*, 932 F.3d at 945-46; *Birckhead*, 925 F.3d at 519-20; *Sabal Trail*, 867 F.3d at 1373.

²⁰ *Birckhead*, 925 F.3d at 520.

²¹ *Id.* at 520-21.

²² *Id.* at 518-20.

²³ *Id.* at 520.

²⁴ *Id.* at 520-21.

it is hard to see how ignoring the issue altogether is anything short of patently unreasonable.²⁵

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10. The Commission's order and the EA speak for themselves: They provide no discussion of climate change or the Project's contribution to climate change. Under those circumstances, it simply is not credible to argue that the Commission took the "hard look" that the law requires.²⁶ I cannot stand by in silence as the Commission writes climate change out of its environmental analysis and its determination of whether the Project is consistent with the public interest and required by the public convenience and necessity.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner

²⁵ *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (explaining that it is arbitrary and capricious for an agency to "entirely fail[] to consider an important aspect of the problem").

²⁶ *Balt. Gas & Elec.*, 462 U.S. at 97 (NEPA requires "that the agency take a 'hard look' at the environmental consequences" of its action); *see also Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (stating that the Commission cannot overlook a single environmental consequence if it is even "arguably significant").