

169 FERC ¶ 61,051
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP18-186-000

ORDER ISSUING CERTIFICATE AND
APPROVING ABANDONMENT

(Issued October 17, 2019)

1. On April 11, 2018, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² requesting authorization to construct, operate, and modify pipeline, compression, and auxiliary facilities in Virginia, South Carolina, Georgia, and Louisiana, and to abandon certain compression facilities (Southeastern Trail Project). The project is designed to enable Transco to provide an additional 296,375 dekatherms per day (Dth/day) of incremental firm transportation service for five project shippers, including local distribution companies and municipal gas systems.
2. As discussed below, we grant Transco's requested certificate and abandonment authorizations, subject to certain conditions.

I. Background and Proposal

3. Transco, a limited liability company formed and existing under the laws of the State of Delaware, is a natural gas company as defined by section 2(6) of the NGA.³ Transco is engaged in the transportation of natural gas in interstate commerce by way of its natural gas transmission system extending from Texas, Louisiana, Mississippi, Alabama and the offshore Gulf of Mexico area, through the States of Georgia, South

¹ 15 U.S.C. §§ 717f(b), (c) (2018).

² 18 C.F.R. pt. 157, subpt. A (2018).

³ 15 U.S.C. § 717a(6).

Carolina, North Carolina, Virginia, Maryland, Pennsylvania and New Jersey, to its termini in the New York City metropolitan area.

4. The Southeastern Trail Project is designed to provide an additional 296,375 Dth/day of firm transportation service from the existing Zone 5 Pleasant Valley Interconnect between Transco and Dominion Energy Cove Point in Fairfax County, Virginia (Receipt Interconnect) to the existing Zone 3 Compressor Station 65 pooling point located in St. Helena Parish, Louisiana (Delivery Point). Transco states that the project shippers have forecasted a need for additional natural gas supply to meet residential and commercial demands stemming from population and market growth within their service territories.⁴ To provide the incremental service, Transco proposes to construct and operate approximately 7.72 miles of new natural gas pipeline (Manassas Loop) located along Transco's existing mainline; install additional compression at three existing facilities in Virginia (Compressor Station 185, Compressor Station 175, and Compressor Station 165); and modify additional existing facilities in South Carolina, Georgia, and Louisiana.

5. Specifically, Transco proposes the following:

- Manassas Loop in Fauquier and Prince William Counties, Virginia: constructing approximately 7.72 miles of new 42-inch-diameter pipeline loop,⁵ co-located along the Transco mainline from milepost 1568.13 to 1575.85;
- Compressor Station 185 in Prince William County, Virginia: uprating the existing electric-driven compression unit driver from 25,000 to 30,000 horsepower (HP);
- Compressor Station 175 in Fluvanna County, Virginia: installing one new 22,490 International Organization for Standardization (ISO) HP gas-fired, turbine-driven compression unit, and uprating the existing electric-driven compression unit driver from 33,000 to 41,250 HP;
- Compressor Station 165 in Pittsylvania County, Virginia: installing two new 22,490 ISO HP gas-fired, turbine-driven compression units (totaling 44,980 ISO HP), station cooling, and miscellaneous piping modifications. As further explained below, Transco proposes to abandon 10 existing

⁴ Transco's Application at 5.

⁵ A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

compressor units (totaling 20,000 HP) and related equipment at Compressor Station 165 and replace this compression with 23,681 ISO HP of new compression. The remaining 21,299 ISO HP of the two new compressor units will provide the necessary compression for the proposed increase in firm transportation service;⁶

- Flow reversal modifications and/or deodorization modifications at:
 - Compressor Station 65 in St. Helena Parish, Louisiana;
 - Compressor Station 115 in Coweta County, Georgia;
 - Compressor Station 116 in Carroll County, Georgia;
 - Compressor Station 120 in Henry County, Georgia;
 - Compressor Station 125 in Walton County, Georgia;
 - Compressor Station 130 in Madison County, Georgia;
 - Compressor Station 135 in Anderson County, South Carolina;
 - Compressor Station 140 in Spartanburg County, South Carolina; and
- Installation of deodorization facilities at 13 existing mainline valve facilities in South Carolina and Georgia along the Transco mainline.

6. As noted above, Transco is proposing to abandon and remove ten existing internal combustion engine driven compressor units and replace these units at Compressor Station 165 with replacement HP. Transco explains that these units are obsolete and difficult to maintain and operate and that the replacement of these facilities will provide system benefits from the increased reliability of the new equipment, resulting in fewer maintenance outages, less downtime, lower fuel consumption, decreased air emissions and lower operation and maintenance costs.⁷ Further, Transco contends that combining the replacement of the existing HP with the expansion project reduces the non-incremental (i.e., system) transmission plant costs significantly.⁸ Transco proposes to allocate the costs associated with the new compression facilities at Compressor Station 165 between the project shippers and existing shippers based on the incremental HP (21,299 ISO) as a percentage of the total HP addition at Compressor Station 165

⁶ Transco's Application at 7-8.

⁷ *Id.* at 7.

⁸ *Id.*

(44,980 ISO), resulting in 52.65 percent being allocated to system transmission plant cost and 47.35 percent to the incremental project.⁹

7. Transco held an open season from June 27 through August 3, 2017. As a result, Transco executed binding precedent agreements with the following project shippers: Virginia Natural Gas, Inc.; City of Buford, Georgia; City of LaGrange, Georgia; Public Service Company of North Carolina, Incorporated; and South Carolina Electric & Gas Company. The precedent agreements require Transco and the project shippers to execute firm transportation service agreements with primary terms ranging from 15 to 35 years.¹⁰

8. Transco estimates the cost of the proposed expansion facilities to be approximately \$404.8 million.¹¹ Transco proposes an incremental recourse rate and proposes to apply its generally applicable system fuel retention and electric power rates to the project under Rate Schedule FT. Four out of the five project shippers elected to pay a negotiated rate; the remaining shipper elected to pay the recourse rate.

II. Public Notice, Interventions, Protests and Comments

9. Notice of Transco's application was published in the *Federal Register* on April 30, 2018.¹² The notice established May 24, 2018, as the deadline for filing comments and interventions.¹³ Timely motions to intervene were filed by the entities listed in Appendix A. These timely, unopposed motions to intervene were granted automatically by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹⁴ Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities, Inc. filed an untimely motion to intervene, which was denied by Secretary's notice on March 27, 2019.

10. Teamsters National Pipeline Labor Management Cooperation Trust filed comments in support of the proposed project. Additionally, individuals filed comments

⁹ *Id.* at 8. Transco explains that the incremental volumes require 21,299 ISO HP, and the remaining 23,681 ISO HP is needed for the existing system. *Id.* at 7-8.

¹⁰ *Id.* at 5.

¹¹ See Transco's Application, Exhibit K; see also Transco's September 28, 2018 Response to Staff Data Request.

¹² *Notice of Application*, 83 Fed. Reg. 18,836 (Apr. 30, 2018).

¹³ *Id.*

¹⁴ 18 C.F.R. § 385.214(c)(1) (2019).

concerning environmental impacts, inaccuracies in Transco's application regarding the ownership of roads and surface types, and a request for an analysis of an alternative which would place the Manassas Loop within the footprint of three existing pipelines rather than creating new right-of-way. These comments are addressed in the Environmental Assessment (EA) for the project and in the environmental section of this order, as appropriate.

11. On May 24, 2018, the North Carolina Public Utilities Commission and the New York State Public Service Commission (collectively, State Commissions) filed a protest raising concerns about the following: (1) the pre-tax rate of return used to calculate the proposed recourse rates; (2) the income tax allowance underlying the proposed recourse rates; and (3) the need for the abandonment and replacement of compressor units at Compressor Station 165 and the allocation of costs to existing customers. On June 8, 2018, Transco filed a Motion for Leave to Answer and Answer to the protest. Although the Commission's Rules of Practice and Procedure do not permit answers to protests,¹⁵ our rules also provide that we may waive this provision for good cause.¹⁶ We will accept Transco's answer here because it has provided information that has assisted us in our decision making.

III. Discussion

12. 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.¹⁷ Additionally, Transco's proposed abandonment is subject to subsection (b) of section 7 of the NGA.¹⁸

A. Certificate Policy Statement

13. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.¹⁹ The Certificate Policy Statement establishes

¹⁵ See *id.* § 385.213(a)(2).

¹⁶ See *id.* § 385.101(e).

¹⁷ 15 U.S.C. §§ 717f(c), (e).

¹⁸ *Id.* § 717f(b).

¹⁹ *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).

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.

14. 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.

15. 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. The Commission has determined, in general, that where a pipeline proposes to charge incremental rates for expansion services that are higher than the company's existing system rates, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.²⁰ As discussed below, we are approving an incremental recourse reservation rate designed to recover the fixed costs of the expansion facilities that is higher than Transco's existing system rates. In addition, we are requiring Transco to charge its system usage charge as the recourse usage charge. Under these circumstances, we find that Transco's existing customers will not subsidize the project.

16. Furthermore, under the Certificate Policy Statement, it is not a subsidy for existing customers to pay for projects designed to replace existing capacity or improve the reliability or flexibility of existing service.²¹ To the extent that the proposed project

²⁰ See, e.g., *Transcontinental Gas Pipe Line Co., LLC*, 158 FERC ¶ 61,125, at P 22 (2017).

²¹ See Certificate Policy Statement, 88 FERC ¶ 61,227 at n.12.

will serve to replace the compression provided by 10 compressor units at Compressor Station 165 that are deteriorated due to age, enabling Transco to maintain existing levels of service and to improve reliability, increasing the rates of existing customers to cover associated costs does not constitute a subsidy under the Certificate Policy Statement. As discussed below, we will grant Transco a predetermination to roll-in the costs associated with the Compressor Station 165 upgrade allocated to system shippers in its next NGA section 4 rate case, absent a significant change in circumstances.

17. Next, we find there will be no adverse impacts on Transco's existing customers or existing pipelines in the market or their captive customers because the proposal is designed to both provide new incremental service and enhance the reliability of service to Transco's existing customers. Thus, the proposals shall have no adverse effect on service to Transco's existing customers. Additionally, no pipeline company or its captive customers has protested Transco's application.

18. As described in the EA, the proposed project affects about 508.6 acres of land for construction and 42.6 acres of land for operation.²² Transco has proposed to locate the project facilities within existing rights-of-way where possible, which we find will minimize impacts on affected landowners and communities.²³ Compression-related activities will be completed entirely within existing compressor station facilities.²⁴ Transco states that it is committed to working cooperatively with affected landowners and other stakeholders.²⁵ Accordingly, we find that Transco has taken sufficient measures to minimize the impacts of the project on landowners and communities.

19. The Southeastern Trail Project will enable Transco to provide up to 296,375 Dth/d of incremental firm transportation service for the project shippers. Based on the benefits the project will provide and the minimal effects on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, we find that Transco's proposed project satisfies the criteria of the Certificate Policy Statement. Consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, we find that the public convenience and necessity

²² See EA at 63.

²³ See Transco's Application at 13.

²⁴ *Id.* at 13-14.

²⁵ *Id.* at 15. Additionally, Transco stated in a supplemental filing in response to a comment from a landowner, Jessica Day, that it is currently involved in negotiations with that landowner and "will continue to work with her to develop mutually agreeable solutions." Transco's March 25, 2019 Supplemental Filing at 1.

requires approval of Transco's proposal under section 7(c) of the NGA, as conditioned in this order.

B. Abandonment

20. Section 7(b) of the NGA provides that a natural gas company may abandon jurisdictional facilities or services only if the Commission finds the abandonment is permitted by the present or future public convenience or necessity.²⁶ The Commission has stated that continuity and stability of existing service are the primary considerations in assessing whether the public convenience or necessity permit the abandonment.²⁷ If the Commission finds that the proposed abandonment will not jeopardize continuity of existing gas transportation services, it will defer to the company's business judgment to abandon the facilities.²⁸

21. Transco proposes to abandon and remove 10 compressor units at Compressor Station 165 and replace them with equivalent HP. State Commissions assert that Transco does not provide enough evidence in support of its determination that the proposed Compressor Station 165 compressor abandonment and replacement is beneficial to Transco's existing customers.²⁹ State Commissions claim that the only support for the proposed compressor abandonment and replacement are Transco's statement that "[t]hese units are obsolete and difficult to maintain and operate" and the conclusion that "[b]y replacing them, Transco and its customers will benefit from the increased reliability of the new equipment, resulting in fewer maintenance outages, less down time, lower fuel consumption, decreased air emissions and lower operation and maintenance costs."³⁰ While State Commissions note that they support efforts to increase reliability and reduce fuel consumption, air emissions and operation and maintenance costs, they state the application does not provide the supporting analysis that the proposed compressor replacements will actually do so.³¹ In addition, the State Commissions note that while Transco states it conducted an analysis that determined combining the replacement of the

²⁶ 15 U.S.C. § 717f(b).

²⁷ See, e.g., *WBI Energy Transmission, Inc.*, 163 FERC ¶ 61,033, at P 22 (2018); *Nat'l Fuel Gas Supply Corp.*, 160 FERC ¶ 61,050, at P 17 (2017).

²⁸ See, e.g., *Trunkline Gas Co., LLC*, 145 FERC ¶ 61,108, 61,572, at P 65 (2013) (citing *Northern Natural Gas Co.*, 142 FERC ¶ 61,120 (2013)).

²⁹ See State Commissions' Protest at 12-13.

³⁰ *Id.* at 12 (citing Transco's Application at 7).

³¹ *Id.* at 12-13.

existing HP with the project reduces non-incremental or system transmission plant, such analysis was not submitted with the application.³² Therefore, State Commissions argue the Commission should require evidence of the benefits versus the costs of the compressor replacements and the submission of the analyses of the plant costs referenced in Transco's application.³³

22. In its answer, Transco lists several reasons why abandoning and replacing the Compressor Station 165 equipment is beneficial to Transco's existing customers.³⁴ Specifically, Transco states that half of the ten existing internal combustion driven compressor units at Compressor Station 165 are 61 years old and the other half range from 50 to 55 years old.³⁵ Transco states that as a result of the age of the internal combustion engines, compressors and auxiliary equipment, many of the parts required to provide appropriate maintenance and repair are no longer produced and consequently, must be manufactured by special order.³⁶ Transco asserts that this results in the operation and maintenance of the units being challenging and costly.³⁷ Transco states long-term maintenance and reliability issues stemming from the existing antiquated compressors would be reduced by the proposed replacement.³⁸

23. Regarding the question of reduced system plant costs as a result of the abandonment and replacement of facilities at Compressor Station 165 proposed as part of the Southeastern Trail Project, Transco explains that the analysis it performed indicates that if the compressor needs for incremental service and the system needs related to the compressor abandonment and replacement were addressed and executed separately (Separate Execution), the total cost of the Separate Execution would be approximately \$155 million with approximately \$52 million allocated to the incremental service and

³² *Id.* at 12.

³³ *Id.* at 13.

³⁴ *See* Transco's Answer to Protest at 8-9.

³⁵ *Id.* at 8.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 8-9.

\$103 million allocated to the system.³⁹ On the other hand, if Compressor Station 165 needs for incremental service and system needs associated with the abandonment are addressed and executed simultaneously as proposed by Transco (Simultaneous Execution), the total cost of the Simultaneous Execution will be approximately \$141 million dollars.⁴⁰ The Simultaneous Execution costs are detailed in Transco's Application at Exhibit K, which provides that approximately \$82 million of the costs are allocated to existing customers, and the remaining approximately \$59 million are allocated to the incremental project.⁴¹ Transco elaborates further on the benefits of a Simultaneous Execution, stating that there are significant efficiencies gained by proceeding with this option, which leads to overall reduction in costs.⁴² These stem from working through a single cycle of permitting, engineering, procurement and construction.⁴³

24. We find Transco has made a strong case supporting its request to replace the 10 aging compressor units at Compressor Station 165 and allocate the associated costs to system customers. The proposed abandonment and replacement will enable Transco to maintain existing levels of service and provide system benefits including lower operation and maintenance costs and increased reliability. In addition, Transco has shown that there are efficiencies in abandoning and replacing the compressor units at Compressor Station 165 as part of its Southeastern Trail Project that will result in reduced costs to existing shippers.

25. Thus, we find that Transco's proposed abandonment is permitted by the public convenience or necessity under section 7(b) of the NGA.

³⁹ See Transco's September 28, 2018 Response to Staff Data Request. In the response, Transco clarifies that the system costs for both the Separate Execution and the Simultaneous Execution include costs associated with piping modifications.

⁴⁰ Transco's Answer to Protest at 9.

⁴¹ Transco's Application, Exhibit K. See also Transco's September 28, 2018 Response to Staff Data Request.

⁴² *Id.*

⁴³ *Id.*

C. Rates

1. Initial Recourse Rates

26. Transco proposes to charge incremental recourse rates under Rate Schedule FT for firm transportation service provided by the project. Transco utilizes a straight fixed-variable rate design to calculate its rates. Transco proposes an initial incremental daily recourse reservation charge of \$0.56612 per Dth and an incremental usage charge of \$0.00754 per Dth.⁴⁴ The proposed firm recourse reservation charge is based on an annual cost-of-service of \$61,241,372 and annual billing determinants of 108,176,875 Dth.⁴⁵ The proposed cost-of-service reflects Transco's depreciation rate of 2.61 percent, which is the onshore transmission depreciation rate (including negative salvage), and a 4.97 percent solar turbines depreciation rate,⁴⁶ approved in the settlement agreement in Docket No. RP12-993-000, *et al.*⁴⁷ The proposed cost-of-service uses the pre-tax rate of return that underlies Transco's settlement rates approved in Docket Nos. RP01-245-000, *et al.*,⁴⁸ as adjusted for the current federal corporate income tax rate of 21 percent.⁴⁹ In addition, Transco has allocated existing storage costs to the Southeastern Trail Project incremental recourse reservation charge. We reviewed Transco's proposed cost-of-service and initial rates and find both the proposed cost-of-service and initial rates, as modified below, reflect current Commission policy.

⁴⁴ Transco's Application, Exhibit P at Page 1.

⁴⁵ *Id.*

⁴⁶ Transco's Application, Exhibit P, Preface.

⁴⁷ *Transcontinental Gas Pipe Line Co., LLC*, 145 FERC ¶ 61,205 (2013).

⁴⁸ *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085 (2002). Transco explains that it has used the specified pre-tax rate of return underlying the Docket No. RP01-245 settlement rates because the more recent Docket No. RP12-993 settlement agreement was a "black box" settlement, which does not specify a rate of return. Transco's Application, Exhibit P, Preface.

⁴⁹ The Tax Cuts and Jobs Act of 2017 became effective January 1, 2018. The Tax Cuts and Jobs Act, among other things, reduced corporate taxes from 35 percent to 21 percent. *See* An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

2. Rate of Return

a. Protests and Transco's Answer

27. The State Commissions take issue with Transco's proposed use of a pre-tax return of 13.09 percent based on the pre-tax return underlying the design of Transco's approved settlement rates in Docket No. RP01-245-000 (i.e., 15.34 percent) adjusted for the current federal corporate income tax rate of 21 percent.⁵⁰ While the State Commissions acknowledge Transco's use of the specified pre-tax return most recently approved in a general NGA section 4 rate case is consistent with Commission policy, they emphasize that the Commission approved the settlement in that rate case 16 years ago. They argue that the incremental recourse rates approved in this proceeding should take into account the significant changes in market conditions since then.⁵¹

28. State Commissions note that the Commission's policy permits pipelines to negotiate rates which, unlike discount rates, are not constrained by the minimum and maximum rates in the pipeline's tariff.⁵² They emphasize that the Commission relies on the availability of recourse rates to prevent pipelines from exercising market power by assuring that the customer can revert to the just and reasonable tariff rate if the pipeline unilaterally demands excessive prices or withholds service.⁵³ Accordingly, they assert that recourse rates need to be designed properly in order to provide the necessary check on the pipeline's market power during the establishment of negotiated rates.⁵⁴

⁵⁰ See State Commissions' Protest at 3.

⁵¹ See *id.* at 9. Transco's last NGA section 4 rate case in which a specified rate of return was used in calculating Commission-approved rates was in Docket Nos. RP01-245-000, *et al.* A letter order issued in that proceeding on July 23, 2002, accepted a partial settlement resolving cost classification, cost allocation, and rate design subject to certain reservations and adjustments, and revising Transco's generally applicable rates. *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085, at P 2 (2002).

⁵² State Commissions' Protest at 5 (citing *Northern Natural Gas Co.*, 105 FERC ¶ 61,299 at PP 12-17 (2003)).

⁵³ *Id.* at 6 (citing Negotiated Rate Policy Statement at P 4).

⁵⁴ *Id.*

29. State Commissions complain that over the past several years, the Commission has declined to review recourse rates proposed by Transco in certificate applications.⁵⁵ State Commissions argue that, rather than justifying the application of its policy on the most recent stated return figure, the Commission has assumed that no matter how old or overstated the return used to calculate recourse rates may be, the resulting recourse rates would provide the necessary check on market power when the pipeline enters into negotiated rate agreements for new incremental projects.⁵⁶

30. State Commissions contend the Commission's holdings in previous Transco certificate proceedings err in relying on *Atlantic Refining Co. v. Pub. Serv. Comm'n of N.Y.*,⁵⁷ a case regarding the Commission's discretion in NGA section 7 proceedings to approve initial rates that will "hold the line" until just and reasonable rates are adjudicated under sections 4 or 5 of the NGA.⁵⁸ According to State Commissions, the cited court case is inapplicable because it pre-dates the existence of negotiated rates.⁵⁹ In addition, while the State Commissions acknowledge that Transco was required to file a NGA section 4 rate case by August 2018, they do not agree with any Commission decision to delay inspection of the proposed pre-tax return and other cost-of-service components until that rate case.⁶⁰ State Commissions contend that addressing recourse rates in a proceeding that began in August 2018, with the possibility that it may continue for years after, is futile in ensuring that the proposed recourse rate in this case serves as an adequate check on market power when the pipeline entered into negotiated rate agreements for the proposed project.⁶¹ Finally, they dispute the Commission's finding that conducting discounted cash flow (DCF) analyses in individual certificate cases

⁵⁵ *Id.* at 6 and n.29 (referencing the Commission rulings in three Transco certificate cases: *Transcontinental Gas Pipe Line Co., LLC*, 156 FERC ¶ 61,092 (2016), *order denying reh'g*, 161 FERC ¶ 61,211 (2017) (Dalton Expansion Project); *Transcontinental Gas Pipe Line Co., LLC*, 156 FERC ¶ 61,022 (2016), *order denying reh'g*, 161 FERC ¶ 61,212 (2017) (Virginia Southside Expansion Project II); *Transcontinental Gas Pipe Line Co., LLC*, 158 FERC ¶ 61,125, *order on reh'g*, 161 FERC ¶ 61,250 (2017) (Atlantic Sunrise Project).).

⁵⁶ *Id.*

⁵⁷ 360 U.S. 378 (1959) (*CATCO*).

⁵⁸ *See* State Commissions' Protest at 7-8.

⁵⁹ *Id.* at 8.

⁶⁰ *See id.* at 8.

⁶¹ *Id.*

would not be the most effective and efficient way of determining the appropriate returns on equity for proposed pipeline expansions.⁶²

31. In its answer, Transco maintains that its proposed initial NGA section 7 recourse rates are consistent with Commission policy in section 7 proceedings, in that they are appropriately designed using the correct pre-tax return and are designed to recover the project's incremental cost-of-service.⁶³ Transco states that State Commissions have provided no justification for the Commission to deviate from its general policy for the Southeastern Trail Project and notes that its project is analogous to other Transco incremental expansion projects approved by the Commission, filed subsequent to the effective date of the Docket No. RP01-245-000 settlement and using the pre-tax return approved in the settlement.⁶⁴ Transco further states that the Commission has rejected arguments for individual returns to be based on market circumstances in other certificate applications.⁶⁵

⁶² *Id.* at 10.

⁶³ *See* Transco's Answer to Protest at 6.

⁶⁴ *Id.* (citing orders for Transco's Dalton Expansion Project, Virginia Southside Expansion Project, and Atlantic Sunrise Project). In its June 8, 2018 answer, Transco also asserts that the State Commissions' challenge of the pre-tax rate of return is an impermissible collateral attack, noting that this is the fourth time the State Commissions have challenged Transco's use of the pre-tax rate of return from Docket No. RP01-245. *Id.* at 2-3. The D.C. Circuit has recognized that "[r]atemaking proceedings are especially unlikely to present the proper occasion for invocation of the [collateral estoppel] doctrine, because the appropriateness of a given rate involves policy considerations such as the encouragement of conservation that may be weighed differently over time." *Second Taxing Dist. of City of Norwalk v. FERC*, 683 F.2d 477, 484 (D.C. Cir. 1982) (noting that the doctrine applies only to "relitigation of the same issue[.]") (citations omitted). Moreover, in the three prior Transco certificate cases, the D.C. Circuit did not reach the merits of the arguments raised regarding the pre-tax rate of return, and dismissed the petition for review, finding that the State Commissions lacked standing. *N.C. Utils. Comm'n v. FERC*, 761 F. App'x 9, 10 (D.C. Cir. 2019), *cert. denied*, No. 19-42, 2019 WL 5150506 (Oct. 15, 2019). For these reasons, we do not agree that the State Commissions should be barred procedurally from raising this issue in this proceeding.

⁶⁵ Transco's Answer to Protest at 6-7 (citing *Dominion Cove Point LNG, LP*, 118 FERC ¶ 61,007 (2007); *Kern River Gas Transmission Co.*, 95 FERC ¶ 61,022 (2001)).

b. Commission Determination

32. We approve Transco's proposal to design its recourse rates using the approved pre-tax rate of return from Transco's most recent general NGA section 4 case in which a return was specified, adjusted for the 21 percent corporate tax rate.

33. We agree with the State Commissions that "the predicate for permitting a pipeline to charge a negotiated rate is that capacity is available at the recourse rate,"⁶⁶ and that the Commission therefore requires that shippers have the option of choosing to pay a cost-based recourse rate for expansion capacity that becomes available. However, as State Commissions acknowledge,⁶⁷ the Commission's policy in NGA section 7 certificate proceedings is to require that a pipeline's cost-based recourse rates for incrementally-priced expansion capacity be designed using the rate of return from its most recent general rate case approved by the Commission under section 4 of the NGA in which a specified rate of return was used to calculate the rates.⁶⁸ The recourse rates we are approving comply with this policy,⁶⁹ and provide the necessary check on the potential market power of the pipeline. Consistent with the negotiated rate policy, all shippers had the option to take capacity at the approved tariff recourse rate. In this case, four shippers elected to take service under negotiated rates, while one shipper elected to take service under the recourse rate.

34. In NGA section 7 certificate proceedings, the Commission reviews initial rates for service using proposed new pipeline capacity under the public convenience and necessity standard, which is a less rigorous standard than the just and reasonable standard under

⁶⁶ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,004 (2001) (quoting *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,241 (1996)).

⁶⁷ See State Commissions' Protest at 4.

⁶⁸ *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,144, at P 20 (2019) (recognizing that "the Commission's practice in an NGA section 7 certificate proceeding for an expansion project is to calculate a recourse rate using the last stated ROE from a general rate case."); see also *Transcontinental Gas Pipe Line Co.*, 161 FERC ¶ 61,211 (denying the State Commissions' request for rehearing raising pre-tax return issues); *Trunkline Gas Co., LLC*, 135 FERC ¶ 61,019, at P 33 (2011); *Florida Gas Transmission Co., LLC*, 132 FERC ¶ 61,040, at P 35 & n.12 (2010); *Northwest Pipeline Corp.*, 98 FERC ¶ 61,352, at 62,499 (2002).

⁶⁹ State Commissions assert that their protest in this proceeding "is not a direct challenge to that policy[,] but rather a challenge to the *application* of the Commission's policy in this proceeding. State Commissions' Protest at n.15.

NGA sections 4 and 5.⁷⁰ The Commission develops the recourse rate for expansion capacity based on the project's estimated cost-of-service. The initial NGA section 7 rates are "a temporary mechanism to protect the public interest until the regular rate setting provisions of the NGA come into play."⁷¹ Using a previously-approved rate of return allows the Commission to complete requests for NGA section 7 facilities and service in a timely manner, while "hold[ing] the line" until just and reasonable rates are adjudicated under section 4⁷² or 5⁷³ of the NGA.⁷⁴ Here, Transco filed a general NGA section 4 rate case on August 31, 2018, in Docket No. RP18-1126-000 pursuant to the comeback provision in Article 6 of the settlement in Docket No. RP12-993-000.⁷⁵ Parties in that

⁷⁰ See *CATCO*, 360 U.S. at 390-92. In *CATCO*, the Court contrasted the Commission's authority under sections 4 and 5 of the NGA to approve changes to existing rates using existing facilities and its authority under section 7 to approve initial rates for new services and services using new facilities. See *id.* at 389-92. The Court recognized "the inordinate delay" that can be associated with a full-evidentiary rate proceeding and concluded that was the reason why, unlike sections 4 and 5, section 7 does not require the Commission to make a determination that an applicant's proposed initial rates are or will be just and reasonable before the Commission certifies new facilities, expansion capacity, and/or services. *Id.* at 390-91. The Court stressed that in deciding under section 7(c) whether proposed new facilities or services are required by the public convenience and necessity, the Commission is required to "evaluate all factors bearing on the public interest," and an applicant's proposed initial rates are not "the only factor bearing on the public convenience and necessity[.]" *Id.* at 391. Thus, as explained by the Court, "[t]he Congress . . . has authorized the Commission to condition certificates in such manner as the public convenience and necessity may require" when the Commission exercises authority under section 7. *Id.* The Commission therefore has discretion in section 7 certificate proceedings to approve initial rates that will "hold the line" and ensure "that the consuming public may be protected" while awaiting adjudication of just and reasonable rates under the more time-consuming ratemaking sections of the NGA. *Id.* at 392.

⁷¹ *Mo. Pub. Serv. Comm'n v. FERC*, 601 F.3d 581, 583 (D.C. Cir. 2010) (internal quotation omitted).

⁷² 15 U.S.C. § 717c.

⁷³ *Id.* § 717d .

⁷⁴ See *CATCO*, 360 U.S. at 392.

⁷⁵ *Transcontinental Gas Pipe Line Co., LLC*, 144 FERC ¶ 63,029, at P 18 (2013). As stated above, we note that on August 31, 2018, Transco filed a general section 4 rate case in Docket No. RP18-1126-000.

rate case have an opportunity to review Transco's pre-tax return and other cost-of-service components and to specifically address issues of concern relating to the rate of return that should be used in calculating initial rates in Transco's future certificate proceedings.⁷⁶

35. We disagree with the State Commissions' assertion that our reliance on the *CATCO* decision is misplaced. The advent of negotiated rates does not negate the Commission's discretion to approve initial rates in this section 7 certificate proceeding under the public convenience and necessity standard pending the adjudication of just and reasonable rates in Transco's next general NGA section 4 rate case. In *CATCO*, the Court compared the less rigorous public convenience and necessity standard of review employed under section 7 to assess initial rates for new service or facilities with the just and reasonable standard of review for rate changes under sections 4 and 5.⁷⁷ The less exacting standard of review used in a section 7 certificate proceeding is intended to mitigate the delay associated with a full evidentiary rate proceeding, and the Commission has discretion to approve initial rates that will "hold the line" while awaiting the adjudication of just and reasonable rates.⁷⁸ State Commissions' observation that *CATCO* was decided prior to the development of negotiated rates does not detract from the applicability of the Supreme Court opinion to this proceeding.⁷⁹ Whether the initial rates in question are recourse rates, serving as a check against the exercise of market power by pipelines with negotiated rate authority, or the rates actually charged to shippers, the Commission retains the discretion to protect the public interest while preventing the delays that can accompany full evidentiary proceedings.⁸⁰

⁷⁶ See, e.g., *Eastern Shore Natural Gas Co.*, 138 FERC ¶ 61,050 (2012) (approving settlement that established rates on "black box" basis, but provided a specified pre-tax rate of return).

⁷⁷ See *CATCO*, 360 U.S. at 390-91.

⁷⁸ *Transcontinental Gas Pipe Line Co., LLC*, 161 FERC ¶ 61,212 at P 6.

⁷⁹ See *id.*; *Transcontinental Gas Pipe Line Co., LLC*, 161 FERC ¶ 61,250 at P 19; *Transcontinental Gas Pipe Line Co., LLC*, 161 FERC ¶ 61,211 at P 7.

⁸⁰ *Id.*

36. We disagree that it is appropriate to conduct a DCF analysis in this certificate proceeding in order to establish a return allowance. As we have explained, conducting a full evidentiary rate proceeding is a lengthy, complicated process and is not the most effective or efficient way to determine the appropriate return on equity (ROE) for individual pipeline expansions.⁸¹ Similarly, the Commission has held that conducting a more rigorous DCF analysis in an individual certificate proceeding when other elements of the pipeline's cost-of-service are based on estimates would not be the most effective or efficient way to determine the appropriate ROEs for proposed pipeline expansions.⁸² While parties have the opportunity in NGA section 4 rate proceedings to file and examine testimony with regard to the composition of the proxy group to use in the DCF analysis, the growth rates used in the analysis, and the pipeline's position within the zone of reasonableness with regard to risk, it would be difficult, if not impossible, to complete this type of analysis in NGA section 7 certificate proceedings in a timely manner, and attempting to do so would unnecessarily delay proposed projects with time sensitive in-service schedules. The Commission's primary obligation under the NGA is to "encourag[e] the orderly development of plentiful supplies of . . . natural gas at reasonable prices."⁸³ To achieve this, in setting rates the Commission may consider cost factors as well as non-cost factors, such as the need for project capacity.⁸⁴

⁸¹ *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,144, at P 20. The delay inherent in determining just and reasonable rates under NGA sections 4 and 5, 15 U.S.C. §§ 717c, 717d, makes that standard inappropriate for regulating initial rates under NGA section 7. *Consumer Fed'n of Am. v. FPC*, 515 F.2d 347, 356 n.56 (D.C. Cir. 1975) (citing *United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223, 227-28 (1965) (affirming Commission certification under section 7 of producer sales at the same "in-line" price levels as approved in other contemporaneous certificate proceedings)).

⁸² See, e.g., *PennEast Pipeline Co., LLC*, 164 FERC ¶ 61,098, at P 37 (2018); *Atl. Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at P 101 (2017), *order on reh'g*, 164 FERC ¶ 61,100, at P 73 (2018); *Transcontinental Gas Pipe Line Co., LLC*, 158 FERC ¶ 61,125, at P 39, *order on reh'g*, 161 FERC ¶ 61,250; *Transcontinental Gas Pipe Line Co., LLC*, 156 FERC ¶ 61,022, at P 24, *order denying reh'g*, 161 FERC ¶ 61,212 ; *Transcontinental Gas Pipe Line Co., LLC*, 156 FERC ¶ 61,092 at P 27, *order denying reh'g*, 161 FERC ¶ 61,211.

⁸³ *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1307 (D.C. Cir. 2015) (quoting *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669-70 (1976)).

⁸⁴ *Pub. Utils. Comm'n of Cal. v. FERC*, 367 F.3d 925, 929 (D.C. Cir. 2004) (citing *Permian Basin Area Rate Cases*, 390 U.S. 747, 791 (1968)); see also *Consol. Edison Co. of N.Y. v. FERC*, 315 F.3d 316, 325 (D.C. Cir. 2003) (recognizing that the Commission

37. State Commissions state that the Commission's precedent recognizes the importance on basing capital costs on current market data, including during times of allegedly anomalous conditions, and they assert that our use of a previously approved rate of return conflicts with precedent to use current market data.⁸⁵ The order cited by State Commissions involved a NGA section 4 general rate case, not a certificate proceeding, and is inapposite.

38. We also reject the State Commissions' claim that we should conduct a DCF analysis in a certificate proceeding because we did so in *WestGas Interstate, Inc.*⁸⁶ That case is over 25 years old. Our current practice in certificate proceedings is not to set rate of return issues for hearing, for the reasons explained above.

39. Similarly, the State Commissions' assertion that the Commission's *Notice of Proposed Rulemaking*⁸⁷ addressing changes in the federal corporate income tax rates that required pipelines to use the Commission's last litigated rate of return on equity in reporting cost and revenue information confirms that the pretax return used by Transco in this proceeding is overstated is unavailing.⁸⁸ The Final Rule in that proceeding adopted generic procedures for pipelines to require informational filings to allow the Commission and interested parties to decide whether to initiate NGA section 5 proceedings to decrease a pipeline's rates in light of recent income tax law and policy changes. It did not establish an appropriate rate of return for Transco, or any other interstate pipeline.

40. For the reasons discussed above, we find that it is appropriate to apply our general policy to calculate Transco's initial recourse rate in this proceeding and that parties may raise in Transco's general rate case any issues and concerns they have regarding the rate of return or other cost-of-service components to be used in calculating Transco's recourse

may appropriately consider administrative convenience in determining whether to apply policy in a NGA proceeding).

⁸⁵ State Commissions' Protest at 9 (citing *Portland Natural Gas Transmission System*, 142 FERC ¶ 61,198, at P 233 (2013)).

⁸⁶ 59 FERC ¶ 61,029, at 61,065 (1992).

⁸⁷ *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, 83 Fed. Reg. 12,888 (Mar. 26, 2018), 162 FERC ¶ 61,226 (2018) (NOPR). The Commission has since issued a final rule on this matter. *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 83 Fed. Reg. 36,672 (July 30, 2018), 164 FERC ¶ 61,031 (2018), *order denying reh'g*, Order 849-A, 167 FERC ¶ 61,051 (2019) (Final Rule).

⁸⁸ State Commissions' Protest at 10 (NOPR, 162 FERC ¶ 61,226 at P 34).

rates in subsequent certificate proceedings. Consistent with Commission policy, if Transco's current rate case is approved before the project's in-service date, Transco's compliance filing should reflect the outcome of its rate case including a new rate of return, if stated.

3. Income Tax Allowance

41. State Commissions express concern that Transco is claiming an income tax allowance of \$6,672,378⁸⁹ as part of its recourse rates.⁹⁰ State Commissions state that, in the Commission's *Revised Policy Statement*,⁹¹ the Commission found that granting Master Limited Partnerships (MLPs) an income tax allowance results in an impermissible double recovery.⁹² State Commissions further add that the *Revised Policy Statement* does not directly apply to other non-MLP partnership or other pass-through business forms.⁹³ Instead, the Commission concluded that "any such entity claiming an income tax allowance will need to address the concerns raised by the court in *United Airlines*," which will be addressed in subsequent proceedings.⁹⁴ State Commissions contend that, as a limited liability company, Transco is not a taxable entity and the application lacks any evidence addressing concerns raised by the D.C. Circuit in *United Airlines*.⁹⁵ As such, State Commissions conclude that the case record lacks the evidence needed to approve the proposed recourse rates.⁹⁶

⁸⁹ Transco states in a response to staff's data request on August 10, 2018, that an income tax allowance of \$8,186,824 is included in the cost-of-service for the project.

⁹⁰ State Commissions' Protest at 11.

⁹¹ *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 162 FERC ¶ 61,227 (2018) (*Revised Policy Statement*), order on reh'g, 164 FERC ¶ 61,030 (2018).

⁹² State Commissions' Protest at 11.

⁹³ *Id.*

⁹⁴ *Revised Policy Statement*, 162 FERC ¶ 61,227 at P 45. See *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016) (*United Airlines*), order on remand sub nom., *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228 (2018)).

⁹⁵ State Commissions' Protest at 11.

⁹⁶ *Id.*

42. In its answer, Transco submits that the subject certificate application is not the appropriate proceeding to address the issues raised in *United Airlines*, and Transco notes that the target in-service date for the proposed project is November 1, 2020.⁹⁷ Pursuant to the settlement agreement resolving Transco's last general rate case proceeding in Docket No. RP12-993, Transco was required to file an NGA section 4(e) general rate case no later than August 31, 2018.⁹⁸ Transco states that it anticipates that the section 4(e) general rate case will address whether, and to what extent, the *Revised Policy Statement* may apply to Transco.⁹⁹ In addition, Transco states that, on May 17, 2018, the Williams Companies, Inc., (Williams) and Williams Partners L.P. (Williams Partners) announced a corporate restructuring where Williams would acquire all outstanding public common units of Williams Partners, Transco's indirect parent, in a transaction that was expected to close in the fall of 2018.¹⁰⁰ Transco asserts that such restructuring would make the State Commissions' assertions moot.¹⁰¹

43. Subsequently, on August 31, 2018, Transco filed a general NGA section 4 rate case in Docket No. RP18-1126-000,¹⁰² in which Transco states that it is a wholly-owned subsidiary of Williams, a publicly traded Delaware corporation. As such, Transco asserts that it is a member of a consolidated corporate return group under Williams and is permitted an income tax allowance on a stand-alone basis under Commission policy.¹⁰³ In addition, in a November 20, 2018 response in compliance with a Commission order,¹⁰⁴ Transco filed a written statement clarifying that Williams, a publicly traded Delaware corporation, and Williams Partners L.P. completed their merger on August 10, 2018, with Williams continuing as the surviving entity. Transco again stated that it is now indirectly

⁹⁷ Transco's Answer to Protest at 7.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² This proceeding is set for hearing and is ongoing.

¹⁰³ See Page 3 of Transco's Transmittal Letter of its Tariff filing on August 31, 2018 in Docket No. RP18-1126-000 (citing Order No. 849, 164 FERC ¶ 61,031 at P 56).

¹⁰⁴ See Transco's November 20, 2018 Statement Affirming Close of Merger (Accession No. 20181120-5198).

owned by Williams and is a member of a consolidated corporate return group for federal income tax purposes.

44. Because Williams has completed the merger described above, and Transco's rates are subject to an ongoing general NGA section 4 rate case, we accept Transco's proposal to include the income tax allowance in its cost-of-service subject to the resolution of its rate case. To the extent Transco's rate case is resolved and results in a determination that Transco is not eligible to include an income tax allowance in its rates before it files actual tariff records setting forth the initial rates for service, those records must reflect rates recalculated to remove the proposed income tax allowance and accumulated deferred income taxes (ADIT) from its cost-of-service. If Transco fails to remove the proposed income tax allowance and ADIT from the initial rates, then that filing will be rejected as not being in compliance with this order, and Transco will be required to refile those records with the appropriate rates and receive Commission approval prior to going into service.

4. Storage Costs

45. The reservation charge includes \$359,292,¹⁰⁵ which Transco states represents the cost of storage required to provide no-notice transportation based on the per Dth rate of the allocated storage costs in the Docket No. RP12-993 settlement agreement. Commission policy requires that for an NGA section 7 proceeding certifying new facilities, incremental rates should be designed to reflect only the incremental costs associated with the new facilities and should not reflect the reallocation of costs related to existing facilities or other common costs.¹⁰⁶ An NGA section 7 proceeding certifying new facilities is not a proper forum to analyze the allocation of existing costs between the pipeline's existing and expansion customers because the rates for existing services can only be changed in an NGA section 4 or 5 rate proceeding. Issues regarding cost allocation,¹⁰⁷ including whether any additional system costs should be reallocated to the Southeastern Trail Project's incremental rate, may be addressed in Transco's next NGA section 4 rate proceeding. Therefore, the storage costs allocated to the Southeastern Trail Project incremental reservation charge should be removed from the project's cost-of-

¹⁰⁵ Transco's Application, Exhibit P at Page 1, ln 10.

¹⁰⁶ *Transcontinental Gas Pipe Line Co., LLC*, 165 FERC ¶ 61,221, at P 25 (2018); *Tennessee Gas Pipeline Co.*, 161 FERC ¶ 61,265, at P 21 (2017); *Transcontinental Gas Pipe Line Co., LLC*, 141 FERC ¶ 61,091, at P 27 (2012).

¹⁰⁷ See *Trailblazer Pipeline Co.*, 95 FERC ¶ 61,258, at 61,903 (2001) ("rates of existing customers should not change because a pipeline builds expansion facilities to serve new customers."); see also Certificate Policy Statement, 88 FERC ¶ 61,227, *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094.

service. Using a revised cost-of-service that reflects the removal of the storage costs results in an initial incremental daily recourse reservation charge of \$0.56280¹⁰⁸ per Dth and a usage charge of \$0.00754 per Dth.

46. Under the Commission's Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate exceeds the maximum system recourse rate.¹⁰⁹ The revised incremental daily recourse reservation charge of \$0.56280 per Dth is higher than Transco's filed system rate of \$0.53861 per Dth, while the incremental usage charge of \$0.00754 per Dth is lower than Transco's filed system rate of \$0.03501 per Dth.¹¹⁰ The Commission has previously allowed incremental usage charges below the system rate when the project's overall rate (reservation plus usage) is greater than the system rate.¹¹¹ However, here, Transco's overall incremental daily rate of \$0.57034 per Dth¹¹² is lower than Transco's stated overall system daily rate of \$0.57362 per Dth for Zones 5-3. Therefore, we will approve Transco's incremental reservation charge, as modified above, and we will require Transco to charge its system usage charge as the recourse charge in order to prevent any subsidization by existing shippers.

5. Compressor Station 165 Costs

47. As discussed above, Transco proposes to abandon and remove 10 compressor units at Compressor Station 165 and will have replacement HP. Transco proposes to allocate the costs of the Compressor Station 165 replacement and upgrade between the project shippers and Transco's existing customers. This proposal is based on incremental HP (21,299 ISO) as a percentage of the total HP addition at Compressor Station 165 (44,980 ISO) as follows: 52.65 percent to Transco's existing customers and

¹⁰⁸ For this calculation of the illustrative incremental reservation rate, the storage cost of \$359,292 was subtracted from the cost-of-service of \$61,241,372 and then divided by the billing determinants of 108,176,875 Dth.

¹⁰⁹ Certificate Policy Statement, 88 FERC at 61,746.

¹¹⁰ Transcontinental Gas Pipe Line Company, Fifth Revised Volume No. 1, Section 1.1.1, FT – Non-Incremental Rates, 20.0.0.

¹¹¹ See *Texas Eastern Transmission, LP*, 161 FERC ¶ 61,226 (2017).

¹¹² \$0.56280 per Dth for the reservation charge plus \$0.00754 per Dth for the usage charge gives an overall illustrative incremental rate charge of \$0.57034 per Dth.

47.35 percent to the incremental project. Transco states that \$82,011,981 of the costs will be allocated to existing customers, and the remaining \$58,912,143 to the incremental project.¹¹³

48. The Certificate Policy Statement recognizes that increasing the costs of existing shippers to pay for projects designed to improve reliability is not a subsidy.¹¹⁴ Therefore, we will grant Transco a predetermination that the costs associated with the Compressor Station 165 (Simultaneous Execution) upgrade allocated to system shippers may be rolled into system rates in its next NGA section 4 rate case, absent a significant change in circumstances.

6. Fuel

49. Transco proposes to apply its generally applicable system fuel retention and electric power rates to the project. Transco asserts that, as detailed in Exhibit Z-1,¹¹⁵ the project facilities are expected to result in a reduction in system fuel consumption attributable to existing customers. Thus, Transco states that the fuel benefit provided by the project to other Transco shippers supports Transco's proposal to assess the project shippers the generally applicable fuel retention and electric power charges under Rate Schedule FT. Under these circumstances, we approve Transco's proposal to charge its generally applicable system fuel and electric power rates for transportation on the capacity associated with the project facilities.

7. Reporting Incremental Costs

50. Section 154.309 of the Commission's regulations includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are charged.¹¹⁶ The requirements ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers.¹¹⁷ Therefore, as required by section 154.309 of the Commission's regulations, Transco must keep separate books and accounting of costs and revenues attributable to the project, and the books should be maintained with applicable cross-references. This information must be in sufficient detail

¹¹³ Transco's Application, Exhibit K at Page 1, columns C and I.

¹¹⁴ See Certificate Policy Statement, 88 FERC ¶ 61,227 at n.12.

¹¹⁵ Transco's Application, Exhibit Z-1.

¹¹⁶ 18 C.F.R. § 154.309 (2019).

¹¹⁷ *Id.*

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. 710.¹¹⁸

8. Negotiated Rates

51. Transco proposes to provide service to the project shippers under negotiated rate agreements. Transco must file either negotiated rate agreements or tariff records setting forth the essential elements of the agreements in accordance with the Alternative Rate Policy Statement¹¹⁹ and the Commission's negotiated rate policies.¹²⁰ Transco 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.¹²¹

D. Environmental Analysis

52. On June 1, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Southeastern Trail Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Sessions* (Notice of Intent). The Notice of Intent was published in the *Federal Register*¹²² and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and

¹¹⁸ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262 (2008).

¹¹⁹ *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 Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

¹²⁰ *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 (2006), *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

¹²¹ 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). *See also* 18 C.F.R. § 154.112(b) (2018).

¹²² *Notice of Intent*, 83 Fed. Reg. 27,320 (June 12, 2018).

newspapers; and affected property owners. In response to the Notice of Intent, we received comments from the Virginia Department of Conservation and Recreation, the Teamsters National Pipeline Labor Management Cooperation Trust, one affected landowner, and one individual.

53. On June 18, 19, and 20, 2018, the Commission staff conducted public scoping sessions in Nokesville, Scottsville, and Chatham, Virginia, respectively, to provide the public with an opportunity to learn more about the project and comment on environmental issues that should be addressed in the Environmental Assessment (EA). In total, three individuals provided oral comments on the project at the Commission's scoping sessions. Transcripts of the scoping sessions were entered into the public record in Docket No. CP18-186-000. The primary issues raised during the scoping process included the Commission's environmental review process, and impacts on sensitive species and habitats, visual impacts, property values, noise, and safety.

54. To satisfy the requirements of the National Environmental Policy Act of 1969,¹²³ our staff prepared an EA for Transco's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use (including property values), recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive comments raised during the scoping process were addressed in the EA.

55. The EA was issued for a 30-day comment period¹²⁴ and placed into the public record on February 8, 2019. The Commission received comments on the EA from the following: Virginia Department of Environmental Quality (Department of Environmental Quality);¹²⁵ Virginia Department of Conservation and Recreation's

¹²³ 42 U.S.C. §§ 4321 *et seq.* (2018); *see also* 18 C.F.R. pt. 380 (2019) (Commission's regulations implementing NEPA).

¹²⁴ The Commission's Rules of Practice and Procedure provide that if a deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the deadline does not end until the close of business on the next business day. 18 C.F.R. § 385.2007(a)(2) (2018). Because the 30-day deadline was on a Sunday (i.e., March 10, 2019), the deadline was extended until the close of business on Monday, March 11, 2019.

¹²⁵ The Department of Environmental Quality submitted a compiled comment letter on March 8, 2019, summarizing responses on the EA from Department of Environmental Quality and several other Virginia agencies, including: Virginia Department of Conservation and Recreation; Virginia Department of Game and Inland Fisheries; Virginia Department of Health; Virginia Marine Resources Commission; and Virginia Department of Transportation.

Division of Natural Heritage; Louisiana Department of Wildlife and Fisheries; and Ms. Jessica Day. After the comment deadline, the City of Buford, Virginia Natural Gas, Inc., and numerous landowners filed comments in support of Transco and/or the proposed project. In addition, Transco filed responses to the EA comments on March 25, 2019.¹²⁶ On June 5, 2019, the National Resources Conservation Service (NRCS) of the U.S. Department of Agriculture filed a letter regarding the Farmland Protection Policy Act and noted that the portion of this project that is located in Georgia does not convert farmland; therefore, NRCS states that the Georgia portion of the project is exempt from the Land Evaluation and Site Assessment.

1. Orchards

56. Ms. Day, a landowner in Catlett, Virginia, states that information that Transco provided in the application process, which is referenced in the Commission staff's EA, was incomplete. For example, section B.5.6 of the EA¹²⁷ states that no orchards occur within 0.25 mile of the project, and Ms. Day states that her orchard is within 0.25 mile from the project limits of disturbance. Transco responds that it searched local and state databases for land use categories and areas of importance, which did not include private orchards such as Ms. Day's.¹²⁸ Transco also states that its construction workspace is within its existing permanent right-of-way on Ms. Day's property and would only disturb 0.05 acre of the existing permanent right-of-way.¹²⁹ While we note the presence of Ms. Day's orchard, we conclude based on our review of Transco's alignment sheets that the Manassas Loop would not directly impact any of Ms. Day's trees within her private orchard. Transco also states that it continues to consult with Ms. Day regarding impacts to her land, including her orchard.¹³⁰

2. Soils and Geology

57. The Department of Environmental Quality indicates that Transco is required to file annual general erosion and sediment control standards and specifications consistent with the requirements of the Virginia's Erosion and Sediment Control Law and Stormwater Management Act (§ 62.1-44.15:24 *et seq.*) and associated regulations where

¹²⁶ Transco's March 25, 2019 Response to Comments.

¹²⁷ EA at 68.

¹²⁸ Transco's March 25, 2019 Response to Comments at 1.

¹²⁹ *Id.*

¹³⁰ *Id.*

applicable.¹³¹ The Department of Environmental Quality also states that Transco must register for coverage under the VAR10 permit and develop a project-specific stormwater pollution prevention plan.¹³²

58. Transco has committed to construct the project in accordance with all federal and state regulations and permit requirements including stormwater permit requirements. Additionally, Transco's response to the Department of Environmental Quality's comments confirms that Transco will comply with all applicable rules including development of Erosion and Sediment Control (E&SC) and Stormwater Management Plans.¹³³ Given these commitments, we see no need to impose additional measures.

59. Department of Environmental Quality recommends that Transco conduct additional evaluation of identified Pollution Complaint cases.¹³⁴ Environmental Condition 12 of this order requires that Transco submit a project-specific Unanticipated Discovery of Contamination Plan that addresses how it would proceed should it discover contamination during construction. Transco's response to the Department of Environmental Quality's comments confirms that it will develop and follow such a plan.¹³⁵ Given this, we see no need to require additional evaluation of these identified cases.

60. With regard to pollution prevention and disposal of any generated waste, as stated in the EA, Transco has prepared an acceptable construction Spill Prevention, Control, and Countermeasures Plan (SPCC Plan).¹³⁶ We find Transco's SPCC Plan and other measures included in Transco's application sufficient to address Department of Environmental Quality's concerns regarding general erosion and sediment control standards and specifications.

¹³¹ Department of Environmental Quality's March 8, 2019 Comments at 8.

¹³² *Id.*

¹³³ *See* Transco March 25, 2019 Response to Comments at 2.

¹³⁴ Department of Environmental Quality's March 8, 2019 Comments at 14.

¹³⁵ Transco's March 25, 2019 Response to Comments at 2-3.

¹³⁶ EA at 10. The SPCC Plan includes measures to prevent and respond to any inadvertent releases of hazardous materials and notification procedures in the event of a release. *Id.*

3. Water Resources

61. The Virginia Department of Health's (Department of Health) comments state that the number of public water supply wells within one mile of the Manassas Loop is incorrect in the EA.¹³⁷ According to the Department of Health, four public wells are within a 1-mile radius of the Manassas Loop.¹³⁸ The Department of Health Office of Drinking Water indicates that the project should not have a negative impact on the identified wells.¹³⁹ Additionally, the Department of Health indicates that the Manassas Loop is within the watershed for the Occoquan Reservoir Intake.¹⁴⁰ We find that Transco's Manassas Loop will not directly impact any public wells, and its proposed SPCC Plan and its proposed erosion and sediment control measures are sufficient to avoid impacts on the identified wells and watershed.

62. The Department of Environmental Quality comments that Transco should file general erosion and sediment control standards and specifications annually for review and approval.¹⁴¹ The Department of Environmental Quality also states that Transco must also have a certified Responsible Land Disturber in charge of and responsible for carrying out the project-specific erosion and sediment control plan and the land-disturbing activity.¹⁴² As stated in the EA,¹⁴³ Transco will file an E&SC Plan that will comply with the Department of Environmental Quality requirements prior to construction. Further, Environmental Condition 7 requires Transco to hire at least one environmental inspector for the facilities in Virginia that is responsible for ensuring Transco's compliance with its E&SC Plan and the federal and state agency permits.

63. The Department of Environmental Quality states that the EA does not disclose the notification and retention requirements of the Virginia Pollutant Discharge Elimination

¹³⁷ See Department of Environmental Quality's March 8, 2019 Comments; see also EA at 33.

¹³⁸ See Department of Environmental Quality's March 8, 2019 Comments at 40.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 8.

¹⁴² *Id.*

¹⁴³ EA at 10.

System General Permit as it pertains to hydrostatic testing discharges.¹⁴⁴ As stated in the EA, Transco will maintain compliance with all applicable federal, state, and local regulations and permits.¹⁴⁵ Following construction of the project facilities in Virginia, Transco will complete the required hydrostatic testing in compliance with the state-issued Pollutant Discharge Elimination System General Permit as indicated in the Commission's *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures).

64. The Department of Environmental Quality also notes that Table 15 of the EA,¹⁴⁶ which estimates the total volume of water anticipated for hydrostatic testing, omits the 3.1 million gallons associated with the Manassas Loop.¹⁴⁷ We confirm that the total shown in Table 15 is incorrect and should include the 3.1 million gallons for the Manassas Loop.¹⁴⁸ However, the permitting requirements and minimization measures remain the same as discussed in the EA. Therefore, we find that this information does not change any conclusions in the EA.

65. The Department of Environmental Quality recommends that Transco avoid and minimize impacts on surface waters and wetlands to the extent practical, that it contact the U.S. Army Corps of Engineers (Corps) for wetland impacts, and that it utilize best management practices.¹⁴⁹ We agree. As indicated in the EA, Transco will minimize impacts on waterbodies by using dry crossing methods unless project construction conditions involve crossing waterbodies with no perceivable flow.¹⁵⁰ Transco has reduced construction impacts on wetlands associated with the Manassas Loop to temporary impacts on 2.0 acres of wetlands (1.0 acres of palustrine emergent and 1.0 acre of palustrine forested).¹⁵¹ The remaining facilities associated with the project would not impact wetlands.¹⁵² Following construction of the Manassas Loop, wetlands in the

¹⁴⁴ Department of Environmental Quality's March 8, 2019 Comments at 5.

¹⁴⁵ EA at 39.

¹⁴⁶ See EA at 38.

¹⁴⁷ Department of Environmental Quality's March 8, 2019 Comments at 5.

¹⁴⁸ See EA at 38.

¹⁴⁹ Department of Environmental Quality's March 8, 2019 Comments at 31, 60.

¹⁵⁰ See EA at 22.

¹⁵¹ See EA at 39.

¹⁵² See *id.*

temporary construction right-of-way would revert back to their former state, and Transco would limit vegetation maintenance over the full width of the permanent right-of-way in wetlands to a 30-foot-wide corridor. While Transco's Manassas Loop would result in 0.4 acre of wetland conversion (from palustrine forested to palustrine emergent) in the Corps' Norfolk District, the project will not result in any net loss of wetlands.¹⁵³ Mitigation for the permanent conversion of wetland vegetation cover will be determined through consultation with the Corps.¹⁵⁴ Transco will also minimize impacts on wetlands and waterbodies by following the mitigation measures included in the FERC Procedures and Transco's SPCC Plan and E&SC Plan.

66. The Department of Environmental Quality requires Transco to reinitiate consultation with the Virginia Marine Resources Commission should project changes affect state subaqueous lands.¹⁵⁵ Transco's response to the Department of Environmental Quality's comment confirms that it would reinitiate consultation with the Virginia Marine Resources Commission should project changes affect state subaqueous lands, which would require modifications to the existing permit (JPA#18-0853).¹⁵⁶

67. The Department of Environmental Quality states that Transco must coordinate with the local floodplain administrator for floodplain determination and comply with Executive Order 11988¹⁵⁷ to reduce the risk of flood loss, minimize the impacts of floods on human safety, health, and welfare, and restore and preservice the natural and beneficial values served with floodplains.¹⁵⁸ Transco's response to the Department of Environmental Quality's comment confirms that it will coordinate with the local floodplain administrator for each community for official floodplain determinations and will comply with Executive Order 11988.¹⁵⁹

68. Ms. Day expresses concerns about the wetland delineations that Transco conducted in the winter months. The Corps has authority under section 404 of the Clean

¹⁵³ See EA at 39.

¹⁵⁴ EA at 41-42.

¹⁵⁵ Department of Environmental Quality's March 8, 2019 Comments at 7.

¹⁵⁶ Transco's March 25, 2019 Response to Comments at 2.

¹⁵⁷ Executive Order No. 11988, 42 Fed Reg. 26,951 (May 24, 1977).

¹⁵⁸ Department of Environmental Quality's March 8, 2019 Comments at 10.

¹⁵⁹ Transco's March 25, 2019 Response to Comments at 2.

Water Act (CWA)¹⁶⁰ to review and approve wetland delineations and issue permits for activities that would result in the discharge of dredge or fill material into waters of the United States, including wetlands. In Virginia, consistency reviews of federal permits issued under section 404 of the CWA are conducted as part of the Joint Permit Application. The Joint Permit Application package submitted to the Corps is required to include the Corps-confirmed jurisdictional determination or delineation, ensuring that proper wetland delineations were performed.

69. Ms. Day also refers to the EA's cumulative impacts analysis for water resources and states that the analysis did not take into consideration the cumulative impacts of the project on smaller streams. The cumulative effects analysis in the EA focused on potential impacts from the project on resource areas or issues where the incremental contribution could result in cumulative impacts when added to the potential impacts of other actions. The geographic scope for water resources considers actions within the same Hydrologic Unit Code (HUC)-12 watershed boundary as the project.¹⁶¹ As stated in the EA, construction and operation of the project will mainly result in only short-term impacts on surface water resources.¹⁶² The projects considered in the cumulative effects analysis (i.e., projects within the geographic scope) will individually result in temporary impacts on surface water mostly through the linear construction activities across streams and temporary erosion and sedimentation of exposed soils.¹⁶³ The project, when combined with the several other projects within the geographic scope, will only have a minor and temporary contribution to cumulative impact on surface waters.¹⁶⁴ Therefore, we agree with the EA and find that it sufficiently addresses these concerns.

4. Vegetation, Wildlife, and Special Status Species

70. Ms. Day comments about the size of Transco's biological survey corridor and suggests it could be too small to accurately account for the impact of stormwater and other increased uses. Biological surveys are generally completed to identify species of concern, and in particular, species that require consultation with the U.S. Fish and Wildlife Service (Fish and Wildlife Service). The company completed all required surveys in accordance with protocols established by Fish and Wildlife Service, and the Commission's consultation with Fish and Wildlife Service is complete. Furthermore,

¹⁶⁰ 33 U.S.C. § 1344 (2018).

¹⁶¹ See EA at 83.

¹⁶² EA at 85.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

Commission staff recommends that project sponsors provide alignment sheets that include resources present within proposed workspaces and within 0.25 mile on either side the pipeline route. Transco's application and alignment sheets complied with this recommendation. We also note that the length of the biological survey corridor will not limit or expand the implementation of measures to prevent sedimentation and other contaminants from entering waterbodies or other sensitive resources. Therefore, we find Transco's biological survey corridor to be sufficient. Additionally, Transco's implementation of the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan), Commission Procedures, E&SC Plan, section 401 and 404 CWA permits, and coordination with the Department of Environmental Quality for stormwater management plans will minimize stormwater impacts on adjacent resources. These plans specify the types, duration of implementation, and other specific sediment control measures for each activity during project construction and operation. Furthermore, impacts from construction vehicles driving on public and private roads will be localized to the road and adjacent to the road.

71. The EA indicated that the project may affect the Northern long-eared bat, but that any resulting incidental take of the Northern long-eared bat is not prohibited by the final 4(d) rule.¹⁶⁵ The streamlined consultation form was attached as an appendix to the EA,¹⁶⁶ and submitted to the Fish and Wildlife Service's Virginia Field Office on February 8, 2019. A response from Fish and Wildlife Service, confirming receipt and sufficiency of the form, was received on March 5, 2019. As stated on the form, given 30 days have passed and the Fish and Wildlife Service has not indicated it has any concerns, consultation is complete.

72. The Louisiana Department of Wildlife and Fisheries filed a comment on the EA indicating that it has no objections to the proposed natural gas flow reversal at the St. Helena Station in Louisiana.

73. The Department of Environmental Quality states that the Virginia Department of Conservation and Recreation's Division of Natural Heritage (Department of Conservation and Recreation) finds that the Kettle Run Stream Conservation Unit (SCU) is within the Manassas Loop project area and Slate Run SCU is downstream of the Manassas Loop project area.¹⁶⁷ Kettle Run SCU has a biodiversity ranking of B3, and Slate Run has a ranking of B4 due to the presence of sensitive aquatic communities.¹⁶⁸

¹⁶⁵ EA at 59-60.

¹⁶⁶ EA at Appendix E.

¹⁶⁷ Department of Environmental Quality's March 8, 2019 Comments at 16, 52.

¹⁶⁸ *See id.*

The Nokesville Diabase Flatwoods Conservation Site, which is also located within 2 miles of the Manassas Loop, has a biodiversity significance ranking of B3 due to the presence of sensitive plants including hairy hedge-nettle (*Stachys arenicola*), stiff goldenrod (*Solidago rigida* var. *rigida*), and American bluehearts (*Buchnera americana*).¹⁶⁹ Compressor Station 165 is within the Transco Road Net Conservation Site, which has a biodiversity significance ranking of B3 due to the presence of tri-colored bat.¹⁷⁰ The Department of Conservation and Recreation states that no documented state-listed threatened and endangered plant or insect species will be impacted by the project; however, due to the potential for sensitive diabase plant populations, it recommends an inventory for these plants occur in the Manassas Loop project area.¹⁷¹ It also recommends the implementation of strict adherence to applicable state and local erosion and sediment control and stormwater management laws to minimize downstream impacts.¹⁷² Finally, Department of Conservation and Recreation recommends the implementation of an invasive species plan.¹⁷³

74. The Nokesville Diabase Flatwoods Conservation Site was discussed in the EA.¹⁷⁴ Given it is approximately 2 miles from the project area, no impacts will occur to this area.¹⁷⁵ Furthermore, Transco states in its March 25, 2019 filing that it will conduct an evaluation of the route to determine where habitats for diabase plants may be encountered within the project area and share the results with the Department of Conservation and Recreation.¹⁷⁶ Therefore, impacts on these sensitive plant species are not expected. The Transco Road Net Conservation Site is also discussed in the EA.¹⁷⁷ The Virginia Department of Game and Inland Fisheries (Department of Game and Inland Fisheries) states that although a tri-colored bat was documented at the site in 2015, no roosting sites or hibernacula have been identified near the project site, and it does not anticipate the

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 16.

¹⁷¹ *Id.* at 17.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *See* EA at 46.

¹⁷⁵ *Id.*

¹⁷⁶ Transco's March 25, 2019 Response to Comments at 3.

¹⁷⁷ *See* EA at 48.

project having a significant impact on the species.¹⁷⁸ Transco has also committed to comply with the Department of Game and Inland Fisheries Guidance Document on Best Management Practices for Conservation of Little Brown Bats and Tri-Colored Bats, including restricting any clearing between April 15 and September 15. Therefore, we agree with the conclusion in the EA that impacts on this species would be sufficiently minimized.

75. As stated in the EA, to minimize offsite and downstream impacts from sediment transport, Transco will adhere to the measures in the FERC Plan, its E&SC Plan and Procedures, its SPCC Plan, its 401 and 404 CWA permits, and all relevant applicable local, state, and federal permits and authorizations. This includes the implementation of best management practices that minimize soil disturbance, ensures revegetation of disturbed areas, prevents and contains spills of hazardous materials, and requires erosion control measures during soil disturbance. Transco also provided a Noxious and Invasive Weed Control Plan with its application.¹⁷⁹ As stated in the EA, this Noxious and Invasive Weed Control Plan requires Transco's Environmental Inspector to flag areas of concern while in the field to alert construction personnel and prevent access into areas until noxious and/or invasive weed management control measures have been implemented. Construction vehicles are also required to be clean and weed-free when they arrive at the site.¹⁸⁰ The EA concluded that the Noxious and Invasive Weed Control Plan was acceptable to minimize and control weeds.¹⁸¹ The Department of Game and Inland Fisheries, the state regulatory authority for the management and protection of inland fisheries and wildlife in Virginia, states that it supports the EA and the avoidance and minimization measures for special status species.¹⁸²

76. The Department of Conservation and Recreation's comment on April 1, 2019, states that it reviewed the Invasive Weed Control Plan.¹⁸³ The Department of Conservation and Recreation requests inspection of the site for invasive species twice during each growing season for a period of not less than 5 years after project completion, and that when observed, invasive species be eradicated as appropriate for species and

¹⁷⁸ *See id.*

¹⁷⁹ EA at 46.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Department of Environmental Quality's March 8, 2019 Comments at 18.

¹⁸³ Department of Conservation and Recreation's April 1, 2019 Comments at 1.

setting per coordination with Department of Conservation and Recreation.¹⁸⁴ Transco's implementation of the FERC Plan requires inspections, once the project is complete and in-service, until restoration is successful. The FERC Plan also requires Transco to restore the right-of-way surface condition to a similar state as the adjacent undisturbed lands, ensure successful revegetation, and restore proper drainage. As stated in the EA, Transco will also implement the strategies outlined in Natural Resource Conservation Service's Practice Standard 327,¹⁸⁵ which requires considering weed establishment when preparing sites, mowing, fertilizing, and performing maintenance and herbicide/pesticide treatment. Transco has also committed to use seed mixes described in the 2014 Virginia Plant Establishment Guide, which includes a suggested seed mixture appropriate for the project location, and seed mixtures that would promote use of the project right-of-way by pollinators.¹⁸⁶ This commitment would not apply to land in current agricultural practice or to satisfy specific landowner requests.¹⁸⁷ Transco also states in its March 25, 2019 letter that it intends to comply with all applicable rules and regulations in Virginia and corresponding requirements and recommendations by the Department of Environmental Quality¹⁸⁸ (who coordinates federal project review for the Department of Conservation and Recreation). Therefore, we find that impacts from invasive species will be sufficiently minimized.

77. Due to Transco's implementation of the above-mentioned plans and measures in its permits, we agree with the findings in the EA that impacts of the project on sensitive wildlife and aquatic resources will be sufficiently minimized.

78. The Department of Game and Inland Fisheries requires a typical time of year restriction for all warmwater fisheries, including those in the project area, from April 15 through July 15, and the EA noted that it is the relevant timing restriction for this project.¹⁸⁹ However, the Department of Environmental Quality states that the Department of Game and Inland Fisheries has reviewed the project and modified its timing restriction in Cedar and Kettle Runs from April 15 through July 15 to May 15

¹⁸⁴ *Id.* at 2.

¹⁸⁵ EA at 46.

¹⁸⁶ *See id.*

¹⁸⁷ *Id.*

¹⁸⁸ Transco's March 25, 2019 Response to Comments at 2.

¹⁸⁹ EA at 53.

through July 31.¹⁹⁰ Based on an earlier correspondence prior to issuance of the EA, the Department of Game and Inland Fisheries stated that Transco would not be required to follow a time of year restriction if an unidentified mussel found during Transco's biological surveys was not a green floater (a listed species), and all work is performed using Transco's proposed dry crossing method. Transco has since confirmed that the mussel was not a state or federally listed species, and Transco proposes to perform all crossings using dry crossing methods. Transco clarified in its March 25, 2019 filing that it does not believe that a time of year restriction is applicable to its crossings of Cedar Creek or its tributaries based on these results and previous consultations.¹⁹¹ The Commission's Procedures state that instream work must occur between June 1 and November 30 for warmwater fisheries unless expressly permitted or further restricted by the appropriate federal or state agency in writing on a site-specific basis. Since the Department of Game and Inland Fisheries and Department of Environmental Quality have provided a more restrictive instream timing restriction, Transco will need to comply with the state's waterbody crossing window for the project unless it is able to obtain further correspondence from the Department of Environmental Quality or the Department of Game and Inland Fisheries to clarify a less restrictive time of year crossing restriction.

79. The Department of Game and Inland Fisheries states that it recommends that Transco conduct instream activities during low or no-flow conditions, use non-erodible cofferdams or turbidity curtains to isolate the construction area, block no more than 50 percent of the streamflow at any given time, stockpile excavated material in a manner that prevents reentry into the stream, restore original streambed and streambank contours, revegetate barren areas with native vegetation, implement strict erosion and sediment control measures, and install concrete only "in the dry" to ensure it has hardened and cured prior to contact with open water.¹⁹² As stated in the EA, Transco will comply with all relevant authorizations and permits, including Section 401 and 404 of the CWA, which ensures projects meet state water quality standards, and regulates the discharge of materials to jurisdictional waterbodies and wetlands, respectively.¹⁹³

80. Transco will also comply with the Commission's Procedures, which requires applicants to maintain adequate waterbody flow to protect aquatic life and prevent the interruption of existing downstream uses, contains multiple measures to minimize sedimentation and erosion into the stream, and provides revegetation requirements. As stated in the EA, Transco will implement the FERC Plan, which outlines requirements for

¹⁹⁰ Department of Environmental Quality's March 8, 2019 Comments at 19.

¹⁹¹ Transco's March 25, 2019 Response to Comments at 3.

¹⁹² Department of Environmental Quality's March 8, 2019 Comments at 19.

¹⁹³ See EA at 24-25.

successful revegetation, and Transco is restricted from performing concrete coating within 100 feet of waterbodies in accordance with the Commission's Procedures.¹⁹⁴ As described above, the Department of Game and Inland Fisheries states that it supports the EA and the avoidance and minimization measures for special status species. Based on Transco's proposed waterbody crossing methods and its proposed implementation of the FERC Plan and Procedures, we find that its proposed construction of the Manassas Loop will comply with the Department of Game and Inland Fisheries instream activity recommendations. Therefore, we agree with the assertion in the EA that impacts on waterbodies, wetlands, and wildlife resources will be sufficiently minimized and no additional conditions are warranted.

5. Cultural Resources

81. The Department of Environmental Quality indicates that Transco and the Commission must continue to consult the Virginia Department of Historic Resources (Department of Historic Resources), as necessary, pursuant to section 106 of the National Historic Preservation Act and its implementing regulations.¹⁹⁵ The EA provides the status of section 106 consultations conducted to date.¹⁹⁶ Environmental Condition 16 in the Appendix B of this order ensures that all required section 106 consultations with the Department of Historic Resources will be completed, in accordance with the regulations, prior to any construction authorization from the Commission. We agree with the conclusions in the EA and no additional conditions are required.

6. Land Use

82. The Department of Environmental Quality's comments includes Virginia Department of Transportation's (VA Department of Transportation) recommendation that Transco monitor the VA Department of Transportation's paving schedule map for updates during work.¹⁹⁷ VA Department of Transportation also states that an appropriate work zone plan must be implemented to insure the safe and efficient travel of vehicles during the construction phase is possible.¹⁹⁸ The EA describes that traffic warning signs and other traffic control devices will be used as required by federal, state, and local

¹⁹⁴ EA at 19.

¹⁹⁵ Department of Environmental Quality's March 8, 2019 Comments at 21.

¹⁹⁶ See EA at 70-73.

¹⁹⁷ Department of Environmental Quality's March 8, 2019 Comments at 20.

¹⁹⁸ *Id.*

Department of Transportation regulatory agencies.¹⁹⁹ Furthermore, Transco states in its March 25, 2019 filing that they will comply with the VA Department of Transportation's Land Use Permit Regulations.²⁰⁰

7. Air

83. The Department of Environmental Quality provides a recommendation regarding open burning, fugitive dust control, and air permitting.²⁰¹ The EA describes Transco's Dust Control Measures included in its Fugitive Dust Control Plan, which includes complying with Department of Environmental Quality's recommendations.²⁰² Transco does not anticipate the use of open burning to dispose of cleared vegetation. The EA discusses open burning,²⁰³ including Transco's commitment to comply with all applicable air permitting regulations in order to receive an operating permit from the Department of Environmental Quality.²⁰⁴ Should Transco conduct prescribed open burning, Transco will comply with all applicable state and local regulations as stated in section 9.2.3.1 of its application. Thus, we conclude that no additional conditions are required.

8. Conclusion

84. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed and operated in accordance with Transco's application and supplements, including any commitments made therein, and in compliance with the environmental conditions in Appendix B 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

¹⁹⁹ EA at 21.

²⁰⁰ Transco's March 25, 2019 Response to Comments at 3.

²⁰¹ Department of Environmental Quality's March 8, 2019 Comments at 12.

²⁰² EA at 47.

²⁰³ EA at 18.

²⁰⁴ See EA at 74.

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 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.

85. 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.²⁰⁵

86. 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 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 Transco, 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 therein.

²⁰⁵ 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 the Commission's regulatory authority over the transportation of natural gas is preempted); *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).

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Transco'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 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) Compliance with the environmental conditions listed in Appendix B to this order; and
- (4) Filing of a written statement affirming that it has executed firm service agreement(s) for volumes and service terms equivalent to those in its precedent agreement(s), prior to commencing construction.

(C) Transco is granted permission and approval under NGA section 7(b) to abandon ten compressor units, located at Transco's existing Compressor Station 165 in Pittsylvania County, Virginia.

(D) Transco shall notify the Commission within ten (10) days of the date of the abandonment.

(E) Transco's proposed incremental reservation rates, as revised above, and its system usage charge, are approved as the initial rates for the Southeastern Trail Project.

(F) Transco's request to utilize its system-wide fuel and electric power rates is approved.

(G) A predetermination is granted favoring Transco's rolling into system rates the Compressor Station 165 costs allocated to system shippers in its next NGA section 4 case, absent a significant change in circumstances.

(H) Transco shall file actual tariff records setting forth the initial rates for service on the project no later than 60 days prior to the date the project facilities go into service.

(I) Transco shall keep separate books and accounts of costs attributable to the proposed incremental services, as described above.

(J) Transco 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 Transco. Transco 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.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

Timely Motions to Intervene

Atlanta Gas Light Company, *et al.*²⁰⁶
Calpine Energy Services, L.P.
Duke Energy Carolinas, LLC, *et al.*²⁰⁷
Exelon Corporation
The Municipal Gas Authority of Georgia and the Transco Municipal Group
National Grid Gas Delivery Companies
New Jersey Natural Gas Company
New York State Public Service Commission
NextEra Energy Marketing, LLC
NJR Energy Services Company
North Carolina Utilities Commission
Philadelphia Gas Works
Piedmont Natural Gas Company, Inc.
Public Service Company of North Carolina, Inc. and South Carolina Electric & Gas
Company
Southern Company Services, Inc.

²⁰⁶ This motion to intervene includes the following entities: Atlanta Gas Light Company; Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas Company in New Jersey and d/b/a Elkton Gas in Maryland; and Virginia Natural Gas, Inc.

²⁰⁷ This motion to intervene includes the following entities: Duke Energy Carolinas, LLC; Duke Energy Progress, LLC; and Duke Energy Florida, LLC.

Appendix B

Transcontinental Gas Pipe Line Company, LLC

Environmental Conditions

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

1. Transcontinental Gas Pipe Line Company, LLC (Transco) shall follow the construction and abandonment 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's Order (Order). Transco 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, and abandonment activities. 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**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), 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**, Transco 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.

Transco's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Transco'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. Transco 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* (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 or abandonment begins**, Transco shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Transco must file revisions to the plan as schedules change. The plan shall identify:
- a. how Transco 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 Transco 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 on-site construction and inspection personnel;
 - c. the number of EIs assigned (per spread), and how Transco will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. Transco 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 Transco will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change);
 - f. Transco personnel (if known) and specific portion of Transco's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Transco will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or Program Evaluation Review Technique chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of on-site personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Transco shall employ at least one EI for the Project facilities in Virginia and one EI for the remaining facility sites. 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. specific to the Virginia facilities, a full-time position, separate from all other activity inspectors;
 - e. 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
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Transco shall file updated status reports with the Secretary on a **biweekly basis until all construction, abandonment, 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 Transco's efforts to obtain the necessary federal authorizations;
 - b. the construction status of each spread, 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 Transco from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transco's response.
9. Transco must receive written authorization from the Director of OEP **before commencing construction of any Project facilities**. To obtain such authorization, Transco must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Transco 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**, Transco 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 Certificate conditions Transco 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. **Prior to construction**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, an Unanticipated Discovery of Contamination Plan to respond to potential soil and groundwater contamination encountered during construction of the Project.
13. **Prior to construction**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, the following regarding Station 175:
 - a. a current aerial figure that indicates the extent of temporary workspaces, all wetland and waterbody boundaries, and permanent workspaces; and
 - b. Best Management Practice drawings indicating the distance between the wetlands and the temporary workspace and how Transco will protect the wetlands.
14. **Prior to construction**, Transco shall determine disposal methods for vegetative debris that comply with its Plan (section III.E and V.A.6), and file these methods with the Secretary for review and written approval by the Director of OEP.
15. **Prior to construction**, Transco shall file with the Secretary the Nationwide Permit No. 12 for the Project, which serves as documentation that the Project is consistent with the Virginia Coastal Zone Management Program, or a copy of the determination of consistency with the Coastal Zone Management Program issued by the Virginia Department of Environmental Quality.
16. Transco **shall not begin construction** of facilities and use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. Transco files with the Secretary,

- (1) the Virginia State Historic Preservation Officer's (SHPO) comments on the "Assessment of Effects," and
 - (2) any required avoidance and/or treatment/mitigation plans, and the Virginia SHPO's comments on the plans;
- b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
 - c. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Transco in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All material filed with the Commission containing **location, character, and ownership information** about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "**CUI//PRIV – DO NOT RELEASE**".

17. Transco shall file with the Secretary a noise survey for Compressor Station 185 **no later than 60 days** after placing the modified unit in service. If a full power load condition noise survey is not possible, Transco shall file an interim survey at the maximum possible power load **within 60 days** of placing the modified unit into service and file the full power load survey **within 6 months**. If the noise attributable to operation of all the equipment at the station under interim or full power load conditions exceeds the previously existing noise levels that are at or above an day-night sound level (Ldn) of 55 A-weighted decibels (dBA) at the nearby noise-sensitive areas, Transco shall:
 - a. file a report with the Secretary, for review and written approval by the Director of OEP, on what changes are needed;
 - b. implement additional noise control measures to reduce the operating noise level at the noise-sensitive areas to or below the previously existing noise level **within 1 year** of the in-service date; and
 - c. confirm compliance with this requirement by filing a second full power load noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
18. Transco shall file noise surveys with the Secretary **no later than 60 days** after placing the authorized units at Compressor Station 175 and Compressor Station 165 in service. If a full power load condition noise survey is not possible, Transco shall file an interim survey at the maximum possible power load **within 60 days** of placing the authorized units into service and file the full power load survey **within 6 months**. If the noise attributable to the operation of all equipment at the stations

under interim or full power load conditions exceeds an Ldn of 55 dBA at any nearby noise-sensitive areas, Transco shall:

- a. file a report with the Secretary, for review and written approval by the Director of OEP, on what changes are needed;
- b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
- c. confirm compliance with this requirement by filing a second full power load 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

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP18-186-000

(Issued October 17, 2019)

GLICK, Commissioner, *dissenting in part*:

1. I dissent 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. Neither the NGA nor NEPA permit the Commission to assume away the climate change implications of constructing and operating this project. Yet that is precisely what the Commission is doing here.

2. In today's order authorizing Transcontinental Gas Pipe Line Company, LLC's proposed Southeastern Trail Project (Project), the Commission continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts. The Commission 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.³ That failure forms an integral part of the Commission's decisionmaking in today's order: The refusal to assess the significance of the Project's contribution to the harm caused by climate change is what allows the Commission to misleadingly state that approval of the Project "would not constitute a major federal action significantly affecting the quality of the human environment"⁴ and, as a result, conclude that the Project satisfies the NGA's public interest standard.⁵ Claiming that a project has no significant environmental

¹ 15 U.S.C. § 717f (2012).

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

³ As discussed further below, the Commission quantified the direct emissions resulting from the construction and operation of the Project, but failed to quantify the reasonably foreseeable indirect impacts caused by the Project. *See infra* PP 6-9.

⁴ *Transcontinental Gas Pipe Line Company, LLC*, 169 FERC ¶ 61,051, at P 84 (2019) (Certificate Order); Environmental Assessment at 94 (EA).

⁵ Certificate Order, 169 FERC ¶ 61,051 at PP 19, 84.

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.

I. The Commission's Public Interest Determination Is Not the Product of Reasoned Decisionmaking

3. We know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, released in large quantities through the production, transportation, and the consumption of fossil fuels, including natural gas. The Commission recognizes this fact, acknowledging "GHG emissions due to human activity are the primary cause of increased atmospheric concentration of GHGs since the industrial age."⁶ "These elevated levels of GHGs are the primary cause of warming of the climatic system" and "unless significantly curtailed, will cause further warming and changes to the local, regional and global climate systems."⁷ In light of this undisputed relationship between anthropogenic GHG emissions and climate change, it is critical that the Commission carefully consider the Project's contribution to climate change, both in order to fulfill NEPA's requirements and to determine whether the Project is in the public interest under the NGA.⁸

⁶ EA at 74.

⁷ *Id.*

⁸ 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. *See* 42 U.S.C. § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). This means that the Commission must consider and discuss the significance of the harm from a pipeline's contribution to climate change by actually evaluating the magnitude of the pipeline's environmental impact. Doing so enables the Commission to compare the environment before and after the proposed federal action and factor the changes into its decisionmaking process. *See Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*) ("The [FEIS] needed to include a discussion of the 'significance' of this indirect effect."); 40 C.F.R. § 1502.16 (a)–(b) (An agency's environmental review must "include the environmental impacts of the alternatives including the proposed action," as well as a discussion of direct and indirect effects *and their significance.*) (emphasis added); *see also 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").

4. Today's order falls short of that standard. As part of its public interest determination, the Commission must examine the Project's impact on the environment and public safety, which includes the facility's impact on climate change.⁹ Nevertheless, the Commission fails to determine whether the Project's contribution to climate change is significant, claiming instead that the Project's impact would not be "discernible."¹⁰ However, the most troubling part of the Commission's rationale is what comes next. Relying on this alleged inability to discern the Project's impact on climate change, the Commission concludes that the Project will have no significant environmental impact.¹¹ Think about that. The Commission is saying out of one side of its mouth that it need not assess the significance of the Project's impact on climate change while, out of the other side of its mouth, assuring us that all environmental impacts are insignificant.¹² That is

⁹ See *Sabal Trail*, 867 F.3d at 1373 (explaining that the Commission may "deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment"); *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 a project's environmental consequences, including GHG emissions, and that the Commission, therefore, has a duty to consider the reasonably foreseeable GHG emissions); see also *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").

¹⁰ EA at 88. It is difficult to determine whether this ambiguous statement is a contrived suggestion that the Project's impact either is so small as to be *de minimis* or whether it is an alternative approach to say, as the Commission has repeatedly claimed, that the Commission need not consider the Project's impact because it lacks "generally accepted" means to do so. See *Sendero Carlsbad Gateway, LLC*, 169 FERC ¶ 61,020 (2019) (Glick, Comm'r dissenting in part, at PP 4-5); *Cheyenne Connector, LLC*, 168 FERC ¶ 61,180 (2019) (Glick, Comm'r, dissenting in part, at PP 5-6); *Empire Pipeline, Inc.*, 166 FERC ¶ 61,172 (2019) (Glick, Comm'r, dissenting in part, at PP 3-4); *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 (2019) (Glick, Comm'r, dissenting in part, at PP 4-5); *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm'r, dissenting).

¹¹ Certificate Order, 169 FERC ¶ 61,051 at P 84 (Approval of the Project "would not constitute a major federal action significantly affecting the quality of the human environment."); EA at 94 ("[A]pproval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.").

¹² *Id.*

ludicrous, unreasoned, and an abdication of our responsibility to give climate change the “hard look” that the law demands.¹³

5. It also means that the volume of emissions caused by the Project does not play a meaningful role in the Commission’s public interest determination, no matter how many times the Commission assures us that it does. Using the approach in today’s order, the Commission will always conclude that a project will not have any significant environmental impact irrespective of the project’s actual GHG emissions or those emissions’ impact on climate change. So long as that is the case, a project’s impact on climate change cannot, as a logical matter, play a meaningful role in the Commission’s public interest determination. A public interest determination that systematically excludes the most important environmental consideration of our time is contrary to law, arbitrary and capricious, and not the product of reasoned decisionmaking.

II. The Commission’s NEPA Analysis of the Project’s Contribution to Climate Change Is Deficient

6. The Commission’s NEPA analysis of the Project’s impact on climate change is similarly flawed. NEPA requires the Commission to examine the reasonably foreseeable upstream and downstream emissions that will result from an interstate pipeline. The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has now multiple times instructed the Commission that the GHGs emitted by the reasonably foreseeable combustion of natural gas transported through a pipeline is an indirect effect.¹⁴ Yet today’s order fails to consider any of the Project’s indirect impacts, reporting only the GHG emissions from the Project’s construction and operation.¹⁵ The EA brusquely concludes that there is no need to consider downstream GHG emissions because “[n]o

¹³ See, e.g., *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (agencies cannot overlook a single environmental consequence if it is even “arguably significant”); see also *Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) (“Not only must an agency’s decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational.”) (internal quotation marks omitted); *Motor Vehicle Mfrs. Ass’n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (Agency action is “arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency.”).

¹⁴ See *Birckhead*, 925 F.3d at 518-19; *Sabal Trail*, 867 F.3d at 1371-72.

¹⁵ See EA at 74-75, Tables 22 & 23.

downstream uses for the gas that would be transported by this Project are known at this time.”¹⁶

7. That response reflects the Commission’s argument that *Sabal Trail* “is narrowly limited to the facts of that case”—an argument that the D.C. Circuit rejected emphatically in *Birckhead*.¹⁷ Indeed, *Birckhead* explicitly rejected as a “total non-sequitur” the argument that the potential for increased natural gas transportation capacity to reduce GHG emissions by displacing more GHG-intensive forms of electricity generation somehow renders the downstream GHG indirect emissions from a natural gas pipeline not reasonably foreseeable.¹⁸ Even in the face of some uncertainty, the courts have required the Commission to use its “best efforts” to identify and consider the full scope of a project’s environmental impact, an exercise which may require using educated assumptions.¹⁹

8. In this case, we know from the section 7 application that the natural gas transported via the Project will meet the growing demands of residential and commercial utility customers and domestic industry.²⁰ It is no stretch to assume that, given those purposes, the vast majority, if not all, of that natural gas will be combusted. In addition, the Commission could consider the fact that, according to the U.S. Energy Information Administration, more than 97 percent of the natural gas consumed in the United States is combusted and use that number, along with the evidence in the record, such as the

¹⁶ EA at 83.

¹⁷ *Birckhead*, 925 F.3d at 518-19; *see also San Juan Citizens All. et al. v. U.S. Bureau of Land Mgmt.*, No. 16-CV-376-MCA-JHR, 2018 WL 2994406, at *10 (D.N.M. June 14, 2018) (holding that it was arbitrary for the U.S. Bureau of Land Management to conclude “that consumption is not ‘an indirect effect of oil and gas production because production is not a proximate cause of GHG emissions resulting from consumption’” because “this statement is circular and worded as though it is a legal conclusion”).

¹⁸ *Birckhead*, 925 F.3d at 518-19.

¹⁹ *Sabal Trail*, 867 F.3d at 1374 (“We understand that emission estimates would be largely influenced by assumptions rather than direct parameters about the project, but some educated assumptions are inevitable in the NEPA process. And the effects of assumptions on estimates can be checked by disclosing those assumptions so that readers can take the resulting estimates with the appropriate amount of salt.” (internal citations and quotation marks omitted)).

²⁰ Application at 5-6; Transcontinental Gas Pipe Line Co., July 23, 2018 Response to FERC July 13, 2018 Data Request.

precedent agreements that the Commission relies on to show the need for the Project, to develop ranges of likely GHG emissions, which could then inform its decisionmaking process.²¹

9. The Commission also gives no consideration to whether the Project will lead to an increase in upstream GHG emissions from additional production. The Commission cannot ignore the fact that adding firm transportation capacity is likely to “spur demand” for natural gas.²² Indeed, if a proposed pipeline neither increases the supply of natural gas available to consumers nor decreases the price that those consumers will pay, it is hard to imagine why that pipeline is “needed” in the first place. As a result, the Commission must at least examine the effects that an expansion of pipeline capacity might have on consumption and production.²³

10. In addition, the Commission’s limited analysis of the Project’s direct GHG emissions is itself flawed because it fails to “evaluate the ‘incremental impact’ that [they]

²¹ U.S. Energy Info. Admin., *August 2019 Monthly Energy Review* 22, 97 (2019) (reporting that, in 2018, 778 Bcf of natural gas had a non-combustion use compared to 29,956 Bcf of total consumption); *see also* Jayni Hein *et al.*, *Pipeline Approvals and Greenhouse Gas Emissions*, 23-26 (Apr. 2019) (discussing the potential to use this information to develop straightforward estimates of a project’s reasonably foreseeable downstream emissions).

²² *Barnes v. U.S. Dep’t of Transp.*, 655 F.3d 1124, 1138 (9th Cir. 2011) (holding that it “is completely inadequate” for an agency to ignore a project’s “growth inducing effects” where the project has a unique potential to spur demand); *id.* at 1139 (distinguishing *City of Carmel-by-the-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142 (9th Cir. 1997), which the majority relies on in today’s order) (“[O]ur cases have consistently noted that a new runway has a unique potential to spur demand, which sets it apart from other airport improvements, like changing flight patterns, improving a terminal, or adding a taxiway, which increase demand only marginally, if at all.”); *id.* at 1139 (“[E]ven if the stated purpose of [a new airport runway project] is to increase safety and efficiency, the agencies must analyze the impacts of the increased demand attributable to the additional runway as growth-inducing effects.”).

²³ As the U.S. Court of Appeals for the Eighth Circuit explained in *Mid States Coal. for Progress v. Surface Transp. Bd.*—a case that also involved the downstream GHG emissions from new infrastructure for transporting fossil fuels—when the “nature of the effect” (end-use emissions) is reasonably foreseeable, but “its extent is not” (specific consumption activity producing emissions), an agency may not simply ignore the effect. 345 F.3d 520, 549 (8th Cir. 2003).

will have on climate change or the environment more generally.”²⁴ Identifying the consequences that the Project’s emissions will have for climate change is essential if NEPA is to play the disclosure and good government roles for which it was designed. By contrast, the Commission’s approach in this order, simply quantifying the direct GHG emissions, tells us nothing about the “‘incremental impact’ that these emissions will have on climate change.”²⁵

11. As discussed above, the Commission’s failure to even assess the significance of the Project’s GHG emissions during the environmental review process relegates climate change to a negligible role, at best, in its NEPA analysis. While the Commission provides no support for its conclusion today that the Project’s impact on climate change is not “discernible,” the Commission has repeatedly argued that it need not determine whether the Project’s contribution to climate change is significant because there is “no standard methodology” to determine whether a project’s GHG emissions would result in physical effects on the environment for the purposes of evaluating a project’s impacts on climate change.²⁶

12. But the lack of a single methodology does not prevent the Commission from adopting *a* methodology, even if that methodology is not universally accepted. The Commission has several tools to assess the harm from the Project’s contribution to climate change, including, for example, the Social Cost of Carbon. By measuring the long-term damage done by a ton of carbon dioxide, the Social Cost of Carbon links GHG emissions to actual environmental effects from climate change, thereby facilitating the necessary “hard look” at the Project’s environmental impacts that NEPA requires. Especially when it comes to a global problem like climate change, a measure for translating a single project’s climate change impacts into concrete and comprehensible

²⁴ *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. 2008); *see also WildEarth Guardians v. Zinke*, No. CV 16-1724 (RC), 2019 WL 1273181, at *1 (D.D.C. Mar. 19, 2019) (explaining that the agency was required to “provide the information necessary for the public and agency decisionmakers to understand the degree to which [its] decisions at issue would contribute” to the “impacts of climate change in the state, the region, and across the country”).

²⁵ *See Ctr. for Biological Diversity*, 538 F.3d at 1216.

²⁶ *See Sendero Carlsbad Gateway, LLC*, 169 FERC ¶ 61,020 (2019) (Glick, Comm’r dissenting in part, at PP 4-5); *Cheyenne Connector, LLC*, 168 FERC ¶ 61,180 (2019) (Glick, Comm’r, dissenting in part, at PP 5-6); *Empire Pipeline, Inc.*, 166 FERC ¶ 61,172 (2019) (Glick, Comm’r, dissenting in part, at PP 3-4); *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 (2019) (Glick, Comm’r, dissenting in part, at PP 4-5); *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm’r, dissenting).

terms plays a useful role in the NEPA process by putting the harm in terms that are readily accessible for both agency decisionmakers and the public at large. The Commission, however, continues to ignore the tools at its disposal, relying on deeply flawed reasoning that I have previously critiqued at length.²⁷

13. Regardless of tools or methodologies available, the Commission also can use its expertise and discretion to consider all factors and determine, quantitatively or qualitatively, whether the Project's GHG emissions have a significant impact on climate change. That is precisely what the Commission does in other aspects of its environmental review. Consider, for example, the Commission's findings that the Project will not have a significant effect on issues as diverse as "wildlife" and "emergent wetlands,"²⁸ traffic,²⁹ or the 166.4 acres of agricultural land it will disturb.³⁰ Notwithstanding the lack of any "standard methodology" or "generally accepted criteria" to assess these impacts, the Commission managed to use its judgment to conduct a qualitative review and assess the significance of the Project's effect on those considerations. The Commission's refusal to, at the very least, exercise similar qualitative discretion and judgment on the significance of GHG emissions here is arbitrary and capricious.³¹

14. That refusal is even more mystifying because NEPA "does not dictate particular decisional outcomes."³² NEPA "'merely prohibits uninformed—rather than unwise—

²⁷ See, e.g., *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 (2019) (Glick, Comm'r, dissenting in part at P 6 & n.11) (noting that the Social Cost of Carbon "gives both the Commission and the public a means to translate a discrete project's climate impacts into concrete and comprehensible terms"); *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm'r, dissenting).

²⁸ EA at 42-50.

²⁹ *Id.* at 21.

³⁰ *Id.* at 62-64, Table 21.

³¹ After all, the standard the Commission typically uses for evaluating significance is whether the adverse impact would result in a substantial adverse change in the physical environment. Surely that standard is open to some subjective interpretation by each Commissioner. What today's order does not explain is why it is appropriate to exercise subjective interpretation and judgment when it comes to impacts such as wildlife and traffic, but not climate change.

³² *Sierra Club v. U.S. Army Corps of Engineers*, 803 F.3d 31, 37 (D.C. Cir. 2015).

agency action.’”³³ In other words, taking the matter seriously—and rigorously examining a project’s impacts on climate change—does not necessarily prevent any Commissioner from ultimately concluding that a project meets the public interest standard.

15. Even if the Commission were to determine that a project’s GHG emissions are significant, that would not be the end of the inquiry nor would it mean that the project was necessarily inconsistent with the public interest. Instead, the Commission could require mitigation—as the Commission often does with regard to other environmental impacts. The Supreme Court has held that an EIS must “contain a detailed discussion of possible mitigation measures” to address adverse environmental impacts.³⁴ The Court explained that, “[w]ithout such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects” of a project, making an examination of possible mitigation measures necessary to ensure that the agency has taken a “hard look” at the environmental consequences of the action at issue.³⁵ The Commission not only has the obligation to discuss mitigation of adverse environmental impacts under NEPA, but also the authority to condition certificates under section 7 of the NGA.³⁶ In fact, the Commission often utilizes its conditioning authority to make a finding that a project will be in the public interest.

16. Furthermore, a rigorous examination and determination of significance regarding climate change impacts would bolster any finding of public interest by providing the Commission a more complete set of information necessary to weigh benefits against adverse effects. By refusing to assess significance, however, the Commission short circuits any discussion of mitigation measures for the Project’s GHG emissions, eliminating a potential pathway for us to achieve consensus on whether the Project is consistent with the public interest.

* * *

17. Today’s order is not the product of reasoned decisionmaking. Its analysis of the Project’s contribution to climate change is shoddy and its conclusion that the Project will

³³ *Id.* (quoting *Robertson*, 490 U.S. at 351).

³⁴ *Robertson*, 490 U.S. at 351.

³⁵ *Id.* at 352; *see also* 40 C.F.R. §§ 1508.20 (defining mitigation), 1508.25 (including in the scope of an environmental impact statement mitigation measures).

³⁶ 15 U.S.C. § 717f(e); Certificate Order, 169 FERC ¶ 61,051 at P 84 (“[T]he Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources . . . , including authority to impose any additional measures deemed necessary . . .”).

not have any significant environmental impacts is illogical. After all, the Commission itself acknowledges the Project will contribute to climate change, but refuses to consider whether that contribution is likely to be significant. So long as that is the case, the record simply cannot support the Commission's conclusion that there will be no significant environmental impacts. Simply put, the Commission's analysis of the Project's consequences for climate change do not represent the "hard look" that the law requires.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner