

166 FERC ¶ 61,134
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Portland Natural Gas Transmission System

Docket No. CP18-506-000

Maritimes & Northeast Pipeline, L.L.C.

Docket No. CP18-539-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued February 21, 2019)

1. On June 19, 2018, Portland Natural Gas Transmission System (Portland) filed an application in Docket No. CP18-506-000, pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations,² for authorization to acquire, construct, and operate facilities for Phase III of the Portland XPress Project.³ The Phase III project is designed to increase the certificated capacity on Portland's wholly-owned north system by 24,473 dekatherms per day (Dth/d) and to increase the certificated capacity on the portion of its system jointly-owned with Maritimes & Northeast Pipeline, L.L.C. (Maritimes) by 22,428 Dth/d. Portland also requests NGA section 7(b)⁴ authority to abandon the capacity it leases from Maritimes on the joint facilities as part of Phase II

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2018).

³ Portland's proposed facility modifications and additions to the jointly-owned facilities will be constructed and operated by Maritimes & Northeast Operating Company, LLC (M&N Operating Company), the operator of the joint facilities, as required by the Joint Facilities Operating Agreement between Portland, Maritimes and M&N Operating Company, dated October 8, 1997.

⁴ 15 U.S.C. § 717f(b) (2012).

of the Portland XPress Project,⁵ effective upon the in-service date of Phase III of the Portland XPress Project.

2. On August 10, 2018, Maritimes filed an application in Docket No. CP18-539-000, pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations, for authorization to reacquire the capacity it leases to Portland on the joint facilities supporting Phase II of the Portland XPress Project. Maritimes also requests NGA section 7(b) authority to abandon a portion of its ownership interest in a compressor unit at the existing Westbrook Compressor Station in Cumberland County, Maine to Portland.

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

I. Background

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

5. Portland's interstate pipeline system was authorized by a series of Commission orders.⁷ Portland's system consists of two parts: the north facilities and the joint

⁵ See *Portland Natural Gas Transmission System*, 165 FERC ¶ 62,092 (2018) (granting certificate authorization to increase capacity on the joint facilities and approving a capacity lease agreement between Portland and Maritimes for Phase II of the Portland XPress Project).

⁶ 15 U.S.C. § 717a(6) (2012).

⁷ See *Portland Natural Gas Transmission System*, 76 FERC ¶ 61,123 (1996) (issuing preliminary determination on non-environmental issues regarding Portland's certificate application); 80 FERC ¶ 61,134 (1997) (issuing preliminary determination on non-environmental issues of Portland's amended certificate application); 80 FERC ¶ 61,136 (1997) (issuing a certificate to Portland and Maritimes to construct the 66-mile jointly-owned facilities from Wells, Maine to Dracut, Massachusetts and a certificate to Maritimes to operate those jointly-owned facilities); and 80 FERC ¶ 61,345 (1997) (granting certificate authorization for both the north facilities and joint facilities and addressing requests for rehearing of the July 1997 preliminary determination order).

facilities. The north facilities are wholly-owned and operated by Portland and include 142 miles of mainline from an interconnection with Trans-Québec & Maritimes Pipeline Inc. (Trans-Québec) at the United States border with Canada to Westbrook, Maine, and two laterals. The joint facilities, jointly-owned with Maritimes, include approximately 101 miles of mainline from Westbrook, Maine, to Dracut, Massachusetts and three laterals.

6. Maritimes is a limited liability company, organized and existing under the laws of the State of Delaware. Maritimes is a natural gas company as defined by section 2(6) of the NGA,⁸ primarily engaged in the transportation of natural gas in interstate commerce.

7. Maritimes owns and operates approximately 330 miles of mainline high pressure natural gas pipeline, transporting natural gas from two interconnections at the United States and Canada border near Baileyville, Maine,⁹ to a terminus in Dracut, Massachusetts and a second terminus in Beverly, Massachusetts.

8. Portland states that it held an open season to solicit interest in the Portland XPress Project from August 30 through September 6, 2017. In connection with the open season, on August 31, 2017, Portland reserved 72,905 Dth/d of existing available transportation service from Pittsburg to Dracut and 11,031 Dth/d of existing available transportation service from Westbrook to Dracut for the Portland XPress Project, pursuant to sections 6.13.3 and 6.26 of Portland's FERC Gas Tariff.¹⁰ As a result of the open season, Portland executed eight precedent agreements for a total of 137,378 Dth/d of firm transportation service pursuant to Portland's existing Rate Schedule FT, with the proposed services to be provided over the three phases of the project through the use of reserved and unsubscribed capacity, operational changes, leased capacity, and facility modifications and additions.

9. For Phase I, the Commission authorized Portland to: (1) increase the certificated capacity on its wholly-owned north system from Pittsburg to Westbrook to provide up to an additional 40,000 Dth/d of firm transportation service through a reduction in the delivery pressure at the Westbrook interconnection; and (2) increase the certificated capacity on the jointly-owned system from Westbrook to Dracut in order to increase the firm transportation service capability by 1,648 Dth/d through the incorporation of

⁸ 15 U.S.C. § 717a(6) (2012).

⁹ One interconnection is with Maritimes' Canadian pipeline affiliate and the other interconnection is with Emera Brunswick Pipeline Company Ltd.

¹⁰ See Portland's Application, at 11.

operationally available capacity and a pressure agreement with Maritimes.¹¹ No facility modifications or additions were required, and Portland commenced service for Phase I on November 1, 2018.¹²

10. For Phase II, Portland was authorized to increase the certificated capacity on its jointly-owned system from Westbrook, Maine, to Dracut, Massachusetts, by 11,366 Dth/d through the use of additional operationally available capacity and a lease agreement providing for Portland to lease from Maritimes 7,214 Dth/d of existing capacity on the joint facilities.¹³ Portland anticipates a November 1, 2019 in-service date for Phase II of the project.¹⁴

11. For Phase III of the project, Portland requests an increase in certificated capacity in order to provide the total service commitments reflected in the precedent agreements for all phases of the Portland XPress Project, namely, 18,000 Dth/d of firm transportation service on the north facilities alone and 119,378 Dth/d of firm transportation service on

¹¹ *Portland Natural Gas Transmission System*, 165 FERC ¶ 61,049 (2018) (granting certificate authorization to increase capacity on the north facilities and joint facilities and amending Portland's Presidential Permit and NGA section 3 authorization for Phase I of the Portland XPress Project). Portland also reserved 32,131 Dth/d of existing capacity from Westbrook to Dracut for Phase I, pursuant to sections 6.13.3 and 6.26 of Portland's FERC Gas Tariff.

¹² The transportation services provided under Phase I consist of an incremental 40,000 Dth/d on the north system provided by the reduction in delivery pressure at Westbrook with 33,779 Dth/d continuing on the jointly-owned facilities to Dracut provided through the pressure agreement with Maritimes and operationally available capacity (1,648 Dth/d) and existing reserved capacity (32,131 Dth/d).

¹³ *Portland Natural Gas Transmission System*, 165 FERC ¶ 62,092 (2018). Portland also reserved 72,905 Dth/d from Pittsburg to Dracut and 11,031 Dth/d from Westbrook to Dracut for Phase II, pursuant to sections 6.13.3 and 6.26 of Portland's FERC Gas Tariff.

¹⁴ The transportation services to be provided under Phase II consist of a total of 112,905 Dth/d on the north system comprising 40,000 Dth/d of service made available by Phase I and 72,905 Dth/d of existing service that was reserved for the project. 96,950 Dth/d will continue on the joint facilities to Dracut comprising 83,936 Dth/d of existing service reserved for the project (72,905 Dth/d from Pittsburg to Dracut and 11,031 Dth/d from Westbrook to Dracut), and 11,366 Dth/d certificated in Phase II (4,152 Dth/d of operationally available service and 7,214 Dth/d made available by the leased capacity from Maritimes).

both the north and joint facilities for a total of 137,378 Dth/d.¹⁵ Portland anticipates a November 1, 2020 in-service date for Phase III of the project.

II. Proposals

A. Phase III of the Portland XPress Project

12. Phase III of the Portland XPress Project is designed to increase the certificated capacity on the north facilities from Pittsburg, New Hampshire, to Westbrook, Maine, by 24,473 Dth/d, and increase the certificated capacity on the joint facilities from Westbrook, Maine, to Dracut, Massachusetts, by 22,428 Dth/d. Portland is proposing to increase capacity on the north facilities and the joint facilities by adding compression and modifying facilities. Additionally, Portland has entered into an agreement with Trans-Québec to increase the pressure commitment to 1,380 pounds per square inch for all deliveries made to Portland at the United States and Canada border.¹⁶ Portland states that the additional compression and facility modifications will allow it to provide the increased capacity approved in Phases I and II on a permanent basis, as well as the additional capacity requested herein.¹⁷

13. Specifically, Portland proposes the following modifications and additions, all of which will be located within the fenced-in area of the existing facilities:

¹⁵ Portland utilizes a 1.004 volumetric (Mcf/d) to thermal (Dth/d) conversion factor.

¹⁶ As in Phase II, Portland reserved existing capacity on both the north and joint facilities sufficient to support 72,905 Dth/d of firm transportation service from Pittsburg to Dracut and capacity on the joint facilities alone sufficient to provide 11,031 Dth/d of firm transportation service from Westbrook to Dracut for Phase III of the Portland XPress Project. The capacity was reserved pursuant to sections 6.13.3 and 6.26 of the General Terms and Conditions (GT&C) of Portland's FERC Gas Tariff.

¹⁷ Upon completion of Phase III the Portland XPress Project, transportation services will consist of 137,378 Dth/d on the north system, comprising 40,000 Dth/d created by Phase I, 72,905 Dth/d of reserved transportation service, and 24,473 Dth/d created by Phase III. Of this total, 119,378 Dth/d will continue on the joint facilities comprising 83,936 Dth/d of reserved transportation service, the 1,648 Dth/d and 11,366 Dth/d made available by Phase I and Phase II and now made permanent by the Phase III facility additions and modifications, and an additional 22,428 Dth/d made available by Phase III.

- install a new 6,300 horsepower (hp) International Organization for Standardization (ISO) rated gas-fired turbine compressor unit in a new compressor building, ancillary equipment, and an auxiliary building to house a replacement emergency generator and boiler at the existing Eliot Compressor Station located on the joint facilities in York County, Maine;
- install a new electrical control building with motor control center, an emergency generator building and generator, and ancillary equipment at the existing Westbrook Compressor Station in Cumberland County, Maine; and
- install a low flow meter and transmitters, a new 86 hp emergency generator and ancillary equipment, and replace ultrasonic meter assemblies at the existing Dracut Metering and Regulation Station in Middlesex County, Massachusetts.

14. In addition, Portland proposes to acquire a proportional share of the ownership interest in an existing 15,000 hp ISO rated Mars-100 gas-fired turbine compressor unit at the Westbrook Compressor Station currently owned entirely by Maritimes, in accordance with the November 2006 Settlement Agreement between Maritimes and Portland.¹⁸ Specifically, section 9 of the 2006 Settlement Agreement provides that, upon the in-service date of the first of any facilities built at Portland's request using Initial Expansibility,¹⁹ Maritimes' wholly-owned unit at the Westbrook Compressor Station will become part of the joint facilities, resulting in the entire Westbrook Compressor Station becoming part of the joint facilities mainline, with each owner owning an undivided interest in the station equal to its respective undivided interest in the remainder of the joint facilities, subject to Portland making the required payment to Maritimes.²⁰ In turn, Maritimes seeks authorization to abandon the proportional share of its ownership interest in the referenced compressor unit at the Westbrook Compressor Station to Portland.²¹

15. Portland proposes to charge its existing reservation rate and establish an incremental usage rate under Rate Schedule FT for the project. The shippers have agreed

¹⁸ *Maritimes & Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,193 (2007) (approving Maritimes' and Portland's 2006 Settlement Agreement).

¹⁹ Section 2(b) of the November 2006 Settlement Agreement defines Portland's Initial Expansibility Ceiling as "the right to construct for its own account a total quantity of 250,000 Dth/d of Initial Expansibility."

²⁰ Maritimes' Application, at 7.

²¹ *Id.* at 2.

to pay a negotiated rate for the service. Portland specifically states that it is not seeking a pre-determination for future rolled-in rate treatment.

B. Capacity Lease

16. As part of Phase II of the Portland XPress Project, the Commission authorized Portland to acquire by lease 7,214 Dth/d of existing capacity on the joint facilities from Maritimes. The lease agreement provides that the lease will remain in effect for an initial term of the earlier of (a) the date Portland has completed construction of and placed into service, Phase III of the Portland XPress Project, or (b) twenty (20) years from the later of (i) the actual in-service date of the last phase of the Portland XPress Project for which Portland receives all necessary legal and regulatory permits and approvals, or (ii) November 1, 2020. Consistent with the terms of the lease, Portland requests to abandon, and Maritimes requests to reacquire, the leased capacity effective on the in-service date of Phase III of the Portland XPress Project.

III. Public Notice, Interventions, and Comments

17. Notice of Portland's application in Docket No. CP18-506-000 was published in the *Federal Register* on July, 9, 2018.²² The notice established July 19, 2018, as the deadline for filing interventions, comments, and protests. The following entities filed timely motions to intervene in Docket No. CP18-506-000: Calpine Energy Services, L.P.; Northern Utilities, Inc.; Bay State Gas Company d/b/a Columbia Gas of Massachusetts; Maritimes; and National Grid Gas Delivery Companies.²³ These timely, unopposed motions to intervene are automatically granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.²⁴ Richard H. Leehr filed an out of time motion to intervene. On February 5, 2019, the Commission's Secretary issued a notice granting Mr. Leehr's late intervention. No protests were filed. Maritimes filed comments discussing the agreement it has with Portland for an interim reduction in pressure. Also, National Grid Gas Delivery Companies filed comments in support of the Portland XPress Project.

²² *Notice of Application*, 83 Fed. Reg. 31,746 (Jul. 9, 2018).

²³ The National Grid Gas Delivery Companies include: the Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company and Colonial Gas Company, collectively d/b/a National Grid; Niagara Mohawk Power Corporation d/b/a National Grid; The Narragansett Electric Company d/b/a National Grid; and all subsidiaries of National Grid USA, Inc.

²⁴ 18 C.F.R. § 385.214(c)(1) (2018).

18. Notice of Maritimes' application in Docket No. CP18-539-000 was published in the *Federal Register* on August 29, 2018.²⁵ The notice established September 13, 2018, as the deadline for filing interventions, comments and protests. The following entities filed timely motions to intervene in Docket No. CP18-539-000: Calpine Energy Services, L.P. and National Grid Gas Delivery Companies. These timely, unopposed motions to intervene are automatically granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.²⁶ No protests or adverse comments were filed in Docket No. CP18-539-000.

IV. Discussion

19. Since the facilities proposed by Portland will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of sections 7(c) and 7(e) of the NGA.²⁷ Similarly, Portland's proposed abandonment and Maritimes' proposed reacquisition of the leased capacity are subject to the requirements of sections 7(b) and 7(c) of the NGA.²⁸

A. Certificate Policy Statement

20. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.²⁹ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the

²⁵ *Notice of Application*, 83 Fed. Reg. 44,042 (Aug. 29, 2018).

²⁶ 18 C.F.R. § 385.214(c)(1) (2018).

²⁷ 15 U.S.C. §§ 717f(c), (e) (2012).

²⁸ 15 U.S.C. §§ 717f(b), (c) (2012).

²⁹ *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).

avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

21. 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 new facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis where other interests are addressed.

1. Phase III of the Portland XPress Project

22. 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. With respect to the no subsidization threshold, Portland proposes to charge its existing applicable rates under Rate Schedule FT as the recourse rates for service on the project. As discussed below, it appears that an incremental rate appropriately calculated to recover the project's estimated cost of service would exceed Portland's existing applicable Rate Schedule FT rates. In such instances, it is general Commission policy to require use of the incremental rate as the initial recourse rate for project service in order to prevent subsidization by existing shippers.³⁰ However, the Commission can also protect Portland's existing shippers from subsidizing the proposed expansion project by making a pre-determination in this proceeding that Portland may not roll the cost of the expansion into its system rates in a future rate case absent a finding in such proceeding that doing so would not result in subsidization by non-expansion shippers.³¹ We do so below, thus ensuring that existing customers will not be at risk of subsidizing the project. Based on the above, we find existing shippers will not subsidize service on the proposed project, and we find that the threshold no-subsidy requirement has been met.

³⁰ See *Millennium Pipeline Co., L.L.C.*, 161 FERC ¶ 61,229, at P 14 (2017).

³¹ See *Columbia Gas Transmission, LLC*, 164 FERC ¶ 61,036, at P 13 (2018).

23. Further, we find that the proposal will not have adverse effects on existing pipelines in the region or their captive customers, noting that no other pipeline company or their customers have protested Portland's application.

24. The proposed project facilities will be constructed and/or modified using existing rights of way, and within existing compressor and meter station yards, on property already owned by Portland and/or Maritimes. Accordingly, we find that there will be minimal impacts on nearby landowners and communities.

25. Portland's proposal will enable it to serve the demand evidenced by the subscription of 100 percent of the project's capacity. Based on the benefits the proposed project will provide and the absence of adverse impacts on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, the Commission finds that Portland's proposal satisfies the criteria of the Certificate Policy Statement. Consistent with the criteria discussed in the Certificate Policy Statement, the Commission finds that the public convenience and necessity requires approval of Portland's proposal under section 7 of the NGA, as conditioned in this order. Further, we find that Maritimes' proposal to abandon a proportional ownership interest in a compressor unit at the Westbrook Compressor Station to Portland, as provided for in the November 2006 Settlement Agreement, is permitted by the public convenience or necessity under section 7(b) of the NGA.

2. Capacity Lease Agreement

26. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest in the lessor's pipeline subject to NGA section 7(b) abandonment and section 7(c) certification. Consequently, the lessee is required to obtain certificate authorization to acquire the leased capacity and the lessor abandonment authorization to cede its rights to the capacity. When a lease is terminated, and with it, the property interest of the lessee, the lessor must obtain certificate authorization to reacquire the capacity for use in providing service under its own tariff.³² Similarly, terminating a capacity lease eliminates the lessee's property interest in the leased capacity; thus, the lessee needs abandonment authorization to surrender the capacity.

27. Portland states that the additional compression and facility modifications proposed in Phase III of the Portland XPress Project will allow Portland to provide the volumes requested in Phases I and II on a permanent basis, eliminating the need for the continuation of the leased capacity.³³ Accordingly, we find that the proposed abandonment of the lease capacity is permitted by the public convenience or necessity

³² See *Islander East Pipeline Co.*, 102 FERC ¶ 61,054, at P 35 (2003).

³³ Portland's Application at 7.

and will approve the abandonment effective on the in-service date of the Portland XPress Project's Phase III.

28. Maritimes will offer service using the reacquired capacity at its applicable system rates, which already reflect the costs associated with the capacity. Under these circumstances, we find that Maritimes will be able to reacquire the leased capacity without relying on subsidization from its existing customers and without otherwise adversely impacting its existing shippers. Accordingly, we find the public benefits of Maritimes reacquiring the leased capacity outweigh any potential adverse consequences, and we approve Maritimes' reacquisition of the leased capacity effective on the in-service date of Phase III of the Portland XPress Project.

B. Rates for Phase III of the Portland XPress Project

1. Initial Recourse Rates

29. For illustrative purposes, Portland calculated an incremental cost-based reservation charge of \$27.5522 per Dth per month and an incremental usage charge of \$0.0091 per Dth for the project based on the first year cost of service of \$39,794,000³⁴ divided by annual billing determinants of 1,432,536 Dth.³⁵ Portland states that the cost of service was calculated using the capital structure, cost of debt, return on equity, and depreciation rates underlying its currently effective rates as approved by the Commission in Docket No. RP10-729-000.³⁶ Notwithstanding the cost-based reservation charge being higher than Portland's current recourse reservation charge, Portland proposes to use its existing system-wide recourse reservation charge under Rate Schedule FT as the initial

³⁴ In response to a Commission staff data request, Portland reduced its proposed first year cost of service by eliminating the \$2,150,000 income tax allowance included in the first year cost of service proposed in its Phase III Certificate Application. See Portland's October 30, 2018 Response to Data Request No. 1. Portland states that this revision to the cost of service is consistent with its October 11, 2018 FERC Form No. 501-G filing, in Docket No. RP19-70-000, and Portland's election to be treated as a non-tax paying entity.

³⁵ Portland states that its usage charge was calculated assuming a 90 percent load factor. Portland Application at Exhibit N, Page 2 of 3.

³⁶ *Portland Natural Gas Transmission System*, Opinion No. 524, 142 FERC ¶ 61,197 (2013). Portland utilizes a capital structure of 47.16 percent debt and 52.84 percent equity, a cost of debt of 6.825 percent, a return on equity of 9.34 percent, and a depreciation rate of 2 percent in calculating its incremental rates for the Portland XPress Project.

recourse reservation rate for the project and establish an incremental usage charge. Portland's current base monthly recourse reservation charge is \$25.9843 per Dth, which is less than the calculated incremental recourse reservation charge of \$27.5522 per Dth for the project.³⁷

30. Portland states that it will place itself at risk for any under-recovery of fixed project costs. Additionally, Portland states that it will provide service to the subscribing Portland XPress Project shippers at negotiated rates in accordance with its negotiated rate authority as set forth in section 5.1.3.5 of Rate Schedule FT. The Commission has generally held that when the incremental rate for a project is higher than the generally-applicable system rate, the Commission requires the pipeline to establish an incremental rate to ensure there is no subsidization from existing shippers.³⁸ However, because our determination that rolled-in rate treatment for project costs would not be appropriate in a future section 4 rate case absent evidence of changed circumstances will adequately shield existing customers from any risk of subsidization, the Commission will approve Portland's proposal to charge the generally-applicable firm transportation rate. Portland is prohibited from recovering any costs associated with the Portland XPress Project from its existing shippers unless it is able to demonstrate in a future NGA section 4 rate proceeding that doing so will not result in subsidization of the project by existing customers. Portland's proposed incremental usage charge of \$0.0091 per Dth is greater than its existing usage charge of \$0.00 per Dth;³⁹ therefore, the Commission will approve Portland's proposed incremental usage charge.

2. Reporting Incremental Costs

31. The Commission will require Portland to keep separate books and accounting of costs and revenues attributable to the proposed incremental project services and capacity created by the project in the same manner as required by section 154.309 of the Commission's regulations.⁴⁰ The books should be maintained with applicable cross-reference and the information must be in sufficient detail so that the data can be identified

³⁷ Portland Natural Gas Transmission System, FERC NGA Gas Tariff, PNGTS Tariffs, [Part 4.1- Stmtnt of Rates, Recourse Reservation and Usage Rates, 5.0.0.](#)

³⁸ Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,745.

³⁹ Portland Natural Gas Transmission System, FERC NGA Gas Tariff, PNGTS Tariffs, [Part 4.1- Stmtnt of Rates, Recourse Reservation and Usage Rates, 5.0.0.](#)

⁴⁰ 18 C.F.R. § 154.309 (2018).

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. 710.⁴¹

3. Negotiated Rates

32. Portland proposes to provide service to Portland XPress Project shippers under negotiated rate agreements. Portland must file either negotiated rate agreements or tariff records setting forth the essential elements of the agreements in accordance with the Alternative Rate Policy Statement⁴² and the Commission's negotiated rate policies.⁴³ Portland must file the negotiated rate agreements or tariff records at least 30 days, but no more than 60 days, before the proposed effective date for such rates.⁴⁴

4. Fuel

33. Portland's system currently does not have compression facilities and, therefore, existing shippers only pay a charge related to lost and unaccounted for gas.⁴⁵ As part of its proposal, Portland proposes to charge project shippers an initial incremental fuel rate of 0.28 percent, calculated by dividing the total estimated daily fuel consumption by the daily Portland XPress Project volumes transported on both the north facilities and the

⁴¹ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

⁴² *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194, *order on reh'g and clarification*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066, *reh'g dismissed*, 75 FERC ¶ 61,291 (1996), *petition denied sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

⁴³ *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).

⁴⁴ Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. *See, e.g., Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014). 18 C.F.R. § 154.112(b) (2018).

⁴⁵ Portland's Application, Exhibit Z-2, Page 1 of 3.

joint facilities.⁴⁶ In addition, as addressed below, Portland proposes to adjust the fuel rate on a monthly basis pursuant to its fuel retention mechanism in section 6.2.6 of the GT&C of Portland's FERC Gas Tariff, to ensure that the fuel rate is based on the actual fuel usage and transportation activity.

34. The Commission approves Portland's proposed incremental fuel rate of 0.28 percent for use on the Portland XPress Project.

5. Tariff

35. Portland proposes *pro forma* revisions to its Part 4-Statement of Rates and Part 6.2 of the GT&C of its tariff to modify its fuel retainage mechanism, which was previously approved in its Phase II application in Docket No. CP18-479-000. Portland states that the mechanism, as modified, is designed to keep Portland XPress Project shippers and Portland's existing shippers whole on a rolling-month basis. Portland proposes that any fuel related expenses incurred in relation to Portland XPress Project shipper contracts with primary point rights on the joint facilities will be incorporated into Portland's Measurement Variance Factor in section 6.2.26 of its GT&C. Additionally, Portland proposes to modify its definition for Company Use Fuel defined in section 6.2.26 of its GT&C from that proposed in its Phase II application. Portland proposes that Company Use Fuel will be defined as, "[q]uantities of fuel gas consumed at Transporter/third-party co-owned compressor site(s) for transportation service utilizing [Portland XPress] Project capacity." Portland will publish its revised Fuel Retainage percentage via its Interactive Internet Website.

36. The Commission's regulations regarding periodic adjustments require pipelines to file to explain their rate adjustments to allow customers and the Commission the opportunity to review and comment or protest any adjustments that have been charged. Consistent with our ruling in *TransColorado Gas Transmission Company*,⁴⁷ Portland proposes to publish its Fuel Retainage percentage via its Interactive Internet Website at least ten days prior to the beginning of each month. However, Portland's proposed *pro forma* tariff records do not state that it will also make an annual filing pursuant to section 4 of the NGA. As such, this proposal may compromise a shipper's rights under the NGA

⁴⁶ *Id.* at 2.

⁴⁷ *TransColorado Gas Transmission Co.*, 87 FERC ¶ 61,027 (1999) (*TransColorado*). See also *Rockies Express Pipeline LLC*, 163 FERC ¶ 61,011, at P 9 (2018).

to meaningfully protest the adjustments made thereunder, and it may unintentionally narrow the Commission's ability to address and remedy such objections if necessary.⁴⁸

37. Therefore, consistent with our ruling in *TransColorado*, the Commission will require that Portland's proposed language in the *pro forma* tariff records be modified to include a requirement for annual reimbursement reports fully detailing the operation of its fuel reimbursement mechanism for the past 12-month period, satisfying the reporting requirements of section 154.403(d) of the Commission's regulations.⁴⁹ The Commission further clarifies that such annual fuel reimbursement reports shall be filed pursuant to section 4 of the NGA⁵⁰ to allow each annual report to be open fully to review and adjustment. Because Portland will only post the monthly reimbursement percentages on its Interactive Internet Website, the Commission and interested parties must have the opportunity to review, and if necessary, challenge the monthly fuel reimbursement percentages of a 12-month reporting period.⁵¹

38. The Commission therefore approves the language contained in the *pro forma* tariff records, subject to the modifications discussed above. To implement Portland's proposed monthly adjustments to its Fuel Retainage percentage via its Interactive Internet Website, Portland must file actual tariff records, consistent with the section 154.403(d) requirements discussed above.

C. Environmental Analysis

1. Portland (Docket No. CP18-506-000)

39. On July 12, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Portland XPress Project and Request for Comments on Environmental Issues* (Notice of Intent). The Notice of Intent was published in the *Federal Register*⁵² and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest

⁴⁸ See *TransColorado*, 87 FERC ¶ 61,027 at 61,100-61,101.

⁴⁹ 18 C.F.R. § 154.403(d) (2018).

⁵⁰ 15 U.S.C. § 717c (2012).

⁵¹ *Rockies Express Pipeline LLC*, 163 FERC ¶ 61,011 at P 10.

⁵² *Notice of Intent to Prepare an Environmental Assessment for the Proposed Portland XPress Project, and Request for Comments on Environmental Issues: Portland Natural Gas Transmission System*, 83 Fed. Reg. 33,928 (July 18, 2018).

groups; Native American tribes; local libraries and newspapers; and affected property owners. We received comments in response to the Notice of Intent from the Maine Natural Areas Program and Michael Gilmore, a local resident in the project area. The primary issues raised by the commenters were recommendations to ensure no state-threatened species would be harmed during construction and ground water quality concerns regarding local water wells.

40. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),⁵³ our staff prepared an Environmental Assessment (EA) for Portland's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive comments received in response to the Notice of Intent were addressed in the EA.

41. The EA was issued for a 30-day comment period and placed into the public record on November 27, 2018. The Commission received comments on the EA from Portland that clarifies that M&N Operating Company will be constructing and operating the facilities on behalf of Portland. Portland also clarifies that the new compressor unit will be in a stand-alone building on the site adjacent to the existing building. Additionally, Portland stipulates that exhaust emissions from construction equipment will be mitigated by restricting idling of construction equipment to less than five consecutive minutes when not in use. We find that Portland's clarifications do not change the conclusions reached in the EA.

42. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed and operated in accordance with Portland's application and supplements, including any commitments made therein, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose additional measures deemed necessary to ensure continued compliance with the intent of the

⁵³ 42 U.S.C. §§ 4321 *et seq.* (2012); *see also* 18 C.F.R. pt. 380 (2018) (Commission's regulations implementing NEPA).

conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

43. 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.⁵⁴

2. Maritimes (Docket No. CP18-539-000)

44. Maritimes requests authorization to reacquire 7,214 Dth/d of capacity leased to Portland on the joint facilities and to abandon a portion of its ownership in its wholly-owned unit at the Westbrook Compressor Station. No construction, modification or capacity increase is proposed. The abandonment of a portion of Maritimes' ownership interest in a compressor unit at the Westbrook Compressor Station is to accommodate Phase III of the Portland XPress Project in Docket No. CP18-506-000. Because Maritimes' proposal requires no construction of facilities, it qualifies as a categorical exclusion under section 380.4(a)(27) of the Commission's regulations.⁵⁵ Thus, no environmental assessment is required.

45. At a hearing held on February 21, 2019, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Portland, authorizing it to acquire, construct and operate the facilities for Phase III of the Portland

⁵⁴ 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).

⁵⁵ 18 C.F.R. § 380.4(a)(27) (2018) (stating that neither an environmental assessment nor an environmental impact statement will be prepared for the "[s]ale, exchange, and transportation of natural gas under sections 4, 5, and 7 of the Natural Gas Act that require no construction of facilities").

XPress Project, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Portland's:

- (1) Completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Compliance with all applicable Commission regulations 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 the appendix to this order; and
- (4) Filing a written statement affirming that it has executed firm service agreement(s) for volumes and service terms equivalent to those in its precedent agreements, prior to commencing construction.

(C) Portland's existing system-wide recourse reservation charge under Rate Schedule FT is approved, as the initial recourse reservation charge for the project, as described above.

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

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

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

(G) Portland must file actual tariff records reflecting the initial rates and tariff provisions that comply with the requirements contained in the body of this order at least 30 days but not more than 60 days in advance of the date Portland proposes to make such tariff records effective.

(H) Portland is granted permission and approval under NGA section 7(b) to abandon the leased capacity to Maritimes, as more fully described in this order and the application.

(I) Portland shall notify the Commission within ten (10) days of the date of abandonment of the leased capacity.

(J) Maritimes is hereby issued a certificate of public convenience and necessity under NGA section 7(c) authorizing it to reacquire the leased capacity from Portland, as more fully described in this order and the application.

(K) Maritimes is granted permission and approval under NGA section 7(b) to abandon a portion of its ownership in the existing 15,000 hp ISO rated Mars-100 compressor unit at the Westbrook Compressor Station to Portland.

(L) Maritimes shall notify the Commission within ten (10) days of the date of the abandonment of a portion of its ownership interest in a compressor unit at the Westbrook Compressor Station.

(M) Portland shall notify the Commission's environmental staff by telephone or e-mail of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Portland. Portland shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission. Commissioner LaFleur is concurring with a separate statement attached.

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

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Portland Natural Gas Transmission System

Environmental Conditions

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

1. Portland Natural Gas Transmission Systems (Portland) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Portland must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Portland shall each file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel would 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 project figures. **As soon as they are available, and before the start of construction**, Portland shall file with the Secretary any revised detailed survey maps/figures 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 project figures.

Portland's exercise of eminent domain authority granted under the Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Portland's right of eminent domain granted under the NGA section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Portland shall file with the Secretary detailed figures and aerial photographs identifying all 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/figures/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 FERC's Upland Erosion Control, Revegetation and Maintenance Plan and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and

- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction begins**, Portland shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Portland must file revisions to their plan as schedules change. The plan shall identify:
- a. how Portland will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Portland will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions the company will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of the company's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) the company will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.

7. Portland shall employ at least one EI for the Project. The EI shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. 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, Portland shall file updated status reports for the project with the Secretary on a **monthly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Portland's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the Project, work planned for the following reporting period;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI 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 the company from other federal, state, or local permitting agencies concerning instances of noncompliance, and Portland response.
9. Portland must receive written authorization from the Director of **OEP before commencing construction of any Project facilities**. To obtain such authorization, Portland must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Portland must receive written authorization from the Director of OEP **before placing the Project facilities into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the Project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Portland shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Portland has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. Portland shall not begin construction of the Eliot Compressor Station until it files with the Secretary a copy of the determination of consistency with the Coastal Zone Management Plan issued by the Maine Department of Marine Resources Coastal Zone Consistency Program.
13. Portland shall file noise surveys with the Secretary **no later than 60 days** after placing the authorized unit at the Eliot Compressor Station in service. If a full load condition noise survey is not possible, Portland shall file an interim survey at the maximum possible horsepower load and file the full load survey **within 6 months**. If the noise attributable to the operation of the station at any load exceeds a day-night average sound level (L_{dn}) of 55 decibels (dBA) at any nearby noise sensitive areas, Portland shall file a report on what changes are needed and

install additional noise controls to meet that level **within 1 year** of the in-service date. Portland shall confirm compliance with the L_{dn} of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Portland Natural Gas Transmission System
Martitimes & Northeast Pipeline, L.L.C.

Docket Nos. CP18-506-000
CP18-539-000

(Issued February 21, 2019)

LaFLEUR, Commissioner, *concurring*:

1. Today's order grants Portland Natural Gas Transmission System's (Portland) request for authorization to construct and operate Phase III of the Portland XPress Project.¹ Phase III is designed to increase the capacity on Portland's north system by 24,473 dekatherms per day (Dth/day) and to increase the capacity on the portion of Portland's system jointly-owned with Maritimes & Northeast Pipeline, L.L.C. by 22,428 Dth/day. After carefully balancing the need for the project and its environmental impacts, I find the project is in the public interest. For the reasons discussed below, I concur.

2. In total, all three phases of the Portland XPress Project will provide 137,378 Dth/day of firm transportation service to eight local distribution companies (LDCs) in New England that will deliver natural gas to residential, commercial and industrial customers to meet their needs, including various end uses such as heating and process.² I believe it is reasonably foreseeable that the gas being transported and delivered to these LDCs will be burned and that downstream greenhouse gas (GHG) emissions will result from burning that gas.³

¹ *Portland Natural Gas Transmission System*, 166 FERC ¶ 61,134 (2019). *Portland Natural Gas Transmission System*, 165 FERC ¶ 62,092 (2018) (granting certificate authorization to increase capacity on the joint facilities and approving a capacity lease agreement between Portland and Maritimes for Phase II of the Portland XPress Project). *Portland Natural Gas Transmission System*, 165 FERC ¶ 61,049 (2018) (granting certificate authorization to increase capacity on the north facilities and joint facilities and amending Portland's Presidential Permit and NGA section 3 authorization for Phase 1 of the Portland XPress Project).

² Portland's July 19, 2018 Response to Commission Staff's July 13, 2018 Data Request at 3.

³ See *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 549 (8th Cir. 2003) (*Mid States*). In *Mid States*, the Court concluded that the

3. The Project's Environmental Assessment (EA) quantified the direct GHG emissions from Phase III of the Project's construction and operation,⁴ but the EA did not quantify or consider the downstream emissions impacts.⁵ To address my concerns about the Commission's failure to consider downstream emissions impacts in this proceeding, I have considered the downstream GHG emissions as part of my public interest determination. Using a methodology developed by the Environmental Protection Agency to estimate the downstream GHG emissions from the Portland XPress Project, and assuming as an upper-bound estimate that all of the gas from Phases I, II, and III, to be transported is eventually combusted, 137,378 Dth/d of natural gas service would result in the emission of approximately 2.66 million metric tons per year of downstream CO₂. However, Portland has stated that 18,000 Dth/d of this capacity is contracted to be transported across the U.S.-Canada border. Therefore, 119,378 Dth/d will be delivered into New England, which results in 2.31 million metric tons per year of downstream CO₂ emissions. This figure represents a 2.17 percent increase in GHG emissions regionally (Massachusetts, Maine, New Hampshire, and Rhode Island),⁶ and 0.04 percent increase nationally.⁷

4. I acknowledge that the disclosure of a regional and national comparison data to provide context to the quantified emissions is only the first step to assist the Commission in ascribing significance to a given rate or volume of GHG emissions. However, to date, the Commission has not identified a framework for reaching a significance determination. As I have previously explained, using the Social Cost of Carbon⁸ could enable the

Surface Transportation Board erred by failing to consider the downstream impacts of the burning of transported coal. Even though the record lacked specificity regarding the extent to which the transported coal would be burned, the Court concluded the nature of the impact was clear. *See also, See Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017) (*Sabal Trail*).

⁴ EA at 29-30 & Tables 8 & 9.

⁵ I have previously expressed my disagreement with the Commission's policy limiting the disclosure and consideration of downstream and upstream GHG emissions impacts in our project review. *See Dominion Transmission Inc.*, 163 FERC ¶ 61,128 (2018) (LaFleur, Comm'r, *dissenting in part*).

⁶ U.S. Energy Information Administration, 2018.
<https://www.eia.gov/environment/emissions/state/>

⁷ U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2016*, (April 2018).

⁸ <https://www.epa.gov/sites/production/files/2016->

commission assess the significance of GHG emissions.⁹ While the Commission has argued that monetizing climate damages through the Social Cost of Carbon does not readily lend itself to the Commission's environmental review of natural gas facilities, I am confident that, given the importance of this issue, the Commission could find a way to adapt and apply a metric such as the Social Cost of Carbon to reach a significance threshold determination. Indeed, the Commission makes challenging determinations on quantitative and qualitative issues in many other areas of our work but has simply chosen not to attempt a significance determination in this context.¹⁰ While making a significance

12/documents/social_cost_of_carbon_fact_sheet.pdf

⁹ See, e.g., *Florida Southeast Connection*, 162 FERC ¶ 61,233 (2018) (LaFleur, Comm'r, *dissenting in part*); *Dominion Transmission Inc.*, 163 FERC ¶ 61,128 (2018) (LaFleur, Comm'r, *dissenting in part*); and *Florida Southeast Connection, LLC*, 164 FERC ¶ 61,099 (2018) (LaFleur, Comm'r, *dissenting*).

¹⁰ Many of the core areas of the Commission's work have required the development of analytical frameworks, often a combination of quantitative measurements and qualitative assessments, to fulfill the Commission's responsibilities under its broad authorizing statutes. This work regularly requires that the Commission exercise judgment, based on its expertise, precedent, and the record before it. For example, to help determine just and reasonable returns on equity (ROEs) under the Federal Power Act, Natural Gas Act, and Interstate Commerce Act, the Commission identifies a proxy group of comparably risky companies, applies a method or methods to determine a range of potentially reasonable ROEs (i.e., the zone of reasonableness), and then considers various factors to determine the just and reasonable ROE within that range. See also, e.g., *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007) (establishing Commission regulations and policy for reviewing requests for transmission incentives); *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (requiring, among other things, the development of regional cost allocation methods subject to certain general cost allocation principles); *BP Pipelines (Alaska) Inc.*, Opinion No. 544, 153 FERC ¶ 61,233 (2015) (conducting a prudence review of a significant expansion of the Trans Alaska Pipeline System). I also note that the Commission is currently actively considering a broad topic – resilience – whose scope and complexity might similarly require the development of new analytical frameworks for conducting the Commission's work.

determination on downstream GHG emissions could be difficult, that challenge does not relieve the Commission of its responsibility to address this issue.

5. Using the approach I originally articulated in *Broad Run*,¹¹ I find the Portland XPress Project to be in the public interest. For these reasons, I respectfully concur.

Cheryl A. LaFleur
Commissioner

¹¹ *Tennessee Gas Pipeline Company*, 163 FERC ¶ 61,190 (2018) (LaFleur, Comm’r, *concurring*) (*Broad Run*). See *RH Energytrans, LLC*, 165 FERC ¶ 61,218 (2018) (LaFleur, Comm’r, *concurring*) (“I am trying to move beyond my disagreement with the Commission’s approach to its environmental review of proposed pipeline projects, and base my public interest determination on the facts in the record—even ones not discussed in our environmental documents or in the certificate order.”). See also *Texas Eastern Transmission, LP*, 165 FERC ¶ 61,132 (2018) (LaFleur, Comm’r, *concurring*); and *PennEast Pipeline Company, LLC.*, 164 FERC ¶ 61,098 (2018) (LaFleur, Comm’r, *concurring in part and dissenting in part*).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Portland Natural Gas Transmission System; Maritimes & Northeast Pipeline, L.L.C. Docket Nos. CP18-506-000
CP18-539-000

(Issued February 21, 2019)

GLICK, Commissioner, *dissenting in part*:

1. Today’s order authorizes the expansion of Portland Natural Gas Transmission System’s Portland Xpress Project (Project), which will increase its natural gas pipeline capacity to serve local gas distribution markets and support growing demand in the northeast region.¹ I am dissenting in part from today’s order because the Commission once again fails to adequately consider the Project’s impact on climate change in finding that the application before us is consistent with the public interest. The Commission refuses to quantify, disclose, and consider how the reasonably foreseeable indirect greenhouse gas (GHG) emissions caused by the Project will contribute to climate change.² In particular, the Commission refuses to evaluate whether the Project’s contribution to the harms caused by climate change is significant. As a result of those failures, today’s order falls well short of our obligations under section 7 of the Natural Gas Act (NGA)³ and the National Environmental Policy Act (NEPA), leaving me no choice but to dissent in part.⁴

¹ *Portland Natural Gas Transmission System*, 166 FERC ¶ 61,134 (2019).

² The Project was offered “[i]n response to continued growing demand in the region,” which includes “natural gas for space heating, industrial processes and electric generation.” Portland Application at 4-5. It is thus reasonably foreseeable that a significant portion, if not all, of the natural gas transported through the Project will be combusted, resulting in GHG emissions that contribute to climate change.

³ 15 U.S.C. 717f (2012).

⁴ National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852. NEPA requires the Commission to compare the environment before and after the proposed federal action and factor the changes into its decisionmaking process. 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.). In so doing, the Commission must take a

2. I have at length explained my concerns with the Commission's stubborn refusal to consider a project's potential impact on climate change in several recent proceedings⁵ and will not rehash them all here. Nevertheless, it is important to highlight the fact that the Commission continues to exclude climate change from playing any meaningful role in its decisionmaking process. In particular, the Commission here refuses to consider the indirect emissions from the Project or to make any effort to consider whether the Project's reasonably foreseeable GHG emissions are significant, as the law requires.⁶ The failure to conduct that analysis prevents the Commission from seriously addressing the Project's potential contribution to climate change, which is a necessary step in evaluating whether the Project is consistent with the public interest.⁷ That is a far cry from what good government and the law demand.

"hard look" at the environmental impacts of its decisions. *See, e.g., Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). A standard that can only be understood to require the Commission to evaluate whether the pipeline's contribution to climate change causes significant harm to the environment and affected communities.

⁵ *See Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm'r, dissenting); *see also Transcontinental Gas Pipe Line Co., LLC*, 165 FERC ¶ 61,221 (2018) (Glick, Comm'r, dissenting in part); *RH energytrans, LLC*, 165 FERC ¶ 61,218 (2018) (Glick, Comm'r, dissenting in part).

⁶ *Sierra Club v. FERC*, 867 F.3d 1373, 1374 (D.C. Circuit 2017) (*Sabal Trail*) ("The [environmental document] . . . needed to include a discussion of the 'significance' of this indirect effect."). Council on Environmental Quality (CEQ) regulations adopt a two-step framework for determining whether an environmental impact is significant. Agencies must consider both the "context" of the proposed action and the "intensity" of the environmental consequences. 40 C.F.R. § 1508.27 ("Significantly as used in NEPA requires considerations of both context and intensity."); *id.* ("Context' . . . means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality."); *id.* ("Intensity' . . . refers to the severity of the impact, . . . [including t]he degree to which" it affects considerations including "public health or safety" and the environment.).

⁷ Section 7 of the NGA "requires the Commission to evaluate all factors bearing on the public interest," *Atl. Ref. Co. v. Pub. Serv. Comm'n*, 360 U.S. 378, 391 (1959), which *Sabal Trail* authoritatively held includes a proposed pipeline's contribution to the harms caused by climate change, 867 F.3d at 1373. That conclusion was essential to the Court's holding because, without it, the Court would not have supplied a basis for distinguishing cases involving NGA section 3. *See id.* at 1372-73.

3. The Commission's failure to meaningfully consider climate change forces me into dissenting from certificate orders that I might otherwise support. Prior to issuing a section 7 certificate, the Commission must find both that the proposed project is needed, and that, on balance, its potential benefits outweigh its potential adverse impacts.⁸ The record here shows that the Project is needed and will provide important benefits, including satisfying growing demand for natural gas in the northeast. Although need for the Project is an important consideration, need alone is not sufficient to find that the Project is consistent with the public interest. Instead, the Commission must also determine that the Project's benefits outweigh its adverse impacts, including its GHG emissions, which the Commission cannot do without meaningfully evaluating the impacts of those emissions. I cannot join an order that countenances such an incomplete assessment of a project's adverse impacts, regardless of what I might otherwise think of that project.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner

⁸ See *Sabal Trail*, 867 F.3d at 1373 (explaining that section 7 of the NGA requires the Commission to balance “the public benefits [of a proposed pipeline] against the adverse effects of the project,’ including adverse environmental effects” (quoting *Myersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1309 (D.C. Cir. 2015))).