

166 FERC ¶ 61,136
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Natural Gas Company

Docket No. CP18-534-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued February 21, 2019)

1. On July 30, 2018, Northern Natural Gas Company (Northern) filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission regulations² to construct and operate two projects, the Rochester Project and the Northern Lights 2019 Expansion Project (2019 Expansion Project), in Carver, Freeborn, Hennepin, Le Sueur, Morrison, Mower, Olmsted, Rice, Steele, and Wright Counties, Minnesota. Northern requests authorization to: construct and operate pipeline, compression, and auxiliary facilities; upgrade the maximum allowable operating pressure (MAOP) of an existing lateral; relocate an existing MAOP regulator; and abandon short segments of pipeline. The projects will enable Northern to provide a total of 138,504 dekatherms per day (Dth/d) of additional firm natural gas transportation service.

2. As discussed below, the Commission grants the requested authorizations, subject to certain conditions.

I. Background and Proposal

3. Northern, a Delaware corporation, is a natural gas company as defined by section 2(6) of the NGA,³ engaged in the transportation of natural gas in interstate commerce.

¹ 15 U.S.C. § 717f(b), (c) (2012).

² 18 C.F.R. pt. 157 (2018).

³ 15 U.S.C. § 717a(6) (2012).

Northern's 14,700-mile pipeline system extends from southwest Texas to the upper peninsula of Michigan.⁴

4. Northern requests authorization for the Rochester Project and the 2019 Expansion Project in order to provide an additional 37,093 Dth/d and 104,411 Dth/d of firm transportation service, respectively.⁵ For the Rochester Project, Northern proposes to:

- construct and operate a new, approximately 12.2-mile-long, 16-inch-diameter pipeline in Olmsted County (Rochester Lateral);
- construct and operate a new delivery point at the terminus of the Rochester Lateral in Olmsted County (Rochester Town Border Station);
- increase the MAOP on an approximately 8-mile segment of the existing 16-inch-diameter La Crosse Lateral from its current pressure of 800 pounds per square inch gauge (psig) to 1,000 psig between milepost (MP) 15.57 in Freeborn County and MP 23.61 in Mower County (La Crosse Lateral MAOP upgrade);

⁴ Northern's system is divided into two sections: the Field Area and the Market Area. Northern's Market Area is the geographical area north of the inlet to Northern's Clifton Compressor Station in Clay County, Kansas. The Market Area includes pipeline configured in a grid system, with gas flowing into the Market Area facilities from geographically distinct supply basins via a number of third-party interstate pipelines and Northern's own transmission facilities.

⁵ Each of the projects proposed by Northern in this application is a discrete, stand-alone project under the umbrella of its larger Northern Lights expansion plan. The Northern Lights expansion plan is a multi-year commitment to expand Northern's Market Area capacity at least every two years through 2026 in response to customers' developing demand. The Commission has approved other projects related to the Northern Lights expansion plan. *E.g.*, *Northern Natural Gas Co.*, 160 FERC ¶ 61,017 (2017); *Northern Natural Gas Co.*, 158 FERC ¶ 61,079 (2017); *Northern Natural Gas Co.*, 127 FERC ¶ 61,133 (2009); *Northern Natural Gas Co.*, 119 FERC ¶ 61,111 (2007); *Northern Natural Gas Co.*, 118 FERC ¶ 61,136 (2007). Northern has also completed other construction activities related to the Northern Lights expansion plan pursuant to its Part 157 blanket certificate authority, as identified in its prior notice filings. *E.g.*, Docket Nos. CP17-76-000; CP08-188-000; CP08-97-000; CP08-95-000; CP08-76-000; CP08-56-000.

- relocate an existing MAOP control valve assembly from its current location at MP 15.57 of the La Crosse Lateral to MP 23.61 in Mower County (MAOP regulator); and
- install appurtenant facilities including valves and a pig launcher at MP 0.0 of the Rochester Lateral.

5. For the 2019 Expansion Project, Northern proposes to construct and operate the following facilities:

- A new, approximately 10.0-mile-long, 24-inch-diameter pipeline in Hennepin and Wright Counties (Rockford to Buffalo Lateral);
- an approximately 4.3-mile-long, 8-inch-diameter pipeline extension in Morrison County (Alexandria Branch Line Loop Extension);
- an approximately 1.6-mile-long, 6-inch-diameter pipeline, looping an existing pipeline in Le Sueur County (New Prague Branch Line Loop);
- an approximately 3.1-mile-long, 24-inch-diameter pipeline, looping an existing pipeline in Carver County (Willmar C-Line Extension);
- a new 11,153 horsepower (hp) natural gas-fired turbine driven compressor station in Carver County (Carver Compressor Station);
- a new 15,900 hp natural gas-fired turbine driven compressor unit (Unit 3) at the existing Faribault Compressor Station in Rice County;
- a new 15,900 hp natural gas-fired turbine driven compressor unit (Unit 2) at the existing Owatonna Compressor Station in Steele County; and
- appurtenant facilities including valves, pig launchers, and pig receivers.

6. Also, Northern proposes to remove station piping at the Faribault Compressor Station to accommodate the new unit's tie-in.

7. Northern conducted separate open seasons for the projects. For the Rochester Project, Northern conducted an open season from October 1 through October 26, 2015, to solicit interest for firm transportation service commencing on or after November 1, 2017. As a result of the open season, Northern executed an agreement with Minnesota Energy Resources Corporation (MERC) for 53,032 Dth/d of additional service to the Rochester, Minnesota area. The original agreement was amended to reflect two phases for the service and later commencement dates. For the first phase, MERC requested 15,939 Dth/d of service by November 1, 2018. Northern constructed the facilities necessary for

this service under Docket No. CP17-76-000, in accordance with the prior notice provisions of the Commission's regulations and Northern's blanket certificate granted in CP82-401-000. Northern's proposal here would implement the second phase of the project, providing an additional 37,093 Dth/d of service to meet MERC's requested in-service date of November 1, 2019.⁶ During the open season, Northern did not receive any requests to turn back capacity.

8. For the 2019 Expansion Project, Northern held an open season from August 1 through September 14, 2017, to solicit interest for firm transportation service commencing on or after November 1, 2019. As a result of the open season, Northern executed agreements with two shippers for 101,411 Dth/d of firm transportation service. Specifically, Northern will provide the following service under the project: 49,229 Dth/d for CenterPoint Energy Minnesota Gas (CenterPoint) and 52,182 Dth/d for Xcel Energy on behalf of Northern States Power - Minnesota (Xcel). During the open season, Northern received and accepted one request to turn back peak-day capacity and two requests to realign capacity.

9. Northern estimates that the Rochester Project will cost \$31,416,479 and the 2019 Expansion Project facilities will cost \$158,070,870. Northern is proposing to charge its existing rates under Rates Schedules TFX and TF as initial recourse rates for firm service provided by each of the projects. Northern requests a predetermination of rolled-in rate treatment for costs associated with both projects.

II. Public Notice, Interventions, and Comments

10. Notice of Northern's application was issued on August 10, 2018, and published in the *Federal Register* on August 16, 2018.⁷ The notice established August 31, 2018, as the deadline for filing comments and interventions. Xcel; Northern Illinois Gas Company d/b/a Nicor Gas Company in Illinois; Atmos Energy Corporation; WEC

⁶ The Commission approved the negotiated rate non-conforming agreements between Northern and MERC, relevant to the Northern Lights Project, effective November 1, 2017. See *Northern Natural Gas Co.*, 161 FERC ¶ 61,001 (2017).

⁷ 83 Fed. Reg. 40,762 (2018).

Energy Group, Inc.; and, jointly, the Municipal Distributors Group⁸ and the Midwest Region Gas Task Force Association⁹ filed timely, motions to intervene.¹⁰

11. Xcel filed comments in support of the project. The Municipal Distributors Group and the Midwest Region Gas Task Force Association (Protesters) protest Northern's request for a presumption of rolled-in rate treatment for the 2019 Expansion Project, which is addressed in the rate section of this order.

III. Discussion

12. Because the facilities that Northern proposes to abandon have been used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, and because the proposed new facilities will be for jurisdictional service, the proposed abandonment, construction, and operation of the facilities are subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.¹¹

A. Abandonment

13. Northern requests authority to abandon approximately 80 feet of 8-inch-diameter station pipe, 85 feet of 24-inch-diameter station pipe, and 40 feet of 36-inch-diameter

⁸ The Municipal Distributors Group comprises Iowa municipal-distributor customers of Northern and includes: Alton; Cascade; Cedar Falls; Coon Rapids; Emmetsburg; Everly; Gilmore City; Graettinger; Guthrie Center; Harlan; Hartley; Hawarden; Lake Park; Manilla; Manning; Orange County; Osage; Preston; Remsen; Rock Rapids; Rolfe; Sabula; Sac City; Sanborn; Sioux Center; Tipton; Waukee; West Bend; Whittemore; and Woodbine.

⁹ The Midwest Region Task Force Association comprises municipal-distributor and local distribution customers of Northern and includes: Austin; Centennial Utilities; Community Utility Company; Dooley's Natural Gas; Great Plains Natural Gas Company, a Division of MDU Resources Group Inc.; Greater Minnesota Gas; Hibbing; Hutchinson; New Ulm; Northwest Natural Gas Company; Owatonna; Round Lake; Sheehan's Gas Company, Inc.; Two Harbors; Virginia; Westbrook, Minnesota; Midwest Natural Gas, Inc.; St. Croix Valley Natural Gas, Wisconsin, d/b/a St. Croix Gas, Wisconsin; and Watertown, South Dakota.

¹⁰ Timely, unopposed motions to intervene are granted by operation of Rule 214(c)(1) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1) (2018).

¹¹ 15 U.S.C. §§ 717f(b), (c), (e) (2012).

station pipe at the Faribault Compressor Station, as part of the 2019 Expansion Project. NGA section 7(b) allows an interstate pipeline company to abandon jurisdictional facilities only if the abandonment is permitted by the present or future public convenience or necessity.¹² Because the station piping segments will be removed to accommodate the tie-ins for the new unit at the Faribault Compressor Station and will not negatively impact the provision of any existing service, we find the proposed abandonment is permitted by the public convenience or necessity, subject to compliance with the environmental conditions in the appendix to this order.

B. Certificate Policy Statement

14. The Commission's Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹³ 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 avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

¹² 15 U.S.C. §717f (b) (2012).

¹³ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

16. The threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Northern proposes to charge its currently effective general system rates as the initial recourse rates for the firm services associated with these projects. Northern seeks a determination of rolled-in rate treatment for both projects. As discussed below, illustrative incremental reservation rates for the Rochester Project are lower than Northern's existing applicable system recourse rates. Also, the incremental revenues exceed the incremental cost of service by approximately \$266,000 in the first year of proposed service, and the difference increases for each year through 2023.¹⁴ Therefore, we will accept Northern's proposal to charge its existing applicable system reservation rates as the initial recourse rates for the Rochester Project and approve the pre-determination of rolled-in rate treatment.

17. Northern also proposes to charge its existing applicable system rates under Rate Schedule TFX as the initial recourse rates for the 2019 Expansion Project. However, the illustrative incremental rates calculated to recover the incremental costs of the 2019 Expansion Project are higher than the currently effective system 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.¹⁵ However, the Commission can also protect Northern's existing shippers from subsidizing the proposed 2019 Expansion Project by denying Northern's request for a predetermination that it may roll the cost of the expansion into its system rates in a future rate case.¹⁶ We do so below, thus ensuring that existing customers will not be at risk of subsidizing the 2019 Expansion Project.¹⁷ Based on the above, we find that both projects may go forward without Northern's existing shippers subsidizing the proposal, and the Certificate Policy Statement's threshold requirement of no-subsidy is satisfied.

¹⁴ For 2019, Northern's projected revenues of \$4,759,000 exceed the projected costs of \$4,493,000 for the Rochester Project facilities. Application Exhibit N at 1.

¹⁵ *Millennium Pipeline Co., L.L.C.*, 161 FERC ¶ 61,229, at P 14 (2017).

¹⁶ *Columbia Gas Transmission, LLC*, 164 FERC ¶ 61,036, at P 13 (2018).

¹⁷ As further discussed below, approval of a predetermination of rolled in rate treatment is only appropriate when the incremental expansion revenues exceed the costs. Northern's incremental revenues for the 2019 Expansion Project will fall short of the incremental cost of service by approximately \$2,646,000 in the first year of proposed service and continue at a level below costs each year through 2023. Application Exhibit N at 1.

18. In addition, we find that the Rochester Project and the 2019 Expansion Project will not adversely affect Northern's existing customers because the projects will not degrade any existing service. Further, the projects are not intended to replace existing transportation service on other pipelines. No pipelines or their captive customers have protested Northern's proposal. Consequently, we find that there will be no adverse impacts on existing customers and other pipelines or their captive customers.

19. We also find that Northern has taken steps to minimize impacts on landowners and communities that might be affected by the project. Northern engaged in the Commission's pre-filing process and conducted open houses for landowners and other stakeholders. To the extent feasible, Northern proposes to install much of the proposed pipeline looping and laterals within existing easements along the pipeline route adjacent to Northern's existing pipelines.¹⁸ Northern is working with landowners to purchase land for the new and expanded compressor station sites. The predominant land use impacted by the proposed projects is agricultural land. Northern will utilize an agricultural impact mitigation plan, which was developed in coordination with the Minnesota Department of Agriculture to minimize impacts on agricultural land as discussed in the environmental section of this order.

20. The proposed Rochester Project and the 2019 Expansion Project will enable Northern to provide an additional 138,504 Dth/d of firm transportation service for customers that have signed precedent agreements for the total capacity of both projects. Based on the benefits the projects will provide and the minimal adverse effects on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the criteria discussed in the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of Northern's proposal as conditioned in this order.

C. Rates

1. Initial Recourse Rates

21. Northern proposes to charge its currently effective rates under Rate Schedules TFX and TF for the expanded firm service provided by both the Rochester and 2019 Expansion Projects.¹⁹ Northern estimates the illustrative incremental reservation charges for the Rochester Project to be \$2.909 per Dth in the summer and \$7.756 per Dth in the

¹⁸ Application Resource Report 8 at Table 8.1-2.

¹⁹ Northern Natural Gas Company, FERC NGA Gas Tariff, Gas Tariffs, [Sheet No. 51 and Currently Effective Rates TFX and LFT, 14.0.0.](#)

winter.²⁰ Northern's currently effective Rate Schedule TFX summer and winter reservation charges are \$5.683 per Dth and \$15.153 per Dth, respectively. As the illustrative incremental reservation charges for the Rochester Project are less than the Rate Schedule TFX currently effective recourse reservation charges, the Commission approves the system recourse reservation charges as the initial recourse rates for the Rochester Project.

22. Northern estimates the illustrative incremental reservation charges for the 2019 Expansion Project to be \$9.581 per Dth in the summer and \$25.550 per Dth in the winter.²¹ Northern's currently effective Rate Schedule TFX summer and winter reservation charges are \$5.683 per Dth and \$15.153 per Dth, respectively. The illustrative rates for the 2019 Expansion Project are greater than the currently effective Rate Schedule TFX summer and winter rates. The Commission has generally held that when the incremental rate for a project is higher than the generally-applicable system rate, the pipeline should be required to establish an incremental rate to ensure there is no subsidization from existing shippers.²² However, we will approve Northern's proposal to charge the applicable Rate Schedule TFX rates because we find that we can take other steps to ensure existing shippers will not subsidize the 2019 Expansion Project. As discussed below, our denial of Northern's request for a predetermination in favor of rolled-in rate treatment of project costs will adequately shield existing customers from any risk of subsidization. Northern is prohibited from recovering any costs associated with the 2019 Expansion Project from its existing customers 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.

2. Rolled-in Rate Determination

23. Northern requests a predetermination of rolled-in rate treatment for costs associated with both the 2019 Expansion Project and the Rochester Project.

24. To support a request for a pre-determination that a pipeline may roll the costs of a project into its system-wide rates in its next NGA general section 4 rate proceeding, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must demonstrate that the revenues to be generated by an expansion project will exceed the costs of the project. For purposes of making a

²⁰ October 31, 2018 Response to Staff Data Request at 3.

²¹ *Id.* at 4.

²² Certificate Policy Statement, 88 FERC at 61,745.

determination in a certificate proceeding as to whether it would be appropriate to roll the costs of a project into the pipeline's system rates in a future NGA section 4 proceeding, we compare the cost of the project to the revenues generated utilizing actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the recourse rate).²³

25. Northern states the Northern Lights expansion plan is a multi-year commitment to expand Northern's Market Area capacity, at least every two years through 2026, in response to customers' future growth requirements and to avoid the termination of contracts for then-existing load subscribed by CenterPoint, Xcel, and Flint Hills Resources, LP (Flint Hills). Northern states the projects under the Northern Lights expansion plan must be analyzed on a cumulative basis rather than as individual projects. As illustrated in Exhibit N-1, Northern states cumulative projected revenue for the Northern Lights expansion plan projects through 2023, including the proposed 2019 Expansion Project and the Rochester Project, exceeds project costs by \$16.7 million (2019), \$19.4 million (2020), \$22.1 million (2021), \$23.4 million (2022) and \$25.1 million (2023). Northern states such an analysis recognizes the annual revenues associated with extending the underlying entitlements for CenterPoint, Xcel, Flint Hills, and MERC.²⁴ Northern explains that without the Northern Lights expansion plan, these shippers and associated revenues would have left Northern's system and Northern would seek to recover its costs from the remaining shippers in a rate case proceeding at a much greater rate.

26. When the Commission makes an upfront determination in a certificate proceeding as to whether a project should receive rolled-in rate treatment, it does so based on the specific costs and revenues associated with the facilities being constructed. The Commission has previously ruled that it would not be appropriate or consistent with the Certificate Policy Statement to include the revenues from the retained load under Northern's restructured agreements with existing shippers in determining whether the costs of an expansion should be afforded a presumption of rolled-in rate treatment.²⁵ Therefore, we will deny Northern's request for a predetermination of rolled-in rate

²³ *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

²⁴ Northern states this analysis recognizes the annual revenues associated with extending the underlying entitlement for CenterPoint, Xcel, Flint Hills, and MERC are \$42.7 million for 2007-2010, \$45.8 million for 2011-2017, and for 2018-2023, projected annual revenues of \$50.9 million. Application at 5.

²⁵ See *Northern Natural Gas Co.*, 158 FERC ¶ 61,079 at P 20; *Northern Natural Gas Co.*, 127 FERC ¶ 61,133 at P 21.

treatment for the full capacity of the Rochester Project and 2019 Expansion Project based on the cumulative impacts of the Northern Lights expansion plan projects.

27. For the Rochester Project facilities individually, Northern has demonstrated that the incremental revenues exceed the incremental cost of service by \$266,000 in 2019 and continue to exceed the incremental cost of service for each year through 2023. Accordingly, we approve a presumption of rolled-in treatment for the cost of the Rochester Project in its next general NGA section 4 rate proceeding, absent a significant change in circumstances.²⁶

28. A review of the 2019 Expansion Project's incremental cost of service individually demonstrates that the incremental revenues do not cover the incremental cost of service for each year from 2019 through 2023. Protesters request that the Commission deny Northern's request for a presumption of rolled-in rate treatment of the 2019 Expansion Project.²⁷ Since the incremental revenues of the 2019 Expansion Project do not exceed the incremental cost of service on an individual basis, we deny Northern's request for a predetermination of rolled-in rate treatment for the 2019 Expansion Project. We note that this denial is without prejudice to Northern filing for and fully supporting rolled-in rate treatment in a future rate case.

3. Fuel

29. Northern states that the fuel percentage in its Market Area will be reduced as a result of the incremental compression being constructed as part of the 2019 Expansion Project. Northern states that the compression on the proposed facilities will displace less fuel-efficient compression at the Ventura, Iowa, compressor station and the Farmington, Minnesota, compressor station on non-peak days during the heating season. Northern explains that due to the peak-day nature of its facilities and the optimization processes that Northern's gas control will implement in the Market Area, the new compressor fuel requirements will not adversely affect existing customers, and will benefit customers in the Market Area. As a result, Northern proposes to roll in the incremental fuel costs for the 2019 Expansion Project into its Market Area Period Rate Adjustment calculations pursuant to section 53A of the General Terms and Conditions of its tariff.²⁸

²⁶ See, e.g., *Texas Eastern Transmission, LP*, 164 FERC ¶ 61,037, at PP 19-24 (2018) (addressing rolled-in rate treatment separately for two projects in one application).

²⁷ Protestors August 31 2018 Motion to Intervene and Protest at 5-6.

²⁸ Northern Natural Gas Company, FERC NGA Gas Tariff, Gas Tariffs, Sheet No. 54, Effective Rates TF TFX LFT GS-T TI and FDD, 21.0.0.

30. On October 18, 2018, Northern filed a response to a staff data request stating that the proposed compression units associated with the 2019 Expansion Project are planned for relatively infrequent peak load conditions and that the additional fuel and throughput associated with the project, to serve the incremental load, results in no change to the Market Area fuel percentage.²⁹ Northern provided a fuel study demonstrating that the fuel consumption as a result of the 2019 Expansion Project is projected to be 115,740 Dth annually. Northern explains that based on an annual throughput for the 2019 Expansion Project of 19,215,785 Dth, the presumed incremental fuel percentage is equal to 0.60 percent. This percentage is less than the current system fuel percentage of 0.89 percent. In addition, Northern notes that no compression is proposed to be constructed as part of the Rochester Project; therefore, no additional fuel consumption will occur as a result of that project. Thus, we will approve the use of Northern's existing system fuel percentage for service on the 2019 Expansion Project and the Rochester Project.

4. Reporting Incremental Costs

31. The Commission will require Northern to keep separate books and accounting of costs and revenues attributable to the proposed incremental services and capacity created by the projects in the same manner as required by section 154.309 of the Commission's regulations.³⁰ The books should be maintained with applicable cross-references, the information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.³¹

D. Environmental Analysis

32. On October 16, 2017, the Commission staff began its environmental review of the 2019 Expansion and Rochester Projects by granting Northern's request to use the pre-filing process in Docket No. PF18-1-000. As part of the pre-filing review, staff participated in three open houses sponsored by Northern in Rockford, Cologne, and Albert Lea, Minnesota, on December 5, 6, and 7, 2017, respectively, to explain the environmental review process to interested stakeholders.

33. On February 6, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned Northern Lights 2019 Expansion Project and*

²⁹ October 18, 2018 Response to Staff Data Request at 2.

³⁰ 18 C.F.R. § 154.309 (2018).

³¹ See *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008).

Request for Comments on Environmental Issues (NOI). The NOI, which addressed both the 2019 Expansion Project and the Rochester Project,³² was published in the Federal Register³³ and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. Three federal agencies (U.S. Fish and Wildlife Service, U.S. Department of Agriculture, and U.S. Environmental Protection Agency (EPA)); three state agencies (Minnesota Department of Natural Resources (Minnesota DNR), Minnesota Pollution Control Agency, and Minnesota State Historic Preservation Office); one Native American tribe; one public interest group; and several landowners filed comments in response to the NOI. The primary issues raised by commenters were impacts on sensitive wetlands and wildlife habitat; land use and zoning; air quality; recreation and visual impacts; agricultural lands, particularly drain tiles; and cumulative impacts.

34. To satisfy the requirements of the National Environmental Policy Act of 1969, Commission staff prepared an Environmental Assessment (EA) for Northern's proposals. The EA was prepared with the cooperation of the Minnesota Pollution Control Agency. 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, socioeconomics, cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

35. The EA includes an estimate and discussion of the greenhouse gas (GHG) emissions associated with the construction and operation of the projects.³⁴ In addition, the EA discussed the cumulative impacts on climate change of known downstream end-use of natural gas associated with the projects.³⁵

³² During pre-filing, Northern referred to all facilities proposed in this proceeding, including those that comprise the Rochester Project, as the Northern Lights 2019 Expansion Project. As the pre-filing process progressed, Northern began to separately refer to the facilities as the 2019 Expansion Project and the Rochester Project.

³³ 83 Fed. Reg. 6016 (2018).

³⁴ EA at 120-129.

³⁵ EA at 162-164. Northern states that 38,800 Dth/d of Xcel's firm transportation service associated with the Northern Lights 2019 Project will serve the Mankato Energy Center. Application at 8 n.9. The Minnesota Public Service Commission approved the Mankato Energy Center on February 5, 2015.

36. As identified in the EA, the addition of a new, gas only-fired combined cycle turbine at the Mankato Energy Center's would increase the center's GHG emissions by 1,585,055 tpy of CO_{2e}.³⁶ However, the burning of the 38,800 Dth/d of additional natural gas associated with the Northern Lights 2019 Project would only account for approximately 751,000 tpy of CO₂.³⁷ Combustion of other, unidentified supplies of gas by the Mankato Energy Center would account for the rest of the emissions. We note that the emissions estimate represents an upper bound of GHG emissions because it assumes the total maximum capacity from this project is transported and utilized 365 days per year. The 751,000 tpy of GHG emissions would result in about a 0.8 percent increase in 2016 GHG emissions from fossil fuel combustion in Minnesota,³⁸ and a 0.01 percent increase in net national emissions.³⁹

37. The EA was issued for a 30-day comment period and placed into the public record on November 21, 2018. The Commission received comments on the EA from: EPA; Minnesota DNR; Teamsters National Pipeline Labor Management Cooperation Trust (Teamsters); Pipeliner's Union 798; and two affected landowners, Steven and Sandra Siegle and Kimberly Gleason.⁴⁰ Northern submitted a comment letter in response to the EPA.

1. U.S. Environmental Protection Agency

38. The EPA recommends that Northern continue to coordinate with the Minnesota DNR to ensure that construction of the Rochester Lateral does not impact the Nelson Fen,

³⁶ EA at 163.

³⁷ Staff provided this estimate based upon a stoichiometric burning of the volume of natural gas. The calculation is expressed as CO₂, not CO_{2e}, because the calculation does not account for minor N₂O components in combustion or methane leakage.

³⁸ EIA State Carbon Dioxide Emissions Data. Available at <https://www.eia.gov/environment/emissions/state/>.

³⁹ EPA Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2016. Available at https://www.epa.gov/sites/production/files/2018-01/documents/2018_complete_report.pdf. *See also* EA at 162-163 (discussion of climate change, the Mankato Energy Center, and significance.).”

⁴⁰ The Teamsters and the Pipeliner's Union did not comment specifically on the EA, but rather provide general support for the projects, and included a number of purported environmental, socioeconomic, and construction advantages of using unionized labor.

a sensitive wetland within a designated Wildlife Management Area.⁴¹ The Rochester Lateral, at its closest, passes approximately 1,000 feet to the west of the Nelson Fen, and due to elevations and intermediate features, the EA concludes that construction of the pipeline would not impact the fen nor the surrounding hydrology supporting it.⁴² In its comments on the EA, the Minnesota DNR states that it reviewed the results of additional investigations and finds the Nelson Fen is unlikely to be negatively impacted by the project.⁴³ Northern's response to EPA's comment confirms that Northern submitted to the Minnesota DNR additional information along with commitments to limit dewatering and to install additional trench breakers within the vicinity of the Nelson Fen.⁴⁴ As stated in the EA, if dewatering is required during construction near the Nelson Fen, Northern will coordinate with the Minnesota DNR to develop a dewatering plan for construction activities, which would be filed with the Commission.⁴⁵ Accordingly, we see no need to require further coordination with Minnesota DNR.

39. The EPA also recommends that Northern use fuel-efficient machinery, implement an anti-idling regimen, and, when possible, incorporate energy-efficient lighting and green landscaping at the Carver, Faribault, and Owatonna Compressor Stations. The EPA supports the use of pollinator-promoting plants and seed mixtures for restoration of disturbed areas, and recommends that the Commission require Northern to consult with relevant federal and state resource agencies for their recommendations on plant species to promote pollinator habitat and to identify seed sources.

40. Regarding Northern's use of fuel-efficient machinery, Northern must comply with federal and state air regulations and state permit requirements to ensure that air quality impacts would be minimized during installation and operation of the compressor units at the Carver, Faribault, and Owatonna Compressor Stations.⁴⁶ Northern will also limit idling of construction vehicles to reduce emissions from internal combustion.⁴⁷ Given

⁴¹ EPA December 17, 2018 Comment Letter at 1.

⁴² EA at 57, 64.

⁴³ Minnesota DNR December 21, 2018 Comments at 1-2.

⁴⁴ Northern December 28, 2018 Comments at 1.

⁴⁵ EA at 64.

⁴⁶ EA at 129.

⁴⁷ EA at 122.

Northern's commitments, we see no need to require the use of further anti-idling technology or fuel efficient machinery.

41. In response to EPA's comments regarding energy-efficient lighting and green landscaping, Northern states that it plans to install LED lighting for all interior and external lighting at the new Carver Compressor Station, to convert all existing exterior and interior lighting to LED lighting at the existing Owatonna Compressor Station, and to install LED lighting at the new buildings at the existing Faribault Compressor Station.⁴⁸ Northern also states that it typically incorporates location-specific aesthetic improvements into the design of its compressor stations, which could include color, specific painting of compressor station buildings, and the planting of trees where appropriate, and will do so here, as applicable. Given these commitments, we see no need to impose additional measures.

42. With regard to restoration of disturbed areas, Northern states that it previously coordinated with the U.S. Fish and Wildlife Service on pollinator issues, including seed mix recommendations.⁴⁹ Northern also relies on landowner input and U.S. Department of Agriculture Natural Resource Conservation Service seeding recommendations when planting within pipeline easements. Northern commits to working with local and state agencies to include pollinator-friendly seeds in restoration seed mixes for agency-owned properties such as parks and roadside ditches. Much of the land that will be disturbed for this project is on agricultural land, and as such, these areas will not be reseeded. We find Northern's measures sufficient to address EPA's concerns.

2. Minnesota Department of Natural Resources

43. Minnesota DNR states that the number of waterbody crossings for the Rochester Project is inconsistent between sections in the EA. We confirm that the information in table B.3.2-1 of the EA is correct—the Rochester Project will include 10 crossings of 7 waterbodies. Minnesota DNR also recommends that Northern apply for separate water appropriation permits for the new town border station, the relocated regulator, and the Rochester Lateral pig launcher, and if required, for each site associated with the 2019 Project facilities. Northern began consultation with the Minnesota DNR concerning the submittal of applications for water appropriation permits for the project facilities.⁵⁰

⁴⁸ Northern December 28, 2018 Comments at 1-2.

⁴⁹ *Id.* at 2.

⁵⁰ Northern January 8, 2019 Agency Correspondence Update; EA at 30-32, table A.10-1.

44. The Minnesota DNR states that the wetland located between milepost 3.71 and milepost 3.85 of the Rochester Project may qualify as a rare natural community under the Minnesota Wetland Conservation Act. Minnesota DNR requests that Northern contact it should the crossing method of this wetland no longer use horizontal directional drill, or if an inadvertent return occurs within this wetland. Northern must comply with its *Plan for Inadvertent Release of Drilling Mud*, which is part of its application and requires Northern to contact appropriate agencies following an inadvertent release.⁵¹ Should Northern change its plan for crossing this wetland, Northern is required to request any changes in construction technique using the variance request as detailed in Environmental Condition 1 and/or Environmental Condition 5 in the appendix to this order. Minnesota DNR concurs with the measures identified in the EA to avoid impacts on loggerhead shrikes, Blanding's turtles, wood turtles, rare muscles, rare fishes, and rare wetlands.

3. Affected Landowners

45. Steven and Sandra Siegle, landowners in Carver County, assert that the 9-acre contractor yard to be used as part of the Willmar C-Line Extension would impact the soils and drain tiles on their property, as well as interfere with access to their fields and property. Specifically, the Siegles argue that the soils would become compacted and will take years to return to a farmable condition.

46. Northern proposes to site the contractor yard in question at milepost 3.09 of the Willmar C-Line Extension. The site consists mostly of agricultural land (7.83 acres), with an additional amount of industrial/commercial land (0.65 acre), and open land (0.67 acre). The contractor yard, although not required for operation of the 2019 Expansion Project, will necessitate a large footprint used during construction of the pipeline to store pipe and equipment and for Northern's contractor to perform other project-related uses on this site. The Commission is generally reluctant to approve pipe storage/contractor yards when the pipeline company and landowner are unable to reach an agreement for use of the land and when other nearby landowners who already have agreements with the pipeline could provide land for the yards.⁵² Further, we agree with the commenters that the proposed yard could affect the productivity of the agricultural land for several growing seasons, if not longer. Therefore, we have included Environmental Condition 13 in the appendix to this order requiring Northern to either negotiate a mutually acceptable settlement with the Siegles for the contractor yard, or file a variance for an alternate site under the provisions included in Environmental Condition 5.

⁵¹ Application at Appendix 1A.

⁵² See, e.g., *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 241 (2016) (Commission's policy is to encourage applicants to negotiate for the use of a right-of-way or workspace over the use of eminent domain).

47. Kimberly Gleason, a landowner in Wright County, is concerned that construction of the Rockford to Buffalo Lateral would impact her geothermal heating and cooling system. Her concerns regarding impacts of the pipeline to her geothermal system were first documented during Northern's December 5, 2017 Open House session in Rockford, Minnesota. At that time, Northern informed the Gleasons that the pipeline would be horizontally directionally drilled (HDD) underneath their geothermal system, thus avoiding the system and any impacts on it.⁵³

48. On February 9, 2019, Ms. Gleason filed comments that Northern recently informed her that the pipeline would impact her geothermal system and potentially result in the need to relocate certain components of the system. Ms. Gleason asserts that were there to be any such relocation of components, the whole system would need to be reinstalled, causing a period of shutdown of the whole system, causing a great inconvenience. We find that there is a potential for the pipeline to affect Ms. Gleason's geothermal system, either temporarily or permanently. Therefore, we have included Environmental Condition 14 in the appendix to this order, requiring Northern to identify mitigation measures to minimize and resolve any project-related impacts on the Gleason's geothermal system.

4. Environmental Analysis Conclusion

49. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed and operated in accordance with Northern's application and supplements, 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 projects, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

⁵³ See Northern December 28, 2017 Response to Stakeholder Comments at 11-13, Docket No. PF18-1-000.

50. 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 replacement or operation of facilities approved by this Commission.⁵⁴

51. 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 authorizing Northern to construct and operate the proposed Rochester Project and 2019 Expansion 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 authorized in Ordering Paragraph (A) is conditioned on:

(1) Northern's completion of construction of the authorized 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) Northern's compliance with all applicable Commission regulations, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and

(3) Northern's compliance with the environmental conditions listed in the appendix to this order.

⁵⁴ See 15 U.S.C. § 717r(d) (2012) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted); *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).

(C) Northern shall file a written statement affirming that it has executed firm contracts for the capacity levels and terms of service represented in signed precedent agreements, prior to commencing construction.

(D) Northern's existing rates for firm transportation under Rate Schedules TFX and TF are approved as initial recourse rates for the Rochester Project and 2019 Expansion Project.

(E) Northern's request to utilize its Market Area fuel rate for the 2019 Expansion Project and the Rochester Project is approved, as described in the body of this order.

(F) Northern's request for a predetermination of rolled-in rate treatment for the costs of the Rochester Project in its next NGA general section 4 rate proceeding is granted.

(G) Northern's request for a predetermination of rolled-in rate treatment for the costs of the 2019 Expansion Project in its next NGA general section 4 rate proceeding is denied without prejudice to Northern demonstrating that rolling in such costs into its system rates is appropriate.

(H) Northern shall keep separate books and accounting of costs attributable to the Rochester Project and 2019 Expansion Project, as more fully described above.

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

(J) Northern is granted permission and approval under section 7(b) of the NGA to abandon the facilities described in this order, subject to Northern's compliance with the environmental conditions listed in the appendix to this order.

(K) Northern must notify the Commission within 10 days of the abandonment of the facilities discussed in Ordering Paragraph (J).

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

Environmental Conditions

1. Northern Natural Gas Company (Northern) 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 Environmental Assessment (EA), unless modified by the Order. Northern 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 projects. 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**, Northern shall file an affirmative statement with the Secretary for both projects, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EIs' 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 for each project shall be as shown in the EA, as supplemented by filed alignment sheets, and shall include the right-of-way modifications identified in condition 12. **As soon as they are available, and before the start of construction**, Northern 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 the facility 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.

Northern'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. Northern'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. Northern 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, staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Certificate and before construction begins**, Northern shall file an Implementation Plan for the projects with the

Secretary for review and written approval by the Director of OEP. Northern must file revisions to the plan as schedules change. The plan shall identify:

- a. how Northern 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 Northern 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 Northern will give to all personnel involved with construction and restoration (initial and refresher training as the projects progress and personnel change);
 - f. the company personnel (if known) and specific portion of Northern's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Northern 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. Northern shall employ at least one EI per construction spread. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and

- e. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Northern shall file updated status reports for the projects with the Secretary on a **biweekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Northern's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the projects, work planned for the following reporting period, and any schedule changes for dry-wash crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by EIs 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 that 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 Northern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Northern's response.
 9. Northern must receive written authorization from the Director of OEP **before commencing construction of any project facilities**. To obtain such authorization, Northern must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
 10. Northern must receive written authorization from the Director of OEP **before placing the projects 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 projects are proceeding satisfactorily.
 11. **Within 30 days of placing the authorized facilities in service**, Northern shall file an affirmative statement with the Secretary, certified by a senior company official that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or identifying which of the conditions in the Order Northern has

complied with or will comply with. This statement shall also identify any areas affected by the projects where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

12. Northern shall reduce the offset of its Alexandria Branch Line Loop Extension, New Prague Branch Line Loop, and Willmar C-Line Extension in all locations where the pipelines are immediately adjacent to Northern's existing operational right-of-way and restrict the new permanent right-of-way width along these locations to a maximum of 25 feet immediately adjacent to its existing operation right-of-way.
13. **Prior to construction**, Northern shall document landowner concurrence for the proposed 9-acre contractor yard at milepost 3.09 of the Willmar C-line Extension on the Seigle property; or adopt an alternative site for the yard. If an alternate site is chosen, Northern must file with the Secretary, for review and written approval by the Director of OEP, the requested use of the alternative contractor yard under the provision in condition 5.
14. **Prior to construction**, Northern shall file with the Secretary, for review and written approval by the Director of OEP, mitigation measures that will be undertaken to minimize project-related impacts on Ms. Gleason's geothermal system, and measures to ensure the system is returned to its former capacity in the event of damage resulting from construction, including repair, replacement, and temporary measures to mitigate impacts on the Gleasons during periods of shutdown. **Within 30 days after backfilling the pipeline trench**, Northern shall file a report with the Secretary identifying any damages caused by construction to the geothermal system, any complaints received, and how the damages and complaints were resolved.
15. **Northern shall not begin construction of the Rochester Project or the Northern Lights 2019 Project facilities**, including use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. Northern files with the Secretary:
 - i. remaining cultural resources survey report(s) and addendum(s);
 - ii. site evaluation report(s) and avoidance/treatment plan(s), as required; and
 - iii. the Minnesota State Historic Preservation Office's comments on the cultural resources reports, addendums, and 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 Northern in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All materials 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.**” Additionally, a letter must be filed public that states that these items have been filed as privileged.

16. **Prior to any nighttime (7 p.m. to 7 a.m.) use of horizontal directional drills on either the Rochester Project or the Northern Lights 2019 Project**, Northern shall file with the Secretary, for the review and written approval by the Director of OEP, a horizontal directional drill noise mitigation plan to reduce the projected noise level attributable to the proposed drilling operations at noise sensitive areas (NSA) with predicted unmitigated noise levels above 55 decibels on the A-weighted frequency scale (dBA) day-night sound level (L_{dn}). During drilling operations, Northern shall implement the approved plan, monitor noise levels, include the noise levels in the biweekly construction status reports, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than 55 dBA L_{dn} at the NSAs.
17. Northern shall file a noise survey with the Secretary **no later than 60 days** after placing the Rochester Town Border Station and Maximum Allowable Operating Pressure Regulator each into service. If the noise attributable to the operation of the facilities at maximum flow exceeds an L_{dn} of 55 dBA at any nearby NSA, Northern shall install additional noise controls to meet that level **within 1 year** of the in-service date. Northern 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.
18. Northern shall file a noise survey with the Secretary **no later than 60 days** after placing the new Carver Compressor Station, and the modified Faribault and Owatonna Compressor Stations in service. If full load condition noise surveys are not possible, Northern shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of any of the compressor stations exceeds an L_{dn} of 55 dBA at any nearby NSAs, Northern shall file a report on what changes are needed and install additional noise controls to meet that level **within 1 year** of the compressor station's in-service date. Northern 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

Northern Natural Gas Company

Docket No. CP18-534-000

(Issued February 21, 2019)

LaFLEUR, Commissioner, *concurring*:

1. Today's order grants Northern Natural Gas Company's (Northern) request for authorization to construct and operate two projects, the Northern Lights 2019 Expansion Project (2019 Expansion Project) and the Rochester Project.¹ After carefully balancing the need for these Projects and the environmental impacts, I find the Projects are in the public interest. For the reasons discussed below, I concur.

2. Together, the Projects will enable Northern to provide an additional 138,504 Dth/day of firm transportation service in Minnesota. With respect to the 2019 Expansion Project, CenterPoint Energy Minnesota Gas (CenterPoint) and Xcel Energy on behalf of Northern States Power-Minnesota (Xcel Energy), two local distribution companies (LDCs), contracted for 101,411 Dth/day.² Of that amount, Xcel Energy will deliver 38,000 Dth/day of gas to the Mankato Energy Center.³ The remaining volumes on the 2019 Expansion Project will serve incremental residential, commercial, and industrial end-users within Minnesota, including the Twin Cities.⁴ The Rochester Project will provide 37,093 Dth/day to the Minnesota Energy Resources Corporation (MERC).

¹ *Northern Natural Gas Company*, 166 FERC ¶ 61,136 (2019) (Certificate Order). While these Projects have independent utility, Northern combined them into one application to avoid environmental segmentation. The Projects overlap in construction time, geography, and hydraulic demands on Northern's existing system. Application at 3-4.

² Certificate Order at PP 7-8.

³ Application at 8 n. 9. The Mankato Energy Center is a natural gas fired power plant in Blue Earth County, Minnesota.

⁴ *Id.*

3. The Environmental Assessment (EA) quantified the direct greenhouse gas (GHG) emissions from the construction and operation of both Projects.⁵ The EA also quantified the indirect impacts of the downstream emissions from the Mankato Energy Center and the Certificate Order provides the context for the associated downstream GHG emissions by comparing them to the Minnesota GHG inventory and the nationwide GHG inventory.⁶ While I appreciate that the Commission, as required by the D.C. Circuit in *Sierra Club v. FERC*,⁷ quantified and considered the downstream emissions from the Mankato Energy Center, I believe the Commission should not ignore the downstream GHG emissions associated with burning the rest of the natural gas from both the 2019 Expansion Project and the Rochester Project.⁸

4. To address my concerns about the Commission's failure to consider the rest of the downstream emissions impacts in this proceeding,⁹ 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 2019 Expansion Project and the Rochester Project, and assuming as an upper-bound estimate that all of the gas to be transported is eventually combusted, 138,504 Dth/d of natural gas service would result in approximately 2.68 million metric tons per year of downstream CO₂ emissions. This figure represents a 3.02 percent

⁵ EA at 121-129 & Tables B.8.3-1, B.8.3-2, B.8.4-1, B.8.4-2, and B.8.4-3.

⁶ EA at 163. Certificate Order at P 36.

⁷ 867 F.3d 1357 (D.C. Cir. 2017); *see also Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233 (2018) (LaFleur, Comm'r, *dissenting in part*).

⁸ I believe it is reasonably foreseeable, in the vast majority of cases, that the gas being transported by pipelines FERC authorizes will be burned for electric generation or residential, commercial, or industrial end uses and that downstream GHG emissions will result from burning that gas. *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 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.

⁹ 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*).

increase in CO₂ emissions in Minnesota,¹⁰ and a 0.05 percent increase at the national level.¹¹ I note that Minnesota has announced its intention to replace coal generation with natural gas generation, so the net GHG emissions might be considerably different than the full-burn calculation if we were to offset the emissions from retiring coal-burning units. However, there is a lack of information presented in the record about specific end uses.

5. I acknowledge that the disclosure of state 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 Carbon¹² could enable the Commission to assess the significance of GHG emissions.¹³ 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.¹⁴ While making a significance

¹⁰ U.S. Energy Information Administration, 2018.
<https://www.eia.gov/environment/emissions/state/>

¹¹ U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2016*, (April 2018).

¹² https://www.epa.gov/sites/production/files/2016-12/documents/social_cost_of_carbon_fact_sheet.pdf

¹³ 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*).

¹⁴ 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

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

6. Using the approach I originally articulated in *Broad Run*,¹⁵ I find the 2019 Expansion Project and the Rochester Project are in the public interest. For these reasons, I respectfully concur.

Cheryl A. LaFleur
Commissioner

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.

¹⁵ *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

Northern Natural Gas Company

Docket No. CP18-534-000

(Issued February 21, 2019)

GLICK, Commissioner, *dissenting in part*:

1. Today's order authorizes Northern Natural Gas Company's (Northern) proposed Rochester Project and Northern Lights 2019 Expansion Project (Projects),¹ which will allow Northern to provide "additional natural gas for customers associated with increased energy needs in Minnesota," including delivery to a new electric generation facility.² I am dissenting in part from today's order because the Commission once again fails to adequately consider the Projects' impact on climate change in finding that the application before us is consistent with the public interest. Although the Commission quantifies the increase in greenhouse gas (GHG) emissions from the Projects' construction, operation, and certain downstream uses³, the Commission refuses to consider whether the contribution to climate change from these GHG emissions would be significant because, the Commission claims, it simply cannot do so.⁴ Today's order falls well short of our

¹ *Northern Natural Gas Company*, 166 FERC ¶ 61,136 (2019).

² Environmental Assessment (EA) at 2.

³ The EA acknowledges certain indirect downstream GHG emissions, assuming that "natural gas delivered by the Northern Lights 2019 Expansion Project would be used in quantities sufficient to power at year-round capacity the new 345 MW combustion turbine/heat recovery steam generator train," the Mankato Energy Center, resulting in GHG emissions of as much as 1,585,055 tons per year. EA at 163.

⁴ *Id.* at 163 (stating that "[t]here is no generally accepted significance criteria for GHG emissions. In addition, [the Commission] cannot determine the projects' incremental physical impacts on the environment caused by GHG emissions. Therefore we cannot determine whether the projects' contribution to climate change would be significant.").

obligations under section 7 of the Natural Gas Act (NGA)⁵ and the National Environmental Policy Act (NEPA), leaving me no choice but to dissent in part.⁶

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 proceedings⁷ 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 Projects' indirect emissions or to make any effort to consider whether the reasonably foreseeable greenhouse gas emissions are significant, as the law requires.⁸ The failure to conduct that analysis prevents the Commission from seriously addressing the Projects' potential contribution to climate change, which is a necessary step in evaluating whether

⁵ 15 U.S.C. 717f (2012).

⁶ 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 "hard look" at the environmental impacts of its decisions. *See, e.g., 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.

⁷ *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).

⁸ *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.).

the Projects are consistent with the public interest.⁹ That is a far cry from what good government and the law demand.

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.¹⁰ Although the record includes information regarding the Projects' need, which is an important consideration, need alone is not sufficient to find that the Projects are consistent with the public interest. Instead, the Commission must also determine that the Projects' benefits outweigh their adverse impacts, including their 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

⁹ 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 Sabal Trail*, 867 F.3d at 1372-73.

¹⁰ *See id.* 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))).