

168 FERC ¶ 61,036  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulf South Pipeline Company, LP

Docket No. CP18-525-000

ORDER ISSUING CERTIFICATE

(Issued July 18, 2019)

1. On July 13, 2018, Gulf South Pipeline Company, LP (Gulf South) filed an application under sections 7(c) and 7(e) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> for a certificate of public convenience and necessity to construct and operate the Willis Lateral Project in Polk, Montgomery, and San Jacinto Counties, Texas. The project is designed to provide up to 200,000 dekatherms per day (Dth/d) of firm transportation service to Entergy Texas, Inc.'s (Entergy) approximately one gigawatt natural gas-fired combined cycle power plant (Montgomery Power Station) to be located near Willis in Montgomery County, Texas.

2. For the reasons discussed below, the Commission will authorize Gulf South's proposal, subject to certain conditions.

**I. Background and Proposal**

3. Gulf South is a natural gas company, as defined by section 2(6) of the NGA,<sup>3</sup> engaged in the transportation of natural gas in interstate commerce. It is a limited partnership organized and existing under Delaware law. Gulf South's system extends

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<sup>1</sup> 15 U.S.C. § 717f(c) (2012).

<sup>2</sup> 18 C.F.R. pt. 157 (2018).

<sup>3</sup> 15 U.S.C. § 717a(6).

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from south and east Texas through Louisiana, Mississippi, southern Alabama, and western Florida.

4. Gulf South proposes to construct and operate the proposed project to provide 200,000 Dth/d of firm transportation service from primary receipt points at its existing Perryville Transportation Point and a new receipt point at its existing Goodrich Compressor Station in Polk County<sup>4</sup> to a primary delivery point at Entergy's proposed Montgomery Power Station. To provide the incremental service, Gulf South proposes to construct and operate the following facilities, all which are in Texas:

- approximately 19 miles of 24-inch-diameter pipeline extending from Gulf South's existing Index 129 system in San Jacinto County to Entergy's proposed power plant in Montgomery County;
- one 15,876 horsepower (hp) gas-fired turbine compressor unit and a new receipt meter station interconnect at Gulf South's existing Goodrich Compressor Station in Polk County;
- a new metering and regulating station at the proposed pipeline's terminus; and
- various related appurtenances, underground facilities, and aboveground facilities, such as valves, launchers, tie-ins, and receivers.

Gulf South estimates that the project will cost approximately \$96 million.

5. On January 31, 2018, Gulf South executed a precedent agreement with Entergy for 200,000 Dth/day of firm transportation service using the capacity to be created by the Willis Lateral Project. Subsequently, Gulf South held an open season from June 19, 2018, through June 25, 2018, but received no other bids for firm service.

6. Gulf South states that if the Commission approves the project, it will execute two service agreements for firm transportation service under Gulf South's Rate Schedule FTS: (1) a short-term interim agreement for 130,000 Dth/d for the initial four months of the interim term, increasing up to 165,000 Dth/d for the remainder of the interim term, and (2) a long-term expansion agreement for 200,000 Dt/d. The interim term will begin on the later of (1) July 1, 2020, or (2) the first day of the month after the date the facilities can reliably provide service pursuant to the terms of the interim agreement at a delivery

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<sup>4</sup> Gulf South states that Entergy will also have access to various eligible existing supplemental receipt points on Gulf South's system.

pressure of at least 700 pounds per square inch gauge (psig) under normal operating conditions, and terminate when the long-term expansion agreement begins. The long-term expansion agreement will have an initial 20-year term beginning on the later of (1) Entergy's Montgomery Power Station in-service date, (2) June 1, 2021, or (3) the first day of the month after Gulf South's proposed facilities can reliably deliver 200,000 Dth/d at a delivery pressure of at least 700 psig under normal operating conditions.

7. Gulf South requests authority to charge its existing system-wide rates as the initial recourse rates for firm service using the project capacity<sup>5</sup> and a predetermination authorizing rolled-in rate treatment for the project costs.

## **II. Notice, Interventions, and Comments**

8. Notice of Gulf South's application was published in the *Federal Register* on August 1, 2018.<sup>6</sup> NJR Energy Services Company, Atmos Energy Corporation, Entergy Services, Inc., and United Municipal Distributors Group filed timely, unopposed motions to intervene.<sup>7</sup>

9. Entergy Services, Inc. filed comments supporting the project. Texas Parks and Wildlife Department filed comments raising issues concerning environmental impacts including impacts regarding soil erosion, water quality and sedimentation, invasive species, wetlands, aquatic resources, and wildlife, including state and federally listed rare, protected, endangered, and threatened species.

## **III. Discussion**

10. Gulf South's proposal to construct and operate facilities to transport natural gas in interstate commerce subject to the jurisdiction of the Commission is subject to the requirements of subsections (c) and (e) of NGA section 7.

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<sup>5</sup> Entergy, however, has agreed to a negotiated rate for its firm service.

<sup>6</sup> 83 Fed. Reg. 37,491.

<sup>7</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedures. *See* 18 C.F.R. § 385.214 (2018).

### A. Certificate Policy Statement

11. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>8</sup> 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.

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the 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.

13. As noted above, 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. As discussed below, we will approve Gulf South's proposal to use its existing system rates as the initial recourse rates for services utilizing the incremental capacity created by the proposed facilities. However, we are denying a predetermination of rolled-in rate treatment for the costs of the project because the expected revenues from the Willis Lateral Project are not projected to exceed its costs in Project Years 3 and 4. Under these circumstances, we find that there is adequate assurance that none of Gulf South's existing customers will subsidize the project, and the Certificate Policy Statement's threshold requirement of no subsidization is satisfied.

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<sup>8</sup> *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).

14. We find that the proposed project will have no adverse effect on service to Gulf South's existing customers because the proposed expansion facilities are designed to provide incremental service to meet the needs of the project shipper, without degradation of service to Gulf South's existing customers. We also find that there will be no adverse impact on other pipelines in the region or their captive customers, and no other pipelines or their captive customers filed adverse comments regarding Gulf South's proposal. Thus, we find that Gulf South's proposed project will not adversely affect its existing customers or other pipelines and their captive customers.

15. We also find that Gulf South has routed and designed the proposed project to have minimal adverse impact on landowners and communities. While the construction activities will temporarily affect 465 acres of land, Gulf South will permanently maintain only approximately 141 acres of land for operation of the project facilities. Proposed new pipeline construction is limited to the approximately 19-mile-long lateral, of which approximately 91 percent will be co-located with existing road and/or utility rights-of-way. Moreover, the new compressor unit and receipt point are located at Gulf South's existing Goodrich Compressor Station.

16. The proposed project will enable Gulf South to provide 200,000 Dth/d of firm transportation service for Entergy, which will use the expansion capacity to meet the gas requirements of the electric generation plant Entergy is constructing in Montgomery County, Texas. In view of the benefits that will result from the project, with no adverse impacts on Gulf South's existing customers and other pipelines and their captive customers and minimal impacts on landowners and surrounding communities, the Commission finds that Gulf South's proposal satisfies the Certificate Policy Statement. Based on this finding and the environmental review for Gulf South's proposed project, as discussed below, the Commission further finds that the public convenience and necessity requires approval and certification of Gulf South's proposal under section 7 of the NGA, subject to the environmental and other conditions in this order.

## **B. Rates**

### **1. Initial Recourse Rates**

17. Gulf South estimates a \$16,796,577 first-year overall cost of service based on a 2.18 percent depreciation rate and a 10.41 percent overall rate of return.<sup>9</sup> Gulf South states it used its last stated capitalization (including capital structure and returns on equity and debt) from Docket No. RP97-373. Gulf South proposes to charge its \$0.3380 per Dth system daily recourse reservation charge as the initial recourse reservation charge

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<sup>9</sup> Application, Exhibit N.

(continued...)

because the proposed project's incremental cost-based transportation rate is less than Gulf South's currently-effective maximum transportation rate for Rate Schedule FTS.

18. Gulf South derived a \$0.2220 per Dth illustrative incremental daily recourse reservation charge using a \$16,206,663 first-year fixed cost of service<sup>10</sup> and 73,000,000 Dth annual design billing determinants.<sup>11</sup> This \$0.2220 per Dth illustrative recourse reservation charge is less than Gulf South's \$0.3380 per Dth currently-effective maximum recourse reservation charge under Rate Schedule FTS.<sup>12</sup> As the illustrative recourse reservation charge is less than the currently-effective system recourse reservation charge, we approve Gulf South's proposal to charge the system maximum recourse reservation charge for Rate Schedule FTS as the initial recourse reservation charge.

19. The Commission also finds it reasonable for Gulf South to charge its \$0.0125 per Dth applicable system recourse usage charge under Rate Schedule FTS<sup>13</sup> and its \$0.3505 per Dth interruptible rate.<sup>14</sup>

## 2. Fuel

20. Gulf South proposes to recover compressor fuel and any lost and unaccounted for volumes through its currently-effective system fuel retention rate. In a January 15, 2019

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<sup>10</sup> The \$16,206,663 fixed cost of service is derived on Exhibit N, Page 2 of the application.

<sup>11</sup> Although Gulf South used 200,000 Dth/d as billing determinants in its rate design, Gulf South states that the proposed facilities' maximum design flow will create 250,000 Dth/d of short-haul capacity on Gulf South's mainline Index 129 between the Goodrich Compressor Station and the North Houston Compressor Station. While the Commission's policy is to design incremental rates based on the design capacity of the project, including short-haul capacity in the rate determination would decrease the illustrative incremental rate and thus not impact our decision to approve Gulf South's proposal to use its existing system reservation charge for the project.

<sup>12</sup> Gulf South Pipeline Company, LP, FERC NGA Gas Tariff, Tariffs, Section 4.1, Currently Effective Rates - Transportation - FTS Service, 154.0.0.

<sup>13</sup> *Id.*

<sup>14</sup> Application at 8. Gulf South requests authority to charge its existing system-wide rates as the recourse rates for the proposed facilities.

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response to a staff data request, Gulf South states that its projected fuel retention percentage will decrease from 1.43 percent to 1.41 percent after the proposed project is placed in service. Because the estimated fuel rates for the proposed project are less than Gulf South's system-wide fuel rates, we accept Gulf South's proposal to use its system fuel rate for the Willis Lateral Project.

### 3. Rolled-in Rate Pre-Determination

21. Gulf South requests a pre-determination favoring rolled-in rate treatment for the proposed project's cost in a future NGA section 4 general rate case. Rolled-in rate treatment is appropriate when projected revenues exceed the project's estimated incremental cost of service.<sup>15</sup> To receive a pre-determination favoring rolled-in rate treatment, a pipeline must demonstrate that rolling in the costs of constructing and operating new facilities will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must show that the revenues to be generated by an expansion project will exceed the project's costs. To determine, in a certificate proceeding, whether it is appropriate to roll a project's costs into the pipeline's system rates in a future NGA section 4 proceeding, we compare the project's costs to the revenues generated using actual contract volumes and, either the maximum recourse rate or, if the negotiated rate is lower than the recourse rate, the actual negotiated rate.<sup>16</sup>

22. In support of its request for rolled-in rate treatment, Gulf South states that the revenues reflected in Exhibit N are based on contract negotiated rates that are lower than the maximum recourse rate for service under Rate Schedule FTS,<sup>17</sup> and notes that Exhibit N indicates that the revenues projected over a fifteen-year period exceed the proposed project's calculated cost of service.<sup>18</sup> As discussed below, we will deny Gulf South's request for a pre-determination of rolled-in rate treatment.

23. Gulf South's Exhibit N does, in fact, reflect that for the 15-year projection period as a whole, revenues will exceed total costs. However, we find that this is not an appropriate time period to compare project revenues and costs. In this regard, we note Gulf South is only barred by the provisions of its 2015 settlement from making a section

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<sup>15</sup> See *Dominion Transmission, Inc.*, 144 FERC ¶ 61,182, at P 19 (2013), and *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227.

<sup>16</sup> *Tennessee Gas Pipeline Co., L.L.C.* 144 FERC ¶ 61,219, at P 22 (2013).

<sup>17</sup> See Application at 10, n.8.

<sup>18</sup> *Id.*

(continued...)

4 general rate filing with a proposed effective date earlier than May 1, 2023.<sup>19</sup> Therefore, Gulf South may elect to file a section 4 rate case to be effective on or after May 1, 2023. In such case, the base and test period required under section 154.303 of the Commission's regulations could include data that would encompass the time frame for Project Years 3 and 4, as shown in Exhibit N.<sup>20</sup> During both of these years, as reflected in Gulf South's Exhibit N, costs would exceed project revenues. Thus, use of the cost and revenues for these time periods could result in existing shippers subsidizing the cost of the project. Under these circumstances, we will deny Gulf South's request for a pre-determination favoring the rolling of the Willis Lateral Project costs into Gulf South's system-wide rates in its next NGA general section 4 rate proceeding. This does not preclude Gulf South from proposing, in such rate case, that the proposed project's costs can be rolled into system-wide rates without resulting in subsidization by existing customers. Gulf South, however, will bear the burden of proof to show that rolled-in rate treatment is just and reasonable.

#### **4. Reporting Incremental Costs**

24. We require Gulf South to keep separate books and accounting of costs and revenues attributable to the proposed incremental services and capacity created by the Willis Lateral Project in the same manner as required by section 154.309 of the Commission's regulations.<sup>21</sup> The books should be maintained with applicable cross-reference and 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.<sup>22</sup>

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<sup>19</sup> *Gulf South Pipeline Co., LP*, 153 FERC ¶ 61,326, at P 8 (2015).

<sup>20</sup> Exhibit N shows that for Project Year 3, when the long-term expansion agreement will take effect, the costs will exceed revenues by \$435,467, and for Project Year 4 costs will exceed revenues by \$60,756. Exhibit N also shows that costs will exceed revenues in Project Years 1 and 2, when the short-term interim agreement will be in effect.

<sup>21</sup> 18 C.F.R. § 154.309 (2018).

<sup>22</sup> *See Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008).



## 5. Negotiated Rates

25. Gulf South proposes to provide service to Entergy Texas under interim and long-term negotiated rate transportation agreements. Gulf South must file either the negotiated rate agreements or tariff records setting forth the essential elements of the agreements in accordance with the Alternative Rate Policy Statement<sup>23</sup> and the Commission's negotiated rate policies.<sup>24</sup> Gulf South 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.<sup>25</sup>

### C. Environmental Analysis

26. On August 31, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Willis Lateral Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal Register* and mailed to the environmental mailing list for the project, which includes affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We received comments in response to the NOI from the Texas Parks and Wildlife Department.

27. The primary issues raised during the scoping process included concerns for appropriate best management practices for construction and restoration; special status species; surface water; and impacts on vegetation and wildlife.

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<sup>23</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines* (Alternative Rate Policy Statement), 74 FERC ¶ 61,076, *clarification granted*, 74 FERC ¶ 61,194, *reh'g and clarification denied*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066 (1996), *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).

<sup>24</sup> *Natural Gas Pipeline Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *reh'g dismissed and clarification denied*, 114 FERC ¶ 61,304 (2006).

<sup>25</sup> 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).

28. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an environmental assessment (EA) for Gulf South'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 NOI were addressed in the EA.

29. The EA was issued for a 30-day comment period and placed into the public record on March 4, 2019. The Commission received a letter from the U.S. Environmental Protection Agency Region 6 stating that it had no comments on the EA. We received no other comments on the EA.

30. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Gulf South'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.

31. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

32. 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.<sup>26</sup>

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<sup>26</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the NGA to the extent it conflicts with federal

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33. At a hearing held on July 18, 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 Gulf South authorizing it to construct and operate the Willis Lateral 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 issued in ordering paragraph (A) is conditioned on Gulf South'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 regulations under the NGA, including 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) making a filing affirming that the parties have executed the agreements.

(C) Gulf South's proposal to charge its existing system recourse rates for firm transportation under Rate Schedule FTS as initial rates and its system fuel rate is approved.

(D) Gulf South's request for a pre-determination supporting rolled-in rate treatment for the costs of the Willis Lateral Project in its next NGA general section 4 rate proceeding is denied.

(E) Gulf South shall keep separate books and accounts of costs attributable to the proposed Willis Lateral Project services, as described above.

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regulation, or would delay the construction and operation of facilities approved by the Commission); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(F) As described in the body of this order, Gulf South must file any negotiated rate agreement or tariff record setting forth the essential terms of the agreement associated with the project at least 30 days, but not more than 60 days before the proposed effective date of such rates.

(G) Gulf South shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Gulf South. Gulf South 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**  
**Environmental Conditions**

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

1. Gulf South Pipeline Company, LP (Gulf South) 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. Gulf South 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**, Gulf South shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Gulf South shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for

all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Gulf South's exercise of eminent domain authority granted under Natural Gas Act Section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Gulf South's right of eminent domain granted under Natural Gas Act 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. Gulf South shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

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

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

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

and written approval by the Director of OEP. Gulf South must file revisions to the plan as schedules change. The plan shall identify:

- a. how Gulf South 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 Gulf South 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 Gulf South 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 Gulf South's organization having responsibility for compliance;
- g. the procedures (including use of contract penalties) Gulf South will follow if noncompliance occurs; and
- h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
  - (1) the completion of all required surveys and reports;
  - (2) the environmental compliance training of onsite personnel;
  - (3) the start of construction; and
  - (4) the start and completion of restoration.

7. Gulf South shall employ at least one EI. 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, Gulf South shall file updated status reports with the Secretary on a **biweekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
  - a. an update on Gulf South's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EI 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 Gulf South from other federal, state, or local permitting agencies concerning instances of noncompliance, and Gulf South's response.
9. Gulf South must receive written authorization from the Director of OEP **before commencing construction of any project facilities**. To obtain such authorization, Gulf South must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Gulf South must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.



11. **Within 30 days of placing the authorized facilities in service**, Gulf South 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 Gulf South 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. Gulf South **shall not begin construction** of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
  - a. Gulf South files with the Secretary:
    - (1) a final addendum report, and any Texas State Historic Preservation Office (SHPO) comments on the final addendum report;
    - (2) a second addendum report for the outstanding survey areas, and the SHPO's comments on the addendum report.
  - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
  - c. FERC staff reviews and the Director of OEP approves the survey report, and notifies Gulf South 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.**"
  
13. **Prior to construction of the Caney Creek horizontal directional drill (HDD) entry site, County Line Road HDD entry and exit sites, and Rogers Road HDD entry site**, Gulf South shall file with the Secretary, for the review and written approval by the Director of OEP, an updated HDD noise mitigation plan to reduce the projected noise level attributable to the drilling operations at noise-sensitive areas (NSA) with predicted noise levels above a day-night sound level ( $L_{dn}$ ) of 55 decibels on the A-weighted scale (dBA). During drilling operations, Gulf South shall implement the approved plan, monitor noise levels, include the

initial noise levels in its biweekly status reports, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than  $L_{dn}$  of 55 dBA at the NSAs.

14. Gulf South shall conduct a noise survey for the modified Goodrich Compressor Station to verify that the noise from all the equipment operated at full capacity does not exceed the previously existing noise levels that are at or above an  $L_{dn}$  of 55 dBA at the nearby NSAs, **and** to verify that noise attributable to the project's facilities does not exceed an  $L_{dn}$  of 55 dBA at the nearby NSAs. The results of this noise survey shall be filed with the Secretary **no later than 60 days** after placing the modified units in service. If a full power load condition noise survey is not possible, Gulf South shall file an interim survey at the maximum possible power load **within 60 days** of placing the modified station into service and file the full power load survey **within 6 months**. If any of these noise levels are exceeded, Gulf South shall:
  - a. file a report with the Secretary, for review and written approval by the Director of OEP, on what changes are needed;
  - b. **within 1 year** of the in-service date, implement additional noise control measures to reduce the operating noise level of the modified station at the NSAs to or below the previously existing noise level, and reduce the operating noise level attributable to the project's facilities at the NSAs to less than an  $L_{dn}$  of 55 dBA; and
  - c. confirm compliance with this 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

Gulf South Pipeline Company, LP

Docket No. CP18-525-000

(Issued July 18, 2019)

LaFLEUR, Commissioner, *concurring*:

1. Today's order grants Gulf South Pipeline Company, LP's (Gulf South) request for authorization to construct and operate the Willis Lateral Project in Polk, Montgomery, and San Jacinto Counties, Texas.<sup>1</sup> 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. The Willis Lateral Project will provide up to 200,000 dekatherms per day (Dth/day) of firm transportation service to Entergy's Montgomery Power Station, a gas-fired combined cycle power plant. The Environmental Assessment (EA) quantified the direct greenhouse gas (GHG) emissions from the project's construction and operation, as well as the downstream indirect GHG emissions.<sup>2</sup> The EA also provided important context by comparing the downstream emission estimates to both the national and Texas GHG emissions inventory.<sup>3</sup>

3. In prior concurrences, I noted my concerns about the Commission's failure to assess the significance of the GHG emissions.<sup>4</sup> I continue to have the same concerns in this case and believe that the Commission could develop a framework for assessing significance, if it chose to do so. I expect that the courts will continue to require the Commission to expand its climate analysis.<sup>5</sup>

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<sup>1</sup> *Gulf South Pipeline Company, LP*, 168 FERC ¶ 61,036 (2019).

<sup>2</sup> EA at 43- 45 and Tables 10 and 11.

<sup>3</sup> EA at 45.

<sup>4</sup> *See, e.g., Driftwood LNG LLC*, 167 FERC ¶ 61,054 (2019) (LaFleur, Comm'r, concurring).

<sup>5</sup> *E.g., Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017). *See also Birkhead v. FERC*, 925 F.3d 510 (D.C. Cir. 2019).

(continued...)

4. Additionally, as discussed in my concurrence in *Freeport LNG Development, L.P.*, the Commission's general refusal to grapple with the significance of GHG emissions creates an additional risk here because the Commission prepared an EA instead of an Environmental Impact Statement (EIS), recommending a finding of no significant impact.<sup>6</sup> This tension between the finding of no significant impact, and the Commission's failure to assess significance of climate change impacts, heightens the risk that a court could vacate and remand this project, simply on the basis of which environmental document was prepared.<sup>7</sup> The Commission could and should alleviate these risks by developing a framework for assessing significance.

5. While I will continue to consider and evaluate these issues as they arise in individual proceedings, I believe the Commission should proactively address these issues. If we do not, further guidance from the courts on our NEPA responsibility to consider climate change will likely require us to do so.

For these reasons, I respectfully concur.

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Cheryl A. LaFleur  
Commissioner

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<sup>6</sup> 167 FERC ¶ 61,155 (2019) (LaFleur, Comm'r, concurring).

<sup>7</sup> See *American Rivers v. FERC*, 895 F.3d 32, 49 (D.C. Cir. 2018).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Gulf South Pipeline Company, LP

Docket No. CP18-525-000

(Issued July 18, 2019)

GLICK, Commissioner, *dissenting in part*:

1. I dissent from today's order because it violates both the Natural Gas Act<sup>1</sup> (NGA) and the National Environmental Policy Act<sup>2</sup> (NEPA). The Commission again refuses to consider the consequences its actions have for climate change. Neither the NGA nor NEPA permit the Commission to assume away the climate change implications of constructing and operating this pipeline project. Yet that is precisely what the Commission is doing here.

2. In today's order authorizing Gulf South Pipeline Company's (Gulf South) proposed Willis Lateral Project (Project)<sup>3</sup>, the Commission continues to treat greenhouse gas (GHG) emissions differently than all other environmental impacts. By refusing to assess the significance of the impact of the Project's GHG emissions, even after quantifying them, the Commission neglects its obligation to assess the environmental impacts. This systematic failure to consider the Project's impact on climate change allows the Commission to misleadingly state that approving the Project "would not constitute a major federal action significantly affecting the quality of the human environment"<sup>4</sup> and, as a result, conclude that the Project satisfies the NGA's public interest standard.<sup>5</sup>

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<sup>1</sup> 15 U.S.C. § 717f (2012).

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

<sup>3</sup> *Gulf South Pipeline Co., LP*, 168 FERC ¶ 61,036, at P 2 (2019) (Certificate Order).

<sup>4</sup> *Id.* P 30.

<sup>5</sup> *Id.* P 16.

(continued...)

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

3. We know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, released in large quantities through the production, transportation, and the consumption of natural gas and other fossil fuels. The Commission recognizes this relationship in the record before us today, acknowledging that climate change is “driven by accumulation of GHG in the atmosphere” and that emissions from the Project’s construction and operation, in combination with emissions from other sources, would “contribute incrementally to future climate change impacts.”<sup>6</sup> It is therefore critical that the Commission carefully consider the Project’s contribution to climate change, both in order to fulfill NEPA’s requirements and to determine whether the Project is in the public interest under the NGA.<sup>7</sup>

4. Unfortunately, in today’s order, the Commission again misses the mark. As part of its public interest determination, the Commission must examine the proposed Project’s impact on the environment and public safety, which includes the facility’s impact on climate change.<sup>8</sup> Nevertheless, the Commission maintains that it need not consider

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<sup>6</sup> Willis Lateral Project Environmental Assessment (EA) at 73, 75.

<sup>7</sup> Section 7 of the NGA requires that, before issuing a certificate for new pipeline construction, the Commission must find both a need for the pipeline and that, on balance, the pipeline’s benefits outweigh its harms. 15 U.S.C. § 717f (2012). Furthermore, NEPA requires the Commission to take a “hard look” at the environmental impacts of its decisions. *See* 42 U.S.C. § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). This means that the Commission must consider and discuss the significance of the harm from a pipeline’s contribution to climate change by actually evaluating the magnitude of the pipeline’s environmental impact. Doing so enables the Commission to compare the environment before and after the proposed federal action and factor the changes into its decisionmaking process. *See Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*) (“The [FEIS] needed to include a discussion of the ‘significance’ of this indirect effect.”); 40 C.F.R. § 1502.16 (a)–(b) (An agency’s environmental review must “include the environmental impacts of the alternatives including the proposed action,” as well as a discussion of direct and indirect effects *and their significance.*) (emphasis added)); *see also Atl. Ref. Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, 391 (1959) (holding that the NGA requires the Commission to consider “all factors bearing on the public interest”).

<sup>8</sup> *See Sabal Trail*, 867 F.3d at 1373 (explaining that the Commission may “deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment”); *see also Atl. Ref. Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, 391

whether the Project's contribution to climate change is significant – it claims - because it lacks a means to do so.<sup>9</sup> However, the most troubling part of the Commission's rationale is what comes next. Based on this alleged inability to assess significance, the Commission concludes that the Project will have no significant environmental impact.<sup>10</sup> That is the equivalent of concluding that an action known to be dangerous<sup>11</sup> is actually safe because the majority claims not to know exactly how dangerous it is.<sup>12</sup> In addition to being ludicrous, that reasoning fails to give climate change the serious consideration it deserves and that the law demands.

5. The implications of the Commission's approach to evaluating the impacts of GHG emissions extend beyond this proceeding. Taking the Commission's approach to its logical conclusion, the Commission would approve any project regardless of the amount of GHGs emitted without ever determining the significance of their environmental impact. If the Commission continues to assume that a project will not have a significant environmental impact no matter the volume of GHG emissions it causes, those emissions

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(1959) (holding that the NGA requires the Commission to consider “all factors bearing on the public interest”).

<sup>9</sup> EA at 75 (“There is no generally accepted methodology to estimate what extent a project's incremental contribution to greenhouse gas emissions would result in physical effects on the environment for the purposes of evaluating the Project's impacts on climate change, either locally or nationally. . . . Because we cannot determine the Project's incremental physical impacts due to climate change on the environment, we cannot determine whether or not the Project's contribution to cumulative impacts on climate change would be significant.”).

<sup>10</sup> See EA at 78; Certificate Order, 168 FERC ¶ 61,036 at P 30.

<sup>11</sup> The EA acknowledges both that climate change is “driven by accumulation of GHG in the atmosphere primarily through combustion of fossil fuels,” and that the Project's GHG emissions “would increase the atmospheric concentration of GHGs . . . and contribute incrementally to future climate change impacts.” EA at 73, 75.

<sup>12</sup> See, e.g., *Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) (“Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational.”) (internal quotation marks omitted); see also *Motor Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (Agency action is “arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency.”); cf. *Soundboard Ass'n v. FTC*, 888 F.3d 1261, 1274 (D.C. Cir. 2018) (Millett, J., dissenting) (“Why let reality get in the way of a good bureaucratic construct?”).

(continued...)

and their consequences cannot meaningfully factor into the public-interest determination. Approving a project that may significantly contribute to the harms caused by climate change without evaluating the significance of that impact or considering it as part of the public-interest determination is contrary to law, arbitrary and capricious, and not the product of reasoned decisionmaking.<sup>13</sup>

## II. The Commission Fails to Satisfy Its Obligation under NEPA

6. Under NEPA and D.C. Circuit precedent, the Commission must examine the reasonably foreseeable upstream and downstream emissions that will result from an interstate pipeline. *Sabal Trail* held that the reasonably foreseeable combustion of gas transported through a pipeline was an indirect effect.<sup>14</sup> There is no real question here that the natural gas to be transported by the Project will be combusted. The very purpose of the Project is to provide natural gas to Entergy's Montgomery Power Station.<sup>15</sup> The EA acknowledges the downstream indirect effect and calculates the Project's indirect downstream GHG emissions of more than 2.7 million tons annually.<sup>16</sup>

7. While quantification of the Project's indirect GHG emissions is a necessary step toward meeting the Commission's NEPA obligations, listing the volume of emissions alone is insufficient. In order to examine the environmental consequences of the Project's indirect impacts under NEPA, the Commission must consider the harm caused by the Project's indirect GHG emissions and "evaluate the 'incremental impact' that these emissions will have on climate change or the environment more generally."<sup>17</sup>

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<sup>13</sup> See, e.g., *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (agencies cannot overlook a single environmental consequence if it is even "arguably significant").

<sup>14</sup> See *Sabal Trail*, 867 F.3d at 1371-72.

<sup>15</sup> Certificate Order, 168 FERC ¶ 61,036 at P 16 ("The proposed project will enable Gulf South to provide 200,000 Dth/d of firm transportation service for Entergy, which will use the expansion capacity to meet the gas requirements of the electric generation plant Entergy is constructing in Montgomery County Texas."); EA at 1.

<sup>16</sup> EA at 45 (estimating over 2.7 million metric tons of GHG per year based on the assumption that the Project's capacity of up to 200,000 dekatherms per day is combusted at the Project's destination point, the Montgomery Power Station); *supra* n.6.

<sup>17</sup> *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. 2008); see also *WildEarth Guardians v. Zinke*, No. CV 16-1724 (RC), 2019 WL 1273181, at \*1 (D.D.C. Mar. 19, 2019) (explaining that the agency was required to "provide the information necessary for the public and agency decisionmakers to understand the degree to which [its] decisions at issue would contribute" to the



Identifying the consequences that those emissions will have for climate change is essential if NEPA is to play the disclosure and good government roles for which it was designed. By contrast, the Commission's approach in this order, where it states the volume of emissions as shares of national and state emissions and describes climate change generally, tells us nothing about the "incremental impact' that these emissions will have on climate change."<sup>18</sup>

8. In refusing to even assess the significance of the Project's GHG emissions during the environmental review process, the Commission relegates climate change to a negligible role, at best, in its NEPA analysis. The Commission argues that it need not determine whether the Project's contribution to climate change is significant because "[t]here is no standard methodology" to determine whether the indirect GHG emissions "would result in physical effects on the environment for the purposes of evaluating the Project's impact on climate change, either locally or nationally."<sup>19</sup> As a logical matter, the argument that there is no single standard methodology for evaluating the significance of GHG emissions does not excuse the Commission from assessing the Project's environmental impacts under NEPA. The claimed absence of a standard methodology is no justification for effectively ignoring those emissions.

9. Moreover, the lack of a single methodology does not prevent the Commission from adopting *a* methodology. The Commission has several tools to assess the harm from the Project's contribution to climate change, including the Social Cost of Carbon. By measuring the long-term damage done by a ton of carbon dioxide, the Social Cost of Carbon links GHG emissions to actual environmental effects from climate change, thereby facilitating the necessary "hard look" at the Project's environmental impacts that NEPA requires. Especially when it comes to a global problem like climate change, a measure for translating a single project's climate change impacts into concrete and comprehensible terms plays a useful role in the NEPA process by putting the harm in terms that are readily accessible for both agency decisionmakers and the public at large. The Commission, however, continues to ignore the tools at its disposal, relying on deeply flawed reasoning that I have previously critiqued at length.<sup>20</sup>

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"impacts of climate change in the state, the region, and across the country").

<sup>18</sup> See *Ctr. for Biological Diversity*, 538 F.3d at 1216.

<sup>19</sup> EA at 75.

<sup>20</sup> See, e.g., *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 (2019) (Glick, Comm'r, dissenting in part at P 6 & n.11) (noting that the Social Cost of Carbon "gives both the Commission and the public a means to translate a discrete project's

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10. Regardless of tools or methodologies available, the Commission also can use its expertise and discretion to consider all factors and determine, quantitatively or qualitatively, whether the Project’s GHG emissions have a significant impact on climate change. That is precisely what the Commission does in other aspects of its environmental review. Take, for example, the Commission’s evaluation of the Project’s impact on land use. The EA determined that approximately 150 acres of land would be required for operation of the Project, but the Commission deemed this a “minimal adverse impact” on landowners and communities.<sup>21</sup> Notwithstanding the lack of any “generally accepted”<sup>22</sup> criteria as to this particular environmental impact, the Commission still uses its judgment to conduct a qualitative review of the Project’s impact on land use and to assess the significance of that impact. The Commission’s refusal to exercise similar qualitative discretion and judgment on the significance of GHG emissions is certainly arbitrary and capricious.

11. The Commission’s refusal to seriously consider the significance of the impact of the Project’s GHG emissions is even more mystifying because NEPA “does not dictate particular decisional outcomes.”<sup>23</sup> NEPA “merely prohibits uninformed—rather than unwise—agency action.”<sup>24</sup> Taking the matter seriously—and rigorously examining a project’s impacts on climate change—does not necessarily prevent any Commissioner from ultimately concluding that a project meets the public-interest standard

12. Even if the Commission were to determine that the Project’s GHG emissions are significant, that would not be the end of the inquiry nor would it mean that the project was necessarily inconsistent with the public interest. Instead, the Commission could require mitigation—as the Commission often does with regard to other environmental impacts. The Supreme Court has held that an EIS must “contain a detailed discussion of possible mitigation measures” to address adverse environmental impacts.<sup>25</sup> The Court explained that, “[w]ithout such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects” of a

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climate impacts into concrete and comprehensible terms”); *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm’r, dissenting).

<sup>21</sup> EA at 8; Certificate Order, 168 FERC ¶ 61,036 at P 15.

<sup>22</sup> EA at 75 (referencing lack of a “generally accepted methodology” for assessing GHG emissions).

<sup>23</sup> *Sierra Club v. U.S. Army Corps of Engineers*, 803 F.3d 31, 37 (D.C. Cir. 2015).

<sup>24</sup> *Id.* (quoting *Robertson*, 490 U.S. at 351).

<sup>25</sup> *Robertson*, 490 U.S. at 351.

project, making an examination of possible mitigation measures necessary to ensure that the agency has taken a “hard look” at the environmental consequences of the action at issue.<sup>26</sup> The Commission not only has the obligation to discuss mitigation of adverse environmental impacts under NEPA, but also the authority to condition certificates under section 7 of the NGA.<sup>27</sup> Furthermore, a rigorous examination and determination of significance regarding climate change impacts would bolster any finding of public interest by providing the Commission a more complete set of information necessary to weigh benefits against adverse effects. By refusing to assess significance, however, the Commission short circuits any discussion of mitigation measures for the Project’s GHG emissions, eliminating a potential pathway for us to achieve consensus on whether the Project is consistent with the public interest.

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13. Climate change poses an existential threat to our security, economy, environment, and, ultimately, the health of individual citizens. Unlike many of the challenges that our society faces, we know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane—which can be released in large quantities through the production and the consumption of natural gas. Congress determined under the NGA that no entity may transport natural gas interstate, or construct or expand interstate natural gas facilities, without the Commission first determining the activity is in the public interest. This requires the Commission to find, on balance, that a project’s benefits outweigh the harms, including the environmental impacts from climate change that result from authorizing additional pipeline transportation capacity. Accordingly, it is critical that, as an agency of the federal government, the Commission comply with its statutory responsibility to document and consider how its authorization of a natural gas pipeline facility will lead to the emission of GHGs, contributing to climate change.

For these reasons, I respectfully dissent in part.

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Richard Glick  
Commissioner

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<sup>26</sup> *Id.* at 352; *see also* 40 C.F.R. §§ 1508.20 (defining mitigation), 1508.25 (including in the scope of an environmental impact statement mitigation measures).

<sup>27</sup> 15 U.S.C. § 717f(e); Certificate Order, 168 FERC ¶ 61,036 at P 31 (“[T]he Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources . . . , including authority to impose any additional measures deemed necessary . . .”).