

168 FERC ¶ 61,180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cheyenne Connector, LLC
Rockies Express Pipeline LLC

Docket Nos. CP18-102-000
CP18-103-000

ORDER ISSUING CERTIFICATES

(Issued September 20, 2019)

1. On March 5, 2018, Cheyenne Connector, LLC (Cheyenne Connector) filed an application in Docket No. CP18-102-000, pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations,² for authorization to construct and operate approximately 70 miles of new interstate pipeline and related facilities in Weld County, Colorado (Cheyenne Connector Pipeline Project). The proposed pipeline is designed to provide up to 600,000 dekatherms per day (Dth/d) of firm transportation service from natural gas processing plants to a delivery interconnect with Rockies Express Pipeline LLC (Rockies Express) at the Cheyenne Hub, all within Weld County, Colorado. Cheyenne Connector also requests a blanket certificate under Part 284, Subpart G of the Commission's regulations to provide open-access transportation services, and a blanket certificate under Part 157, Subpart F of the Commission's regulations to perform certain routine construction activities and operations.

2. On the same day, Rockies Express filed an application in Docket No. CP18-103-000, pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations, for authorization to construct and operate certain compression and ancillary facilities at its existing Cheyenne Compressor Station at the Cheyenne Hub in Weld County, Colorado (Cheyenne Hub Enhancement Project). The Cheyenne Hub Enhancement Project would enable Rockies Express to accommodate, on a firm basis, receipts and

¹ 15 U.S.C. § 717f(c) (2018).

² 18 C.F.R. pt. 157 (2019).

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deliveries of natural gas between pipelines³ at points where currently service is only available on a non-firm basis.

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

I. Background and Proposals

4. Cheyenne Connector, a Delaware limited liability company with its principal place of business in Kansas, is an indirect wholly-owned subsidiary of Tallgrass Energy Partners, LP⁴ and does not currently own any pipeline facilities, nor is it engaged in any natural gas transportation operations. Upon commencement of operations proposed in its application, Cheyenne Connector will become a natural gas company within the meaning of section 2(6) of the NGA,⁵ and will be subject to the jurisdiction of the Commission.

5. Rockies Express,⁶ an affiliate of Cheyenne Connector, is a Delaware limited liability company with its principal place of business in Kansas and is a natural gas company, as defined by section 2(6) of the NGA, engaged in natural gas transportation services subject to the jurisdiction of the Commission. Rockies Express's existing transmission system, comprising of over 1,700 miles of 36-inch- and 42-inch-diameter pipeline, associated compression, and laterals of various diameters, provides natural gas

³ The pipelines which interconnect at the Cheyenne Hub are: Rockies Express, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains); Colorado Interstate Gas Company, L.L.C. (CIG); Tallgrass Interstate Gas Transmission, LLC (Tallgrass); Public Service Company of Colorado (PSCo); Trailblazer Pipeline Company LLC (Trailblazer); and Wyoming Interstate Company, L.L.C. (WIC). The newly constructed Cheyenne Connector Pipeline will also interconnect at the Cheyenne Hub.

⁴ Cheyenne Connector states that Western Gas Partners, LP, a subsidiary of Anadarko Petroleum Corporation, and DCP Midstream, LP, both have an option to invest in Cheyenne Connector at a later date. If an equity investment in Cheyenne Connector is made, Cheyenne Connector states that it will inform the Commission. Cheyenne Connector's March 5, 2018 Application at 6, n.4.

⁵ 15 U.S.C. § 717a(6).

⁶ Rockies Express is owned by three members: TEP REX Holdings, LLC, an indirect wholly-owned subsidiary of Tallgrass Energy Partners, LP, owns 49.99 percent; Rockies Express Holdings, LLC, an indirect wholly-owned subsidiary of Tallgrass Energy GP, LP, owns 25.01 percent; and P66REX LLC, a wholly-owned subsidiary of Phillips 66, owns 25 percent.

transportation services in Colorado, Wyoming, Nebraska, Kansas, Missouri, Illinois, Indiana, and Ohio.

A. Cheyenne Connector Pipeline Project

1. Facilities and Service

6. Cheyenne Connector proposes to construct and operate approximately 70 miles of 36-inch-diameter natural gas pipeline extending north from gas processing plants owned by Anadarko and DCP Midstream in Weld County, Colorado, to an interconnection with Rockies Express located at the Cheyenne Hub, also in Weld County. Cheyenne Connector also proposes to construct and operate the following:

- an interconnect and measurement facility located in Section 14, Township 2 North, Range 66 West (Anadarko Lancaster Interconnect Meter Station);
- an interconnect and measurement facility located in Section 2, Township 3 North, Range 66 West (Anadarko Latham Interconnect Meter Station);
- an interconnect and measurement facility located in Section 2, Township 3 North, Range 66 West (DCP Mewbourn Interconnect Meter Station);
- an interconnect and measurement facility and approximately 0.70 miles of 24-inch-diameter pipeline to connect with DCP Midstream's O'Connor Plant in Section 31, Township 5 North, Range 64 West (DCP O'Connor Interconnect Meter Station and Connecting Pipeline);
- a measurement facility and interconnect with Rockies Express at the Cheyenne Hub (Rockies Express Interconnect Meter Station); and
- ancillary facilities pursuant to section 2.55 of the Commission's regulations,⁷ including three mainline block valve sets and in-line inspection facilities (i.e., pig launching and receiving equipment).

7. The Cheyenne Connector Pipeline Project would provide up to 600,000 Dth/d of firm transportation service from natural gas processing plants in Weld County, Colorado, to a delivery point at Rockies Express's Cheyenne Hub facilities. From the Cheyenne

⁷ 18 C.F.R. § 2.55(a) (2019).

Hub, shippers have access to a variety of regional markets via several interconnected pipelines.⁸

8. Cheyenne Connector held an open season for the project from September 12, 2017 to September 26, 2017 to solicit interest in the firm transportation service to be created by the Cheyenne Connector Pipeline Project. Cheyenne Connector executed precedent agreements with Anadarko Energy Services Company (Anadarko) and DCP Midstream Marketing, LLC (DCP Midstream). The precedent agreements are each for 300,000 Dth/d of firm transportation service for a primary term of 10 years at a fixed negotiated rate.

9. Cheyenne Connector estimates the total cost of the Cheyenne Connector Pipeline Project to be \$213,265,400. Cheyenne Connector requests approval of its proposed *pro forma* tariff, and proposes to establish initial recourse reservation rates under Rate Schedules FTS (Firm Transportation Service), ITS (Interruptible Transportation Service), PALS (Park and Loan Service), and PAWS (Pooling and Wheeling Service).

2. Blanket Certificates

10. Cheyenne Connector requests a blanket certificate of public convenience and necessity pursuant to section 284.221 of the Commission's regulations authorizing it to provide transportation service to customers requesting and qualifying for transportation service under its proposed tariff, with pre-granted abandonment authority.⁹

11. Cheyenne Connector also requests a blanket certificate of public convenience and necessity pursuant to section 157.204 of the Commission's regulations authorizing future facility construction, operation, and abandonment as set forth in Part 157, Subpart F of the Commission's regulations.¹⁰

⁸ From the Cheyenne Hub, Cheyenne Connector states that shippers would have direct or indirect access to the following regional markets: Rocky Mountain (via Trailblazer, Tallgrass, Rockies Express, Cheyenne Plains, PSCo, and CIG), West Coast (via Rockies Express); Midwest (via Trailblazer and Rockies Express); Mid-Continent (via Rockies Express, Cheyenne Plains, Tallgrass, CIG, and Trailblazer); and Gulf Coast (via Rockies Express downstream interconnects). Cheyenne Connector's March 5, 2018 Application at 10.

⁹ 18 C.F.R. § 284.221 (2019).

¹⁰ *Id.* § 157.204.

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B. Cheyenne Hub Enhancement Project

12. At its existing Cheyenne Compressor Station in Weld County, Colorado, Rockies Express proposes to construct and operate six new 5,350 horsepower (hp) natural gas reciprocating compressor units (32,100 hp total) and ancillary equipment, and to modify the existing CIG and Trailblazer Interconnect Meter Stations to enable bi-directional gas flow through the meters. In addition, pursuant to section 2.55(a) of the Commission's regulations,¹¹ Rockies Express will also construct and operate certain ancillary facilities, including station piping, compressor and electrical buildings, valves, and gas cooling equipment at the station.

13. The Cheyenne Hub Enhancement Project would enable Rockies Express to accommodate, on a firm basis, receipts and deliveries at points where service is currently only available on a non-firm basis.¹² The proposed project will enable Rockies Express to provide up to a total of 1,000,000 Dth/d of additional firm Cheyenne Hub service, including up to 600,000 Dth/d for receipts from the proposed Cheyenne Connector Pipeline Project.

14. Rockies Express held a binding open season from September 12, 2017 to September 26, 2017 to solicit interest in firm service to be created by the Cheyenne Hub Enhancement Project. Rockies Express executed precedent agreements with Anadarko and DCP Midstream for 300,000 Dth/d of firm hub transportation service each for a primary term of 10 years at a fixed negotiated rate.

15. Rockies Express estimates the total cost of the Cheyenne Hub Enhancement Project to be \$132,805,200. Rockies Express proposes to establish new Rate Schedules C-HUB-FS (Cheyenne Hub Firm Service) and C-HUB-IS (Cheyenne Hub Interruptible Service), with separately-stated fuel and power rates, for its new services at Cheyenne Hub. Rockies Express also proposes to implement an incremental surcharge (Cheyenne Hub Facilities charge) for existing shippers that wish to take advantage of the new firm access at certain points made possible by the Cheyenne Hub Enhancement Project facilities.

¹¹ 18 C.F.R. § 2.55(a).

¹² The Cheyenne Hub Enhancement Project will also make additional levels of interruptible service available.

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II. Procedural Issues

A. Notice, Interventions, Protests, and Comments

16. Notices of Cheyenne Connector's and Rockies Express's applications were issued on March 19, 2018, and published in the *Federal Register* on March 23, 2018.¹³ Both notices established April 9, 2018 as the deadline for filing comments and interventions. ConocoPhillips Company; NJR Energy Services Company; Public Service Company of Colorado (PSCo); DCP Midstream; Shell Energy North America (U.S.), L.P.; Chevron U.S.A. Inc.; Anadarko; and Colorado Interstate Gas Company, L.L.C. (CIG) filed timely motions to intervene.¹⁴ Southern Star Central Gas Pipeline, Inc.; Cheyenne Plains Gas Pipeline Company, L.L.C.; Wyoming Interstate Company, LLC (WIC); East Cheyenne Gas Storage, LLC; and Concord Energy LLC filed untimely motions to intervene, which were granted by Secretary's Notice on October 5, 2018.

17. On April 9, 2018, PSCo, a natural gas and electricity local distribution company in Colorado, filed a limited protest and request for technical conference in Docket No. CP18-103-000, Rockies Express's Cheyenne Hub Enhancement Project. PSCo states that while it does not oppose the Cheyenne Hub Enhancement Project, it protests Rockies Express's application to the extent the project "results in the imposition of new costs on PSCo's gas purchases at the Cheyenne Hub without any concomitant benefits."¹⁵ On April 24, 2018, Rockies Express filed an answer to PSCo's limited protest. PSCo filed additional comments on April 4, 2019, and Rockies Express filed an answer to these comments on April 11, 2019.

18. In Docket No. CP18-102, on April 9, May 23, June 4, and August 31, 2018, CIG filed comments and answers recommending that Commission staff analyze a system alternative during the environmental review of Cheyenne Connector's proposed pipeline project, which would be capable of providing 600,000 Dth/d of additional transportation capacity, equal to the Cheyenne Connector Pipeline's proposed capacity, for Anadarko and DCP Midstream through a combination of turnback capacity, installation of a back pressure valve, line reversal, use of an existing pipeline as a loop line, and construction of a lateral pipeline, all on CIG's existing system (CIG System Alternative). On April 24, June 6, and September 13, 2018, Cheyenne Connector filed answers to CIG's comments arguing that the Commission need not analyze the CIG System Alternative because it

¹³ 83 Fed. Reg. 12,747 (CP18-102-000); 83 Fed. Reg. 12,750 (CP18-103-000).

¹⁴ Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2019).

¹⁵ PSCo's April 9, 2018 Limited Protest at 2.

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fails to meet the purpose and need of the proposed project, and because the CIG's proposal lacks customers and market support. On April 24, 2018, Anadarko and DCP Midstream also filed answers to CIG's comments stating that CIG's System Alternative cannot meet their respective timing and need requirements. Although the Commission's Rules of Practice and Procedure generally do not permit answers to protests or answers to answers,¹⁶ our rules also provide that we may, for good cause, waive this provision.¹⁷ We will accept the responsive pleadings filed in these proceedings because they have provided information that assisted in our decision-making process.

19. In addition to comments on the CIG System Alternative, the Commission also received comments from HLT Farms LLLP, the Town of Kersey, two Native American tribes, and several landowners and other individuals. The commenters raised a variety of environmental issues, including concerns regarding the projects' impacts on an irrigation ditch, agricultural lands, property values, water quality, air quality, public safety, soils, and cultural resources. The Teamsters National Pipeline Labor Management Cooperation Trust (Teamsters) filed comments in support of Cheyenne Connector's application in Docket No. CP18-102-000. These comments are addressed in the Environmental Assessment (EA) and, as appropriate, below.

B. Requests for Technical Conference

20. PSCo requests a technical conference to allow Commission staff and interested parties to examine how Rockies Express's proposal will affect interconnected pipelines at the Cheyenne Hub, such as PSCo, and the ability of shippers to transport gas between Rockies Express and the interconnected pipelines at the Cheyenne Hub. In its April 24, 2018 Answer, Rockies Express asserts that a technical conference is not necessary where, as is the case here, the questions raised can be resolved through the written record. Rockies Express maintains that it has provided sufficient responses to the technical questions raised by PSCo,¹⁸ and that its proposed new hub service will not negatively impact PSCo's current gas purchasing activities, but rather will increase the volume of natural gas transactions and liquidity at the Cheyenne Hub.

21. CIG also requests a technical conference to allow Commission staff and interested parties to discuss the environmental impacts of the CIG System Alternative. In its September 13, 2018 Answer, Cheyenne Connector argues that a technical conference is not necessary, explaining that CIG has failed to raise any material issue in dispute and

¹⁶ 18 C.F.R. § 385.213(a)(2) (2019).

¹⁷ 18 C.F.R. § 385.101(e) (2018).

¹⁸ See Rockies Express's April 24, 2018 Answer, Exhibit 2.

has been afforded a full opportunity to present its views as evidenced by CIG's four filings detailing its alternative.

22. We find the merits of these matters can be adequately assessed and addressed based on the information in the record in this proceeding. Therefore, we find no need to convene a technical conference. PSCo's limited protest is discussed further in the rates section of this order. CIG's System Alternative is discussed in the EA and, as appropriate, in the environmental section of this order.

III. Discussion

23. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction, and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁹

A. Certificate Policy Statement

24. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.²⁰ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of new pipeline 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.

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

¹⁹ 15 U.S.C. § 717f.

²⁰ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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

1. Cheyenne Connector Pipeline Project

26. Cheyenne Connector's proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Cheyenne Connector is a new company without existing customers, and proposes a new pipeline system; therefore, there is no potential for subsidization on Cheyenne Connector's system or degradation of service to existing customers.

27. We also find that there will be no adverse impact on other existing pipelines in the region or their captive customers. The Cheyenne Connector Pipeline Project will enable Cheyenne Connector to provide 600,000 Dth/d of firm transportation service from natural gas processing plants to a delivery interconnect with Rockies Express at the Cheyenne Hub, from which shippers can access gas-consuming markets in the western United States, Midwest, Mid-Continent, and Gulf Coast. As noted above, Cheyenne Connector has no existing customers and will not replace service on an existing pipeline. There is no evidence that the project will adversely affect other pipelines or their customers. In addition, no pipeline company or their captive customers have protested Cheyenne Connector's proposal. Although CIG's filings suggest that a system alternative on its pipeline would have less environmental impact or disruption than the Cheyenne Connector Pipeline Project, at a reduced cost and at concomitantly reduced rates, we note that the prospective shippers on the Cheyenne Connector project have executed precedent agreements with Cheyenne Connector and it is longstanding Commission policy to not second guess the business decisions of pipeline shippers.²¹

28. Cheyenne Connector has also taken steps to minimize any adverse effects on landowners and communities. The proposed Cheyenne Connector Pipeline Project consists of approximately 70 miles of pipeline and five aboveground measurement stations. No major aboveground facilities (e.g., compressor stations) are proposed for the

²¹ Certificate Policy Statement, 88 FERC at 61,748 (explaining that the Commission's policy is less focused on whether the contracts are with affiliated or unaffiliated shippers and more focused on whether existing ratepayers would subsidize the project); *see also id.* at 61,744 (the Commission does not look behind precedent agreements to question the individual shippers' business decisions to enter into contracts); *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085, at P 83 & n.153 (2018).

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project. The Cheyenne Connector Pipeline Project will affect approximately 1,653 acres of land during construction.²² The project's operation will impact approximately 438 acres of this land on a permanent basis,²³ most of which will be either agricultural land, characterized by hayfields, pastures, and crop production, and grassland.²⁴ Cheyenne Connector states that 70 percent of the proposed pipeline construction will be adjacent to existing development (e.g., pipelines, transmission lines, roads, oil and gas development, and commercial development), and 46 percent (33 miles) will be co-located with other existing pipeline rights-of-way.

29. Several commenters expressed concerns about easement negotiations and Cheyenne Connector's possible misuse of eminent domain.²⁵ However, we note that as of June 18, 2019, Cheyenne Connector states that it has secured 99.59 percent of the approximately 70 miles of right-of-way needed for the project through the use of voluntary agreements with landowners.²⁶ For purposes of our consideration under the

²² EA at 52.

²³ *Id.*

²⁴ EA at 51. Approximately 57 percent of the land required for project operation is agricultural land (250.8 acres) and 37.5 percent is grassland/herbaceous land (164.4 acres); project operation would also affect developed land (16.5 acres), barren land (2.1 acres), wetlands (2.0 acres), open water (1.4 acres), forest (1.1 acres), and shrubland (0.4 acres).

²⁵ In the event that Cheyenne Connector and affected landowners are unable to reach agreement, NGA section 7(h) provides that a holder of a certificate of convenience and necessity, which this order issues to Cheyenne Connector, may acquire the needed property rights by exercise of the right of eminent domain. *See generally, Mountain Valley Pipeline LLC*, 161 FERC ¶ 61,043, at PP 59-62 (2017), *order on reh'g*, 163 FERC ¶ 61,197, at PP 48-51 (2018), *aff'd sub nom., Appalachian Voices v. FERC*, Nos., *et al.* 17-1271, 17-1271, 2019 WL 847199 (D.C. Cir. Feb. 19, 2019). Citing the Colorado Supreme Court decision *Larson v. Sinclair Transportation Co.*, 284 P.3d 42 (Colo. 2012) (*Larson*), commenter Larry Hostetler and affected landowner Ryan Hostetler contend that a private pipeline does not have eminent domain authority in Colorado. We note that the court in *Larson* was construing state law and not the NGA, and that case thus does not appear apposite. In any event, legal issues surrounding a certificate holder's exercise of eminent domain are beyond our jurisdiction.

²⁶ Cheyenne Connector and Rockies Express's June 18, 2019 Supplemental Filing at 2. Over fifty landowners filed letters with the Commission indicating that they had entered into agreements granting rights-of-way or other land rights

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Certificate Policy Statement, we find that Cheyenne Connector has taken sufficient steps to minimize impacts on landowners and surrounding communities.

30. The proposed Cheyenne Connector Pipeline Project will enable Cheyenne Connector to provide 600,000 Dth/d of firm transportation service for Anadarko and DCP Midstream, which have executed 10-year precedent agreements. Based on the benefits the project will provide, the lack of adverse effects on existing customers and other pipelines and their captive customers, and the minimal adverse effects on landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity require approval and certification of Cheyenne Connector's proposal, subject to the environmental and other conditions in this order.

2. Cheyenne Hub Enhancement Project

31. The Commission has determined, in general, that where a pipeline proposes to charge incremental rates to recover the costs associated with new construction that are higher than the pipeline's applicable system rates, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing customers.²⁷ As discussed further below, Rockies Express's proposal to establish two new rate schedules, C-HUB-FS and C-HUB-IS, and an incremental surcharge for Cheyenne Hub service using the capabilities made possible by the Cheyenne Hub Enhancement Project facilities eliminates the risk of existing transportation customers subsidizing the cost of the expansion. Rockies Express also proposes to establish separate fuel and power rates for shippers that will use the capacity created by the project, ensuring that existing shippers will not subsidize the fuel and power costs resulting from the new booster compression associated with the Cheyenne Hub Enhancement Project. Therefore, Rockies Express's proposal satisfies the threshold requirement that it financially support the project without relying on subsidization from its existing customers.

32. Next, we find that the proposed project will not adversely affect service to Rockies Express's existing customers. None of Rockies Express's existing customers have presented any concerns that the project will result in degradation of their service.

33. Nor is there any evidence that Rockies Express's proposed project will adversely affect any other pipelines or their customers. The proposal is not intended to replace service on other pipelines. Although PSCo and East Cheyenne express concern that Rockies Express's application fails to differentiate between service provided using

to Cheyenne Connector, and urging the Commission to authorize the projects. *See* Cheyenne Connector's April 30, 2019 Supplemental Filing.

²⁷ *See, e.g., Dominion Transmission, Inc.*, 155 FERC ¶ 61,106, at P 15 (2016).

existing facilities at the Cheyenne Hub and that to be made possible by the proposed Cheyenne Hub Enhancement Project, neither party objects to the proposed Cheyenne Hub Enhancement Project. Rather, PSCo and East Cheyenne ask the Commission to require Rockies Express to clarify that shippers that use existing transportation service on Rockies Express may continue to use points at the Cheyenne Hub to the extent, and on the same terms, that they could prior to completion of the Cheyenne Hub Enhancement Project. In response, Rockies Express confirms that service at points with firm capacity available prior to construction of the Cheyenne Hub Enhancement Project, including PSCo's delivery interconnection point, will not be subject to the proposed new surcharge. We are also satisfied that the proposed project will not adversely affect any other pipelines or their customers. No other pipelines or their captive customers have objected to Rockies Express's proposal.

34. The Cheyenne Hub Enhancement Project will have minimal impacts on landowners and communities. Rockies Express's proposed project would largely be constructed within the fence line of its existing Cheyenne Compressor Station. Rockies Express anticipates acquiring six additional acres of land adjacent to its existing Cheyenne Compressor Station to construct the proposed facilities, but plans to purchase the land through negotiation without the use of eminent domain.²⁸ The Cheyenne Hub Enhancement Project will affect approximately 70.5 acres of land during construction.²⁹ The project's operation will impact approximately 31.1 acres of this land on a permanent basis.³⁰ Approximately 9.0 acres of the permanently impacted acreage would be converted from grassland to developed use after construction, while the remaining 22.1 acres are located in an existing staging yard and would retain the same land use classification (i.e., Disturbed, Medium Intensity) after construction.³¹ For these reasons, we conclude that the project would not have a significant adverse effect on landowners and surrounding communities.

35. The proposed Cheyenne Hub Enhancement Project will enable Rockies Express to provide firm receipts and deliveries of natural gas between the interconnected Cheyenne Hub pipelines, including the Cheyenne Connector Pipeline Project. Anadarko and DCP Midstream have executed 10-year precedent agreements for a combined 600,000 Dth/d of the total 1,000,000 Dth/d of incremental firm Cheyenne Hub service that will be made available by the project. Based on the benefits the project will provide, the lack of adverse effects on existing customers and other pipelines and their captive customers, and

²⁸ Rockies Express's Application at 15.

²⁹ EA at 52.

³⁰ *Id.*

³¹ *Id.*

the minimal adverse effects on landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity require approval and certification of Rockies Express's proposal, subject to the environmental and other conditions in this order.

B. Blanket Certificates

36. Cheyenne Connector requests a Part 284, Subpart G blanket certificate in order to provide open-access transportation services. Under a Part 284 blanket certificate, Cheyenne Connector will not require individual authorizations to provide transportation services to particular customers. Cheyenne Connector filed a *pro forma* Part 284 tariff to provide open-access transportation services. Since a Part 284 blanket certificate is required for Cheyenne Connector to participate in the Commission's open-access regulatory regime, we will grant Cheyenne Connector a 284 blanket certificate, subject to the conditions imposed herein.

37. Cheyenne Connector also requests a Part 157, Subpart F blanket certificate. The Part 157 blanket certificate gives an interstate pipeline NGA section 7 authority to automatically, or after prior notice, perform a restricted number of routine activities related to the construction, acquisition, abandonment, replacement, and operation of existing pipeline facilities provided the activities comply with constraints on costs and environmental impacts.³² Because the Commission has previously determined through a rulemaking that these blanket-certificate eligible activities are in the public convenience and necessity,³³ it is the Commission's practice to grant new natural gas companies a Part 157 blanket certificate if requested.³⁴ Accordingly, we will grant Cheyenne Connector a Part 157 blanket certificate, subject to the conditions imposed herein.

³² 18 C.F.R. § 157.203 (2019).

³³ *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, 117 FERC ¶ 61,074 at P 9 (2006), *order on reh'g*, Order No. 686-A, 119 FERC ¶ 61,303, *order on reh'g*, Order No. 686-B, 120 FERC ¶ 61,249 (2007).

³⁴ *C.f. Rover Pipeline LLC*, 161 FERC ¶ 61,244, at P 13 (2017) (denying a request for a blanket certificate where the company's actions had eroded the Commission's confidence it would comply with all the requirements of the blanket certificate program, including the environmental requirements).

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C. Rates and Tariff Issues

1. Cheyenne Connector Pipeline Project

a. Initial Recourse Transportation Rates

38. Under its proposed *pro forma* tariff, Cheyenne Connector proposes to provide firm (Rate Schedule FTS) and interruptible (Rate Schedules ITS, PALS and PAWS) transportation services pursuant to Part 284 of the Commission's regulations at cost-based recourse rates. However, instead of paying the cost-based recourse rates, the project shippers have elected to pay negotiated rates for transportation service provided by the project, as further discussed below.³⁵

39. Cheyenne Connector states that in allocating costs and designing rates for service, it utilized a straight fixed-variable rate design. The initial reservation charge under the proposed Rate Schedule FTS is derived using a first year cost of service of \$34,838,219 and billing determinants of 7,200,000 Dth, based on Cheyenne Connector's maximum daily design capacity. The proposed initial monthly reservation charge is \$4.8386 per Dth.³⁶ Because Cheyenne Connector has no variable costs, Cheyenne Connector proposes a usage charge of \$0.0000 per Dth. Cheyenne Connector proposes an initial rate of \$0.1591 per Dth for Rate Schedule ITS, PALS and PAWS service based on a 100 percent load factor derivative of the Rate Schedule FTS rate. In addition, Cheyenne Connector proposes a rate of \$0.0000 per Dth for pooling service under Rate Schedule PAWS.

40. Cheyenne Connector's proposed rates include a capital structure of 50.44 percent debt and 49.56 percent equity, a projected cost of debt of 5.50 percent, and a return on equity of 13 percent. Cheyenne Connector states that the overall rate of return of 9.21 percent is consistent with Commission precedent for other new construction pipeline companies.³⁷ Cheyenne Connector states the income tax allowance and amounts shown

³⁵ Details of the negotiated rate authority are contained in Cheyenne Connector's proposed FERC Gas Tariff, General Terms & Conditions (GT&C) Section 33. Cheyenne Connector Application at Exhibit P.

³⁶ Equivalent to a daily rate of \$0.1591. The daily rate is calculated by multiplying the monthly rate (\$4.8386) by 12, and dividing the product (i.e., \$58.0632) by 365.

³⁷ Application at 14 (citing *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 84; *Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at P 104 (2017); *Florida Southeast Connection, LLC*, 154 FERC ¶ 61,080, at P 118, *order on reh'g*, 156 FERC ¶ 61,160 (2016), *reversed on other grounds*, *Sierra Club v. FERC*, 867 F.3d 1357,

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for accumulated deferred income taxes incorporate the changes to the federal corporate income tax rates, which became effective in January 2018 under the Tax Cuts and Jobs Act of 2017.³⁸ Cheyenne Connector also proposes a depreciation rate of 2.86 percent.

41. Cheyenne Connector designed its recourse rates without an allocation of costs to Rate Schedule ITS service or a provision requiring the crediting of Rate Schedule ITS revenues to shippers. The Commission's general policy regarding new interruptible services requires pipelines to either credit 100 percent of the interruptible revenues, net of variable costs, to firm and interruptible shippers paying maximum rates, or to allocate costs and volumes to its interruptible services.³⁹ The purpose of interruptible revenue credits is to protect the pipeline's customers from too low an allocation to interruptible service, as an allocation of too little costs to interruptible service causes both the firm and interruptible maximum rates to be too high.⁴⁰ Therefore, Cheyenne Connector is directed to either revise its system rates to reflect an allocation of costs to these services or to provide for a mechanism to credit 100 percent of the interruptible and authorized service revenues, net of variable costs, to its maximum rate firm and interruptible shippers.

42. The Commission has reviewed Cheyenne Connector's proposed cost of service and proposed initial rates and finds them reasonable for a new pipeline entity such as Cheyenne Connector, subject to the condition regarding interruptible revenue crediting discussed above.

b. Fuel and Lost and Unaccounted for Gas

43. Cheyenne Connector states that because it does not utilize compression, only lost and unaccounted for gas (L&U) will be assessed, for which Cheyenne Connector is proposing an initial L&U reimbursement of 0.10 percent. Cheyenne Connector is proposing to recover its L&U through a tracker mechanism defined in GT&C section 38 of the *pro forma* tariff. The Commission finds that Cheyenne Connector's proposed initial L&U of 0.10 percent is reasonable due to the system's lack of

at 1377 (D.C. Cir. 2017) (upholding FERC's approval of a 14 percent return on equity based on a hypothetical capital structure of 50 percent debt and 50 percent equity)).

³⁸ The Tax Cut and Jobs Act, among other things, reduced federal corporate taxes from 35 percent to 21 percent. Pub. L. No. 115-97, 131 Stat. 2054 (2017).

³⁹ See, e.g., *First ECA Midstream LLC*, 155 FERC ¶ 61,222, at PP 25-26 (2016); *Sonora Pipeline, LLC*, 120 FERC ¶ 61,032, at PP 27-28 (2007).

⁴⁰ *Transcontinental Pipe Line Corp.*, 78 FERC ¶ 61,057, at 61,209 (1997).

(continued ...)

compression, and finds that the proposed tariff recovery mechanism is consistent with Commission policy.⁴¹

c. Three-Year Filing Requirement

44. Consistent with Commission precedent, Cheyenne Connector is required to file a cost and revenue study no later than three months after the end of its first three years of actual operation to justify its existing cost-based firm and interruptible recourse rates.⁴² In its filing, the projected units of service should be no lower than those upon which Cheyenne Connector's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost of service data.⁴³ Cheyenne Connector's cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, Cheyenne Connector is advised to include, as part of the eFiling description, a reference to Docket No. CP18-102-000, and the cost and revenue study.⁴⁴ After reviewing the data, the Commission will determine whether to exercise its authority under NGA section 5 to investigate whether the rates remain just and reasonable. In the alternative, in lieu of this filing, Cheyenne Connector may make an NGA section 4 filing to propose alternative rates for transportation to be effective no later than three years after the in-service date for its proposed facilities.

d. Negotiated Rate Agreements

45. Cheyenne Connector proposes to charges its shippers negotiated rates pursuant to the negotiated rate authority in its GT&C Section 33. Cheyenne Connector states that it will file either its negotiated rate agreements or tariff records setting forth the essential terms of the agreements associated with the project, in accordance with the Alternative

⁴¹ 18 C.F.R. § 154.403 (2019); *ANR Pipeline Co.*, 108 FERC ¶ 61,050 (2004).

⁴² *Bison Pipeline LLC*, 131 FERC ¶ 61,013, at P 29 (2010).

⁴³ 18 C.F.R. § 154.313 (2019).

⁴⁴ *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

Rate Policy Statement⁴⁵ and the Commission's negotiated rate policies.⁴⁶ Cheyenne Connector must file the negotiated rate agreements or tariff records at least 30 days, but not more than 60 days, before the proposed effective date for such rates.⁴⁷

e. **Pro Forma Tariff**

i. **Section 17.5 – Right of First Refusal (ROFR)**

46. Cheyenne Connector's proposed *pro forma* tariff provides firm shippers with a right of first refusal (ROFR) per GT&C Section 17.5. Under Section 17.5(D), "[t]o exercise the ROFR, Shipper must provide Transporter with notice via email or the Interactive website of its intent to do so in a form specified by Transporter and must submit such notice at least (1) Year prior to the expiration of the existing Service Agreement, unless a Service Agreement is only (1) Year in length, in which case the notice period shall be not less than (6) months. Transporter and Shipper may mutually agree to a notice period different than that specified in the preceding sentence. Shipper's notice of intent to proceed under the ROFR must specify a desired term of service and the desired MDQ in total and the desired MDRQ or MDDQ, as applicable, at each Receipt and Delivery Point..."

47. GT&C Section 17.5(D) does not comply with Commission policy in two ways. First, the Commission has previously held that a generally applicable ROFR process stated in the tariff cannot be superseded by a contract, as that would impermissibly allow the deadline for a shipper to notify the pipeline to be negotiated separately from the

⁴⁵ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996).

⁴⁶ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

⁴⁷ Cheyenne Connector is 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. *E.g.*, *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

generally applicable notice deadline.⁴⁸ Therefore, Cheyenne Connector is directed to remove the language “Transporter and Shipper may mutually agree to a notice period different than that specified in the preceding sentence” from GT&C Section 17.5(D) of its tariff. Second, Commission policy entitles the ROFR shipper to decide how much capacity it wishes to retain,⁴⁹ and that the decision to retain only a volumetric portion of its capacity does not have to be made until after the pipeline presents the ROFR shipper with the best bid for the purpose of matching.⁵⁰ Therefore, Cheyenne Connector is directed to revise GT&C Section 17.5(D) to provide that a shipper is not required to elect how much capacity it will seek to retain through the ROFR process until after receiving notification from Cheyenne Connector as to the best offer(s) for its expiring capacity, and may then notify Cheyenne Connector of its intent to match the best offer(s) for all or a volumetric portion of its capacity.

ii. **Section 32 - North American Energy Standards Board (NAESB)**

48. Cheyenne Connector’s proposed tariff provisions in GT&C Section 32 implement the NAESB Wholesale Gas Quadrant (WGQ) Version 3.0 business practice standards that the Commission incorporated by reference in its regulations.⁵¹ In the time since Cheyenne Connector filed its proposed tariff in this proceeding, the Commission amended its regulations to incorporate by reference, with certain enumerated exceptions, the NAESB WGQ Version 3.1 business practice standards.⁵² Thus, we direct Cheyenne

⁴⁸ *UGI Sunbury, LLC*, 155 FERC ¶ 61,115, at P 40 (2016); *Sierrita Gas Pipeline, LLC*, 147 FERC ¶ 61,192, at P 75 (2014); *Wyoming Interstate Co., L.L.C.*, 145 FERC ¶ 61,289, at P 6 (2013)

⁴⁹ *Dominion Transmission, Inc.*, 111 FERC ¶ 61,135, at PP 18-22 (2005).

⁵⁰ *Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at P 154 (2017); *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 at P 113; *Sierrita Gas Pipeline, LLC*, 147 FERC ¶ 61,192 at P 78; *Transcontinental Gas Pipe Line Corp.*, 101 FERC ¶ 61,267, at P 26 (2002).

⁵¹ *Standards for Business Practices of Interstate Natural Gas Pipelines; Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, Order No. 587-W, 153 FERC ¶ 61,061 (2015); *order on reh’g*, Order No. 587-X, 154 FERC ¶ 61,207 (2016).

⁵² *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-Y, 83 Fed. Reg. 62,242 (Dec. 3, 2018), 165 FERC ¶ 61,109 (2018). Under Order No. 587-Y, interstate natural gas pipelines are required to file compliance filings

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Connector to file revised tariff records, no less than 60 days prior to its in-service date, implementing the NAESB WGQ Version 3.1 business practice standards. Further, Cheyenne Connector is directed to revise its tariff to:

- (1) add standard 2.3.29 to the section titled “Standards not Incorporated by Reference and their Location in Tariff:,” along with the identification of the location of the text of the standard within the tariff, in GT&C Section 32.2, Compliance with 18 C.F.R., section 284.12;
- (2) remove standards 1.3.47, 1.3.49, 1.3.50, 1.3.52, 1.3.54, 1.3.57, 1.3.59, 1.3.60, and 1.3.61 from section titled “Standards Incorporated by Reference: - Nominations Related Standards” in GT&C Section 32.3.B, Compliance with 18 C.F.R., section 284.12;
- (3) remove standards 2.3.29 and 2.3.49 from section titled “Standards Incorporated by Reference - Flowing Gas Related Standards” in GT&C Section 32.3.C, Compliance with 18 C.F.R., section 284.12;
- (4) remove standard 3.3.20 from section titled “Standards Incorporated by Reference: - Invoicing Related Standards” in GT&C Section 32.3.D, Compliance with 18 C.F.R., section 284.12; and
- (5) remove standard 4.3.76 from section titled “Standards Incorporated by Reference: - Quadrant Electronic Delivery Mechanisms Related Standards” in GT&C Section 32.3.E, Compliance with 18 C.F.R., section 284.12.

iii. Section 34 - Operational Balancing Agreements

49. To minimize operational conflicts between its system and the interconnecting systems of other interstate and intrastate pipelines, Cheyenne Connector includes in its proposed *pro forma* tariff GT&C Section 34, which discusses Operational Balancing Agreements (OBAs). Although GT&C Section 34.2 provides that “[i]t is [Cheyenne Connector’s] *intent to negotiate and* execute [Operational Balancing Agreements (OBAs)] on a non-discriminatory basis with any OBA Party,”⁵³ the section lists five

with the Commission by April 1, 2019, and are required to comply with the Version 3.1 standards incorporated by reference in this rule on and after August 1, 2019.

⁵³ Emphasis added.

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conditions under which Cheyenne Connector would have no obligation to negotiate and execute OBAs with any party. However, NAESB WGQ Standard 2.3.29 provides that “[a]t a minimum, [pipeline] should enter into [OBAs] at all pipeline-to-pipeline (interstate and intrastate) interconnects.” Further, section 284.12(b)(2)(i) of the Commission’s regulations provides that “[a] pipeline must enter into [OBAs] at all points of interconnection between its system and the system of another interstate or intrastate pipeline.”⁵⁴ Accordingly, Cheyenne Connector is directed to revise its tariff to comply with NAESB WGQ Standard 2.3.29 and section 284.12(b)(2)(i) of the Commission’s regulations.

2. **Cheyenne Hub Enhancement Project**

a. **Initial Recourse Rates**

50. Rockies Express proposes initial recourse rates for firm and interruptible transportation service under Rate Schedules C-HUB-FS and C-HUB-IS. Rockies Express’s proposed first year cost of service is \$22,958,307, consisting of \$22,708,307 of fixed costs and \$250,000 of variable costs. Rockies Express’s proposed cost of service includes a depreciation rate of 2.86 percent, and the return and income tax costs have been calculated using a pre-tax return of 13.28 percent utilizing a return on equity of 13.00 percent and debt return of 6.37 percent. Rockies Express states that the income taxes embedded in the pre-tax return assume an effective rate determined pursuant to the provisions of the Tax Cuts and Jobs Act of 2017.⁵⁵ Additionally, Rockies Express’s proposed cost of service includes \$900,597 associated with existing meter facilities allocated to the project. Rockies Express used the straight fixed-variable rate design to calculate an initial monthly incremental firm reservation charge for Cheyenne Hub Service of \$1.9674 per Dth, and a commodity charge of \$0.0007 per Dth. Rockies Express proposes the 100 percent load factor derivative of the firm rate, \$0.0654 per Dth, as the initial Rate Schedule C-HUB-IS interruptible charge.

51. Rockies Express proposes to use the 13.00 percent return on equity approved as part of its greenfield certificate application. The Commission has generally approved higher rates of return on equity for greenfield projects to reflect the higher risks associated with such projects.⁵⁶ However, in developing incremental rates for expansions

⁵⁴ 18 C.F.R. § 284.12(b)(2)(i) (2019).

⁵⁵ See *supra* note 38.

⁵⁶ See, e.g., *PennEast Pipeline, LLC*, 162 FERC ¶ 61,053 (2018).

(continued ...)

of existing pipeline systems, our general policy is to use the rate of return components approved in the pipeline's last NGA section 4 rate proceeding.⁵⁷

52. Rockies Express has not filed an NGA section 4 rate case since it went into service. However, in the absence of a litigated ROE on file, we do not find it appropriate for Rockies Express to use the 13 percent ROE approved in its initial certificate authorizations in determining the cost of service for the Cheyenne Hub Expansion Project because such a return would not reflect the lower risks associated with expanding an existing pipeline system. We believe the Cheyenne Hub Expansion Project has more in common with the incremental expansions constructed by existing pipelines than with greenfield pipeline projects. Therefore, we find it is more appropriate to use the most recent ROE approved in a litigated NGA section 4 rate case as the ROE for designing the incremental rates for this project.⁵⁸ This is the approach the Commission adopted in determining the ROE to be used in developing initial rates for existing facilities being acquired by a new interstate pipeline when the pipeline did not have an ROE from an NGA section 4 rate case, and it is appropriate to use in these circumstances.⁵⁹ The last applicable litigated ROE is 10.55 percent, as approved in *El Paso Natural Gas Co.*⁶⁰ Therefore, we will require Rockies Express to revise its proposed incremental recourse rates to reflect this revised ROE.

53. Rockies Express's firm reservation charge includes \$900,597 which, according to Rockies Express, represents an allocation of costs associated with existing meter facilities. Consistent with Commission policy, Rockies Express's incremental rate should reflect only the incremental costs associated with the new facilities, and should not reflect the reallocation of costs related to existing facilities or other common costs.⁶¹ An NGA section 7 proceeding certifying new facilities is not a proper forum to analyze the allocation of existing costs between the pipeline's existing and expansion customers because the rates for existing services can only be changed in an NGA section 4 or 5 rate

⁵⁷ See, e.g., *Transcontinental Gas Pipe Line Co., LLC*, 158 FERC ¶ 61,125, at P 38, *order on reh'g*, 161 FERC ¶ 61,250 (2017).

⁵⁸ *Alliance Pipeline L.P.*, 140 FERC ¶ 61,212, at PP 18-20 (2012).

⁵⁹ *Florida Southeast Connection, LLC*, 164 FERC ¶ 61,091, at P 19 (2018).

⁶⁰ Opinion No. 528, 145 FERC ¶ 61,040, at P 642 (2013), *reh'g denied*, Opinion No. 528-A, 154 FERC ¶ 61,120 (2016).

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

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proceeding. Issues regarding cost allocation,⁶² including whether any additional system costs should be reallocated to Rockies Express's Cheyenne Hub Enhancement Project incremental rate, may be addressed in Rockies Express's next NGA section 4 rate proceeding. Therefore, the existing meter costs allocated to the project should be removed from the Cheyenne Hub Enhancement Project's cost of service.

54. We have reviewed Rockies Express's proposed cost of service, allocation, and rate design used to develop the incremental rates and find that, with the exception of the ROE and the inclusion of the existing meter costs, as discussed above, they reasonably reflect current Commission policy. Because incremental rates revised as discussed above will still exceed Rockies Express's system rates, the Commission will approve Rockies Express's proposed Rate Schedule C-HUB-FS and Rate Schedule C-HUB-IS rates, subject to the above conditions.

b. Fuel and Electric Power Charges

55. To ensure that existing customers do not subsidize the operations of the project, Rockies Express proposes to charge shippers on the proposed project a separately-stated fuel charge of 0.44 percent and a separately-stated electric power charge of \$0.0004 per Dth. The Commission finds that Rockies Express's proposal to charge a separate fuel rate and electric cost is appropriate. Therefore, we approve Rockies Express's proposed incremental fuel charge and electric power charge for the Project.

c. Reporting Incremental Costs

56. Section 154.309 of the Commission's regulations⁶³ includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are approved to ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers. Therefore, Rockies Express must keep separate books and accounting of costs and revenues attributable to the capacity to be created by the Cheyenne Hub Enhancement Project and incremental services using that capacity as required by section 154.309. The books should be maintained with applicable cross-references as required by section 154.309. This information must be in sufficient detail

⁶² *Trailblazer Pipeline Co.*, 95 FERC ¶ 61,258, at 61,903 (2001) ("rates of existing customers should not change because a pipeline builds expansion facilities to serve new customers..."); *see also* Certificate Policy Statement, 88 FERC ¶ 61,227, *corrected*, 89 FERC ¶ 61,040, *clarified*, 92 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094.

⁶³ 18 C.F.R. § 154.309 (2019).

(continued ...)

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. 710.⁶⁴

d. Negotiated Rate Agreements

57. Rockies Express proposes to provide service to project shippers Anadarko and DCP Midstream under negotiated rate agreements. Rockies Express must file either its negotiated rate agreements or tariff records setting forth the essential terms of the agreements associated with the project, in accordance with the Alternative Rate Policy Statement⁶⁵ and the Commission's negotiated rate policies.⁶⁶ Rockies Express must file the negotiated rate agreements or tariff records at least 30 days, but not more than 60 days, before the proposed effective date for such rates.⁶⁷

e. Incremental Surcharge

58. As noted above, Rockies Express also proposes to establish an incremental Cheyenne Hub Facilities charge (equivalent to the new incremental C-HUB-FS reservation rate) applicable to existing or future shippers under Rate Schedule FTS utilizing the firm service made possible by the new Cheyenne Hub facilities at Cheyenne Hub points where firm service was not previously available. In addition, the C-HUB-IS interruptible rate will be applicable to shippers utilizing points with newly-available firm service under Rate Schedules ITS and PAWS, as well as to secondary usage under Rate Schedule FTS.

59. Although neither PSCo nor East Cheyenne oppose Rockies Express's proposal, PSCo states that the project appears to impose higher costs on the gas that PSCo purchases from producers for delivery from Rockies Express at the Cheyenne Hub than it

⁶⁴ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008).

⁶⁵ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194.

⁶⁶ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134, order on reh'g and clarification, 114 FERC ¶ 61,042, dismissing reh'g and denying clarification, 114 FERC ¶ 61,304 (2006).

⁶⁷ Rockies Express is also 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. *E.g.*, *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198 at P 33.

does for its current arrangements, without any demonstration that the project will provide any benefits or incremental capability to that purchasing ability. PSCo and East Cheyenne are concerned that Rockies Express's application does not explain with sufficient clarity the difference between service which is reliant on the existing facilities at the Cheyenne Hub and service deemed dependent on the facilities contemplated by the proposed project so that customers are apprised as to what triggers the new proposed surcharge for Cheyenne Hub Service and what services customers can continue to receive at the Cheyenne Hub without incurring an additional charge. PSCo states the application does not explain whether charges for what Rockies Express calls the "new" service will be imposed on all transactions at the Cheyenne Hub or only on transactions that are made possible by the new facilities. PSCo states the application describes Cheyenne Hub Service as consisting of "the receipt of gas at a point within the Cheyenne Hub and the redelivery of gas at a point within the Cheyenne Hub." PSCo states this a broad description that arguably encompasses all receipts and deliveries at the Cheyenne Hub. To the extent Rockies Express proposes to impose new hub service charges on shippers for use of the Cheyenne Hub, PSCo states that Rockies Express should be required to demonstrate that shippers actually require the new hub service, thereby justifying the increased costs.

60. East Cheyenne requests that the Commission require Rockies Express to clarify that once the project is placed in service, shippers that use transportation service on Rockies Express's system may continue to use points at the Cheyenne Hub to the extent and on the same terms that they could do so before the completion of the project.

61. In its answer, Rockies Express states that PSCo is not a firm or interruptible shipper on Rockies Express's system and simply purchases gas from third parties and receives that gas at PSCo's interconnection with Rockies Express at the Cheyenne Hub. Rockies Express states that the PSCo delivery interconnection point is not included as one at which service will be subject to the new rates proposed in its application. Rockies Express states that the proposed facilities will allow for firm receipt and delivery at many points within the Cheyenne Hub that were previously unavailable for firm service by overcoming existing pressure differentials between Rockies Express and the interconnected parties. In addition, Rockies Express states that the project will help increase the volume of natural gas transactions and liquidity at the Cheyenne Hub. Rockies Express posits that the addition of counterparties and increased supply options will foster greater competition in the market, putting downward pressure on gas prices. Rockies Express explains that the existing points that will be subject to the Cheyenne Hub Facilities charge are those where the compression added by the Cheyenne Hub Enhancement Project is needed to overcome current prevailing pressure differentials in order to for service to be provided on a firm basis (or for additional amounts of service to be offered on an interruptible basis). Rockies Express further clarifies that the Cheyenne Hub Facilities charge will be assessed only once for any transaction including both a receipt and delivery point.

62. In its October 4, 2018 response to Commission staff's September 20, 2018 data request, Rockies Express clarified that prior to the construction of the project, firm capacity is available at two points at the Cheyenne Hub – the TPC/REX Lone Tree Weld interconnect and the PSCC/REX Chalk Bluffs Weld interconnect. In addition, Rockies Express clarified that service at these two points (TPC/REX Lone Tree Weld and PSCC/REX Chalk Bluffs Weld) will not be assessed the Cheyenne Hub Facilities charge.

63. On April 4, 2019, PSCo filed additional comments. PSCo observes that Rockies Express's October 4, 2018 data response failed to acknowledge the WIC/REX Sitting Bull Weld Interconnect – an interconnection point at the Cheyenne Hub between the Rockies Express and WIC pipeline systems – as a point with firm capacity available prior to construction of the Cheyenne Hub Enhancement Project.⁶⁸ PSCo notes that a table attached to the same data response described the WIC/REX Sitting Bull Weld Interconnect as having an existing capacity of 28,000 Dth/d, and a post-construction capacity of 59,500 Dth/d.⁶⁹ PSCo questions whether the 59,500 Dth/d of post-construction capacity includes the 28,000 Dth/d of existing capacity or if that amount is incremental. In addition, PSCo points to an earlier Rockies Express filing that lists the WIC/REX Sitting Bull Weld Interconnect as a point with currently available firm receipt capacity.⁷⁰ However, in a subsequent data response, PSCo states that Rockies Express lists the current flow direction for the WIC/REX Sitting Bull Weld Interconnect as “N/A” and lists the flow direction following the construction of the Cheyenne Hub Enhancement Project as “Receipt.”⁷¹ In its April 4, 2019 comments, PSCo states that it is unclear how Rockies Express will distinguish flows that will utilize the existing Cheyenne Booster facilities, flows that will utilize the new Cheyenne Hub facilities, and flows that will not use either of these compression facilities. PSCo is also concerned that the proposed tariff definition for the new Cheyenne Hub Facilities uses the exact same language as the current tariff definition for the existing Cheyenne Booster Facilities, thus making it

⁶⁸ Specifically, Rockies Express stated that “points with firm capacity available prior to the construction of the Cheyenne Hub Enhancement Facilities (TPC/REX Lone Tree Weld and PSCC/REX Chalk Bluffs Weld) will not be assessed the Cheyenne Hub Facilities charge and thus there will be no need to distinguish between flows from existing facilities and flows from the Cheyenne Hub Enhancement facilities.” Rockies Express's October 4, 2018 Data Response at 2.

⁶⁹ *See id.* (Attachment 1).

⁷⁰ *See* Rockies Express's April 24, 2018 Answer at 6.

⁷¹ *See* Rockies Express's October 4, 2018 Data Response (Attachment 1 table).

(continued ...)

impossible for customers and other parties to determine the applicability of the two separate incremental charges.

64. In its April 11, 2019 response, Rockies Express states that it will distinguish flows on existing and project facilities through its shippers' nominations, which will utilize separate and distinct point location numbers and will indicate the flow direction. By using both the point location number and flow direction, Rockies Express states that it will know what compression is required to accomplish the movement and, therefore, how to bill for the service. Rockies Express clarifies that the capacity at the WIC/REX Sitting Bull Weld Interconnect created by the project will be incremental to the existing firm receipt capability. Rockies Express clarifies that the WIC/REX Sitting Bull Weld Interconnect has a current firm capacity of 28,000 Dth/d due to existing booster compression constraints, to which an additional 59,500 Dth/d of firm capacity will be added by the project.⁷² Rockies Express confirms that shippers will not be charged twice for Cheyenne Hub compression for receipts into Rockies Express from WIC and that service to shippers continuing to use the currently available receipt capacity at the WIC/REX Sitting Bull Weld Interconnect will be distinguished from nominations for service reliant on the project facilities through the use of the separate and unique location numbers. Rockies Express also notes that its April 24 answer erroneously indicated there is currently available firm receipt capacity at the future WIC/REX Sitting Bull Weld Interconnect and the correct entry should have been "N/A."

65. The Commission accepts Rockies Express's proposal to apply the new incremental Cheyenne Hub Facilities charge to shippers that use the capacity created by the Cheyenne Hub Enhancement Project facilities, as clarified by Rockies Express's October 4, 2018 data response and April 11, 2019 answer. The construction of the facilities will permit the receipt and delivery of firm volumes between Rockies Express and the interconnected pipelines at the Cheyenne Hub. Currently, Rockies Express's ability to move gas between Rockies Express and the interconnected pipelines at the Cheyenne Hub on a firm basis is limited by the existing facilities at the Cheyenne Hub and the significant pressure differentials between Rockies Express and the interconnected pipelines. The proposed project facilities will permit bi-directional flow at the Cheyenne Hub and ensure adequate pressure for shippers to make deliveries from systems with lower operating pressures into Rockies Express on both a firm and interruptible basis. Rockies Express has clarified in

⁷² According to Rockies Express, WIC/REX Sitting Bull Weld Location No. 42722 is associated with the existing 28,000 Dth/d of firm capacity. Shippers tendering gas to this location will continue to pay the existing Cheyenne Booster Facilities rate, not the proposed Cheyenne Hub Facilities rate. WIC/REX Sitting Bull Weld Location No. 60348 will be associated with the 59,500 Dth/d of incremental capacity to be created by the project. Shippers tendering gas to this location will pay the proposed Cheyenne Hub Facilities rate.

its October 4, 2018 data response and April 11, 2019 answer that service at points with firm capacity available prior to construction of the Cheyenne Hub Enhancement Project facilities will not be assessed the Cheyenne Hub Facilities charge. Rockies Express has further clarified that it will differentiate between new and existing capacity through the use of separate and distinct point location numbers. Therefore, because only shippers that will use the capacity created by Cheyenne Hub Enhancement Project facilities will pay for the service, we approve Rockies Express's proposal to assess the Cheyenne Hub Facilities charge as described above.

66. Finally, we believe our requirement below for Rockies Express to include in its tariff a listing of the receipt and delivery points for which the project charges apply will address PSCo's concern regarding the similar definitions of the Cheyenne Hub facilities and Cheyenne Booster facilities in the tariff.

f. Pro Forma Tariff

67. Rockies Express filed *pro forma* tariff records reflecting the proposed separately-stated service rates, and separately-stated fuel and power rates for service using the project facilities. The *pro forma* tariff also includes new Rate Schedules C-HUB-FS and C-HUB-IS and other tariff changes necessary to implement the proposed Cheyenne Hub Service.

68. PSCo protests Rockies Express's proposed tariff language and *pro forma* service agreements as impermissibly vague and ambiguous for failing to identify the specific points to be included in the new facilities for which Rockies Express will charge the Cheyenne Hub Facilities Service charge. PSCo notes that Rockies Express's tariff language does not define the Cheyenne Hub Facilities, rather, it proposes to post a listing of the points on Rockies Express's Interactive Website, subject to revision by Rockies Express "from time to time." PSCo states this is contrary to Commission policy because it does not provide "sufficient clarity for the Commission to understand the nature of the contractual provisions it is authorizing the pipeline to enter into" and "inhibits customers from easily tracking and understanding" whether the points where they conduct transactions are included in the facilities that are subject to new charges under Rate Schedules C-HUB-FS and C-HUB-IS.⁷³

69. In response, Rockies Express asserts that its proposal to post the receipt and delivery points on its website is consistent with Commission precedent and policy.

⁷³ PSCo's April 9, 2018 filing at 12 (citing *Texas Gas Transmission, LLC*, 127 FERC ¶ 61,313, at PP 19, 21 (2009)).

(continued ...)

Rockies Express states that in *Florida Gas Transmission Co. (FGT)*,⁷⁴ the Commission allowed Florida Gas to remove the list of receipt points from its tariff provided that the list was maintained on its website. Rockies Express states the Commission elaborated that “FGT’s proposal will enhance [the customer’s] ability to accurately assess the availability of receipt points because posting of receipt points on FGT’s Internet web site will give [the customer] and FGT’s other customers, real-time knowledge of the availability of receipt points.”⁷⁵ Rockies Express states that the order continued that “shippers are fully protected by the procedures under Part 157 of the Commission’s regulations for changes in receipt point facilities, including section 157.216 of the Commission’s regulations regarding abandonment of receipt point facilities, and, thus, there is no need for an additional section 4 filing requirement” every time the pipeline changes a point on its system.

70. We agree with PSCo’s concerns, and will reject Rockies Express’s request to post on its website the receipt and delivery points for which the project charges will apply. In *FGT*, rather than requiring the pipeline to maintain its list of receipt points in its tariff or make a tariff filing pursuant to NGA section 4 for each revision, the Commission allowed the pipeline to maintain its receipt point list on its website because the shippers would be fully protected by existing procedures under Part 157 of the Commission’s regulations for changes in receipt point facilities.⁷⁶ However, unlike the list of receipt points contemplated in *FGT*, which may change over time as new receipt points are added and old points removed, Rockies Express’s list of points subject to the project charge should be static. In addition, in *FGT*, the Commission noted that it had required an NGA section 4 filing for revisions to pooling service boundaries that affected rates for pooling services since changes to pool boundaries could change the amount of revenues the pipeline would recover from particular shippers.⁷⁷ Similarly, here, any changes to the list of points subject to project charges could change the rates shippers pay for service on the system. Therefore, the Commission directs Rockies Express to include in its tariff a listing of the receipt and delivery points for which the project charges apply.

71. We direct Rockies Express to file actual tariff records that are consistent with the *pro forma* tariff records included in Exhibit P, subject to the modifications discussed above, no less than 60 days prior to the in-service date of the facilities.

⁷⁴ 115 FERC ¶ 61,240 (2006) (*FGT*).

⁷⁵ *Id.* P 8.

⁷⁶ *Id.*

⁷⁷ *Id.*

(continued ...)

IV. Environmental Analysis

72. On May 3, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Cheyenne Connector Pipeline and Cheyenne Hub Enhancement Projects and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal Register*⁷⁸ 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. We received comments on the NOI from DCP Midstream; the Teamsters; CIG; Anadarko; Cheyenne Connector; the Town of Kersey; HLT Farms, LLLP (a landowner); two Native American tribes; and ten additional landowners and other individuals. Darryl and Sue Woods filed comments a few days prior to issuance of the EA and although the issues raised by these comments were addressed within the EA, these comments are also addressed below.

73. The primary issues raised during the scoping process include the easement negotiation process for the pipeline route, impacts on agricultural lands, public safety, pipeline project construction methods and agreements, property values, cumulative impacts, and alternatives and route variations.

74. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), our staff prepared an EA for the applicants' proposals. 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.

75. The EA was placed into the public record on December 18, 2018, with comments due by April 1, 2019.⁷⁹ The Commission received comments on the EA from Cheyenne Connector, DCP Midstream, Anadarko, one Native American tribe, and numerous landowners and other individuals. These comments are addressed below. We also received comments voicing general support for the projects.

⁷⁸ 83 Fed. Reg. 21,291 (2018).

⁷⁹ Comments on EA were initially due by January 17, 2019. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, and due to printing/ mailing errors, the Commission reopened the comment period for the EA on February 7, 2019, and subsequently extended it until April 1, 2019.

(continued ...)

76. Jeff Priestley, an affected landowner, questions why the Commission did not acknowledge the comments and various newspaper articles he filed in the docket on May 24, 2018, related to his concerns on the projects' impacts on public safety, soils, air and water quality, and climate, and issues pertinent to environmental justice. As is Commission practice, Commission staff addresses issues raised in scoping comments in the EA, but does not respond individually to each commenter. We find that Mr. Priestley's comments raising relevant environmental concerns were addressed appropriately by staff in the EA.⁸⁰

77. Sandra Moser, an affected landowner, claims that she received no contact from the applicants regarding her concerns of environmental impact of the projects, and that the applicants did not perform any "physical study of the environment." As indicated above, the Commission mailed the NOI to all landowners potentially affected by the projects including Ms. Moser, as well as other identified stakeholders. The NOI provided notification of the opening of the Commission's scoping period for its environmental review of the projects, clarified how the public may access information about the projects, and explained how to file comments with the Commission. The Commission also mailed all stakeholders the notice of the Commission staff's schedule for issuance of the EA for the projects, as well as notice of the EA's issuance. As stated in the EA, the applicants filed the project applications in accordance with the Commission's regulations, supplemented by information obtained through Commission staff-issued data requests.⁸¹ Commission staff's environmental analysis, presented in the EA, is the mechanism for this Commission to address identified environmental issues, including those raised by landowners.

A. Soils

78. Janet Roth and several landowners express concerns that Cheyenne Connector will "blade and pile top soil" along the length of the approximately 70-mile-long pipeline project construction right-of-way. They are concerned the construction process will leave the construction right-of-way exposed for an extended length of time before the trench is constructed, backfilling of the trench occurs, and final restoration is achieved. The landowners contend this would allow weeds to proliferate, becoming uncontrollable by normal farming practices, result in supplemental water requirements after restoration for one or more years, and expose the soils to wind and other forms of erosion.

⁸⁰ See EA at 21-22 (soils), 22-29 (water resources), 68-72 (environmental justice), 72-73 (property values), 77-89 (air quality), 89-97 (noise), 97-105 (reliability and safety), and 118-120 (climate change).

⁸¹ Cheyenne Connector reports that it has completed environmental surveys for 100 percent of the proposed pipeline route.

79. Cheyenne Connector proposes to construct the pipeline using two “spreads” (i.e., coordinated pipeline assembly efforts). For each spread, the stages of pipeline construction (e.g., clearing, grading, pipe stringing, welding, trenching, backfill, etc.) proceed in an assembly-line fashion. A company typically constructs in stages to maintain efficiency, so trenching the pipeline would begin in areas comparatively soon after clearing/grading, rather than clearing the entire 70 miles prior to commencing the next stage of pipeline construction. Further, as stated in the EA, Cheyenne Connector would restore the pipeline project right-of-way to preconstruction conditions, to the extent practicable and allowed by federal safety standards, and will adhere to the Commission’s *Erosion Control, Revegetation, and Maintenance Plan* (FERC Plan) and *Wetland and Waterbody Construction and Mitigation Procedures* (FERC Procedures).⁸² In accordance with the FERC Plan, Cheyenne Connector will install temporary erosion control devices and fugitive dust mitigation strategies (e.g., water or tackifiers⁸³) to ensure topsoil and spoil piles are maintained before and during active construction. The Plan defines successful revegetation in agricultural areas as “crop growth and vigor . . . similar to adjacent undisturbed portions of the same field.” As such, Cheyenne Connector would be required to eradicate any weeds that were to establish (whether prior to trenching or after backfill) so that agricultural practices could continue as before. Further, Cheyenne Connector is developing an *Agricultural Impact Mitigation Plan* to address construction damage to agricultural resources and to monitor the success of agricultural restoration and mitigation.⁸⁴ The FERC Plan sets forth a process for final grading, topsoil replacement, and installation of permanent erosion control structures. After initial backfilling and restoration, Cheyenne Connector will seed and mulch all exposed areas to reduce wind and water erosion of the newly restored right-of-way. Cheyenne Connector would revegetate all disturbed areas as required by the FERC Plan and any specific landowner agreements, and seed mix and seeding rates would be developed through consultation with the local Natural Resources Conservation Service office and landowners.⁸⁵

⁸² EA at 5.

⁸³ Tackifiers are chemical compounds that adhere readily to other substances. When applied to dry surfaces, the tackifier binds to dust particles, effectively weighing down the particles and suppressing fugitive dust creation.

⁸⁴ See *infra* P 89.

⁸⁵ EA at 35.

(continued ...)

B. Water Resources and Wetlands

80. Janet Roth expresses concerns that trenching under irrigation canals and ditches during the summer through October will put Lone Tree Creek and associated wetlands in jeopardy. Specifically, she warns that during heavy rains, water will flow down the pipeline trenches eroding subsoil and topsoil into the creek.

81. As stated in the EA, Cheyenne Connector would use the dry-ditch crossing method, horizontal directional drill (HDD), and direct boring on most waterbodies to avoid and minimize impacts on surface water.⁸⁶ In addition, Cheyenne Connector would install trench plugs to reduce trenchline erosion and minimize the volume and velocity of trench water flow, per FERC's Plan (section IV.F.2). Cheyenne Connector's construction practices would follow FERC's Plan and Procedures to further reduce ground disturbance, minimize erosion and sediment run-off, and promote vegetation within the construction area.⁸⁷

82. Tom Karlberg expresses concerns that the pipeline construction may damage an underlying shale formation and cause water to flow along the pipeline channel, disrupting hydrology, and requiring the installation of drainage tiles for mitigation. We do not believe this will be the case. The thickness and lateral extent of the aquifers to be crossed by the project vary, but they are much greater than the space that would be occupied by the Cheyenne Connector pipeline. The physical pipeline would occupy only a negligible portion of any surface aquifer and have no influence on groundwater flow during operation of the pipeline project. Similarly, water infiltration would not be inhibited by the presence of the pipeline. The Cheyenne Connector right-of-way, like subsurface pipe, only overlies a very small portion of the aquifers it crosses. Further, the right-of-way would be restored to pre-construction contours and would be either seeded or allowed to revegetate naturally. For these reasons, the restored right-of-way would not cause a permanent reduction to infiltration of recharge waters.

83. Hydraulic head (i.e., the level to which water rises in a well) is a measurement of the potential energy of water due to its elevation and additional energy from pressure. Due to the pipeline trench's small size relative to the larger aquifer system through which it traverses, the pipeline trench would have no influence on groundwater elevation or the water's potential energy associated with pressure. Therefore, staff concludes, and we agree, that the proposed pipeline (or pipeline trench) would not alter groundwater flow, disrupt hydrology, or require the installation of any new drainage tiles.

⁸⁶ EA at 25.

⁸⁷ *Id.*

84. Upon completion of construction, Cheyenne Connector would restore the ground surface as closely as practicable to original contours, and re-establish vegetation to facilitate restoration of pre-construction overland water flow and recharge patterns. Impacts would be minimized by implementation of the construction practices and operational erosion controls outlined in the FERC Plan.

85. Ron and Marsha Baker, affected landowners, request information regarding the pumping locations and hauling routes of the hydrostatic test waters. As explained in the EA, Cheyenne Connector would obtain approximately 4 million gallons of water for hydrostatic testing from three sources: Wagistics, New Cache La Poudre Irrigation Company, and North Weld Irrigation District.⁸⁸ These three sources are existing permitted sources for which the withdrawal (water rights) associated with the project have already been accounted.⁸⁹ Generally, HDD pipe sections are hydrostatically tested prior to insertion in the ground, and testing usually occurs in an adjacent stringing area. Cheyenne Connector would use only approved access roads to haul hydrostatic test waters to and from the test sites. Cheyenne Connector would likely utilize the closest access roads to HDDs #11 and #12, which are County Roads 51 and 60 ½, and temporary access road 051.

86. Greg Cecil expresses concern about the depth of the pipeline in relation to his utilities, road, and grading required for flood management control. As stated in the EA, the Cheyenne Connector pipeline route crosses two Federal Emergency Management Agency 100-year flood zones, at mileposts 27.8 to 28.4 (South Platte River) and mileposts 33.5 to 33.8 (Lone Tree Creek).⁹⁰ No permanent impacts on the function of these 100-year flood zones are anticipated, as no modifications to the flood zone that could alter its use during a flood event would occur.⁹¹ Cheyenne Connector's implementation of the measures included in the FERC Plan and FERC Procedures will ensure that the installation of the pipeline and restoration of the right-of-way on Mr. Cecil's property does not result in stormwater or flooding impacts during operation of the project facilities.

87. Following issuance of the EA, Cheyenne Connector revised the number and placement of several HDD entry and exit points along the pipeline's proposed right-of-

⁸⁸ EA at 7.

⁸⁹ EA at 28.

⁹⁰ EA at 29.

⁹¹ *Id.*

(continued ...)

way alignment.⁹² Because these revisions satisfy the EA's recommended condition 14, we have not included that recommendation in the list of environmental conditions in the appendix to this order. In addition, based on Cheyenne Connector's revisions to the number and placement of HDD sites, we have eliminated the EA's recommended condition 20 (recommending site-specific noise mitigation plans for specific HDD entry and exit sites) and modified the EA's recommended condition 21 (recommending noise analyses, mitigation, and monitoring requirements for specific HDD sites) to apply to all HDD sites. The latter modified condition is included in the appendix to this order as Environmental Condition 19.

C. Land Use

88. Several landowners along the proposed pipeline route express concerns that construction may impact agricultural lands and operations. Specifically, landowners are concerned that the pipeline will interfere with: the ability to raise feed for livestock, the use of pivot sprinklers for irrigation, access to property, use of irrigation ditches and canals, and wastewater drainage. Landowners are also concerned about the timing and extent of pipeline right-of-way grading, the need to prevent sinkholes that may form after backfilling of the pipeline trench, the possible introduction or spread of noxious weeds, soil impacts and the need to incorporate compost, and general agricultural activities. Janet Roth asks the Commission to require Cheyenne Connector to hire a professional agricultural representative approved by property owners to act on the owners' behalf, particularly if construction is to take place within the growing season.

89. As recommended in the EA and included as Environmental Condition 17 in the appendix to this order, Cheyenne Connector is required to file an *Agricultural Impact Mitigation Plan*, developed in consultation with the Platte Valley and West Greeley Conservation Districts, prior to any construction of the pipeline project.⁹³ Commission staff will ensure that Cheyenne Connector's *Agricultural Impact Mitigation Plan* will provide appropriate mitigation measures to sufficiently address the environmental compliance issues raised during scoping and in response to the EA. Construction of the pipeline project may not proceed until Commission staff has confirmed that Cheyenne Connector has met the requirements of Environmental Condition 17. Moreover, Environmental Condition 9 requires Cheyenne Connector to develop and implement an environmental complaint resolution procedure to address landowners' environmental concerns that arise during pipeline construction and restoration of the right-of-way.

⁹² See Cheyenne Connector's January 28, 2019 Supplemental Filing.

⁹³ EA at 56-57.

90. To avoid impacts on crops, some landowners assert that Cheyenne Connector should construct the pipeline project outside of the growing season (i.e., between October 1 and March 1). Darryl and Sue Woods express concerns that pipeline construction could cause damage to soils lasting between three and five years.

91. As mentioned above, Cheyenne Connector has filed signed letters from over 50 landowners, including Darryl and Sue Woods, stating that they have entered into voluntary settlement agreements with Cheyenne Connector and urging prompt Commission approval of the projects.⁹⁴ Among other things, these letters include the following statements: "...the settlement agreements achieve fair and reasonable resolution to the issues of valuation and, importantly, provide us with much needed certainty regarding our agricultural operations" and "Adhering to the project timeline...provides [signatories] with assurance that construction activities will be limited to a single growing season." Thus, it appears that Cheyenne Connector has resolved the concerns raised by many of these commenters regarding the pipeline project construction impacts during the growing season.

92. Tom Karlberg, an affected landowner, identifies the anticipated location of a proposed water pipeline on his property and requests assurance that the Cheyenne Connector Project will not be in conflict with the water pipeline. As discussed above, Cheyenne Connector will be required to address and mitigate all impacts on agricultural operations, including avoiding water lines associated with irrigation systems, as part of the aforementioned *Agricultural Impact Mitigation Plan* required by Environmental Condition 17. Installation of a water line after construction of the Cheyenne Connector pipeline project would not be prohibited, but the water line would need to comply with the U.S. Department of Transportation's (DOT) spatial offset or crossover requirements,⁹⁵ as well as any clearance requirements imposed by Cheyenne Connector.

93. Ron and Marsha Baker comment that the pipeline project's operation could impede their ability to mine resources on their land, and cite a gravel mine approximately 0.5 mile away from their property as evidence that similar extractable resources could exist on their property. However, since the Bakers are apparently not currently mining gravel (or other mineral resources) on their property, and they have not identified any

⁹⁴ See Cheyenne Connector's April 30, 2019 Supplemental Filing at 44-47. We note that Darryl and Sue Woods' March 29, 2019 comments on the EA were filed approximately one month prior to Cheyenne Connector's April 30, 2019 Supplemental Filing, which included letters signed by Darryl and Sue Woods, indicating that they had resolved their outstanding right-of-way issues with the Cheyenne Connector Pipeline Project.

⁹⁵ See 49 C.F.R. § 195.250 (2019) (requiring at least 12 inches of clearance between pipe and any other underground structure other than drainage tile).

specific resources or plans that would be compromised by the presence of a pipeline, it is speculative to try to determine future impacts.

94. The Bakers also express concern regarding the potential impacts of an additional temporary access road (TAR) 051A, which purportedly crosses their property and is within the 100-year floodplain. The Bakers assert that any modified road in this area would divert flood waters from their present path onto their pasture, and could also adversely affect their ability to return water to the South Platte River. Additionally, Karla Herold comments that Cheyenne Connector informed her that it plans to utilize a staging area on her property, but that Cheyenne Connector did not inform her of this planned staging area until March 2019.

95. We note that to date, Cheyenne Connector has not proposed construction or use of any additional access roads on the Baker property⁹⁶ or any staging area on the Herold property. Cheyenne Connector would need to propose and receive additional authorization from Commission staff before any such facilities could be installed.⁹⁷ The temporary access road which Cheyenne Connector has proposed on the Baker property, TAR 051, is listed in Cheyenne Connector's application as an existing 1,332-foot-long gravel lane. As indicated in the EA,⁹⁸ Cheyenne Connector proposes to widen, blade, and add gravel to TAR 051 to accommodate the travel of heavy and large construction equipment.⁹⁹ Temporary road upgrades of this nature would not have a significant impact on the floodplain as there would be no increase in impervious surfaces, and the function of the floodplain (i.e., ability of the floodplain to promote groundwater recharge and provide for flood storage and water conveyance) would not be affected in an appreciable manner by use of TAR 051 as proposed. Further, given the flat topography in the area, it is unlikely that the amount of gravel that will be added to the road would

⁹⁶ The most recent alignment sheets, filed by Cheyenne Connector August 2, 2018, do not depict a road designated as TAR 051A, nor was such a road included in appendix G of the EA, which lists the access roads proposed by Cheyenne Connector.

⁹⁷ Environmental Condition 5 sets forth a process for Cheyenne Connector to propose minor route realignments or facility relocations. In addition to documentation of landowner approval, Cheyenne Connector would need to provide information regarding potential environmental effects on any such modifications.

⁹⁸ EA at 13 and Appendix G.

⁹⁹ We note that the Cheyenne Connector's April 30, 2019 Supplemental Filing at 30-31 and 34-35 includes letters from the Bakers stating that they have entered into voluntary settlement agreements with Cheyenne Connector and urging prompt Commission approval of the projects.

(continued ...)

cause the height of the road to increase to the extent that would alter water flow patterns. Accordingly, we do not anticipate that overland or groundwater flow to the South Platte River will be significantly hindered, and that any water diverted onto the Bakers' pasture would be a minor and temporary impact.

D. Wildlife Impacts

96. Janet Roth requests that Cheyenne Connector bore under native habitat areas and restore all native, non-crop areas to their original pre-pipeline condition. Ms. Roth also contends that open trench construction would result in long-term impacts on habitat near waterbodies used by wildlife, including small mammals, deer, and birds (including bald eagles, discussed further below). Impacts on wildlife, migratory birds, and special status species are discussed in sections 4.2, 4.3, and 4.4 of the EA. As discussed in the EA, larger wildlife species are generally able to avoid active construction areas and make use of nearby available habitat.¹⁰⁰ Further, the applicants adherence to the FERC Plan and FERC Procedures will ensure restoration of most crossed areas (i.e., non-forested) and waterbody crossings to pre-construction condition and contours. We agree with the EA's conclusion that impacts on wildlife and habitat will primarily be short-term (1-3 years) and will not result in significant impacts.¹⁰¹

E. Migratory Birds, Bald Eagles, and Colorado Raptors

97. Some landowners identify eagles, hawks, and owls inhabiting or nesting near the pipeline route. The EA discusses impacts on and mitigation for wildlife, migratory birds, and Colorado raptors.¹⁰² One landowner points out eagle nesting sites in proximity to the pipeline project construction right-of-way, and recommends that construction in these areas be carefully monitored during the nesting season.

98. The EA discusses impacts and mitigation for bald eagles and bald eagle nests.¹⁰³ For example, if construction is to commence during the eagle nesting season (e.g., spring or early summer 2019), the applicants will re-survey for nests prior to construction.¹⁰⁴ For active eagle nests near the construction work area, the applicants would adhere to

¹⁰⁰ EA at 36.

¹⁰¹ EA at 37.

¹⁰² EA at 43-47 (section 4.4).

¹⁰³ EA at 44-47.

¹⁰⁴ EA at 45-47.

(continued ...)

Colorado Parks and Wildlife (CPW) recommended spatial buffers, which are more stringent than the U.S. Fish and Wildlife Service's (FWS) *National Bald Eagle Management Guidelines*.¹⁰⁵ Although there may be specific cases where topography or type of vegetation separating the construction work from the nest may allow a different spatial buffer, the applicants would discuss those cases on a site-specific basis with the FWS and CPW.¹⁰⁶

99. If construction is scheduled to occur within a raptor nest spatial buffer, the FWS requires that the nest be monitored by a qualified biologist for signs of disturbance.¹⁰⁷ If disturbance is observed, the applicants must contact the appropriate FWS and CPW offices for further guidance.¹⁰⁸ If the applicants cannot adhere to the spatial buffers or required monitoring by a qualified biologist, the FWS would require them to seek take permits, if applicable, for bald eagles under the Bald and Golden Eagle Protection Act.¹⁰⁹ Based on the implementation of the applicants' proposed minimization and mitigation measures to avoid or reduce impacts during the nesting season, we agree with the EA's conclusion that the projects would not have significant impacts on migratory birds, including bald eagles and other raptors of concern.

F. Safety

100. Several landowners raise safety concerns related to residences within proximity to the pipeline project, including "blast radius" spacing of mainline valves along the pipeline, depth of cover for the pipeline, and "acceptable setback distance." The landowners further request that the pipeline be upgraded from Class 1 to Class 3 near residential areas. Janet Roth states that a known fault is located within one mile of the proposed pipeline route, and expresses concerns regarding the integrity of the pipeline due to potential impacts of general seismic activity within the project's area.

101. As stated in the EA, Cheyenne Connector must design, construct, and operate all facilities associated with the pipeline project in accordance with the DOT's natural gas

¹⁰⁵ EA at 47.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

(continued ...)

pipeline safety standards.¹¹⁰ The DOT also defines area classifications based on the population density near the pipeline.¹¹¹ Higher class designations, which represent more populated areas, require more stringent safety factors in pipeline design, testing, and operation.¹¹² Cheyenne Connector will be required to construct and operate its pipeline in compliance with all applicable federal safety regulations, including class designations.¹¹³ Moreover, modern steel pipelines with high quality electric arc welded joints have a history of performing well during seismic events with ground displacements up to 60 centimeters because of the restrained, welded joints and the flexibility of the pipeline to move with the earth during ground shaking. Further, the applicants' proposed pipeline and aboveground facilities would be designed in accordance with all applicable federal and state safety codes, which govern pipeline thickness, welding standards for joints, and pipeline strength.

G. Property Values

102. Several landowners are concerned that the projects may devalue their properties and agricultural lands. Commission staff has reviewed studies that evaluate the impact of energy infrastructure facilities on surrounding property values. The EA ultimately found no conclusive evidence indicating that pipeline infrastructure projects have a significant negative impact on property values.¹¹⁴ Accordingly, we conclude here, as we have in

¹¹⁰ 49 C.F.R. pt. 192 (2019).

¹¹¹ The four DOT area classifications include: Class 1 (10 or fewer buildings intended for human occupancy); Class 2 (location with more than 10 but less than 46 buildings intended for human occupancy); Class 3 (location with 46 or more buildings intended for human occupancy or where pipeline lies within 100 yards of any building or outside area occupied by 20 or more people at least 5 days a week for 10 weeks in any 12-month period); and Class 4 (location where buildings with four or more stories aboveground are prevalent). EA at 99.

¹¹² *Id.*

¹¹³ EA at 104. In accordance with DOT class designation requirements, the Cheyenne Connector Pipeline will be built to Class 2 specifications near residential areas at mileposts 4.3 – 6.6, 21.3 – 29.6, and 31.5 – 35.1; to Class 3 specifications near a shooting range at mileposts 50.0 – 50.3; and to Class 1 specifications in all other locations.

¹¹⁴ *See* EA at 72-73.

(continued ...)

other cases, that the proposed projects are not likely to significantly impact property values in the project area.¹¹⁵

H. Cultural Resources

103. The Northern Cheyenne Tribe comments that Cheyenne Connector should conduct pedestrian surveys and/or site visits of the pipeline route, and reiterates its concerns that all survey work must be done in consultation with tribes. As noted in the EA, tribal input was sought by both Cheyenne Connector and Commission staff, and tribal responses were considered.¹¹⁶ Cheyenne Connector conducted a cultural resources survey of the pipeline route from October 2017 to February 2018, surveying approximately 3,125.3 acres, including a 250-foot-wide corridor along the pipeline route, as well as access roads, extra workspaces, and contractor yards.¹¹⁷ Cheyenne Connector memorialized the results of the survey in a *Class III Cultural Resources Inventory* report, which it provided to the Northern Cheyenne Tribe in June 2018. No comments on the report were received. The pipeline survey was conducted in accordance with the Colorado Office of Archaeology and Historic Preservation's (which acts as the State Historic Preservation Office [SHPO]) Guidelines and standards, and the SHPO reviewed and approved the report results. Moreover, Environmental Condition 18 ensures that Cheyenne Connector files all necessary information to enable Commission staff to complete consultation with the SHPO before authorizing construction. Therefore, we conclude that the proposed projects are not likely to significantly impact cultural resources.

I. System Alternatives and Route Variations

104. Anadarko and DCP Midstream, the shippers to be served by the pipeline project, comment that although they are both in general agreement with the EA's conclusions, they take issue with the EA's statement that the CIG System Alternative "would appear to meet the Projects' objective" and "would potentially present an environmental advantage because it would involve significantly less new construction than the proposed Projects." To support its rejection of the CIG System Alternative as a viable alternative, DCP Midstream argues that CIG's multiple revisions of its alternative, which was analyzed in the EA, over a period of several months serve as evidence that its alternative is not reliable or stable. According to DCP Midstream, questions remain about how CIG's proposed alternative would be able to meet the needs of the shippers' gas

¹¹⁵ *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110, at P 38 (2019); *Transcontinental Gas Pipe Line Co., LLC*, 158 FERC ¶ 61,125, at P 106 (2017); *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 at P 228.

¹¹⁶ See EA at 76-77.

¹¹⁷ EA at 74.

processing plants, unreasonably relies on capacity turnback and de-contracting, and is unable to meet the timing needs of each shipper. Similarly, Anadarko argues that CIG failed to propose a complete and coherent system alternative and that its alleged alternative is subject to multiple contingencies and potential delays, falls approximately 100,000 Dth/day short of the capacity needed by the shippers within their specified timeframe, and is otherwise incapable of meeting the pipeline project's anticipated in-service date. On the other hand, Leslie Peterson voices support for the CIG System Alternative or other use of CIG's existing pipeline system as an alternative to serve the needs of the projects.

105. We agree with the project shippers that the CIG System Alternative is not a viable system alternative. CIG did not file a formal application requesting to certificate the CIG System Alternative. To our knowledge, CIG does not have commitments from shippers that would support the CIG System Alternative. Nor did CIG submit the engineering data (e.g., flow diagrams), in a certificate application or otherwise, necessary for Commission staff to fully analyze the technical feasibility of the alternative. Evaluating the viability of the system alternative was further complicated by CIG's filing of several iterations of the alternative over a five-month period, with stated available capacities that, as Anadarko and DCP Midstream point out, are unreliable and unlikely to meet the project shippers' timing needs because the available capacity is contingent on capacity turnback and de-contracting, as well as future system modifications.

106. Under NEPA, the Commission is required to analyze the environmental consequences of a proposed pipeline project as well as reasonable alternatives to the project.¹¹⁸ The purpose of NEPA's requirement is to ensure that the Commission is fully informed of the environmental consequences of a proposal before it decides whether to certificate it.¹¹⁹ Making certain assumptions about the alternative, which we note has not been filed as a proposal with the Commission, the EA analyzed the environmental impacts of CIG's System Alternative to the extent possible. The EA found that an alternative using the CIG System could potentially present an environmental advantage because it conceptually would involve significantly less new construction compared to Cheyenne Connector's proposal. However, the EA also concluded that Cheyenne Connector's proposed pipeline project is environmentally acceptable and would not result in significant environmental impacts.¹²⁰

¹¹⁸ 42 U.S.C. § 4332(C) (2012).

¹¹⁹ *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978).

¹²⁰ EA at 124.

(continued ...)

107. NEPA does not require the Commission to certificate the most environmentally favorable alternative. Nor does it require that the Commission deny an application on the grounds that there hypothetically might be a way to satisfy the project purpose with less environmental impact. “If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.”¹²¹ Here, the EA adequately identified and evaluated the adverse environmental effects of Cheyenne Connector’s proposal. In addition, the EA evaluated the environmental impacts of the CIG System Alternative to the extent possible using the technical information available and relying on certain environmental assumptions. Ultimately, we conclude (based on all factors considered, both environmental and non-environmental) that Cheyenne Connector’s pipeline project is in the public convenience and necessity. Further, we find that, on balance, the benefits that the project will provide and its less-than-significant environmental impacts outweigh the potential environmental benefits of the non-viable, hypothetical system alternative proffered by CIG. The only viable proposal that is subject to Commission action at this time is Cheyenne Connector’s proposed pipeline project. CIG has not, to date, requested authority to construct and operate any alternative pipeline route or project. Nor has CIG filed any additional comments, with regard to the CIG System Alternative or otherwise, following the December 2018 issuance of the EA for Cheyenne Connector’s and Rockies Express’s proposed projects.

108. On March 31, 2019, Ed Mark requested that the Cheyenne Connector pipeline project follow an “existing corridor” to the north and west of his property, rather than the pipeline alignment as proposed by Cheyenne Connector and analyzed in the EA. Mr. Mark’s suggested alternative would impact an additional, adjacent, landowner. Therefore, we will not require Cheyenne Connector to adopt this route variation, which would merely shift the impacts to an adjacent landowner.¹²²

¹²¹ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989); *Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227-228 (1980); *Kleppe v. Sierra Club*, 427 U.S. 390, 490 n.21 (1976).

¹²² As noted previously, Environmental Condition 5 sets forth a mechanism, requiring, among other things, approval of any affected landowners, by which Cheyenne Connector can propose minor route realignments or facility relocations.

J. Easement Negotiations and Local Permits

109. As previously noted, several landowners express dissatisfaction with Cheyenne Connector's easement negotiation process for the pipeline right-of-way.¹²³ In addition, many commenters asked the Commission to delay issuance of a certificate to allow Weld County to act on Cheyenne Connector's application for a special use permit. On May 29, 2019, the Weld County Board of County Commissioners unanimously approved Cheyenne Connector's special use permit application.¹²⁴ Moreover, Cheyenne Connector has subsequently filed more than fifty letters signed by landowners, many of whom had filed earlier comments expressing disapproval of Cheyenne Connector's negotiation process, affirming that they have entered into settlement agreements granting rights-of-way or other land rights to Cheyenne Connector.¹²⁵ To date, Cheyenne Connector and Rockies Express have secured 99.59 percent of the right-of-way required for the projects.

110. Hoshiko Land, LLC; HLT Farms, LLLP; and William T. Klein (each co-owners of the Irons Lateral Ditch), comment that Cheyenne Connector has not entered into an agreement with them regarding crossing a waterbody on their property they refer to as the "Irons Lateral Ditch." The commenters request that the Commission withhold its authorization for the pipeline project until an agreement has been entered into between the owners of the ditch and Cheyenne Connector.

111. The Commission encourages applicants to obtain easements from landowners through mutually negotiated agreements. However, once the Commission determines that the construction and operation of the proposed interstate pipeline facilities are in the public convenience and necessity, Cheyenne Connector may acquire the necessary property rights through exercise of the right of eminent domain if Cheyenne Connector and the affected landowners are unable to reach agreement.¹²⁶ In any event, we do not believe the crossing of the Irons Lateral Ditch presents any particularly problematic issues, and should be a standard waterbody crossing. As stated in the EA, Cheyenne Connector would open-cut non-flowing and intermittent and ephemeral streams, including ditches.¹²⁷ If a ditch (including the Irons Lateral Ditch) is dry at the time of construction, Cheyenne Connector would cross it using standard upland crossing

¹²³ See *supra* P 29.

¹²⁴ Cheyenne Connector's May 30, 2019 Supplemental Filing.

¹²⁵ See Cheyenne Connector's April 30, 2019 Supplemental Filing.

¹²⁶ See *supra* note 25.

¹²⁷ EA at 11.

(continued ...)

techniques. FERC's Procedures require that open-cut crossings be completed and backfilled within 24 hours for minor waterbodies less than 10 feet wide and within 48 hours for waterbodies between 10 and 100 feet wide.¹²⁸

112. The West Greeley Conservation District states that it will not approve a mitigation plan for the pipeline project construction until the mitigation plan meets with the District's satisfaction and the Weld County special use permit is approved. Particularly, the District is concerned that Cheyenne Connector's revised mitigation plan relies on oversight and compliance by Cheyenne Connector's employees when the District has traditionally relied on the local Natural Resources Conservation Service and the Weld County Planning Department to determine the exact reclamation methods based on soil and crop types.

113. As described in the EA,¹²⁹ and required by Environmental Condition 7, the environmental inspectors employed by the applicants would follow a robust, Commission-designed inspection regime which, as required by Environmental Condition 8, will include the submittal of weekly construction status reports to the Commission for its review, monitoring, and follow up. In addition, Commission staff and/or a FERC-directed contractor will conduct regularly scheduled inspections of the projects from commencement of construction through full restoration. Inspection results, including any remedial actions ordered, will be filed in the dockets for each project. Commission staff will require that Cheyenne Connector remedy any noncompliance or problem areas related to requirements specified in the FERC Plan and Procedures within a timely manner and confirm in subsequent reports that these issues have been resolved. Further, Weld County may opt to conduct its own inspections of the projects independently of FERC's regular inspections. Cheyenne Connector would be required to report any County- or District-documented instances of noncompliance to the Commission within 24 hours of receiving notice of such noncompliance. Finally, as noted above, Weld County has approved Cheyenne Connector's special use permit request.

K. Environmental Analysis Conclusion

114. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed and operated in accordance with Cheyenne Connector's and Rockies Express's applications and supplements, including any commitments made therein, and in compliance with the environmental conditions in the appendix to this order, our approval of these proposals 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

¹²⁸ EA at 24.

¹²⁹ *Id.*

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 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.

115. 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.¹³⁰

116. At a hearing held on September 19, 2019, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, as supplemented, and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Cheyenne Connector, authorizing it to construct and operate the Cheyenne Connector Pipeline Project, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant in Docket No. CP18-102-000, including any commitments made therein.

(B) A blanket construction certificate is issued to Cheyenne Connector under Subpart F of Part 157 of the Commission's regulations.

¹³⁰ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

(C) A blanket transportation certificate is issued to Cheyenne Connector under Subpart G of Part 284 of the Commission's regulations.

(D) A certificate of public convenience and necessity is issued to Rockies Express, authorizing it to construct and operate the Cheyenne Hub Enhancement Project, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant in Docket No. CP18-103-000, including any commitments made therein.

(E) The certificates authorized in Ordering Paragraphs (A) and (D) are conditioned on Cheyenne Connector's and Rockies Express's:

- (1) completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable Commission regulations including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) compliance with the environmental conditions listed in the appendix to this order.

(F) Cheyenne Connector and Rockies Express shall file written statements affirming that they have executed firm contracts for the capacity levels and terms of service represented in signed precedent agreements, prior to commencing construction.

(G) Cheyenne Connector's initial rates and tariff are approved, as conditioned and modified above.

(H) Cheyenne Connector is required to file actual tariff records reflecting the initial rates and tariff that comply with the requirements contained in the body of this order no less than 60 days prior to the date the proposed project goes into service.

(I) Within three months after its first three years of actual operation, as discussed herein, Cheyenne Connector must make a filing to justify its existing cost-based firm and interruptible recourse rates. In the alternative, in lieu of such filing, Cheyenne Connector may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

(J) Rockies Express's proposed initial rates for service under Rate Schedules C-HUB-FS and C-HUB-IS are approved, as modified above, for service utilizing the Cheyenne Hub Enhancement Project.

(K) Rockies Express's proposal to charge incremental fuel and electric power charges is approved.

(L) Rockies Express is required to file actual tariff records reflecting the initial rates, separately-stated fuel and power rates, new Rate Schedules C-HUB-FS and C-HUB-IS, and other proposed changes to its tariff that comply with the requirements contained in the body of this order no less than 60 days prior to the date the proposed project goes into service.

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

(N) PSCo's and CIG's requests for a technical conference are denied.

By the Commission. Commissioner Glick is dissenting with a separate statement
Attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions

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

1. Cheyenne Connector, LLC (Cheyenne Connector) and Rockies Express Pipeline LLC (Rockies Express) shall follow the construction procedures and mitigation measures described in their applications and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Cheyenne Connector and Rockies Express 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 each project's construction and operation.
3. **Prior to any construction**, Cheyenne Connector and Rockies Express shall each file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel 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**, Cheyenne Connector and Rockies Express 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.

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

5. Cheyenne Connector and Rockies Express shall each 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**, Cheyenne Connector and Rockies Express shall each file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Cheyenne Connector and Rockies Express must file revisions to the plan as schedules change. The plan shall identify:
- a. how Cheyenne Connector and Rockies Express will implement the construction procedures and mitigation measures described in their respective applications and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Cheyenne Connector and Rockies Express will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Cheyenne Connector and Rockies Express will give to all personnel involved with construction and restoration (initial and refresher training as the projects progress and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - f. the company personnel (if known) and specific portion of Cheyenne Connector and Rockies Express' organizations having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Cheyenne Connector and Rockies Express 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. Cheyenne Connector shall employ at least one EI per construction spread of the Cheyenne Connector Pipeline Project (Pipeline Project). Rockies Express shall employ at least one EI for the Cheyenne Hub Enhancement Project. The EIs 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 their respective Implementation Plans, Cheyenne Connector and Rockies Express shall file updated status reports with the Secretary on a **weekly** basis (Cheyenne Connector) or **monthly** basis (Rockies Express) 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 Cheyenne Connector and Rockies Express' efforts to obtain the necessary federal authorizations;
 - b. the construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

- d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Cheyenne Connector and Rockies Express from other federal, state, or local permitting agencies concerning instances of noncompliance, and Cheyenne Connector and Rockies Express' response.
9. Cheyenne Connector shall develop and implement an environmental complaint resolution procedure, and file such procedure with the Secretary, for review and approval by the Director of OEP. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the Pipeline Project and restoration of the right-of-way. **Prior to construction**, Cheyenne Connector shall mail the complaint procedures to each landowner whose property will be crossed by the Pipeline Project.
- a. In its letter to affected landowners, Cheyenne Connector shall:
 - (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - (2) instruct the landowners that if they are not satisfied with the response, they should call Cheyenne Connector's Hotline; the letter should indicate how soon to expect a response; and
 - (3) instruct the landowners that if they are still not satisfied with the response from Cheyenne Connector's Hotline, they should contact the Commission's Landowner Helpline at 877-337-2237 or at LandownerHelp@ferc.gov.
 - b. In addition, Cheyenne Connector shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
 - (1) the identity of the caller and date of the call;
 - (2) the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
 - (3) a description of the problem/concern; and

- (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
10. Cheyenne Connector and Rockies Express must receive written authorization from the Director of OEP **before commencing construction of any project facilities.** To obtain such authorization, Cheyenne Connector and Rockies Express must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
11. Cheyenne Connector and Rockies Express 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 each project are proceeding satisfactorily.
12. **Within 30 days of placing their respective authorized facilities in service,** Cheyenne Connector and Rockies Express shall each 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 Cheyenne Connector and Rockies Express 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.
13. **Prior to construction,** Cheyenne Connector shall file an updated table of all proposed road, railroad, and canal crossings by milepost for the Pipeline Project.
14. Cheyenne Connector **shall not begin construction activities until:**
 - a. any outstanding or additionally required biological surveys for the Colorado butterfly plant and/or the Ute ladies'-tresses are completed and the results are filed with the Secretary;
 - b. the FERC staff completes any necessary Endangered Species Act section 7 consultation with the U.S. Fish and Wildlife Service (FWS); and
 - c. Cheyenne Connector has received written notification from the Director of OEP that construction and/or use of mitigation (including implementation of conservation measures) may begin.

15. **Prior to construction**, Cheyenne Connector shall file with the Secretary the final Migratory Bird Conservation Plan developed in consultation with the FWS, along with any comments on the plan provided by the FWS.
16. **Prior to commencing horizontal directional drill (HDD) construction**, Cheyenne Connector shall file with the Secretary, for review and written approval by the Director of OEP, a list of any additional drilling fluid additives that could be used, as well as the Safety Data Sheets for each additive, and an affirmative statement that Cheyenne Connector will utilize only pre-approved, non-petrochemical-based, non-hazardous additives that comply with permit requirements and environmental regulations.
17. **Prior to construction**, Cheyenne Connector shall file with the Secretary, for review and written approval of the Director of OEP, an Agricultural Impact Mitigation Plan developed in consultation with the Platte Valley and West Greeley Conservation Districts. The Plan shall identify the measures Cheyenne Connector will use to avoid damage to agricultural resources and to monitor the success of the mitigation. The Plan shall address issues such as depth of cover; restoration measures, including decompaction; maintenance of conservation practices; timing of construction during crop seasons; and identification, repair, and monitoring of drain tile and irrigation systems.
18. Cheyenne Connector shall **not begin construction** of Pipeline Project facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. Cheyenne Connector files with the Secretary:
 - (1) an addendum survey report for the outstanding survey areas, and the State Historic Preservation Officer's (SHPO) comments on the addendum report;
 - (2) any required avoidance/treatment plan, and the SHPO's comments on any plan;
 - 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 the OEP approves the cultural resources reports and plans, and notifies Cheyenne Connector 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.”**

19. **Prior to construction of any HDD**, Cheyenne Connector shall file with the Secretary an HDD noise analysis identifying the existing and projected noise levels at each NSA within 0.5 mile of each HDD entry and exit site. If noise attributable to the HDD is projected to exceed a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any noise-sensitive areas (NSA), Cheyenne Connector shall file with the noise analysis a site-specific mitigation plan to reduce the projected noise levels to below an L_{dn} of 55 dBA at any NSA for the review and written approval by the Director of OEP. During drilling operations, Cheyenne Connector shall implement the approved plan, monitor noise levels, include the noise levels in the weekly construction status reports, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than an L_{dn} of 55 dBA at the NSAs.

20. Rockies Express shall file with the Secretary a noise survey for the Cheyenne Hub Booster Compressor Station **no later than 60 days** after placing all of the equipment at the modified Cheyenne Hub into service. If a full power load condition noise survey is not possible, Rockies Express shall file an interim survey at the maximum possible power load **within 60 days** of placing the station into service and file the full power load survey **within 6 months**. If the noise attributable to operation of all equipment at the modified Cheyenne Hub under interim or full power load conditions exceeds an L_{dn} of 55 dBA at any nearby NSA, Rockies Express shall:
 - a. file a report with the Secretary, for review and written approval by the Director of OEP, on what changes are needed;
 - b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
 - c. confirm compliance with this requirement by filing a second full power load noise survey with the Secretary for review and written approval by the Director of OEP **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Cheyenne Connector, LLC
Rockies Express Pipeline LLC

Docket Nos. CP18-102-000
CP18-103-000

(Issued September 20, 2019)

GLICK, Commissioner, *dissenting*:

1. I dissent from today's order because it violates both the Natural Gas Act¹ (NGA) and the National Environmental Policy Act² (NEPA). The Commission again refuses to consider the consequences its actions have for climate change. Neither the NGA nor NEPA permit the Commission to assume away the climate change implications of constructing and operating these projects. Yet that is precisely what the Commission is doing here.

2. In today's order authorizing Cheyenne Connector, LLC's proposed Cheyenne Connector Pipeline (Cheyenne Connector) and Rockies Express Pipeline LLC's proposed Cheyenne Hub Enhancement (collectively, the Projects), the Commission continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts. The Commission steadfastly refuses to assess whether the impact of the Projects' GHG emissions is significant, even after quantifying at least some of those emissions.³ That failure forms an integral part of the Commission's decisionmaking in today's order: The refusal to assess the significance of the Projects' contribution to the harm caused by climate change is what allows the Commission to misleadingly state that "approval of the Projects would not constitute a major action significantly affecting the quality of the human environment"⁴ and, as a result, conclude that the Projects satisfy the NGA's public interest standard.⁵ Claiming that a project has no significant environmental impacts while at the same time refusing to assess the

¹ 15 U.S.C. § 717f (2012).

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

³ As discussed further below, the Commission quantified the direct emissions resulting from the construction and operation of the Projects, but failed to quantify the reasonably foreseeable indirect impacts caused by the Projects. *See infra* PP 7-9.

⁴ Environmental Assessment at 130 (EA).

⁵ *Cheyenne Connector, LLC*, 168 FERC ¶ 61,180, at PP 30, 35 (2019) (Certificate Order).

significance of the project's impact on the most important environmental issue of our time is not reasoned decisionmaking.

3. In addition, the Commission fails to adequately consider what could be a viable alternative to the Cheyenne Connector. The Commission's own EA concludes that the proposed alternatives appears to be meet the objectives of the Cheyenne Connector as well as be technically and economically feasible and likely to have dramatically fewer adverse impacts. The Commission, however, largely brushes off those conclusions so as to put on blinders and evaluate only the project in front of it. We can and should do better. So long as the Commission all but ignores feasible alternative proposals, it will fall short of its responsibility under NEPA and the NGA to protect landowners, communities, the environment, and the public interest more generally.

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

4. We know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, released in large quantities through the production, transportation, and the consumption of fossil fuels, including natural gas. The Commission recognizes this fact, acknowledging "GHG emissions due to human activity are the primary cause of increased atmospheric concentration of GHGs since the industrial age and are the primary contributor to climate change."⁶ In light of this undisputed relationship between anthropogenic GHG emissions and climate change, it is critical that the Commission carefully consider the Projects' contribution to climate change, both in order to fulfill NEPA's requirements and to determine whether the Projects are in the public interest under the NGA.⁷

⁶ EA at 78.

⁷ Section 7 of the NGA requires that, before issuing a certificate for new pipeline construction, the Commission must find both a need for the pipeline and that, on balance, the pipeline's benefits outweigh its harms. 15 U.S.C. § 717f (2018). Furthermore, NEPA requires the Commission to take a "hard look" at the environmental impacts of its decisions. See 42 U.S.C. § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). This means that the Commission must consider and discuss the significance of the harm from a pipeline's contribution to climate change by actually evaluating the magnitude of the pipeline's environmental impact. Doing so enables the Commission to compare the environment before and after the proposed federal action and factor the changes into its decisionmaking process. See *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*) ("The [FEIS] needed to include a discussion of the 'significance' of this indirect effect."); 40 C.F.R. § 1502.16 (a)–(b) (An agency's environmental review must "include the environmental impacts of (continued ...)")

5. Today's order falls short of that standard. As part of its public interest determination, the Commission must examine the Projects' impact on the environment and public safety, which includes the facility's impact on climate change.⁸ Nevertheless, the Commission insists that it need not consider whether the Projects' contribution to climate change is significant because it lacks "generally accepted" means to do so, or so it claims.⁹ 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 Projects will have no significant environmental impact.¹⁰ Think about that. The Commission is saying out of one side of its mouth that it cannot assess the significance of the Projects' impact on climate change¹¹ while, out of the other side of its mouth, assuring us that all environmental impacts are insignificant.¹² That is ludicrous,

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").

⁸ *See Sabal Trail*, 867 F.3d at 1373 (explaining that the Commission may "deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment"); *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019) (explaining that, "in the pipeline certification context the Commission *does* have statutory authority to act" on a project's environmental consequences, including GHG emissions, and that the Commission, therefore, has a duty to consider the reasonably foreseeable GHG emissions); *see also Atl. Ref. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959) (holding that the NGA requires the Commission to consider "all factors bearing on the public interest").

⁹ EA at 120 ("[T]here is no standard methodology to estimate the extent to which a project's incremental contribution to greenhouse gas emissions would result in physical effects on the environment for the purposes of evaluating the Projects' impacts on climate change, either locally or nationally, nor are there generally accepted criteria for determining whether a project's GHG emissions are significant under NEPA.").

¹⁰ *Id.* at 130 ("[A]pproval of the Projects would not constitute a major action significantly affecting the quality of the human environment."); *id.* at 72 ("As described throughout this EA, the Projects would not have a significant adverse impact on the environment.").

¹¹ *Id.* at 120 ("[W]e cannot determine whether the Project's contribution to climate change would be significant.").

¹² *Supra* note 10.

(continued ...)

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

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

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

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

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

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

¹⁵ See EA at 84-87.

(continued ...)

specific end use for the natural gas is known, noting, for example, that the gas could displace fossil fuels that tend to have higher GHG emissions, such as coal or oil.¹⁶

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

9. In this case, we know from the section 7 application that the natural gas transported via the Projects will meet the growing demands of retail utility customers, domestic industry, and natural gas-fired power plants.²⁰ It is no stretch to assume that, given those purposes, the vast majority, if not all, of that natural gas will be combusted. In addition, the Commission could consider the fact that, according to the U.S. Energy Information Administration, more than 97 percent of the natural gas consumed in the United States is combusted and use that number, along with the evidence in the record, such as the precedent agreements that the Commission relies on to show the need for the

¹⁶ *Id.* at 87.

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

¹⁸ *Birckhead*, 925 F.3d at 518-19.

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

²⁰ Application at 25-26.

(continued ...)

Projects, to develop ranges of likely GHG emissions, which could then inform its decisionmaking process.²¹

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

11. In addition, the Commission’s limited analysis of the Projects’ direct GHG emissions is itself flawed because it fails to adequately consider the harm caused by the these emissions and “evaluate the ‘incremental impact’ that [they] will have on climate

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

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

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

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change or the environment more generally.”²⁴ 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 GHG 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.”²⁵

12. As discussed above, the Commission’s refusal to even assess the significance of the Projects’ GHG emissions during the environmental review process relegates climate change to a negligible role, at best, in its NEPA analysis. The Commission argues that it need not determine whether the Projects’ contribution to climate change is significant because “[t]here is no standard methodology” to determine whether a project’s GHG emissions “would result in physical effects on the environment for the purposes of evaluating the Projects’ impacts on climate change, either locally or nationally.”²⁶

13. But the lack of a single methodology does not prevent the Commission from adopting *a* methodology, even if that methodology is not universally accepted. The Commission has several tools to assess the harm from the Projects’ contribution to climate change, including, for example, the Social Cost of Carbon. By measuring the long-term damage done by a ton of carbon dioxide, the Social Cost of Carbon links GHG emissions to actual environmental effects from climate change, thereby facilitating the necessary “hard look” at the Projects’ 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.²⁷

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

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

²⁶ EA at 120.

²⁷ *See, e.g., Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 (2019) (Glick, Comm’r, dissenting in part at P 6 & n.11) (noting that the Social Cost of Carbon (continued ...))

14. 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 Projects' GHG emissions have a significant impact on climate change. That is precisely what the Commission does in other aspects of its environmental review. Consider, for example, the Commission's findings that the Cheyenne Connector will not have a significant effect on issues as diverse as "ephemeral and intermittent waterbodies,"²⁸ traffic,²⁹ or the 981.1 acres of agricultural land it will disturb.³⁰ Notwithstanding the lack of any "standard methodology" or "generally accepted criteria" to assess these impacts, the Commission managed to use its judgment to conduct a qualitative review and assess the significance of the Projects' effect on those considerations. The Commission's refusal to, at the very least, exercise similar qualitative discretion and judgment on the significance of GHG emissions here is arbitrary and capricious.³¹

15. That refusal is even more mystifying because NEPA "does not dictate particular decisional outcomes."³² NEPA "'merely prohibits uninformed—rather than unwise—agency action.'"³³ In other words, taking the matter seriously—and rigorously examining a project's impacts on climate change—does not necessarily prevent any Commissioner from ultimately concluding that a project meets the public interest standard.

"gives both the Commission and the public a means to translate a discrete project's climate impacts into concrete and comprehensible terms"); *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm'r, dissenting).

²⁸ EA at 26.

²⁹ *Id.* at 67-68.

³⁰ *Id.* at 55-57.

³¹ After all, the standard for evaluating significance laid out in the EA is whether the adverse impact "would result in a substantial adverse change in the physical environment," *id.* at 18. Surely that standard is open to some subjective interpretation by each Commissioner. What today's order does not explain is why it is appropriate to exercise subjective interpretation and judgment when it comes to impacts such as "ephemeral and intermittent waterbodies" and traffic, but not climate change.

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

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

(continued ...)

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

17. 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 Projects' GHG emissions, eliminating a potential pathway for us to achieve consensus on whether the Projects are consistent with the public interest.

III. The Commission Fails to Adequately Consider Alternatives

18. The Commission must consider viable alternatives to a proposed project. “[T]he duty imposed upon the Commission by Section 7 of the Natural Gas Act is not merely to determine which of the submitted applications is most in the public interest, but also to give proper consideration to logical alternatives which might serve the public interest better than any of the projects outlined in the applications.”³⁷ Similarly, under NEPA, the

³⁴ *Robertson*, 490 U.S. at 351.

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

³⁶ 15 U.S.C. § 717f(e); Certificate Order, 168 FERC ¶ 61,180 at P 114 (“[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 . . .”).

³⁷ *Nat. Gas Co. v. FPC*, 399 F.2d 953, 973 (D.C. Cir. 1968); *Minisink Residents for Env'tl. Pres. & Safety v. FERC*, 762 F.3d 97, 107 (D.C. Cir. 2014) (explaining that the (continued ...)

Commission must “‘identify the reasonable alternatives to the contemplated action’ and ‘look hard at the environmental effects of its decision.’”³⁸

19. The record here presents a potentially viable alternative to the Cheyenne Connector. Colorado Interstate Gas Company, L.L.C. (CIG) submitted to the record a proposal to re-engineer some of its existing facilities and take advantage of available capacity to provide the 600,000 dekatherms/day of transportation capacity between Anadarko Energy Services Company’s (Anadarko) and DCP Midstream Marketing, LLC’s (DCP Midstream) processing facilities and the Cheyenne Hub—the exact purpose of the Cheyenne Connector.³⁹ The EA analyzed the CIG alternative and concluded that it would satisfy the purpose of the Cheyenne Connector and did not present any major technical or economic concerns. In addition, the EA noted that the CIG alternative would, in many respects, have a small fraction of the Cheyenne Connector’s adverse impacts. It noted, for example, that the CIG alternative would disturb roughly one-tenth as much land, one-tenth as many acres of wetlands, and cross about one-tenth as many waterbodies as the Cheyenne Connector. It would, in other words, reduce the adverse environmental impacts by an order of magnitude. The opportunity to so significantly reduce the harm that a project causes individuals, landowners, and the environment is one that the Commission ought to seriously consider.

20. Unfortunately, today’s order dismisses the CIG alternative, largely adopting the arguments advanced by the potential shippers on the Cheyenne Connector, without a serious discussion of the relative merits of the two projects.⁴⁰ The Commission chides

“the Commission was obligated to consider, as part of its certificating process under the NGA, reasonable alternatives to the project proposed by” the section 7 applicant); *see also Citizens for Allegan Cty., Inc. v. FPC*, 414 F.2d 1125, 1133 (D.C. Cir. 1969) (noting that “the FPC [the Commission’s predecessor agency] has an active and independent duty to guard the public interest, and that this may require consideration of alternative courses, other than those suggested by the applicant”).

³⁸ *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 967 (D.C. Cir. 2000) (quoting *Corridor H Alternatives, Inc. v. Slater*, 166 F.3d 368, 374 (D.C. Cir. 1999) (alterations omitted); *see* 42 U.S.C. § 4332(C) (2018) (providing NEPA’s requirement that an agency include a detailed statement assessing, among other things, the “alternatives to the proposed action”).

³⁹ *See* EA at 122-25; CIG Comments at 17-18.

⁴⁰ It is also worth noting that both commenters have the option to invest in the Cheyenne Connector—an option that they presumably would not have for the CIG alternative—which should have made the Commission take a somewhat more critical eye
(*continued ...*)

CIG for not having provided certain documents and for not providing others immediately.⁴¹ As noted, those factors did not prevent the EA from finding that the CIG alternative appears to meet the Cheyenne Connector’s objectives and, in any case, the Commission could always have issued a data request, as it did four other times in this proceeding,⁴² seeking that information. Indeed, one might think that gathering such information would be a Commission priority just a few months after the D.C. Circuit criticized its “decidedly less-than-dogged efforts to obtain the information it says it would need” in a not dissimilar context.⁴³ Alternatively, the Commission could have granted CIG’s request to hold a technical conference or workshop to discuss the proposal and address its claimed concerns about the viability of the CIG alternative.⁴⁴ But the Commission declines to do so, saying it has all the information it needs before it.⁴⁵ It is hard to believe that the Commission has seriously considered the CIG alternative when it simultaneously declines CIG’s request to develop the record on its proposal while at the same criticizing CIG for not having sufficiently developed the record.

21. For my part, I believe that the record here makes a compelling case that the CIG alternative could satisfy the purpose of the Cheyenne Connector with dramatically fewer adverse effects. That is exactly the type of alternative that the Commission must take seriously if it is truly concerned about minimizing the adverse impacts of a new pipeline on landowners, communities, and the environment. If there is a serious suggestion that existing resources could be used more effectively, we should explore that option before rushing to approve any new application in front of us.⁴⁶ At the very least, I would have granted CIG’s request for a technical conference to further explore the viability and relative merits of the CIG alternative.

to their opposition to the CIG alternative.

⁴¹ Certificate Order, 168 FERC ¶ 61,180 at P 105.

⁴² According to the docket, the Commission issued data requests on July 5, 2018; July 27, 2018; September 20, 2018; and October 31, 2018.

⁴³ *Birckhead*, 925 F.3d at 920.

⁴⁴ Certificate Order, 168 FERC ¶ 61,180 at P 21.

⁴⁵ *Id.* P 22 (“We find the merits of these matters can be adequately assessed and addressed based on the information in the record in this proceeding.”).

⁴⁶ It is worth noting that CIG operates an extensive natural gas pipeline network and is a major subsidiary of Kinder Morgan—not exactly a fly-by-night operation.

(continued ...)

22. The Commission also notes that it is not required to select the option with the fewest environmental harms and that, in any case, CIG has not filed a section 7 application to develop the CIG alternative. Both responses are beside the point. First, my point is not that NEPA requires the Commission to select the CIG alternative *because* it has fewer adverse impacts, but rather that the potential for reduced environmental impacts should have caused the Commission to seriously consider a technically and economically feasible means of satisfying the Cheyenne Connector's purpose. Second, I see no reason why our public interest obligation to consider alternatives is limited to deciding among pending section 7 applications filed with the Commission (and today's order cites to none). Indeed, under NEPA, the Commission's consideration of alternatives is not even limited to options within its jurisdiction⁴⁷ and the Commission cites no authority suggesting that CIG's decision not to file a formal section 7 application somehow relieves the Commission of its obligation to take the CIG alternative seriously.

* * *

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

⁴⁷ 40 C.F.R. § 1502.14 (2019).

24. In addition, today's order shirks the Commission's responsibility to seriously consider alternatives to the Projects. The record presents a compelling alternative that appears to satisfy the purpose of the Cheyenne Connector while having dramatically fewer effects on landowners and the environment. That is exactly the type of alternative that the Commission must take seriously if it is truly concerned about minimizing the adverse impacts of a new pipeline.⁴⁸ Unfortunately, nothing in today's order suggests that the CIG alternative received the consideration it deserves and that I believe the public interest demands.

For these reasons, I respectfully dissent.

Richard Glick
Commissioner

⁴⁸ See 40 C.F.R. § 1500.2(e)-(f) (2019).