

165 FERC ¶ 61,218
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

RH energytrans, LLC

Docket No. CP18-6-000

ORDER ISSUING CERTIFICATES

(Issued December 7, 2018)

1. On October 16, 2017, as supplemented,¹ RH energytrans, LLC (RH energytrans) filed an application under section 7(c) of the Natural Gas Act (NGA)² and Part 157 of the Commission's regulations³ for authorization to acquire and convert certain existing pipeline and compression facilities, to construct additional pipeline, compression, and auxiliary facilities, and to operate the existing and new facilities as a new interstate natural gas pipeline system in Crawford and Erie Counties, Pennsylvania, and Ashtabula County, Ohio (Risberg Line Project). The proposed project is designed to provide up to 55,000 dekatherms per day (Dth/d) of firm transportation service to markets in northeast Ohio. RH energytrans 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. For the reasons discussed below, the Commission will grant the requested authorizations, subject to conditions.

¹ RH energytrans supplemented its application on November 2, 2017; November 13, 2017; November 17, 2017; November 22, 2017; December 12, 2017; January 19, 2018; April 5, 2018; April 18, 2018; April 20, 2018; April 24, 2018; June 5, 2018; and July 27, 2018.

² 15 U.S.C. § 717f(c) (2012).

³ 18 C.F.R. pt. 157 (2018).

I. Background and Proposal

3. RH energytrans, a Delaware limited liability company, is a wholly-owned subsidiary of OPATHO Gas Trans, LLC (OPATHO). OPATHO, a Delaware limited liability company, does not engage in any business activities other than its ownership of RH energytrans.⁴ RH energytrans does not currently own any pipeline facilities, nor is it engaged in any natural gas transportation operations.⁵ Upon commencement of operations proposed in its application, RH energytrans will become a natural gas company within the meaning of section 2(6) of the NGA,⁶ and, as such, will be subject to the jurisdiction of the Commission.

A. Facilities and Services

4. RH energytrans requests authorization to acquire, modify, construct, and operate a new 59.9-mile-long interstate natural gas pipeline system. RH energytrans proposes to acquire and modify 31.6 miles of existing 8- and 12-inch-diameter gathering pipelines and to construct 28.3 miles of new 12-inch-diameter pipeline. The pipeline system would begin at a new interconnection with Tennessee Gas Pipeline Company, LLC (Tennessee Gas), adjacent to the now-vacant former Meadville Compressor Station site in Crawford County, Pennsylvania, and would extend north to a new delivery point interconnection with East Ohio Gas Company d/b/a Dominion Energy Ohio's (Dominion Ohio) existing distribution facilities in North Kingsville, Ashtabula County, Ohio.

⁴ OPATHO is owned by Øivind Risberg and Torkill Hellberg, who also own EmKey Energy, LLC (EmKey Energy), Viking Energy Broker LLC (Viking Energy), and Nucomer Energy, LLC (oil and natural gas production activities in New York, Pennsylvania, and Ohio). EmKey Energy owns EmKey Gathering LLC (EmKey Gathering) (engaged in natural gas gathering activities in New York and Pennsylvania), EmKey Gas Processing, LLC (EmKey Processing) (engaged in natural gas processing activities in New York and Pennsylvania), and EmKey Transportation, Inc. (owns a Hinshaw pipeline in New York). Viking Energy owns Mid American Natural Resources, LLC (Mid American), a company which markets natural gas and electric power in New York, Pennsylvania, and Ohio.

⁵ RH energytrans states that it intends to acquire and incorporate into the Risberg Line Project certain pipeline and compressor facilities currently owned by affiliates EmKey Gathering, EmKey Processing, and Mid American.

⁶ 15 U.S.C. § 717a(6) (2012).

5. Specifically, RH energytrans proposes to:

- install compression facilities, consisting of a 728-horsepower (hp) gas-fired reciprocating compressor unit, a pig launcher, and auxiliary equipment, at the currently vacant Meadville Compressor Station site in Crawford County, Pennsylvania;⁷
- construct a 650-foot-long, 12-inch-diameter lateral pipeline from an interconnect with the Tennessee Gas system at the metering facility within the new Meadville Compressor Station to the existing 12-inch-diameter pipeline (Tennessee Gas Lateral);
- acquire from its affiliate EmKey Gathering 31.6 miles of existing 8- and 12-inch-diameter natural gas gathering pipeline extending from the Meadville Compressor Station in Crawford County, Pennsylvania, into Erie County, Pennsylvania, and terminating east of State Road near the Town of Pageville, and convert it to interstate natural gas transmission service;
- acquire from its affiliate Mid American and operate in interstate service the existing non-jurisdictional County Line Compressor Station, consisting of three 378 hp gas-fired, reciprocating compressor units and auxiliary equipment, in Elk Creek Township in Erie County, Pennsylvania, and modify the station piping;
- construct 28.3 miles of new 12-inch-diameter pipeline extending from the northern terminus of the converted gathering pipeline in Erie County, Pennsylvania, northwest across the Pennsylvania/Ohio border and into Ashtabula County, Ohio, and terminating at a new delivery point to be constructed at an interconnection with Dominion Ohio's existing distribution system in North Kingsville, Ashtabula County, Ohio; and
- construct a meter station at the delivery point in North Kingsville, Ashtabula County, Ohio (North Kingsville Meter Station).

⁷ As described in the Environmental Assessment (EA), the Meadville Compressor Station site formerly housed a compressor station that was removed from service in 1994. EA at 5. No aboveground structures from the former compressor station remain at the site. *Id.* RH energytrans plans to purchase the compressor unit to be installed at the Meadville Compressor Station site from its affiliate, EmKey Processing.

RH energytrans estimates that the total cost to construct the Risberg Line Project will be approximately \$88 million.⁸

6. RH energytrans held a non-binding open season for the Risberg Line Project that commenced on June 12, 2017, and concluded on July 12, 2017.⁹ RH energytrans executed a binding precedent agreement with Dominion Ohio for 40,000 Dth/d of firm transportation service over a 15-year contract term.¹⁰

7. RH energytrans also requests approval of its proposed *pro forma* tariff. RH energytrans proposes to establish initial maximum and minimum recourse reservation and usage rates set forth under Rate Schedules FTS (Firm Transportation Service) and ITS (Interruptible Transportation Service).

B. Blanket Certificates

8. RH energytrans 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.¹¹

9. RH energytrans also requests a blanket certificate of public convenience and necessity pursuant to section 157.204 of the Commission's regulations authorizing future

⁸ RH energytrans's October 16, 2017 Application (Application), Exhibit K.

⁹ Application, Exhibit Z-2.

¹⁰ In its application, RH energytrans indicated that the North Atlantic Iron Corporation (NAIC) expressed interest in contracting for the remainder of the firm transportation service that would be created by the project (15,000 Dth/d). In a July 23, 2018 data response, RH energytrans clarified that NAIC's successor in the project, Petmin USA Inc. (Petmin), is evaluating the possibility of constructing and operating a pig iron plant in northeast Ohio. While a precedent agreement with Petmin has not been executed at this time, RH energytrans states that the parties are engaged in discussions regarding the terms that will form the basis of a precedent agreement. RH energytrans further states that the parties intend to execute a precedent agreement before the end of 2018.

¹¹ 18 C.F.R. § 284.221 (2018).

facility construction, operation, and abandonment as set forth in Part 157, Subpart F of the Commission's regulations.¹²

II. Notice, Interventions, and Comments

10. Notice of the application was published in the *Federal Register* on November 1, 2017.¹³ The notice established November 16, 2017, as the deadline for filing comments and interventions. National Fuel Gas Distribution Corporation, Dominion Ohio, and Range Resources-Appalachia, LLC filed timely motions to intervene.¹⁴ Michael and Dianne Shaffer, jointly, Scott Poole, Jeff Meighan, and FirstEnergy Service Company filed late motions to intervene, which the Commission granted.¹⁵ On July 10, 2018, William Pavolko filed a late motion to intervene. Noting that the deadline for filing a timely intervention passed before the Commission announced its new policy governing late interventions in *Tennessee Gas Pipeline Company, L.L.C.*,¹⁶ the Commission will grant Mr. Pavolko's late motion to intervene.¹⁷

11. Several individuals filed adverse comments questioning the need for the project and the project proponent's ability to finance the project. RH energytrans filed responses to these comments on January 4, 2018, and March 6, 2018. These concerns are addressed below.

12. In addition, a number of comments were filed raising concerns about the environmental impacts of the Risberg Line Project. These concerns are addressed in the EA and, as appropriate, below.

¹² 18 C.F.R. § 157.204 (2018).

¹³ 82 Fed. Reg. 50,646.

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) (2018).

¹⁵ Secretary's February 9, 2018 and April 5, 2018 Notices Granting Late Interventions.

¹⁶ 162 FERC ¶ 61,167, at P 51 (2018).

¹⁷ 18 C.F.R. § 385.214(d) (2018).

III. Discussion

13. 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.¹⁸

A. Certificate Policy Statement

14. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.¹⁹ 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.²⁰ 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.

¹⁸ 15 U.S.C. § 717f (2012).

¹⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

²⁰ Mr. James Miller requested a "temporary freeze" of the Commission's review of the project in light of the December 21, 2017 announcement that the Commission intends to review its currently effective policy statement on the certification of new natural gas transportation facilities (i.e., the Certificate Policy Statement). James S. Miller's December 22, 2017 Comment. On April 19, 2018, the Commission issued a Notice of Inquiry (NOI) seeking information and stakeholder perspectives on the Certificate Policy Statement. *Certification of New Interstate Natural Gas Facilities*, FERC Stats. & Regs. ¶ 35,583 (2018). However, until such time as the Commission decides to revise the Certificate Policy Statement, the current Certificate Policy Statement remains in effect and will be applied to natural gas certificate proceedings pending before the Commission as appropriate. *Id.* P 4 ("[d]uring the pendency of [the NOI] proceeding, the Commission intends to continue to process natural gas facility matters before it consistent with the Policy Statement, and to make determinations on the issues raised in those proceedings on a case-by-case basis.").

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

1. Subsidization and Impact on Existing Customers

16. RH energytrans'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. RH energytrans is a new company without existing customers, and proposes a new pipeline system; therefore, there is no potential for this project to be financially subsidized by existing customers or for existing customers to be otherwise adversely impacted.

2. Need for the Project

17. Several commenters challenge the need for the proposed project. Some commenters are generally opposed to any additional development of fossil fuel pipeline infrastructure, and instead express a preference for the development of renewable energy sources. Other commenters contend that the proposed project would disproportionately benefit Ohio, to the detriment of prospective customers in Pennsylvania.²¹ In addition, commenter James Miller states that the project is only needed "to correct an occasional drop in supply pressure now being experienced by [Dominion Ohio] during high demand times," and to supply additional gas in the future to attract new industrial customers.²²

²¹ See, e.g., Jamie A. Miller's December 20, 2017 Comment; James S. Miller's December 20, 2017 Comment; and William Pavolko and Neighbors' December 21, 2017 Comment.

²² James S. Miller's December 20, 2017 Comment at 2.

He further asserts that there is no publicly-available information in the project application to support this stated need.²³

18. On January 4, 2018, RH energytrans filed a response disputing commenters' claims that the project is not needed. RH energytrans characterizes commenters' preference for development of renewable energy sources rather than development of fossil fuel pipeline infrastructure as a preference for the "no-action" alternative.²⁴ RH energytrans discounts this as a non-viable alternative because Dominion Ohio's distribution system in northwest Ohio would remain limited in its ability to meet existing and projected natural gas demands.²⁵ In response to concerns that the proposed project would disproportionately benefit Ohio, RH energytrans states that as an open-access pipeline, it would be prepared to provide services to any prospective customers meeting the criteria that will be set forth in its *pro forma* tariff.²⁶ RH energytrans invites prospective customers in Pennsylvania and Ohio to inquire about the potential availability of natural gas transportation services on the proposed project.²⁷ Finally, RH energytrans explains that its foundation shipper, Dominion Ohio, concluded that the project is a cost-effective means of reinforcing supply and enhancing reliability for its local distribution system in northeast Ohio.²⁸ In addition, RH energytrans maintains that the Public Utility Commission of Ohio has confirmed the need for the project.²⁹

Commission Determination

19. The Certificate Policy Statement established a policy under which the Commission will allow an applicant to rely on a variety of relevant factors to demonstrate need, rather than continuing to require that a certain percentage of the proposed capacity be

²³ *Id.*

²⁴ RH energytrans's January 4, 2018 Response to Scoping Comments at 21.

²⁵ *Id.*

²⁶ *Id.* at 22.

²⁷ *Id.*

²⁸ *Id.* at 23.

²⁹ *Id.*

subscribed under long-term precedent or service agreements.³⁰ These factors might include, but are not limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.³¹ The Commission will consider all such evidence submitted by the applicant regarding need. Nonetheless, the Certificate Policy Statement made clear that, although precedent agreements are no longer required to be submitted, they are still significant evidence of demand for the project.³² As the court stated in *Minisink Residents for Environmental Preservation & Safety v. FERC*, and again in *Myersville Citizens for a Rural Community, Inc. v. FERC*, nothing in the policy statement or in any precedent construing it suggest that it requires, rather than permits, the Commission to assess a project's benefits by looking beyond the market need reflected by the applicant's existing contracts with shippers.³³ Moreover, it is current Commission policy to not look behind precedent or service agreements to make judgments about the needs of individual shippers.³⁴

20. We find that RH energytrans has sufficiently demonstrated that there is market demand for the project. RH energytrans has executed a precedent agreement with Dominion Ohio for 40,000 Dth/d of firm transportation service (i.e., approximately 73 percent of the proposed project's design capacity) for a 15-year contract term. Further, Dominion Ohio received authorization from the Public Utilities Commission of Ohio to amend its tariff to include the acquisition of new capacity at the price, terms, and conditions set forth in the precedent agreement.³⁵ Moreover, Ordering Paragraph (E) of this order requires that RH energytrans file a written statement affirming that it has executed final contracts for service at the levels provided for in its precedent agreement

³⁰ Certificate Policy Statement, 88 FERC at 61,747.

³¹ *Id.* at 61,747.

³² *Id.* at 61,748.

³³ *Minisink Residents for Env'tl. Pres. & Safety v. FERC*, 762 F.3d 97, 112 n.10 (D.C. Cir. 2014); *see also Myersville Citizens for a Rural Cmty., Inc., v. FERC*, 783 F.3d 1301, 1311 (D.C. Cir. 2015); *Township of Bordentown, New Jersey v. FERC*, No. 17-3207, slip op. at 48 (3d. Cir. Sept. 5, 2018).

³⁴ Certificate Policy Statement, 88 FERC at 61,744 (citing *Transcontinental Gas Pipe Line Corp.*, 82 FERC ¶ 61,084, at 61,316 (1998)); *Transcontinental Gas Pipe Line Co.*, 164 FERC ¶ 61,101, at PP 18-19 (2018).

³⁵ *See* RH energytrans's April 20, 2018 Supplemental Filing.

before commencing construction. Given the substantial financial commitment required under the service contract by the project shipper, Dominion Ohio, we find the contract is the best evidence that the service to be provided by the project is needed in the markets to be served. The project will provide additional transportation capacity connecting sources of natural gas to a constrained portion of Dominion Ohio's local distribution system in Ashtabula County, Ohio.

21. Despite commenters' general opposition to development of fossil fuel pipeline infrastructure, renewable energy sources or energy efficiency measures would not accomplish the project purpose of providing natural gas transportation service to Dominion Ohio. Dominion Ohio has elected to meet its present energy needs by signing a precedent agreement with RH energytrans for natural gas service in order to serve its local distribution customers in Ashtabula County, Ohio.³⁶ The Commission cannot require individual energy users to use different or specific energy resources. Thus, RH energytrans's long-term precedent agreement with Dominion Ohio accurately reflects the need for the project.

22. Finally, the argument that the project will disproportionately benefit Ohio to Pennsylvania's detriment is unavailing since over 31 miles of the pipeline located in Pennsylvania would consist of existing natural gas gathering pipeline that RH energytrans will acquire and convert to natural gas transmission service. All earth-disturbing activities necessary to convert the existing gathering pipeline to transmission service would take place within the existing 50-foot-wide permanent rights-of-way, the compressor station yards, or the permanent right-of-way for the new pipeline.³⁷

³⁶ In its motion to intervene, Dominion Ohio explains that its distribution system in northeast Ohio is currently served by two Dominion Ohio pipelines: the 16-inch-diameter Lakeshore Line from the west and the 10-inch-diameter Cochranon Line from the east. Dominion Ohio's November 11, 2017 Motion to Intervene at 4. Rather than expanding these existing transmission facilities, Dominion Ohio determined that construction of the Risberg Line Project would offer a cost-effective alternative that would increase supply reliability for a highly constrained area, and facilitate load growth and new industrial development in the region. Dominion Ohio concluded that the cost of acquiring capacity on the proposed Risberg Line Project would be considerably less than the cost of either constructing or subscribing service on a new greenfield pipeline to the Ashtabula area. *Id.* at 5. The Public Utilities Commission of Ohio agreed, approving Dominion Ohio's application to amend its state tariffs to accommodate the acquisition of capacity on the proposed Risberg Line Project. *See* Application, Exhibit I, Public Utilities Commission of Ohio's Finding and Order, Case No. 17-820-GA-ATA, at P 30 (Sept. 2017).

³⁷ EA at 5.

Moreover, as an open-access pipeline, RH energytrans would be required to provide service to prospective customers that meet the criteria to be set forth in its *pro forma* tariff, including prospective customers in Pennsylvania.

3. Applicant's Ability to Finance Project

23. Jamie A. Miller, Barry Bateman, and Ethel Bateman, collectively, Neighbors of the County Line Compressor Station (CLCS Neighbors), and Scott Poole challenge RH energytrans's ability and financial resources to construct, operate, and maintain the project. To support this claim, CLCS Neighbors points to the recent formation of RH energytrans and its parent company, OPATHO. CLCS Neighbors also questions RH energytrans's prior affiliations with other companies that experienced financial difficulties and declared bankruptcy. If RH energytrans files for bankruptcy in the future, CLCS Neighbors asks how this will affect operation and maintenance of the proposed pipeline.

24. On March 6, 2018, RH energytrans filed a response to comments questioning the Risberg Line Project's "financial sustainability." In its response, RH energytrans explains that creating a new special purpose entity to construct, own, and operate a new interstate natural gas pipeline that will be subject to the Commission's jurisdiction is a common practice, and one that is often required by project financing lenders.³⁸ RH energytrans further asserts that its precedent agreement with Dominion Ohio for 40,000 Dth/d over a 15-year term is evidence of a long-term revenue stream that is adequate to support the financing of the Risberg Line Project.

Commission Determination

25. Under section 157.14(a)(15) of the Commission's regulations, the Commission requires pipelines to file certain information concerning the financing for a proposed project in Exhibit L of the application.³⁹ RH energytrans filed the necessary financing information as required. RH energytrans states, among other things, that it anticipates that 50 percent of the capital for the project would be furnished in the form of equity by its parent company, while 50 percent of the financing would consist of long-term debt.

³⁸ RH energytrans's March 6, 2018 Response to Financing Comments at 3.

³⁹ 18 C.F.R. § 157.14(a)(15) (2018), titled "Exhibit L – Financing," contains six subparagraphs detailing the specific data an applicant must include in the exhibit in order to demonstrate the adequacy and availability of resources for financing its proposed project.

RH energytrans's 50 percent equity/50 percent debt capital structure is well within the range deemed consistent with Commission policy.⁴⁰

26. RH energytrans maintains, and we agree, that its precedent agreement with Dominion Ohio for 40,000 Dth/d over a 15-year term is sufficient evidence of a reliable, long-term revenue stream. Moreover, as noted above, before any construction is authorized, Ordering Paragraph (E) requires RH energytrans to file a written statement affirming that it has executed final contracts for service that reflect the service commitments described in precedent agreements.

27. In any event, as RH energytrans recognizes, any abandonment of certificated facilities or any service provided on certificated facilities requires prior Commission approval under NGA section 7(b).⁴¹ To approve an abandonment of facilities or service under section 7(b), the Commission must find that the public convenience or necessity permit abandonment.⁴² Therefore, in the event of a project proponent's bankruptcy, a certificated pipeline would remain subject to the Commission's jurisdiction, as well as federal pipeline safety regulations and applicable federal and state environmental laws, until such time as the Commission determines that abandonment is warranted.⁴³

⁴⁰ *Transcontinental Gas Pipe Line Corp.*, Opinion No. 414-A, 84 FERC ¶ 61,084, at 61,413-61,415, *reh'g denied*, Opinion No. 414-B, 85 FERC ¶ 61,323 (1998), *petition for review denied sub nom. N.C. Utils. Comm'n v. FERC*, D.C. Cir. Case No. 99-1037 (Feb. 7, 2000) (per curiam); *See also Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, FERC Stats. & Regs. ¶ 31,404, at n.135 (2018) (cross referenced at 164 FERC ¶ 61,031) (discussing acceptable ranges for capital structures).

⁴¹ 15 U.S.C. § 717f(b) (2012).

⁴² *Id.*

⁴³ *See, e.g., Columbia Gas Transmission Corp.*, 85 FERC ¶ 61,437, at 62,643 (1998) (explaining that Columbia's bankruptcy did not justify its failure to seek prior Commission approval for not maintaining compression facilities necessary to provide certificated levels of service), *order on reh'g*, 89 FERC ¶ 61,325 (1999), *aff'd sub nom. Baltimore Gas and Elec. Co. v. FERC*, 252 F.3d 456 (D.C. Cir. 2001); *See also Louisiana-Nevada Transit Co.*, 83 FERC ¶ 61,201 (1998) (finding Louisiana-Nevada's request to abandon all of its jurisdictional facilities and services because it filed for bankruptcy permitted by the public convenience and necessity).

4. Existing Pipelines and their Customers

28. We also find that there will be no adverse impact on other existing pipelines in the region or their captive customers. The Risberg Line Project is a new interstate natural gas pipeline system with the purpose of supplying natural gas to a constrained portion of Dominion Ohio's local distribution system in North Kingsville, Ashtabula County, Ohio. The Risberg Line Project will provide up to 40,000 Dth/d of firm transportation service to the Ashtabula area in order to meet Dominion Ohio's need for additional firm transportation capacity "to enhance peak day pressure reliability, to furnish system redundancy, and to be in a position to grant request for new service from potential large industrial and commercial customers."⁴⁴ As discussed above, RH energytrans has no existing customers and will not replace service on any existing pipeline. There is no evidence that the Risberg Line Project will adversely affect other pipelines or their customers. In addition, no pipeline company or their captive customers have protested RH energytrans's proposal.

5. Landowners and Communities

29. We are additionally satisfied that RH energytrans has taken appropriate steps to minimize adverse impacts on landowners. More than 52 percent of the total length of the project's pipeline facilities consist of existing pipeline, with proposed construction activities limited to minor work around block valve sites and interconnects.⁴⁵ RH energytrans indicates that it has executed easement agreements with private parties covering approximately 98 percent of the 28.3 miles of new pipeline that it proposes to construct.⁴⁶ RH energytrans expects to reach easement agreements with the remaining landowners. Finally, all proposed construction at the two compressor station sites will be limited to the existing, previously-disturbed, yard areas.

6. Conclusion

30. The Risberg Line Project will enable RH energytrans to provide up to 55,000 Dth/d of firm transportation service, including 40,000 Dth/d of already subscribed service to Ashtabula County in northeastern Ohio, a region in need of additional natural gas delivery capacity "to overcome peak day supply deficits and to support economic

⁴⁴ Application at 8.

⁴⁵ Application at 12.

⁴⁶ EA at 69.

development.”⁴⁷ Dominion Ohio, a local distribution company, has subscribed 73 percent of the project’s capacity for an initial term of 15 years. In view of the considerations above, we find that RH energytrans has demonstrated a need for the Risberg Line 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 the minimal adverse effects on landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity require approval and certification of the Risberg Line Project, subject to the environmental and other conditions in this order.

B. Blanket Certificates

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

32. RH energytrans 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.⁴⁸ Because the Commission has previously determined through a rulemaking that these blanket-certificate eligible activities are in the public convenience and necessity,⁴⁹ it is the Commission’s practice to grant new natural gas companies a Part 157 blanket certificate if requested.⁵⁰ Accordingly, we will grant RH energytrans a Part 157 blanket certificate, subject to the conditions imposed herein.

⁴⁷ Application at 2.

⁴⁸ 18 C.F.R. § 157.203 (2018).

⁴⁹ *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, FERC Stats. & Regs. ¶ 31,231, at P 9 (2006) (cross-referenced at 117 FERC ¶ 61,074), *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).

⁵⁰ *C.f. Rover Pipeline LLC*, 161 FERC ¶ 61,244, at P 13 (2017) (denying a request

C. Rates

1. Initial Recourse Transportation Rates

33. RH energytrans proposes to provide firm (Rate Schedule FTS) and interruptible (Rate Schedule ITS) transportation services under Part 284 of the Commission's regulations at cost-based recourse rates, and also requests approval to offer service at negotiated rates pursuant to section 4.14 of the General Terms and Conditions (GT&C) of its *pro forma* tariff. In its application, RH energytrans proposed a maximum reservation charge of \$0.7819 per Dth per day and a usage charge of \$0.0120 per Dth for firm service under Rate Schedule FTS. RH energytrans developed its maximum rates based on a straight fixed-variable cost classification and rate design and a first-year cost of service of \$16,078,597. The proposed daily reservation charge for firm service is based on a first-year cost of service of \$15,697,025⁵¹ and annual reservation design determinants of 20,075,000.⁵² RH energytrans's proposed cost of service utilizes a capital structure of 50 percent equity and 50 percent debt, a return on equity of 13 percent, and a cost of debt of 7.0 percent.⁵³ RH energytrans included a tax allowance in the cost of service using a

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).

⁵¹ To comply with the Commission's policy requiring new pipelines to allocate costs to interruptible services or credit revenues generated by these services to maximum rate shippers, RH energytrans allocated two percent, or \$321,572, of its cost of service to interruptible services. *See, e.g., Transcontinental Gas Pipe Line Corp.*, 78 FERC ¶ 61,057, at 61,209-61,210 (1997). RH energytrans also classified \$60,000 as variable costs to be recovered in the usage charge.

⁵² The annual reservation design determinants are based on the project's daily design capacity of 55,000 Dth per day times 365.

⁵³ As noted above, CLCS Neighbors questions whether RH energytrans has the requisite financial resources to construct, operate, and maintain the project. Among other things, CLCS Neighbors points to RH energytrans's proposal to finance 50 percent of the total project cost with debt. For new pipelines, the Commission has approved equity returns of up to 14 percent as long as the equity component of the capital structure is no more than 50 percent. *See, e.g., Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 80 (2017). Here, RH energytrans proposes an equity return of 13 percent, coupled with a capital structure of 50-percent equity and 50-percent debt. Therefore, RH energytrans's combined return on equity and capital structure proposal reflects current Commission

35 percent corporate tax rate and a 9.9 percent composite state income tax rate. RH energytrans proposes a depreciation rate of two percent for transmission and compression plant.

34. For interruptible service under Rate Schedule ITS, and authorized overrun service, RH energytrans proposed a maximum rate of \$0.7939 per Dth based on 100 percent load factor of its firm rate. RH energytrans proposes backhaul rates equal to the forward haul rates.

a. Acquisition Adjustment

35. As indicated above, RH energytrans proposes to acquire 31.6 miles of pipeline and the Meadville Compressor Station site from its affiliate Emkey Gathering for incorporation into the Risberg Line Project.⁵⁴ RH energytrans explains that in 1998, EmKey Gathering's predecessor (Norse Pipeline, LLC) purchased existing natural gas facilities, including the facilities that RH energytrans proposes to acquire and incorporate into the Risberg Line Project, from Columbia Gas Transmission Corporation (Columbia).⁵⁵ Prior to the 1998 abandonment by sale, Columbia used the NGA-certificated facilities to provide interstate natural gas transportation service. EmKey Gathering currently operates the facilities as part of a large regional gathering system.

36. RH energytrans proposes to include the 31.6 miles of existing pipeline and the Meadville Compressor Station site in rate base at valuations that reflect their "fair market value," rather than original cost less accumulated depreciation. A study, commissioned by RH energytrans and included in the certificate application, concluded that the total fair market value for the pipeline and compressor station site is \$12,900,000. Although RH energytrans maintains that it does not have detailed records documenting the original costs of the facilities to be acquired, it estimates the original cost less accumulated

policy.

⁵⁴ RH energytrans also proposes to acquire a 728 hp compressor to be installed at the Meadville Compressor Station site and the three 378 hp compressors installed at the County Line Compressor Station from its affiliates EmKey Processing and Mid American, respectively. RH energytrans proposes to include these acquired compressor unit assets in rate base at their depreciated book value.

⁵⁵ In 1998, Columbia abandoned the Project Penny facilities, which were constructed in the late 1970s and 1980s and certificated under the NGA, by sale to Norse Pipeline, LLC. *Columbia Gas Transmission Corp.*, 85 FERC ¶ 61,191 (1998).

depreciation of the facilities to be \$2,544,751.⁵⁶ Accordingly, RH energytrans proposes to include an acquisition adjustment of \$10,355,249 in its rate base.

37. The Commission's general policy is to use original cost principles in establishing the cost of service upon which a pipeline's regulated rates are based. This policy limits a pipeline to including no more than facilities' depreciated original cost (alternatively, referred to as net book value) in rate base.⁵⁷ Thus, a pipeline that purchases facilities for a price in excess of the net book value cannot typically recover the premium in excess of net book value through jurisdictional rates. The Commission makes exceptions only when a pipeline can show that its acquisition of existing facilities at more than their net book value will result in substantial benefits to ratepayers. As set out in *Longhorn Partners Pipeline*,⁵⁸ the "substantial benefits" test requires a pipeline to show that: (1) the facilities will be converted from one public use to a different public use, or that the facilities will be placed in FERC-jurisdictional service for the first time; and (2) the acquisition will provide substantial, quantifiable benefits to ratepayers even if the full purchase price, including the acquisition adjustment (i.e., the portion above the depreciated original cost), is included in the rate base. As part of the substantial benefits test, the Commission also considers whether the transaction was the result of an "arm's length" transaction between unaffiliated parties and whether the purchase price of the existing facilities is less than the cost to construct a comparable facility.

38. RH energytrans claims that it meets the first prong of the *Longhorn* substantial benefits test because converting the facilities from natural gas gathering service to natural gas transmission service will qualify as a different "public use." It also states EmKey Gathering has operated the acquired assets as part of its non-jurisdictional natural gas gathering system for many years, serving a group of customers "that is entirely different from those which RH energytrans will serve."⁵⁹

39. With respect to the second prong, RH energytrans states that the acquisition will result in substantial, quantifiable benefits to ratepayers because the acquisition cost is less than the cost to replace the existing facilities with new construction. RH energytrans estimates that the cost to construct 31.6 miles of new pipeline would total approximately

⁵⁶ RH energytrans's January 19, 2018 Response to Data Request at 23.

⁵⁷ See, e.g., *United Gas Pipe Line Co.*, 25 FPC 26, at 64 (1961), *rev'd on other grounds sub nom. Willmut Gas & Oil Co. v. FPC*, 299 F.2d 111 (D.C. Cir. 1962).

⁵⁸ 73 FERC ¶ 61,355 (1995) (*Longhorn*).

⁵⁹ RH energytrans's Application at 26.

\$63 million.⁶⁰ RH energytrans further argues that its affiliation with EmKey Gathering, the seller of the facilities to be acquired, does not run afoul of the *Longhorn* test's arm's length transaction consideration because a third party has conducted a fair market value study to determine the price that a non-affiliated party would be expected to pay for the assets in an arm's length transaction. RH energytrans commits to paying no more for the facilities than the fair market value determined by the valuation study.

Commission Determination

40. We find that RH energytrans has not met the *Longhorn* substantial benefits test. Specifically, it has not satisfied its burden of proving the first prong of the substantial benefits tests by showing that these assets are being put to a different public use or placed in FERC-jurisdictional service for the first time. Here, it is undisputed that these facilities were previously devoted to interstate gas service as part of Columbia's transmission system and that the cost of these facilities were included in Columbia's interstate transportation rates and recovered from Columbia's customers, including East Ohio, the project shipper. In reviewing whether to allow the inclusion of amounts in excess of depreciated original cost, the Commission has emphasized the need to protect consumers from write-ups that force them to pay more depreciation for the same facilities.⁶¹ Here, interstate gas ratepayers have already paid for depreciation on the existing facilities that were used for interstate transportation service prior to their use as gathering facilities.⁶²

41. As the Commission explained in *B-R Pipeline Co.*,⁶³ where facilities have already been dedicated to jurisdictional gas service, an acquiring pipeline's use of those facilities in order to continue providing jurisdictional gas service does not constitute a new or different public use, regardless of whether the facilities were previously underutilized or idle.⁶⁴ This finding does not change even where jurisdictional gas service is bifurcated

⁶⁰ *Id.* at 27.

⁶¹ See *Enbridge Pipelines (KPC)*, 100 FERC ¶ 61,260, at P 58 (2002), *order on reh'g*, 102 FERC ¶ 61,310 (2003).

⁶² RH energytrans's claim that EmKey's customers may be different than RH energytrans's customers is not relevant to our analysis.

⁶³ 106 FERC ¶ 61,166, at P 17 (2004).

⁶⁴ See also *Enbridge Pipelines (KPC)*, 109 FERC ¶ 61,042, at PP 28-29 (2004) (finding that Enbridge failed to meet the "different use" prong of the *Longhorn* test where the facilities were already being used to provide gas service at the time the acquisition

by a period of non-jurisdictional gathering activities.⁶⁵ Under these circumstances, permitting RH energytrans to value the facilities in excess of their depreciated original cost would result in interstate gas customers paying twice for the facility's depreciation.⁶⁶ As a result, permitting RH energytrans to include the proposed acquisition adjustment for these facilities in the rate base would conflict with Commission policy.

42. Even assuming that RH energytrans is able to satisfy *Longhorn's* first prong, the affiliate relationship between buyer (RH energytrans) and seller (EmKey Gathering) creates a substantial barrier to RH energytrans satisfying the second prong of the *Longhorn* test. While the Commission has allowed the full purchase price to be included in the rate base when the record supports a finding that the purchase price is less than the cost to construct comparable facilities, these cases all involved non-affiliates.⁶⁷ In *KN Wattenberg*, the Commission explained that our policy is to require that when facilities are transferred between affiliates, the amount paid be based on the facilities' net book value.⁶⁸ The fact that RH energytrans commissioned and paid for a study to purportedly

premiums were paid, and were not being placed into FERC-jurisdictional gas service for the first time as portions of the system were used to provide service under a limited jurisdiction NGA certificate and under section 311 of the Natural Gas Policy Act); *Millenium Pipeline Co., L.L.C.*, 117 FERC ¶ 61,319 (2006) (determining that Empire Pipeline, Inc. failed to meet the first prong of the *Longhorn* test because it was not placing assets into jurisdictional service for the first time where the prior system owner had been subject to the Commission's authority by virtue of providing interstate transportation service under a Part 284 blanket certificate).

⁶⁵ See, e.g., *KN Wattenberg Transmission Limited Liability Co.*, 85 FERC ¶ 61,204 (1998) (*KN Wattenburg*) (excluding acquisition adjustment where the buyer and seller were affiliates and the Commission determined that gas ratepayers had already paid for depreciation on existing wet gas segment of pipeline that was used for interstate transportation prior to use as gathering line).

⁶⁶ See 85 FERC at 61,853-854.

⁶⁷ See *Missouri Interstate Gas, LLC*, 144 FERC 61,220, at P 15 (2013) (citations omitted).

⁶⁸ 85 FERC 61,204 at 61,852 (explaining that "the affiliate relationship played a large part of [the Commission's] rationale for denying KN Wattenberg's request to acquire the wet gas facilities for any price other than the depreciated original cost.").

assess the “fair market value” of the acquired assets is insufficient to overcome the concerns underlying our policy.

43. For these reasons, we will require RH energytrans to remove the proposed \$10,355,249 acquisition adjustment from rate base and adjust its rates accordingly.

b. Income Tax Allowance

44. Subsequent to RH energytrans’s filing of its certificate application, the Tax Cuts and Jobs Act of 2017 became effective January 1, 2018.⁶⁹ The Tax Cuts and Jobs Act, among other things, reduced the corporate tax rate from 35 percent to 21 percent. Additionally, on March 15, 2018, the Commission issued the Inquiry Regarding the Commission’s Policy or Recovery of Income Tax Costs.⁷⁰ The *Revised Policy Statement* finds that an income tax double recovery results from granting a Master Limited Partnership (MLP)⁷¹ a separate income tax allowance and a pre-tax return on equity, and accordingly, establishes a policy that MLPs are not permitted to recover an income tax allowance in their cost of service.⁷² The *Revised Policy Statement* also explains that other partnerships and pass-through entities should, if claiming an income tax allowance, address the double recovery concern. However, a natural gas company organized as a pass-through entity, all of whose income or losses are consolidated on the federal income tax return of its corporate parent, is considered to be subject to the federal corporate income tax, and is thus eligible for a tax allowance.⁷³

⁶⁹ An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

⁷⁰ Revised Policy Statement on Treatment of Income Taxes, FERC Stats. & Regs. ¶ 35,060 (2018) (cross-referenced at 162 FERC ¶ 61,227 (*Revised Policy Statement*)).

⁷¹ An MLP is a publicly traded partnership under the Internal Revenue Code that receives at least 90 percent of its income from certain qualifying sources, including gas and oil transportation. *See* 26 U.S.C. § 7704 (2012).

⁷² *Id.* P 2.

⁷³ *See Enable Mississippi River Transmission, LLC*, 164 FERC ¶ 61,075, at PP 34-35 (2018); *BP West Coast Products, LLC v. FERC*, 374 F.3d 1263, at 1289 (D.C. Cir. 2004) (disallowing an income tax allowance for an MLP’s corporate unitholders, while explaining that an income tax allowance is appropriate in the cost of service of a pass-through subsidiary of a corporation “when such a subsidiary does not itself incur a tax

45. In an April 9, 2018 response to a staff data request, RH energytrans indicated that after considering the effects of the Tax Cuts and Jobs Act and the *Revised Policy Statement*, it would elect to be treated as a corporation for income tax purposes pursuant to 26 C.F.R. § 301.7701-3, which gives business entities the choice to be classified as either a pass-through entity or a corporation for federal tax purposes. Because it will elect to be treated as a corporation for income tax purposes, RH energytrans explains it will incur income tax liability pursuant to the federal Internal Revenue Service code and the Pennsylvania and Ohio state tax codes, each as applicable to a corporation. Consistent with that decision, RH energytrans provided a recalculated cost of service and rate derivation that shows the federal tax code change reduces the estimated cost of service to \$15,152,121, the initial recourse reservation charge to \$0.7367 per Dth, and the initial Rate Schedule ITS and authorized overrun charge to \$0.7487.

Commission Determination

46. To the extent RH energytrans elects to be treated as a corporation for income tax purposes, it will incur an income tax liability in its own name, and providing an income tax allowance will not result in a double recovery of taxes. Under these circumstances, we will permit RH energytrans to include an income tax allowance in its cost of service subject to RH energytrans filing a written statement affirming that it has elected to be treated as a corporation for tax purposes when it files its actual tariff records as required by this order. To the extent RH energytrans does not make that affirmative statement before it files its actual tariff records setting forth the initial rates for service, those records must reflect rates recalculated to reflect removal of the proposed income tax allowance and accumulated deferred income tax (ADIT) from its cost of service. If RH energytrans fails to remove the proposed income tax allowance and ADIT from the initial rates, the tariff filing will be rejected as not being in compliance with this order and RH energytrans will have to refile those tariff records with the appropriate rates and receive Commission approval prior to going into service.

47. The Commission has reviewed RH energytrans's first year cost of service and, with the exception of the acquisition adjustment discussed above, finds that it generally reflects current Commission policy.

liability but generates one that might appear on a consolidated return of the corporate group.”). *See also* Order No. 849, FERC Stats. & Regs. ¶ 31,404 at P 3 (clarifying that for purposes of the Form 501-G and limited section 4 filings contemplated by the final rule “a natural gas company organized as a pass-through entity all of whose income or losses are consolidated on the federal income tax return of its corporate parent is considered to be subject to the federal corporate income tax, and is thus eligible for a tax allowance.”).

2. Fuel Rate

48. RH energytrans proposes to retain system fuel in-kind subject to an annual tracker mechanism. RH energytrans proposes an initial fuel and lost and unaccounted-for gas (FL&U) percentage of 1.00 percent, consisting of 0.62 percent for fuel and 0.38 percent for lost and unaccounted-for gas. The FL&U percentage is based on estimates of daily compression fuel use and transportation quantities assuming a 25 percent load factor, and the need for compression on approximately 90 days during each year.

49. RH energytrans proposes to make an annual fuel tracker filing pursuant to section 4 of the NGA, as described in GT&C section 13 of RH energytrans's *pro forma* tariff, to reestablish the FL&U Reimbursement Percentage, including a true-up of any differences between the fuel retained from shippers and the actual fuel consumed and the lost and unaccounted for gas experienced.

50. The Commission finds that RH energytrans's proposed initial FL&U of 1.00 percent is reasonable and the proposed fuel tracker is consistent with Commission policy.⁷⁴

3. Negotiated Rates

51. RH energytrans proposes to charge its shippers negotiated rates pursuant to the negotiated rate authority in its GT&C section 4.14. RH energytrans must file either the negotiated rate agreements or tariff records setting forth the essential elements of the agreements in accordance with the Alternative Rate Policy Statement⁷⁵ and the Commission's negotiated rate policies.⁷⁶ RH energytrans must file the negotiated rate

⁷⁴ 18 C.F.R. § 154.403 (2018); *See ANR Pipeline Co.*, 108 FERC ¶ 61,050 (2004).

⁷⁵ *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).

⁷⁶ *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).

agreements or tariff records at least 30 days, but no more than 60 days, before the proposed effective date for such rates.⁷⁷

4. Three-Year Filing Requirement

52. Consistent with Commission precedent, RH energytrans is required to file a cost and revenue study at the end of its first three years of actual operations to justify its existing cost-based firm and interruptible recourse rates.⁷⁸ In its filing, the projected units of service should be no lower than those upon which RH energytrans'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.⁷⁹ RH energytrans's cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, RH energytrans is advised to include, as part of the eFiling Filing Title/Description, a reference to Docket No. CP18-6-000, and the cost and revenue study.⁸⁰ 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, RH energytrans may make an NGA general section 4 rate 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. Tariff Issues

53. RH energytrans filed a *pro forma* open-access tariff for the Commission's approval. RH energytrans's proposed tariff generally conforms to the Commission's requirements. We will approve the tariff, as conditioned below. We direct RH energytrans to file actual tariff records that reflect the changes required by this order no

⁷⁷ RH energytrans 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 (2014).

⁷⁸ *Bison Pipeline, LLC*, 131 FERC ¶ 61,013, at P 29 (2010); *Ruby Pipeline, LLC*, 128 FERC ¶ 61,224, at P 57 (2009); *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 34 (2008).

⁷⁹ 18 C.F.R. § 154.313 (2018).

⁸⁰ *See Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

less than 60 days prior to the commencement of interstate service consistent with Part 154 of the Commission's regulations.

1. Rate Schedules FTS and ITS Discount Provisions

54. Rate Schedules FTS and ITS section 3.2(b) and GT&C section 4.13, Discounting, all address the pipeline's ability to discount its rates. Rate Schedule FTS section 3.2(b) provides that RH energytrans may "prescribe and/or adjust at any time" any of the rates below the maximum stated rate and above the minimum stated rate "subject to the terms of the [Transportation Service Agreement]." Rate Schedule ITS section 3.2(b) provides that RH energytrans has the right to discount without reference to the Transportation Service Agreement. Both sections further state that RH energytrans may provide discounts consistent with GT&C section 4.13, Discounting. RH energytrans does not explain why these two sections are worded differently. GT&C section 4.13 is a comprehensive provision describing the conditions under which RH energytrans may discount. The Commission finds that GT&C section 4.13 is consistent with the Commission's policy on discounting and approves this provision. However, we will require RH energytrans to harmonize Rate Schedules FTS and ITS section 3.2(b) discounting provision by simply referencing GT&C section 4.13.

2. Rate Schedule ITS and Uncommitted Capacity

55. Rate Schedule ITS, section 1.1(a), Availability, provides that:

Transporter has determined that (other than such new taps, valves, measurement equipment, and other minor facilities as may be required at the receipt or delivery point(s) to effect Natural Gas receipt or delivery) *it has available or will secure sufficient uncommitted capacity to provide the service requested by Shipper as well as to satisfy all of its firm service commitments.*⁸¹

In addition, Rate Schedule ITS section 2.1 provides that "[t]ransportation service under this Rate Schedule will be performed when Transporter has capacity *which is not subject to a prior claim* by another Shipper or another class of service under a pre-existing contract, [Transportation Service Agreement], or certificate."⁸²

⁸¹ Emphasis added.

⁸² Emphasis added.

56. Part 284 of the Commission's regulations provides that service on an interruptible basis means that the "capacity used to provide the service *is subject to a prior claim* by another customer or class of service."⁸³ Rate Schedule ITS sections 1.1(a) and 2.1 would restrict RH energytrans's ability to market and provide interruptible service on capacity that is subject to prior claim by a firm contract customer but is unused. These provisions are contrary to section 284.9(a)(3) of the Commission's regulations and are rejected.

3. Force Majeure

57. GT&C section 11.2(a) provides that a *force majeure* event includes, without limitation, "compliance with any court order, law, regulation or ordinance promulgated by any governmental authority having jurisdiction, whether federal, Indian, state or local, civil or military ... that are not reasonably within the control of the party claiming suspension."

58. Outages resulting from governmental actions may be treated as resulting from a *force majeure* event only when the governmental requirement pertains to matters which are not reasonably in the pipeline's control *and are unexpected*.⁸⁴ For example, government-mandated "scheduled maintenance is a necessary non-*force majeure* event," even if it causes major disruptions.⁸⁵ Therefore, RH energytrans is required to revise both its "government" clause, and its catch-all clause at the end of GT&C section 11.2(a) to only cover events that are outside RH energytrans's control and are unexpected.

4. Complaint Procedures

59. GT&C section 25, Complaint Procedures, sets forth procedures for a shipper to file a complaint with the pipeline. The section does not state that shippers also have the right to file a complaint with the Commission pursuant to section 385.206 of the

⁸³ 18 C.F.R. § 284.9(a)(3) (2018) (emphasis added).

⁸⁴ See, e.g., *Equitrans, L.P.*, 148 FERC ¶ 61,250, at PP 42-44 (2014); *Equitrans, L.P.*, 149 FERC ¶ 61,204, at PP 7-8 (2014); *Iroquois Gas Transmission Sys., L.P.*, 145 FERC ¶ 61,233, at PP 85-86 (2013); *Algonquin Gas Transmission, LLC*, 143 FERC ¶ 61,082, at PP 24-25 (2013); *Texas Eastern Transmission, LP*, 140 FERC ¶ 61,216, at PP 82-88 (2012); *Gas Transmission Northwest LLC*, 141 FERC ¶ 61,101, at PP 47-49 (2012).

⁸⁵ *Florida Gas Transmission Co.*, 107 FERC ¶ 61,074, at P 29 (2004).

Commission's regulations.⁸⁶ If RH energytrans decides to retain GT&C section 25, it is required to specify that shippers retain the right to file complaints directly with the Commission pursuant to the Commission's regulations.

5. Gas Day Balancing

60. Rate Schedule FTS, section 2.2(c) and Rate Schedule ITS, section 2.3(b) provide "[e]xcept as otherwise provided in the Tariff, Shipper must balance its daily receipts and its daily deliveries at the end of each Gas Day." Neither RH energytrans nor the proposed tariff explain how a shipper can satisfy this requirement in the absence of RH energytrans's actual flow data. RH energytrans's proposed GT&C section 6, Nominations and Scheduling Procedures, provides for no more than the standard three intraday nomination periods. Without the pipeline providing actual with-in the gas day flow data to the shipper in time for the shipper to submit revised intraday nominations, there is no means by which the shipper can comply with this obligation. Therefore, this provision is rejected.

6. Obligation to Serve

61. GT&C section 6.2(h) provides that "Transporter shall not be obligated to deliver any greater quantity than it has *confirmed and received*."⁸⁷ However, the *pro forma* firm and interruptible service agreements at Article II.1.c and Article II.2, respectively, provide "Seller shall Tender to or for the account of Customer, on a firm basis at the Point of Delivery, Equivalent Quantities of Gas to the quantity *nominated* by Customer at the Point of Receipt."⁸⁸ As confirmed and received quantities can be equal to or less than nominated quantities, the proposed pipeline service obligations in these parts of the proposed tariff are inconsistent. RH energytrans is required to select one of these obligations to serve commitments and standardize that commitment throughout its tariff.

7. Maximum and Minimum Pressures

62. GT&C section 5.4(a) provides that receipt point pressures should not exceed those provided for in Exhibit A of the transportation agreement. GT&C section 5.4(b) provides that, except as otherwise specified in the minimum pressure provision of the

⁸⁶ 18 C.F.R. § 385.206 (2018); *see also Public Service Co. of Indiana, Inc.*, 51 FERC ¶ 61,367, at 62,196-7 (1990).

⁸⁷ Emphasis added.

⁸⁸ Emphasis added.

transportation agreement, the delivery point pressure should be sufficient to effect delivery into the receiving facilities and in no event greater than the maximum delivery pressure as provided in Exhibit A of the transportation agreement. However, neither the firm nor interruptible *pro forma* transportation service agreements' Exhibit A have provisions for minimum receipt point pressure or minimum and maximum delivery point pressures. RH energytrans is required to either remove the minimum and maximum pressure requirements from GT&C section 5.4, or include these terms in Exhibit A of the *pro forma* transportation service agreements.⁸⁹

8. Scheduling of Fuel

63. GT&C section 6.3 provides scheduling priorities for various gas service nominations. In GT&C section 6.3(c), RH energytrans proposes to schedule fuel gas ahead of Rate Schedule FTS services using secondary points. Elsewhere in RH energytrans's proposed tariff at GT&C section 22, RH energytrans incorporates by reference North American Energy Standards Board (NAESB) Standard 1.3.31. Standard 1.3.31 provides that "[t]he transportation priority for fuel should be the same as the level of service as the transaction to which it applies." Scheduling of fuel gas at a different priority from the underlying transportation service is inconsistent with the NAESB nomination and scheduling standards. Compliance with NAESB Standard 1.3.31 is required by the Commission's regulations.⁹⁰ Therefore, RH energytrans's proposal in GT&C section 6.3(c) is rejected as contrary to the NAESB nomination and scheduling standards. RH energytrans is required to make a conforming adjustment to its GT&C section 6.5(d), Allocation of Capacity, which also addresses the scheduling of fuel.

64. GT&C section 6.3 also proposes to schedule make up/payback gas under an operational balancing agreement ahead of Rate Schedule FTS services using secondary points, and all other make-up/payback gas below Rate Schedule ITS. Operational balancing agreements are not firm transportation services, and the imbalances that arise under these agreements can be the result of either firm or interruptible services. Therefore, RH energytrans's proposal in GT&C section 6.3 is rejected. RH energytrans is required to schedule operational balancing agreement make-up/payback gas at the same level as all other make-up/payback gas – below interruptible transportation services.⁹¹ As a result of this finding, RH energytrans is required to make a conforming

⁸⁹ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*).

⁹⁰ 18 C.F.R. § 284.12(a)(1)(ii) (2018).

⁹¹ *Ingleside Energy Center, LLC*, 112 FERC ¶ 61,101, at P 54 (2005).

adjustment to GT&C section 6.5(a) and (d), Allocation of Capacity, which also addresses make-up/payback under operational balancing agreements.

9. Curtailement

65. GT&C section 6.5 provides that scheduled secondary capacity firm service will be curtailed prior to scheduled primary firm or flow path secondary firm service. Further, for primary firm or flow path secondary firm service, RH energytrans does not propose any curtailment methodology except for reductions occurring after the Evening Nomination Cycle, which will be interrupted on a pro rata basis based on contract entitlements.

66. The Commission's policy provides that, once scheduled, all firm service is assigned the same priority for curtailment purposes, regardless of whether the capacity is utilized on a primary, flow path secondary, or secondary basis.⁹² Thus, the Commission requires RH energytrans to revise GT&C section 6.5 to reflect that it will allocate all scheduled firm capacity on a pro rata basis during capacity curtailment situations.

10. Posting Requirements

67. GT&C section 19 (Transporter's Web Site) identifies specific information RH energytrans will provide on its website and states that this information will be accessible by "any party." GT&C sections 19.4 and 19.5 both appear to address the posting of available capacity, but section 19.4 lists only four data elements, whereas section 19.5 incorporates by reference the capacity posting requirement enumerated in section 284.13(d) of the Commission's regulations. The list of proposed posted capacity data elements in 19.4 does not match those required by section 284.13(d) of the Commission's regulations. Thus, the posting of available capacity obligations in GT&C sections 19.4 and 19.5 are not the same. The Commission requires RH energytrans to revise these sections to ensure that they are not redundant and that the information that is posted on its website is consistent with Commission regulations.

⁹² *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 at p. 62,013 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

68. The Commission distinguishes between information that must be available to the public on a natural gas pipeline's website without a password,⁹³ and communications between the pipeline and its shippers for which a password is permitted. While GT&C section 19 provides that information on its website will be available to any "party," RH energytrans's tariff does not define "party." In addition, under RH energytrans's proposed GT&C section 19.6, website "users" may be required to have a "user access and/or signature code," but "user" is also not defined in the tariff. To ensure that RH energytrans's tariff provides public access to documents the Commission requires to be accessible to the public without a password, the Commission requires RH energytrans to revise GT&C section 19 to provide appropriate definitions of "party" and/or "user" that clarify that the public has access to documents without the use of a password as required in section 284.13(d) of the Commission's regulations.

69. GT&C section 8.1(b)(ii) provides that RH energytrans will post on its website any additional interconnects that it establishes within 15 days of the agreement. The 15-day period is inconsistent with section 284.13(d) of the Commission's regulations that requires pipelines to provide "equal and timely access to information relevant to the availability of all transportation services whenever capacity is scheduled" including the availability of capacity at receipt and delivery points. Therefore, RH energytrans is directed to revise its tariff to make this information available for the first nomination cycle at which capacity at an additional interconnect is available for scheduling. In addition, GT&C section 9.14 provides that RH energytrans will post certain capacity release replacement shipper data, as enumerated in this section, on its website within 48 hours of the completed transaction. This requirement is inconsistent with section 284.13(b)(1) of the Commission's regulations requiring that firm service and capacity release information be posted no later than the first nomination under a transaction.⁹⁴

11. Penalty Revenue Crediting Mechanism

70. The Commission requires that all penalties, net of costs, be credited to non-offending shippers.⁹⁵ The level of penalties is intended to prevent shipper behavior that could threaten the pipeline's operational integrity in the absence of such penalties.

⁹³ 18 C.F.R. § 284.12(b)(3)(ii)(A) (2018) ("[D]ocuments must be accessible to the public over the public Internet . . . without imposition of a password or other access requirement.").

⁹⁴ 18 C.F.R. § 284.13(b)(1) (2018).

⁹⁵ Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,315.

71. GT&C section 14, Penalties, provides at section 14.2(a) that unauthorized daily overrun charges will be credited to shippers that did not incur an unauthorized daily overrun charge. However, this section does not address other penalties in RH energytrans's tariff, such as the cautionary condition charge for violation of an operational flow order in GT&C Section 11.1(c), Cautionary Condition Procedures. In addition, GT&C section 10.3(b)(viii) addresses imbalance cash out penalties and provides that penalties in excess of RH energytrans's costs will be credited to firm and interruptible shippers on a pro rata of commodity units transported basis, without distinction to their offending status.

72. In order to comply with the Commission's policy on penalty revenue crediting, we require RH energytrans to revise its tariff to consolidate its penalty revenue crediting provisions into one section of its GT&C. That section should address all penalties that may be imposed by RH energytrans under the terms of its tariff. Further, the penalty revenue credits should only be provided to non-offending shippers. Additionally, we find that the GT&C section 14.2 mechanism that provides for an annual credit with accrued interest is consistent with section 154.501(d)(1) of the Commission's regulations,⁹⁶ and is approved.⁹⁷

12. North American Energy Standards Board (NAESB)

73. RH energytrans reflects tariff provisions in GT&C section 22, Compliance with 18 C.F.R., Section 284.12, implementing the NAESB WGQ Version 3.0 business practice standards.⁹⁸ In the time since RH energytrans 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.⁹⁹ Thus, we direct RH energytrans to file revised tariff records, no less than 60

⁹⁶ 18 C.F.R. § 154.501(d)(1) (2018).

⁹⁷ *Elba Express Co., L.L.C.*, 119 FERC ¶ 61,015, at P 42 (2006); *Algonquin Gas Transmission Co.*, 98 FERC ¶ 61,211 (2002); *Natural Gas Pipeline Co. of America*, 101 FERC ¶ 61,200 (2002); *Texas Eastern Transmission, L.P.*, 98 FERC ¶ 61,215 (2002).

⁹⁸ *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, FERC Stats. & Regs. ¶ 31,373 (2015); *order on reh'g*, 154 FERC ¶ 61,207 (2016).

⁹⁹ *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-Y, 83 Fed. Reg. 62,242 (December 3, 2018), FERC Stats. & Regs. ¶ 61,109 (2018). Under Order No. 587-Y, interstate natural gas pipelines are required to file

days prior to its in-service date, implementing the NAESB WGQ Version 3.1 business practice standards. Further, RH energytrans is directed to revise its tariff to:

- (1) change the reference from standard 5.3.20* to 5.4.20 in the section titled “Standards Incorporated by Reference: - Capacity Release Related Standards: - Datasets;”
- (2) change the reference from standard 5.3.21* to 5.4.21 in the section titled “Standards Incorporated by Reference: - Capacity Release Related Standards: - Datasets;”
- (3) change the reference from standard 5.3.22* to 5.4.22 in the section titled “Standards Incorporated by Reference: - Capacity Release Related Standards: - Datasets;”
- (4) remove standard 5.3.27 from section titled “Standards not Incorporated by Reference and their Location in Tariff;” and
- (5) remove standard 1.3.2 from section titled “Standards Incorporated by Reference: - Nominations Related Standards:.”

74. In addition, RH energytrans requests that the Commission grant it a waiver from compliance with the NAESB Standards relating to Electronic Data Interchange (EDI)¹⁰⁰ / Electronic Delivery Mechanism (EDM)¹⁰¹ communications protocols. RH energytrans states that it does not anticipate that any foreseeable customer would seek to use the EDI/EDM communications protocols, and therefore, the implementation of those protocols would impose an unnecessary burden. In Order No. 587-V, the Commission explained its policy regarding requests for waivers or extensions of time of NAESB standards related to using the Internet to conduct business transactions.¹⁰² Order No. 587-V states that pipelines have “to identify clearly in their filings the specific

compliance filings 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.

¹⁰⁰ EDI standards require pipelines to maintain and operate an interactive website.

¹⁰¹ EDM standards relate to the use of the Internet for pertinent business practice and electronic communications.

¹⁰² *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-V, FERC Stats. & Regs., ¶ 31,332, at P 39 (2012).

standards from which they are seeking waivers or extensions of time.”¹⁰³ Because RH energytrans failed to do so, its request for waiver is denied. When RH energytrans files its actual tariff, RH energytrans must clearly identify the specific standards, by standard number, from which it is seeking a waiver or an extension of time to comply with EDI, EDM, and Internet Electronic Transport (IET)¹⁰⁴ transactions, in the section titled “Standards for which Waiver or Extension of Time to Comply have been granted.”

13. Pro Forma Service Agreements

75. The *pro forma* service agreements for Rate Schedules FTS and ITS have multiple blank spaces. The majority of the blank spaces are to be populated with specific data (e.g., name of the shipper, date of the agreement, and contract quantities). Article IV.3 of each agreement provides for a “Further Agreement” blank space that is not defined.

76. Where a service agreement contains a provision not in the approved language of the form of service agreement and that provision: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties, the Commission cannot be considered to have already reviewed the service agreement when it reviewed the *pro forma* service agreement. In such cases, the Commission considers that the contract contains a provision affecting the substantive rights of the parties which the Commission has never seen before. Since NGA section 4 requires the filing of all contracts that affect the pipeline’s service “in any manner,” the statute requires the filing of such a service agreement.¹⁰⁵ If the “Further Agreement” blank space is populated, the Commission could not possibly have already reviewed the additional terms. Therefore, the Commission directs RH energytrans to remove the “Further Agreement” blank space. To the extent RH energytrans intends to include additional provisions in the service agreement other than merely filling in blanks with specific data, RH energytrans must file such non-conforming provisions with the Commission consistent with NGA section 4 and Part 154 of the Commission’s regulations.

77. In addition, Exhibit A, Article V, Additional Charges and Provisions, of the Rate Schedule FTS *pro forma* provides blank lines and/or spaces after the provision. These

¹⁰³ *Id.*

¹⁰⁴ IET refers to electronic transaction messaging standards which, in concert with Quadrant-specific Electronic Delivery Mechanisms (QEDM), enable NAESB parties to securely and reliably exchange transactions over the Internet.

¹⁰⁵ *Columbia*, 97 FERC at 62,001-3.

lines or spaces do not appear to be associated with any specific required data element, and thus, should be removed.

78. Finally, GT&C section 4.10 provides that RH energytrans and the shipper “may mutually agree to an evergreen, renewal, or rollover provision *in the [Transportation Service Agreement]* that would allow the Transportation Service Agreement to continue beyond its primary term.”¹⁰⁶ However, review of the *pro forma* service agreements indicate that there is no such provision. Thus, RH energytrans is required to modify its *pro forma* service agreements consistent with GT&C section 4.10.

14. Miscellaneous Provisions

79. The Commission notes that throughout RH energytrans’s proposed tariff are provisions, such as GT&C section 4.6, Off-system Capacity, addressing the acquisition, use and charges applicable for the use of RH energytrans capacity on other pipelines. Under the Commission’s *Texas Eastern* policy, the Commission found that open-access pipelines no longer need to obtain prior approval to acquire capacity on another pipeline, provided the acquiring pipeline has filed tariff language specifying that it will only transport for others using off-system capacity pursuant to its existing tariff and rates.¹⁰⁷ RH energytrans’s proposed tariff language is consistent with the requirements set forth in *Texas Eastern*. Notwithstanding various provisions in its proposed tariff that provide for cost recovery of these off-system costs, the Commission notes that RH energytrans cannot assess rates to recover these costs without first requesting approval from the Commission pursuant to an NGA section 4 rate filing.¹⁰⁸

80. RH energytrans proposes to include “FERC Gas Tariff” in the tariff sections’ headers. We administer two different gas tariff programs. Thus, we require RH energytrans to properly identify the applicable program as “FERC NGA Gas Tariff.”¹⁰⁹

81. GT&C section 3.1(i) ends with “and,” which should be deleted.

¹⁰⁶ Emphasis added.

¹⁰⁷ *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000) (*Texas Eastern*).

¹⁰⁸ *Id.* at 61,886.

¹⁰⁹ See *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings* at 7, <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf> (last updated on April 29, 2014). See also *Kinetica Energy Express, LLC*, 144 FERC ¶ 61,159, at P 21 (2013) (for additional guidance).

82. GT&C sections 4.9(c)(ii) and 4.11(b) reference GT&C section 4.9(c)(v). This section does not exist. Therefore, RH energytrans is required to clarify GT&C sections 4.9(c)(ii) and 4.11(b).

83. Finally, GT&C section 4 is titled “Requests For Service,” and purports to apply to requests for both firm and interruptible services. However, GT&C section 8, Operating Provisions, provides for section 8.2(a) “Obtaining Interruptible Service.” Thus, GT&C section 8.2(a) should either be removed or moved to GT&C section 4.

E. Non-Conforming Contract Provisions

84. RH energytrans states that to secure Dominion Ohio as a foundation shipper, it had to offer Dominion Ohio certain non-conforming rights similar to those offered foundation shippers in other proceedings. RH energytrans states that it offered the same non-conforming rights to all in its open season. RH energytrans requests a predetermination that the Commission will allow six non-conforming provisions. The non-conforming provisions which Dominion Ohio has negotiated are described below.

85. In *Columbia*, the Commission clarified that a material deviation is any provision in a service agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties.¹¹⁰ However, not all material deviations are impermissible. As explained in *Columbia*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.¹¹¹ Below, we apply these standards of review to RH energytrans’s proposed non-conforming provisions.

1. Permissible Deviations

86. RH energytrans proposes the following non-conforming provisions:

- Dominion Ohio will have the right, upon twenty-four (24) months’ advance notice to be given at the conclusion of the primary term of its firm transportation agreement or of the first five year successor term, to elect up to two successive five-year contract term extensions, at the then-applicable

¹¹⁰ *Columbia*, 97 FERC at 62,002. See also *ANR Pipeline Co.*, 97 FERC ¶ 61,224, at 62,022 (2001) (*ANR*).

¹¹¹ *Columbia*, 97 FERC at 62,003. See also *ANR*, 97 FERC at 62,024.

recourse rate for the service specified in Foundation Shipper's firm transportation agreement, as it may have been amended, or such other rate as may be mutually agreed;

- Dominion Ohio will be afforded a contractual right of first refusal in addition to the right to unilateral contract term extensions;
- Dominion Ohio will be afforded Most Favored Nations rate protection; and
- Dominion Ohio will have the right to obtain any foundation or anchor shipper status available in the event of any future RH energytrans expansion project, subject to that Foundation Shipper's satisfaction of the criteria governing recognition of foundation or anchor shipper status specifically applicable to such expansion project.

87. The Commission finds that the incorporation of these non-conforming provisions in the shipper's service agreement constitutes material deviations from RH energytrans's *pro forma* firm transportation agreement. However, in other proceedings, the Commission has found that non-conforming provisions may be necessary to reflect the unique circumstances involved with the construction of new infrastructure and to provide the needed security to ensure the viability of a project.¹¹² We find that the aforementioned non-conforming provisions identified by RH energytrans are permissible because they do not present a risk of undue discrimination, do not affect the operational conditions of providing service, and do not result in any customer receiving a different quality of service.

88. In addition, RH energytrans proposes to provide Dominion Ohio a limited capacity marketing service pursuant to the RH energytrans's tariff, for purposes of marketing releases of Dominion Ohio's capacity to new customers located within a Foundation Shipper's area of service. We find this non-conforming provision permissible because GT&C section 9.17 of RH energytrans's tariff offers a comparable capacity marketing service to all shippers.

¹¹² *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008); *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 78 (2006).

2. Impermissible Deviation

89. RH energytrans proposes that Dominion Ohio will be exempted from proration of its capacity subscription of future expansions, except to the extent RH energytrans must prorate available capacity in order to accommodate other Foundation Shippers.

90. Undue discrimination occurs when two classes of customers are similarly situated and the two classes of customers are afforded different treatment.¹¹³ In the event of an expansion of RH energytrans's facilities, Dominion Ohio would be exempted from proration of its capacity subscription for the new expansion without necessarily meeting threshold commitment amounts, whereas other shippers may have to offer certain commitment levels to attain Foundation Shipper status. The provision provides the shipper with a potentially *more advantageous* opportunity to participate in a future expansion simply due to its previous foundation shipper status.¹¹⁴ The advantageous opportunity is that, in the event there was a future proposed expansion, the proposed provision would give Dominion Ohio special rights to increase its capacity outside of the posting and bidding provision set forth in RH energytrans's GT&C section 4.3, as others would be subject to prorating whereas Dominion Ohio would not.¹¹⁵ Therefore, the Commission finds that this provision is unduly preferential to Dominion Ohio and unduly discriminatory against future shippers, and finds it non permissible. Therefore, the Commission orders RH energytrans to revise this section accordingly.

F. Waiver of Park and Loan Service

91. Section 284.12(b)(2)(iii) of the Commission's regulations require that open-access pipelines with imbalance penalties in their tariff must offer, to the extent operationally practicable, parking and lending service.¹¹⁶ RH energytrans requests waiver of this

¹¹³ *Energy Transfer Partners*, 120 FERC ¶ 61,086, at P 169 (2007) (citing "*Complex*" *Consol. Edison v. FERC*, 165 F.3d 992, 1012 (D.C. Cir. 1999); *Sebring Utility Comm'n v. FERC*, 591 F.2d 1003, 1009, n.24 (D.C. Cir. 1979); *Transwestern Pipeline Co.*, 36 FERC ¶ 61,175, at 61,433 (1986) (undue discrimination is in essence an unjustified difference in treatment of similarly-situated customers); *Tennessee Gas Pipeline Co.*, 77 FERC ¶ 61,215, at 61,877 (1996)).

¹¹⁴ *Equitrans, L.P.*, 157 FERC ¶ 61,018, at P 7 (2016), *reh'g denied*, 161 FERC ¶ 61,017 (2017).

¹¹⁵ *Columbia Gas Transmission, LLC*, 153 FERC ¶ 61,146, at P 13 (2015).

¹¹⁶ 18 C.F.R. § 284.12(b)(2)(iii) (2018).

requirement. RH energytrans states that the relatively short length of the Risberg Line, along with the relatively small diameters of its pipelines, will mean that RH energytrans will only have a small amount of line pack. Further, RH energytrans's ability to increase or decrease line pack will be restricted by the pressure characteristics of its system. Although it will not offer park and loan services, RH energytrans commits that it will not inhibit its customers' use of imbalance management services obtained from other service providers.

92. We grant RH energytrans's waiver request. RH energytrans has approximately 60 miles of small diameter pipeline with limited line pack and no storage, and has proposed to allow shippers to enter into agreements with third parties for imbalance services. Under these circumstances, we will not require RH energytrans to offer additional imbalance services at this time.¹¹⁷

G. Accounting and Reporting Requirements

93. RH energytrans's January 19, 2018 data response includes proposed accounting entries to reflect the acquisition of existing pipeline and compression facilities from EmKey Gathering. RH energytrans's proposed entry records the payment through Account 102, Gas Plant Purchased or Sold, but does not subsequently clear Account 102 to plant accounts. RH energytrans must account for the transaction in accordance with Gas Plant Instruction No. 5 and Account 102 of the Uniform System of Accounts. Therefore, we will require RH energytrans to submit the proposed accounting entries in their entirety within six months of the date that the acquisition of facilities is consummated. The accounting submissions must provide all of the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

94. An allowance for funds used during construction (AFUDC) is a component part of the cost of constructing RH energytrans's facilities. Gas Plant Instruction 3(17) prescribes a formula for determining the maximum amount of AFUDC that may be capitalized as a component of construction cost.¹¹⁸ However, that formula is not applicable here, as it uses prior year book balances and cost rates of borrowed and other capital that either do not exist or could produce inappropriate results for initial construction projects of newly created entities such as RH energytrans. Therefore, to ensure that the amounts of AFUDC are properly capitalized, we will require RH energytrans to capitalize the actual costs of borrowed and other funds for construction

¹¹⁷ See *Horizon Pipeline Co., L.L.C.*, 101 FERC ¶ 61,195, at P 31 (2002).

¹¹⁸ 18 C.F.R. pt. 201 (2018).

purposes not to exceed the amount of debt and equity AFUDC that would be capitalized based on the overall rate of return approved.¹¹⁹

H. Environmental Analysis

95. On November 21, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Risberg Line Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal Register*¹²⁰ 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; affected property owners, and interested parties. We received comments in response to the NOI from the U.S. Army Corps of Engineers (Army Corps), the U.S. Fish and Wildlife Service (FWS), the Ohio Department of Natural Resources (Ohio DNR), and 29 individuals.

96. The primary issues raised during the scoping process included impacts on water resources, wetlands, vegetation, wildlife, and air quality; noise and vibration associated with compressor stations; reliability and safety; and alternatives.

97. To satisfy the requirements of the National Environmental Policy Act of 1969,¹²¹ Commission staff prepared an EA for RH energytrans's proposal. The EA was prepared with the cooperation of the Army Corps and the Pennsylvania Fish and Boat Commission (Pennsylvania FBC). 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.

98. The EA was issued for a 30-day comment period and placed into the public record on June 29, 2018. The Commission received comments on the EA from two landowners near the existing County Line Compressor Station – Jeff Meighan and Scott Poole; the U.S. Environmental Protection Agency (EPA); the FWS; the Bureau of Indian Affairs; International Union of Operating Engineers, Local 18; Laborers' International Union of North America, the Laborers' District Council of Ohio; and RH energytrans. The primary concerns raised in response to the EA include: project need, geology and soils,

¹¹⁹ See *Mill River Pipeline, L.L.C.*, 112 FERC ¶ 61,070 (2005).

¹²⁰ 82 Fed. Reg. 56,599 (November 29, 2017).

¹²¹ 42 U.S.C. §§ 4321 *et seq.* (2012). See also 18 C.F.R. pt. 380 (2018) (the Commission's NEPA-implementing regulations).

water resources and wetlands, vegetation and wildlife, special status species, cultural resources, land use, air quality and climate change, noise, safety, and project alternatives.

1. Statement of Purpose and Need

99. EPA states that proper identification and documentation of a proposed project's purpose and need helps ensure that all reasonable alternatives have been identified and considered. EPA recommends the EA include documentation that supports the purpose and need. Finally, EPA requests an explanation of why there is a need for the project to provide "interruptible" natural gas service.

100. CEQ regulations require that an EA provide brief discussions of the need for the proposal, of alternatives, and of the environmental impacts of the proposed action and alternatives.¹²² Thus, the EA need only describe the purpose and need of the project to the extent necessary to inform its alternatives analysis. Courts have upheld federal agencies' use of applicants' project purpose and need as the basis for evaluating alternatives.¹²³ When an agency is asked to consider a specific plan, the needs and goals of the parties involved in the application should be taken into account.¹²⁴ We recognize that a project's purpose and need should not be so narrowly defined as to preclude consideration of what may actually be reasonable alternatives.¹²⁵ Nonetheless, an agency need only consider alternatives that will bring about the ends of the proposed action, and the evaluation is "shaped by the application at issue and by the function that the agency plays in the decisional process."¹²⁶ Here, the EA's stated purpose and need for the project – to provide firm and interruptible natural gas transportation services to [Dominion Ohio] and other customers along the pipeline's route and in the vicinity of

¹²² See 40 C.F.R. § 1508.9(b) (2018). For an Environmental Impact Statement, CEQ regulations specify that the purpose and need statement "shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." *Id.* at § 1502.13.

¹²³ See, e.g., *City of Grapevine, Texas v. U.S. Dep't of Transportation*, 17 F.3d 1502, 1506 (D.C. Cir. 1994).

¹²⁴ *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

¹²⁵ *Id.*

¹²⁶ *Id.* at 195, 199.

North Kingsville in Ashtabula County, Ohio – provided an appropriate basis on which to evaluate the project’s alternatives.¹²⁷

101. In response to EPA’s question about the need for the project to provide interruptible service, RH energytrans’s explains that the interruptible transportation services RH energytrans will offer on the Risberg Line are an adjunct to the firm transportation services that RH energytrans will provide.¹²⁸ RH energytrans clarifies that the service will be furnished through Risberg Line capacity that is available when firm transportation customers are not fully utilizing their reserved capacity. Moreover, section 284.9 of the Commission’s regulations requires an interstate natural gas pipeline that offers firm transportation service to offer a corresponding interruptible transportation service.¹²⁹

2. Geology and Soils

102. EPA recommends that the Commission clarify the language in the EA that describes “slopes greater than 30 feet.”¹³⁰ The referenced text states that “nearly 50 locations along the Risberg Pipeline route have slopes greater than 30 *feet*.”¹³¹ We clarify this sentence to state, “nearly 50 locations along the Risberg Pipeline route have slopes greater than 30 *percent*.” This change does not affect the EA’s conclusions.

103. EPA concurs with the EA recommendation that RH energytrans file a slope stability assessment, included as Environmental Condition 13 of this order, to identify specific locations along the Risberg Pipeline with the potential for slope failure and site-specific measures to mitigate potential hazard. However, EPA states that “landslide minimization measures that have deteriorated or otherwise fallen into disrepair have historically been associated with landslide or slip events in areas characterized as being susceptible to landslide hazards.”¹³² In addition to regular inspections and repair of

¹²⁷ EA at 3.

¹²⁸ RH Energytrans’s August 13, 2018 Response to EPA Comments at 1 (Response to EPA Comments).

¹²⁹ 18 C.F.R. § 284.9 (2018).

¹³⁰ EA at 22.

¹³¹ *Id.*

¹³² EPA’s August 6, 2018 Comments at 5.

erosion controls and slope stabilization structures, EPA recommends that inspections and repairs take place immediately prior to and after heavy rain events. EPA recommends that the Commission make these types of inspections and repairs a condition of certification. EPA also recommends environmental inspectors with expertise in erosion control and slope stabilization be on-site during all site preparation and construction work regarding, wetlands and stream crossings, and areas with steep slopes and highly erodible soils.

104. As indicated in the EA, RH energytrans's Erosion and Sediment Control Plans describe maintenance of erosion and sediment controls.¹³³ As required by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan), with which RH energytrans has agreed to comply, environmental inspectors are required to inspect and ensure maintenance of temporary erosion control measures at least: daily in areas of active construction, weekly in areas with no active construction, and within 24 hours of each 0.5 inch rainfall. RH energytrans commits to directing environmental inspectors to inspect erosion control devices before and after heavy rains.¹³⁴ Environmental Conditions 3 and 7 of this order address the experience and qualifications required of the environmental inspectors. These requirements specify that RH energytrans must affirmatively state that environmental inspectors 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. We conclude that erosion controls and landslide minimization have been adequately addressed.

3. Water Resources and Wetlands

a. Groundwater

105. EPA notes that the EA does not disclose the name of the Superfund site near Milepost (MP) 57.3, nor depict its location on EA maps or figures in relation to the route proposed for the pipeline portion of the Risberg Line Project. EPA requests that the Commission and RH energytrans coordinate with EPA Region 5 Remedial Project Manager, William Ryan, regarding the proposed location for the new pipeline, and make

¹³³ EA at 28; RH energytrans's January 9, 2018 Response to Data Request, Attachment 22 (RH energytrans's Permit Tracking Table and Additional Permit Submissions).

¹³⁴ Response to EPA Comments at 2.

any route adjustments necessary to avoid the Superfund site and to protect human health and the environment. EPA requests that the Commission document this coordination.

106. The Superfund site located southwest of the proposed Risberg Pipeline near MP 57.3 is known as the Big D Campground. As described in the EA, the project is not expected to encounter groundwater contamination associated with this site.¹³⁵ Based on the EPA's comment, on August 7, 2018, RH energytrans contacted EPA Region 5's William Ryan regarding the proposed location of the Risberg Pipeline in relation to the Big D Campground Superfund site. Mr. Ryan reviewed the project information and agreed with the conclusions that the pipeline will not impact the Big D Campground Superfund site, and that the site will not expose workers to levels of contamination that could cause adverse impacts on health.¹³⁶ We conclude that no pipeline route adjustments are warranted at this location, and affirm the EA's conclusion that the project is not likely to have a significant impact on groundwater.¹³⁷

b. Surface Water

107. EPA recommends RH energytrans consult with the City of Conneaut, Ohio, to determine whether an emergency plan may be necessary regarding potential water quality impacts associated with a crossing upgradient from the municipal water intake within the City of Conneaut's Surface Water Protection Area. If so, EPA recommends that the emergency plan be formulated in accordance with the City of Conneaut's specifications, which may include the time it would take for a contaminant to reach the intake.

108. RH energytrans clarifies that it has contacted the City of Conneaut to inquire whether an emergency plan is necessary to address potential water quality impacts associated with the Surface Water Protection Area crossed by the Risberg Line Project.¹³⁸ Noting that the crossing would be located at the outermost boundary of the Surface Water Protection Area, over three miles from the City's water intake and upgradient of a raised elevation major interstate highway, RH energytrans suggests it is unlikely that an emergency plan will be needed. Nevertheless, if the City of Conneaut determines that a

¹³⁵ EA at 30.

¹³⁶ Response to EPA Comments, Attachment 1 (William Ryan's August 7, 2018 email).

¹³⁷ EA at 31.

¹³⁸ Response to EPA Comments at 4.

plan is needed, RH energytrans commits to developing the plan in accordance with its specifications.

c. Waterbody Crossings

109. EPA notes that the EA does not include figures that show the locations of wetlands at or near the proposed Conneaut Creek horizontal directional drill (HDD) and Interstate-90 sites. It expresses concern that forested wetlands could potentially be adversely impacted by proposed HDD activities if there is an inadvertent release and lack of constant monitoring of HDD activities. Therefore, EPA recommends an environmental inspector with expertise in HDD methods be present during all HDD construction activities.

110. As indicated in the EA, delineated wetlands and streams are shown on RH energytrans's alignment sheets, which are available on the Commission's eLibrary website.¹³⁹ The EA explains that during HDD activities, trained personnel would monitor drilling fluid pressure and make periodic visual observations along the drill path to ensure the quick identification of any inadvertent return.¹⁴⁰ Furthermore, as described in the EA,¹⁴¹ RH energytrans will follow its Inadvertent Return Contingency Plan, which is required by Environmental Condition 15. No additional monitoring is warranted. We agree with the EA's conclusion that inadvertent returns will be sufficiently monitored and impacts on wetlands sufficiently minimized during the proposed HDDs.

d. Waterbody Restoration

111. EPA comments that waterbody restoration plan details and use of riprap and planting of riparian buffers are not included in the EA. EPA recommends the Commission clarify whether restoration plans for stream and wetland crossings have been filed with the Commission. If so, EPA asks where it can find this information on the Commission's e-filing site for this project. If not, EPA recommends that these elements be added to the record.

112. Appendix B of the EA contains typical waterbody crossing construction diagrams, including RH energytrans's proposed use of riprap (see figure B-15), which is also

¹³⁹ EA at 35, n. 6 (citing RH energytrans's March 23, 2018 Response to Data Request).

¹⁴⁰ EA at 13.

¹⁴¹ *Id.*

described in text of the EA.¹⁴² In addition, RH energytrans's *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures) (sections V.C.5 and V.C.6) contain waterbody restoration requirements, including stipulations to comply with the Army Corps's (or its delegated agency) permit terms and conditions regarding riprap use; and to limit the use of riprap to areas where flow conditions preclude effective vegetative stabilization techniques (such as seeding and erosion control fabric). With the exception of alternative measures described in section B.3.3.2 of the EA,¹⁴³ RH energytrans's Procedures are the same as the Commission's Procedures.¹⁴⁴ Furthermore, RH energytrans provided wetland restoration and riparian area planting plans in the January 17, 2018 Erosion, Sediment Control, and Stormwater Management Permitting Application it submitted to the Pennsylvania Department of Environment Protection (Pennsylvania DEP) and the Erie and Crawford County Conservation Districts for work in Pennsylvania, and in the January 26, 2018 Erosion and Sediment Control Plan submitted to the Ohio Environmental Protection Agency (Ohio EPA) as part of the Individual Section 401 Water Quality Certification for work in Ohio.¹⁴⁵ We do not find that additional documentation or modification of any conclusions in the EA are necessary.

e. **Wetlands**

113. RH energytrans requests that the timing requirement in Environmental Condition 17 be changed to allow RH energytrans to conduct the wetland delineation surveys from April to July 2019 and file results with the Commission prior to resuming vegetation maintenance on the existing gathering pipeline right-of-way. We have modified Environmental Condition 17 accordingly.

¹⁴² EA at 33.

¹⁴³ EA at 40. RH energytrans requested to vary from the FERC Procedures for two access roads (TAR-1 and TAR-5) that will impact wetlands. Because alternative routes would have impacted the same or other wetlands, and RH energytrans will use protective timber mats and will not conduct grading in the wetlands, Commission staff found that RH energytrans provided sufficient justification for these variations.

¹⁴⁴ Available at FERC's website, <http://www.ferc.gov/industries/gas/enviro/plan.pdf> and <http://www.ferc.gov/industries/gas/enviro/procedures.pdf>.

¹⁴⁵ See RH energytran's January 9, 2018 Response to Data Request, Attachment 22.

114. EPA requests clarification about whether RH energytrans will clear and maintain vegetation in wetlands within the permanent right-of-way for existing pipelines and facilities. EPA recommends that RH energytrans consult with Pennsylvania DEP and Army Corps to determine whether any forested wetlands impacts associated with the project in Pennsylvania will require mitigation, and that environmental inspectors be on-site during all site preparation and construction work regarding wetlands and stream crossings, and areas with steep slopes and highly erodible soils.

115. As stated in the EA, any required compensatory mitigation for wetlands, including forested wetlands, will be determined by the Army Corps during the wetland permitting process.¹⁴⁶ On November 7, 2018, the Army Corps's Buffalo District provided a provisional Nationwide Permit 12 pending RH energytrans's acquisition of its state Section 401 Water Quality Certification. This permit outlines minimization measures that RH energytrans must implement as well as compensatory mitigation for wetland impacts. As partial compensatory mitigation for the permanent conversion of 5.01 acres of forested wetland to emergent wetland, RH energytrans is required to purchase 3.8 wetland mitigation bank credits from Stream + Wetlands Foundation, Trumbull Creek Mitigation Bank for forested wetland mitigation; 1.1 wetland mitigation bank credits from Stream + Wetlands Foundation, Trumbull Creek Mitigation Bank for non-forested wetland mitigation; and 1.8 wetland mitigation preservation bank credits from Stream + Wetlands Foundation, Pine Brook Mitigation Bank for preservation wetland credits.

116. Vegetation maintenance restrictions within the permanent pipeline rights-of-way in wetlands are detailed in RH energytrans's Procedures and in section B.3.3.2 of the EA, which states:

RH also would not conduct vegetation maintenance over the full width of the permanent right-of-way in wetlands. To facilitate periodic pipeline corrosion/leak surveys, a corridor centered on the entire pipeline right-of-way and up to 10 feet wide would be maintained in an herbaceous state. RH also would selectively cut and remove trees within 15 feet of the pipeline and greater than 15 feet in height.¹⁴⁷

Additionally, the EA explains that routine vegetation mowing or clearing in wetlands will not be conducted in areas between HDD entry and exit points.¹⁴⁸ As noted earlier, the

¹⁴⁶ EA at 103.

¹⁴⁷ EA at 41.

¹⁴⁸ *Id.*

Commission's Plan requires that trained environmental inspectors inspect and ensure maintenance of temporary erosion control measures at least: daily in areas of active construction, weekly in areas with no active construction, and within 24 hours of each 0.5 inch rainfall. Based on RH energytrans's proposed mitigation measures, Environmental Condition 17, and the compensatory mitigation required by the Army Corps's Buffalo District and that may be required by other agencies, we agree with the EA's determination that the project's wetland impacts would not be significant.

4. Vegetation and Wildlife

117. EPA requests that the Commission consult with the Pennsylvania Game Commission to ensure construction and maintenance procedures do not interfere with the pursuit of game animals or recreation on state game lands. EPA states that maintenance practices and seed mixes should adhere to existing plans and goals of each individual game land. As described in the EA, although the existing gathering pipeline crosses Pennsylvania State Game Lands, no new construction is proposed on these lands.¹⁴⁹ Routine pipeline maintenance and operation will not interfere with recreational use of the game lands. Because there will be no new construction, reseeding will not be required. For these reasons, we find that the EA adequately analyzed impacts on Pennsylvania State Game Lands.

118. EPA notes that several of the National Heritage Areas crossed by the proposed Risberg Pipeline contain high-quality stands of tree species that are imperiled in Pennsylvania in addition to many sensitive species which are threatened by human disturbance, invasive species, and hydrologic changes. Therefore, EPA recommends avoiding permanent impacts on these areas. Where impacts are unavoidable, EPA recommends monitoring for invasive species and following the conservation recommendations presented by the Pennsylvania National Heritage Program.

119. For invasive species management, the EA explains that RH energytrans would monitor the non-cultivated portions of the right-of-way for noxious weeds during restoration and post-construction monitoring, and would use spray or hand removal, as appropriate, to control noxious weeds.¹⁵⁰ RH energytrans will also implement several invasive species control measures recommended by the Pennsylvania Department of Conservation and Natural Resources.¹⁵¹ The EA also describes additional mitigation

¹⁴⁹ EA at 46.

¹⁵⁰ EA at 49.

¹⁵¹ *Id.*

measures that RH energytrans will implement to minimize impacts on National Heritage Areas, including measures recommended by the Pennsylvania National Heritage Program for specific National Heritage Areas.¹⁵² RH energytrans notes that the crossing of the Pond Road Wetlands National Heritage Area will be completed in the non-core habitat area paralleling the railroad tracks and powerline.¹⁵³ Therefore, we agree with the EA's determination that project impacts on vegetation, including unique and sensitive habitat such as National Heritage Areas, will be sufficiently minimized.¹⁵⁴

120. EPA recommends that the Commission and RH energytrans consult with the Cleveland Museum of Natural History, Ohio EPA, Ohio DNR, and the Army Corps regarding the location, design, construction and operation of the new pipeline in order ensure that the project will not adversely impact the hydrology, water quality, and plant and animal communities of the Kingsville Swamp and North Kingsville Sand Barrens.

121. The EA explained that because excavation associated with pipeline construction will be shallow, any changes in water table levels and/or turbidity in the surficial aquifer connected with the Kingsville Swamp will be minor, localized, and temporary.¹⁵⁵ Because effects of the Risberg Pipeline Project on hydrology will be minor and localized, the EA concludes that the project will not significantly impact the sensitive species or habitat in the Kingsville Swamp.¹⁵⁶ Furthermore, the North Kingsville Sand Barrens will be greater than 0.5 mile away from the proposed pipeline and will not be affected by pipeline construction. Additionally, RH energytrans is consulting with the Cleveland Museum of Natural History about the crossing of an existing driveway on the Kingsville Swamp property. While pipeline construction could cause brief, temporary impacts on access, the Kingsville Swamp itself would not be affected.¹⁵⁷ Therefore, we agree with the EA's conclusion that impacts on the Kingsville Swamp and associated plant and animal communities will be sufficiently minimized.

¹⁵² EA at 46-49.

¹⁵³ Response to EPA Comments at 7.

¹⁵⁴ EA at 49.

¹⁵⁵ EA at 30.

¹⁵⁶ EA at 48.

¹⁵⁷ EA at 70.

122. EPA comments that forests provide valuable habitat and help maintain surface and groundwater quantity and quality in the watershed, in part, by stabilizing soils. EPA encourages voluntary compensation for the loss of over 100 acres of upland forest due to tree cutting and clearing associated with RH energytrans's current proposal and asks whether RH energytrans proposes to undertake upland forest mitigation. In response, RH energytrans states that it began consulting with local organizations early in the project planning and design phase regarding support for activities intended to preserve or enhance forested areas in the project vicinity.¹⁵⁸ The activities RH energytrans is currently evaluating include preserving wooded areas, planting trees, and contributing to local organizations engaged in such goals.¹⁵⁹ RH energytrans designed its proposed facilities to co-locate the construction right-of-way alignment with existing utility corridors to minimize forested vegetation clearing impacts. We agree with the EA's conclusion that impacts on forests will be sufficiently minimized.

123. EPA states that although Gravel Run and Upper Woodcock Creek trout waters will not be impacted during construction, any operational or maintenance impacts should be conveyed to the Pennsylvania FBC. In response, RH energytrans states that it has been consulting with the Pennsylvania FBC throughout the planning and permitting stages of the proposed project, and that Pennsylvania FBC is aware of the project's potential impacts during operation or maintenance activities.¹⁶⁰ Further, RH energytrans will follow its Procedures during operations and maintenance, including restrictions on herbicide and pesticide use adjacent to waterbodies and vegetation maintenance measures to mitigate potential impacts on fisheries.¹⁶¹ The EA states that normal pipeline operations will not affect surface water quality and RH energytrans will implement measures, including its Procedures and its hazardous materials Preparedness, Prevention, and Contingency Plan to avoid or minimize impacts from spills.¹⁶² RH energytrans will also install permanent erosion controls, including slope breakers, to prevent sediment deposition into surface waters. These erosion controls will be monitored and maintained

¹⁵⁸ Response to EPA Comments at 7.

¹⁵⁹ *Id.* at 7-8.

¹⁶⁰ *Id.* at 8.

¹⁶¹ EA at 52.

¹⁶² EA at 36.

throughout operations.¹⁶³ For these reasons, we agree with the EA's conclusion that potential impacts on aquatic resources will be sufficiently minimized.¹⁶⁴

5. Special Status Species

124. In a July 10, 2018 letter, FWS's Ohio Field Office (FWS-Ohio) concurred with Commission staff's determination¹⁶⁵ that the project *may affect, but is not likely to adversely affect* the Indiana bat and northern long-eared bat in Ohio.¹⁶⁶ In a July 18, 2018 letter, FWS's Pennsylvania Field Office (FWS-Pennsylvania) concurred that the project *may affect, but is not likely to adversely affect* the Indiana bat in Pennsylvania.¹⁶⁷ But FWS-Pennsylvania does not concur with the EA's determination that the project *may affect, but is not likely to adversely affect* northern long-eared bats in Pennsylvania because of the proposed forest removal and a maternity roost tree identified 0.2 mile from the project. However, FWS-Pennsylvania states that appendix D of the EA includes a completed streamlined consultation form for the northern long-eared bat that acknowledges take may occur due to forest removal and satisfies the Endangered Species Act Section 7 consultation requirement. FWS-Pennsylvania clarifies that take that may occur due to forest removal is not prohibited and that no additional consultation is required. Given FWS consultation is complete, the EA's recommended Environmental Condition 18 has been omitted.

125. In its EA comments, RH energytrans provided supplemental information from the Pennsylvania FBC and Ohio Division of Wildlife. Based on field reviews and additional information, the Pennsylvania FBC requests that no in-stream construction activity take place between April 1 and June 30 for the segments of the project area east of McKee Road in Erie County. This modified request is less restrictive than the original time period reported in the EA (i.e., April 1 through August 15).¹⁶⁸ Pennsylvania FBC also reported that it did not observe critical habitat for spotted turtle during its April 2018 field

¹⁶³ EA at 35-36.

¹⁶⁴ EA at 52.

¹⁶⁵ EA at 58-59.

¹⁶⁶ FWS-Ohio's July 10, 2018 Letter.

¹⁶⁷ RH energytrans's July 24, 2018 Supplemental Filing (FWS-Pennsylvania's July 18, 2018 letter).

¹⁶⁸ EA at 60.

reviews of the project area in western Erie County. Similarly, Ohio Division of Wildlife reports that the spotted turtle was not detected during field surveys. Ohio Division of Wildlife concludes that spotted turtle is unlikely to be present within the project area and that no further coordination regarding this species is required. Notwithstanding this supplemental information, the EA's conclusions regarding state-listed species do not require modification.

6. Cultural Resources

126. The Bureau of Indian Affairs comments that the project is in an area of historic interest to the Oneida Indian Nation, and that while the Commission consulted with the Oneida Indian Nation in Wisconsin, there is no record of consultation with the Oneida Indian Nation in New York. On August 14, 2018, Commission staff contacted Jesse Bergevin, the Historic Resources Specialist for the Oneida Indian Nation in New York.¹⁶⁹ Mr. Bergevin states, “[t]hose counties [Erie County, Pennsylvania, and Ashtabula County, Ohio] lie outside of the Oneida aboriginal territory and, unless there were specific historic properties linked to Oneida ancestors, we would not have an interest in consultation.”¹⁷⁰ Commission staff's assessment of cultural resources did not identify specific historic properties linked to the Oneida Indian Nation.¹⁷¹ We find no further consultation with the Oneida Indian Nation is necessary.

7. Land Use

127. EPA recommends that the Commission and RH energytrans coordinate with the Ohio Department of Agriculture and local authorities regarding best practices and mitigation opportunities for impacts to farmland, and document findings in the Commission's final decision. If applicable, EPA recommends that RH energytrans develop an Agricultural Impact Mitigation Plan based on Ohio Department of Agriculture's Pipeline Standard and Construction Specification as updated on December 25, 2015 (2015 Pipeline Standards).¹⁷²

¹⁶⁹ Commission staff's August 20, 2018 Memo (containing Jesse Bergevin's August 14, 2018 email).

¹⁷⁰ *Id.*

¹⁷¹ EA at 62-65.

¹⁷² This information is available on the Ohio Department of Agriculture's website: <https://agri.ohio.gov/wps/portal/gov/oda/home/>.

128. RH energytrans's measures to mitigate soil and agricultural impacts are summarized in the EA.¹⁷³ RH energytrans states that it consulted with the Ashtabula Soil and Water Conservation District and received guidance to follow Ohio Department of Agriculture's 2015 Pipeline Standards.¹⁷⁴ RH energytrans additionally states that it has initiated contact with the Ohio Department of Agriculture regarding the 2015 Pipeline Standards, which are similar to the mitigation measures in the Commission's Plan.¹⁷⁵ We find that the measures included in the Plan are generally sufficient to minimize impacts on agricultural lands and ensure proper restoration of soil function. However, based on its consultation with the Ohio Department of Agriculture, RH energytrans may include in its implementation plan, which is required by Environmental Condition 6, additional mitigation measures for agricultural land crossed by the project.

8. Air Quality and Climate Change

129. EPA recommends that RH energytrans consult EPA's Diesel Emission Reduction Checklist for additional implementation measures to protect air quality during construction. In response, RH energytrans commits to providing copies of the checklist to its project contractors and requesting the contractors to adopt the provisions that can be reasonably implemented.

130. EPA also recommends that RH energytrans consider incorporating some of the technologies and practices that EPA has compiled to help reduce emissions of methane (a greenhouse gas).¹⁷⁶ As described in the EA, RH energytrans will be required to comply with EPA's Clean Air Act regulations regarding New Source Performance Standards Subpart OOOOa, which establishes standards to reduce natural gas emissions within the natural gas transmission system.¹⁷⁷ RH energytrans states it will implement a

¹⁷³ EA at 27-28.

¹⁷⁴ RH energytrans's January 9, 2018 Response to Data Request at 92.

¹⁷⁵ Response to EPA Comments at 3. RH energytrans also notes that the proposed pipeline route follows the edges of agricultural tracts to the greatest extent possible, and that it consulted with agricultural landowners regarding pipeline crossing specifications (e.g., depth of cover, fence crossings, avoidance or repair of drain tiles). *Id.*

¹⁷⁶ This information is available on EPA's website: <https://www.epa.gov/natural-gas-star-program/recommended-technologies-reduce-methane-emissions>.

¹⁷⁷ EA at 88; EPA, *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources*, 81 Fed. Reg. 35,824 (June 3, 2016) (amending 40 C.F.R. pt. 60, subpts. OOOO, OOOOa); *Source Determination for Certain Emission*

routine maintenance plan that includes, at a minimum, monthly leak surveys of the compressor stations, quarterly leak surveys of the class 3 areas of the pipeline based on the U.S. Department of Transportation's (DOT) safety classification regulation in 49 C.F.R. 192,¹⁷⁸ and an annual leak survey of the entire system. RH energytrans's proposed project will employ current best management practices (BMP), including use of instrument air, rather than natural gas, to actuate pneumatically controlled valves at the project's two compressor stations, and low bleed rate natural gas regulators, as suggested by BMP 3 of the Natural Gas STAR Program.¹⁷⁹ RH energytrans will also implement Directed Inspection and Maintenance procedures at the two project compressor stations as suggested by BMP 1 of the Natural Gas STAR Program. These measures will minimize natural gas emissions.¹⁸⁰

131. EPA recommends that RH energytrans consider measures to improve resiliency to climate change in the project's design, during construction, operation, maintenance, and inspections. EPA indicates that protective measures may be needed, such as enhanced stormwater management capacity during project construction. RH energytrans's Erosion and Sediment Control Plans¹⁸¹ include measures that will enhance resiliency to climate

Units in the Oil and Natural Gas Sector, 81 Fed. Reg. 35,622 (June 3, 2016) (amending 40 C.F.R. pts. 51, 52, 70, 71). *See also Clean Air Council v. Pruitt*, 862 F.3d 1, 9-14 (D.C. Cir. 2017) (vacating the EPA's attempt to stay the performance standards based on four plainly "inaccurate and thus unreasonable" bases).

¹⁷⁸ 49 C.F.R. pt. 192 (2018).

¹⁷⁹ The Natural Gas STAR Program is an EPA partnership program that encourages its partner companies to evaluate and implement methane reducing technologies and practices, and report annual methane emission reduction activities. EPA, *Natural Gas STAR Program*, <https://www.epa.gov/natural-gas-star-program/natural-gas-star-program>.

¹⁸⁰ While the modification of the existing County Line Compressor Station will not result in increased operational emissions, the Meadville Compressor Station will be a new operational emissions source. EA at 85. The project will result in an increase in GHG emissions, as described in section B.8.0 of the EA, and quantified in sections B.8.4 and B.8.5 of the EA. EA at 79 and 83-87. The Commission has previously concluded it could not determine a project's incremental physical impacts on the environment caused by GHG emissions. *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70 (2018) (LaFleur, Comm'r, *dissenting in part*; Glick, Comm'r, *dissenting in part*).

¹⁸¹ RH energytran's January 9, 2018 Response to Data Request, Attachment 22.

change including state-of-the-art stormwater management practices and standard measures to prevent sediment from exiting the limits of disturbance.¹⁸² We find these measures adequate.

9. Noise

132. Mr. Meighan and Mr. Poole express concern about noise and vibration impacts from the County Line Compressor Station.¹⁸³ Mr. Meighan describes existing adverse noise and vibration impacts on residents near the station, and requests that the Commission require RH energytrans to fix noise and vibration problems before the new equipment is put into service. Mr. Meighan expresses doubts that RH energytrans will mitigate noise and vibration impacts after the proposed modifications. He states that RH energytrans has not developed a realistic mitigation plan or solution to vibration problems, and that the proven method to mitigate the sound and vibration from the station is to provide a completely enclosed sound-rated structure with explosion-proof construction. Mr. Poole notes resonance at noise sensitive areas due to the low frequency intrusion, and claims that although the station operator was notified of noise and vibration problems as far back as 2015, it has failed to remedy the issue.

133. As part of the Risberg Line Project, the existing non-jurisdictional County Line Compressor Station will be modified and recertified as a FERC-jurisdictional facility. Although an existing facility, we will require RH energytrans to ensure that the County Line Compressor Station complies with the Commission's applicable standards as if it were a new jurisdictional facility. As stated in the EA,¹⁸⁴ RH energytrans acknowledges that current operations at the station result in perceptible airborne vibration (from low-frequency noise) that it plans to mitigate as part of the project. To address this issue, RH energytrans will install fiber- or ceramic-based insulation on the single-wall steel head pipe sections of the exhaust systems and a portion of the mufflers during the proposed station modifications. RH energytrans will measure vibration levels after modification and address further vibration problems if necessary at that time. We are requiring RH Energytrans to file this vibration survey demonstrating how vibration issues are addressed as Environmental Condition 20. In addition, Environmental Condition 21

¹⁸² Response to EPA Comments at 9-10.

¹⁸³ Mr. Meighan questions whether RH energytrans plans to expand the County Line Compressor Station in the future. Future expansion of the County Line Compressor Station has not been proposed and is not part of the proposed action or reasonably foreseeable future action evaluated in the EA. *See* Application, Resource Report 1 at 1-21; RH energytrans's January 9, 2018 Response to Data Request at 20.

¹⁸⁴ EA at 92.

requires RH energytrans to conduct a post-modification noise survey and, if necessary, implement additional mitigation measures to ensure that the compressor stations meet the Commission's noise conditions of this order. Environmental Condition 1 requires RH energytrans to comply with the conditions of the order to construct and operate its facilities. Environmental Condition 2 clarifies that the Commission will impose further mitigation to address any unanticipated environmental impacts identified during construction or operation of the project.

134. Mr. Meighan requests that the Commission require RH energytrans to file the vibration testing from the January 2018 noise survey at the County Line Compressor Station. Commission staff did not require RH energytrans to conduct vibration testing, and RH energytrans did not file any vibration measurements as part of its January 2018 noise survey data. In any event, we are requiring RH Energytrans to file its proposed post-operation vibration survey documenting the mitigation measures employed and the effectiveness of those measures. The results of RH energytrans's post-operation noise and vibration surveys will be available on the Commission's public eLibrary website once filed by RH energytrans.

135. Mr. Meighan and Mr. Poole question the accuracy of RH energytrans's January 2018 noise survey. Mr. Meighan contends that snow cover and high wind caused measured noise levels at noise sensitive areas to be lower than usual and that, absent these conditions, the Commission's standard of 55 decibels A-weighted scale (dBA) day-night sound level (Ldn) would not be met. He further argues that the January 2018 noise survey is inaccurate because microphones were strategically placed to measure the lowest sound possible, a lift was not used, and the report is unsigned. Mr. Poole questions what the criteria are for "significance" in the EA's conclusion that the noise measurements were not significantly impacted by snow. He notes that commenters have provided test data, domestic and global research data, and emails to RH energytrans that refute this conclusion. Mr. Poole also notes that weather data from Edinboro University of Pennsylvania can be significantly different from what is observed on top of the plateau near the existing compressor station. Mr. Poole contends that RH energytrans's noise survey technician expressed concern for the high wind conditions on the day of the retest.

136. As described in the EA, the pre-modification noise survey was conducted under acceptable atmospheric conditions in compliance with the American Society for Testing and Materials (ASTM) E1014-84 standard conditions, including wind conditions.¹⁸⁵ The EA indicates that the wind conditions reported for the January 2018 noise survey are supported by data from the closest online weather station, which is in Edinboro (but not

¹⁸⁵ EA at 92.

at Edinboro University).¹⁸⁶ This station is far closer in both proximity and elevation to the County Line Compressor Station than the station in Erie, which was cited in the landowner's scoping comments. If the post-modification survey indicates day-night sound level higher than 55 dBA at nearby noise sensitive areas, RH energytrans is required to implement additional mitigation measures.

137. Regarding the allegation that microphones were improperly placed and a lift should have been used, ASTM standard conditions involve taking noise measurements at a height between 1.2 and 1.5 meters above ground level, not with a lift. Mr. Meighan seems to suggest that the report was issued with a blank signature line. However, because a signature line was not part of the report, the lack of signature on the report is immaterial. RH energytrans provided a response prepared by Paul Kiteck, a Professional Engineer and senior consultant at Hoover & Keith, Inc., to address questions about the January 2018 noise survey that he supervised, including the influence of snow cover.¹⁸⁷ A quantitative assessment of the effect of snow-covered ground is not possible because of patchy snow cover and uncertain melt condition. Data and research provided by commenters were not applicable to test conditions or failed to account for all of the variables that can affect test results. We accept the EA's assessment of RH energytrans's noise survey and the related recommendation (which is now Environmental Condition 21 of this order). Environmental Condition 21 will ensure that noise at the existing County Line Compressor Station does not exceed the Commission's standards for the protection of the public.¹⁸⁸

¹⁸⁶ EA at 94.

¹⁸⁷ RH energytrans's March 23, 2018 Response to Noise Emissions Comments at 9-12.

¹⁸⁸ In multiple comments, Mr. Meighan alleges that companies affiliated with RH energytrans have a history of bankruptcy. He requests the Commission to require a \$2.5 million irrevocable letter of credit to address noise and vibration problems at the County Line Compressor Station. We decline this request. Environmental Conditions 20 and 21 require RH energytrans to conduct noise and vibration surveys after placing the new equipment at the County Line Compressor Service in service, and to install noise and vibration controls if survey results exceed the conditions of this order. RH energytrans, or any hypothetical future owners of these jurisdictional facilities, must comply with these conditions in order to construct and operate the project facilities. Pursuant to Environmental Condition 2, the Director of the Commission's Office of Energy Projects has authority to: modify order conditions, stop work, and impose additional measures necessary to ensure continued compliance with the intent of the order conditions.

138. The EA states that “[b]ased on the analysis presented above; RH energytrans’s compliance with federal, state, and local noise regulations; and our recommendations, we conclude that operational noise resulting from the Project would not be significant.”¹⁸⁹ With respect to this conclusion, Mr. Poole asks for a quantification of “significance” and also questions the purpose of stating RH energytrans’s compliance with local noise regulations when there are no applicable local standards. In addition, he disagrees with the statement in the EA that the Pennsylvania Act 13 (Act 13) does not apply to RH energytrans. Mr. Poole indicates that the regulation clearly states that all local ordinances purporting to regulate gas and oil operations are hereby superseded by Act 13, which requires gas compressor stations in all zoning districts to meet 60 dBA noise levels at the nearest property line.

139. The EA describes the Commission’s criteria for evaluating the significance of noise impacts, based on the EPA’s *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety* published in 1974.¹⁹⁰ Commission staff evaluates the potential noise impacts at noise sensitive areas (in this setting, nearby residences) from operation of the project and fixed-location construction activities using a criterion of 55 dBA Ldn. The EA describes state and local noise regulations, noting that none apply to the project, including Act 13.¹⁹¹ As the EA explained,¹⁹² the noise control section, among others, of Act 13 was struck down by the Pennsylvania Supreme Court in 2013 and has not been reinstated. Furthermore, Act 13 does not prescribe an enforceable noise standard, but rather provides noise limit guidelines that cannot be superseded by more stringent local ordinances. For example, Act 13 states that a local ordinance may not impose noise regulations that are stricter than 60 dBA at the property line, but does not actually put such a limit into effect.¹⁹³ Based on the analysis presented in the EA, RH energytrans’s compliance with applicable noise regulations and the conditions included in the appendix of this order, we conclude that operational noise resulting from the project would not be significant.

140. Mr. Poole claims that the EA’s conclusion that compressor mufflers do not degrade over time contradicts information supplied by the muffler manufacturer. Mr. Poole provided a letter from muffler manufacturer VANEC, which identifies

¹⁸⁹ EA at 96.

¹⁹⁰ EA at 89.

¹⁹¹ EA at 89-90.

¹⁹² *Id.*

¹⁹³ EA at 89-90.

conditions, such as continued pulsations, that may affect muffler performance over time. RH energytrans will be required to address noise and vibration problems over the lifetime of the project. Additionally, the requirement to comply with the noise limits in Environmental Condition 21 extends through the life of the facility. Therefore, in the unlikely event that muffler performance degrades over time causing compressor station noise to exceed the Commission's standards, RH energytrans will be required to install additional noise controls to ensure compressor performance complies with the Commission's requirements. Should noise or vibration problems occur, we encourage nearby residents to contact the Commission through our Landowner Helpline by phone at 1-877-337-2237 or by email at LandownerHelp@ferc.gov.

141. Mr. Poole disagrees with the EA's conclusion that the area south of the County Line Compressor Station, containing an undeveloped pond, should not be considered a noise sensitive area because it does not have an access road. The EA noted that the undeveloped pond is on private property without an identifiable public access road.¹⁹⁴ Commission staff typically considers residences, schools, or hospitals as noise sensitive areas¹⁹⁵ and not undeveloped, inaccessible private property. Therefore, the EA appropriately concluded that the undeveloped pond is not considered a noise sensitive area.

142. Finally, Mr. Poole argues that the Commission's 55 dBA Ldn should be applied at the compressor station property line rather than the nearest noise sensitive area. To support this contention, Mr. Poole references an EPA recommendation for the Patriot Project – an unrelated natural gas project certificated in 2002 – that suggested the Commission modify its policy to require the 55 dBA standard be maintained at the compressor station property line.¹⁹⁶ However, the Commission declined this suggestion in 2002, explaining that the Commission's 55 dBA standard for existing noise sensitive

¹⁹⁴ EA at 94-95.

¹⁹⁵ While “noise sensitive area” is not defined in our regulations, the Commission's *Guidance Manual for Environmental Report Preparation* notes that noise sensitive areas typically include residences, schools and day-care facilities, hospitals, long-term care facilities, places of worship, and libraries and may also include campgrounds, parks, and wilderness areas valued specifically for their solitude and tranquility. Federal Energy Regulatory Commission, *Guidance Manual for Environmental Preparation*, 4-128 (February 2017). An undeveloped, inaccessible parcel of private property does not rise to the level of a park or wilderness area that would be valued for its solitude and tranquility.

¹⁹⁶ See *East Tennessee Nat. Gas Co.*, 101 FERC ¶ 61,188, at P 99 (2002).

areas “adequately protects the public from existing outdoor activity interference and annoyance in residential areas.”¹⁹⁷ Commission staff applied its 55 dBA standard at existing noise sensitive areas to the Patriot Project,¹⁹⁸ which is the same requirement applied to the Risberg Line Project. Section 380.12(k)(4)(v)(A) of the Commission’s regulations states that “[t]he noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, must not exceed a day-night sound level (Ldn) of 55 dBA at any pre-existing noise-sensitive area (such as schools, hospitals, or residences).”¹⁹⁹ We therefore adopt the EA’s recommendations with modification at Environmental Condition 20.

10. Contractor Selection and Employment

143. International Union of Operating Engineers, Local 18 and the Laborers’ District Council of Ohio express opposition to the project because RH energytrans selected a non-local contractor. The labor unions question the adequacy of RH energytrans’s construction training and allege that a non-local contractor will not be as concerned about safety and environmental issues as a local contractor.

144. The EA notes that “the construction workforce would include both local and non-local workers, of which up to 50 percent (up to about 90 people) would be local,” based on RH energytrans’s project application.²⁰⁰ However, contractor selection is outside the scope of the EA and the Commission’s jurisdiction. We note that RH energytrans indicates that through a competitive bidding process, it selected two firms having ties to Pennsylvania and Ohio to provide construction services on the project. RH energytrans states that Wood Group USA Inc., has one of its principal offices in Pittsburgh, Pennsylvania, and that Elite Midstream Services Inc. is headquartered in Cuddy, Pennsylvania. It further states that Dura-Bond Industries, of Export, Pennsylvania, will provide the line pipe to RH energytrans from its local manufacturing facilities, using domestic steel from Cleveland, Ohio.

145. With regard to the assertion that a non-local contractor will have less regard for safety and environmental issues, the EA explains that the project facilities will be designed, constructed, operated, and maintained in accordance with applicable

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ EA at 89 (citing 18 C.F.R. § 380.12(k)(4)(v)(A) (2018)).

²⁰⁰ EA at 72.

requirements defined by DOT regulations in 49 CFR pt. 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; the siting and maintenance requirements in section 380.15 of the Commission's regulations;²⁰¹ and other applicable federal and state regulations and permits.²⁰² The selected contractors must be qualified and trained to ensure compliance with all safety and environmental requirements.

11. Safety

146. Mr. Meighan and Mr. Poole are concerned that recreational hunting on nearby state game land could compromise the safety of the County Line Compressor Station located in Erie County, Pennsylvania. Mr. Meighan states that the lands adjacent to the compressor station are leased for deer hunting and used by hunters with high-powered rifles. Mr. Meighan requests that the Commission require the installation of new walls on all four sides of the County Line Compressor Station to prevent a high-powered rifle bullet from penetrating the station facilities. Mr. Meighan and Mr. Poole assert that the east noise wall does not extend far enough south to cover a straight line shot from the state game land, no forest buffer exists between the compressor station and state game land, and there is no buffer or protection on the south side of the compressor station.

147. These landowners also raise additional safety concerns related to the County Line Compressor Station. Mr. Meighan asks generally whether additional safety systems or changes are needed at the station (e.g., changes to the piping flexibility, explosion-rated building with four walls, and upgrades to equipment). He also expresses concern about the risk of fire and explosion should the compressors hit a resonance operation condition (i.e., operation that causes synchronous, escalating vibration). Mr. Poole requests regular auditing of RH energytrans's records to assure that compressors are maintained according to the original equipment manufacturer recommendations.

148. Although the County Line Compressor Station is an existing facility that is not currently under the Commission's jurisdiction, the same DOT safety regulations apply to its design and construction. For example, the station has sensors and emergency measures to shut down if there is a fire. As the EA stated, the conversion of the compressor station would be in accordance with applicable design and safety codes, including DOT's pipeline safety regulations.²⁰³ Regarding the specific risk from a bullet

²⁰¹ 18 C.F.R. § 380.15 (2018).

²⁰² EA at 10.

²⁰³ EA at 99.

strike, the EA states that the area between the compressor station and the state game land is forested.²⁰⁴ To clarify, the EA should have stated that the state game lands are forested. A wooded area about 150 feet by 200 feet in size is present just east of the compressor station, and an open area is present between the wooded area and the forested state game land, offering a buffer between the compressor station and the adjacent hunting areas. The EA concluded, and we agree, that the risk of a stray bullet from the State Game Land to the equipment at the County Line Compressor Station is minimal.²⁰⁵

149. Resonance conditions are not typically experienced in compressor stations, primarily because the frequencies of engines and turbines are so high. Although small resonances could occur, they would not typically cause an issue for operations. The EA notes that the modified County Line Compressor Station will include automated safety shutdown equipment on the compressors, such as switches that will be activated by unusual high or low pressure or vibration.²⁰⁶

150. The County Line Compressor Station will continue to be designed, constructed, operated, and maintained in accordance with DOT's pipeline safety standards. DOT's Pipeline and Hazardous Materials Safety Administration is responsible for determining compliance with its regulations. We agree with the EA's conclusion that RH energytrans's compliance with these conditions and with relevant local, state, and federal permits will sufficiently minimize the project's noise and vibration impacts.²⁰⁷

12. Alternatives

151. The EA explains that the proposed modifications at the County Line Compressor Station are relatively minor and will be required to meet applicable noise and air quality standards.²⁰⁸ For these reasons, Commission staff did not find reasonable the alternative of adding compression to the Meadville Compressor Station rather than modifying the existing County Line Compressor Station.²⁰⁹ Mr. Poole questions the validity of this

²⁰⁴ *Id.*

²⁰⁵ EA at 100.

²⁰⁶ EA at 99.

²⁰⁷ EA at 96.

²⁰⁸ EA at 121.

²⁰⁹ *Id.*

conclusion, and reiterates his claim that the County Line Compressor Station operator has failed to remedy residents' longstanding noise and vibration concerns.

152. The County Line Compressor Station will become subject to the Commission's jurisdiction upon issuance of this order and RH energytrans's acquisition of the facility. As addressed in the EA,²¹⁰ RH energytrans must comply with Commission regulations requiring it to ensure that noise attributable to the operation of the compressor station does not exceed a day-night sound level of 55 dBA²¹¹ at any noise sensitive area. Environmental Conditions 20 and 21 require RH energytrans to conduct vibration and noise surveys and, if necessary, implement mitigation measures to meet the Commission's restrictions. As noted above, we affirm the EA's conclusion that Environmental Conditions 20 and 21, and RH energytrans's compliance with relevant local, state, and federal permits will sufficiently minimize the project's noise and vibration impacts.²¹²

153. EPA requests clarification regarding the decision to relocate the Dominion Ohio delivery point from East Ashtabula to North Kingsville, Ohio, referring to a statement in the EA, which states that RH energytrans changed the delivery point based on Dominion Ohio preference.²¹³ In response, RH energytrans explains that it originally planned to terminate the proposed pipeline at a delivery point in East Ashtabula, where it would have incorporated facilities designed to serve a prospective industrial customer.²¹⁴ Had RH energytrans pursued this design, Dominion Ohio would have accepted deliveries from the Risberg Line Project in another area of its service territory. The prospective industrial customer decided not to proceed with its project. Subsequently, Dominion Ohio requested that RH energytrans move the proposed pipeline's terminus and major delivery point to North Kingsville, which would provide better access to Dominion Ohio's low pressure and high-pressure gas distribution systems and result in a shorter pipeline route. In any event, at the time RH energytrans submitted its application for the Risberg Line Project to the Commission, the application stated that the portion of the proposed pipeline to be constructed would "terminate at a new delivery point to be

²¹⁰ EA at 94-95.

²¹¹ 18 C.F.R. § 380.12(k)(4)(v)(A) (2018).

²¹² EA at 96.

²¹³ EA at 121.

²¹⁴ Response to EPA Comments at 10.

constructed at an interconnection with [Dominion Ohio's] distribution system in North Kingsville, Ohio."²¹⁵

13. Clarifications

154. EPA requests that we reconcile the apparent discrepancy in the length of co-location reported for the Risberg Pipeline route between table A.8-2 (Co-located Risberg Pipeline Segments) and tables C.2-1 (Comparison of System Alternatives) and C.3-1 (Comparison of Pipeline Alternatives). EPA states that table A.8-2 identifies 14.5 miles of co-location, while tables C.2-1 and C.3-1 identify 8.0 miles of co-location. The two lengths in question are not the same metric. As indicated by the text in section A.8.0, table A.8-2 provides the co-location lengths for existing utilities, roads, and railroads.²¹⁶ As indicated in footnote "a," the co-located lengths in tables C.2-1 and C.3-1 only include co-location with other utilities.²¹⁷ The more limited co-location data in the tables in the alternatives section was necessary to allow a similar comparison between the alternative pipeline routes.

155. In a number of its comments, EPA states that environmental inspectors should be given the authority to stop construction, if needed, to protect human health and the environment. Section A.7.4 of the EA states "the [environmental inspectors] would have authority to stop activities that violate the measures set forth in the Project documents and authorizations, and would have the authority to order corrective action."²¹⁸ Environmental Condition 3 requires that RH energytrans must inform all construction personnel of the EI's authority and responsibilities to ensure the company's compliance with the environmental mitigation measures during construction and restoration. Therefore, we confirm that the environmental inspectors have the requested stop work authority, as discussed in the EA.

14. Conclusion

156. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed and operated in accordance with RH energytrans's application and

²¹⁵ Application at 11; *see also* Application, Resource Report 10 at 10-5 (describing the first system alternative considered by RH energytrans as the original route for the proposed pipeline prior to relocating Dominion Ohio's delivery point).

²¹⁶ EA at 17.

²¹⁷ EA at 119.

²¹⁸ EA at 15.

supplements, including any commitments made therein, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

157. 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.²¹⁹

158. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, 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 RH energytrans, authorizing it to construct and operate the Risberg Line Project, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

²¹⁹ 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).

(B) The certificate authorized in Ordering Paragraph (A) is conditioned on RH energytrans'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.

(C) A blanket construction certificate is issued to RH energytrans under Subpart F of Part 157 of the Commission's regulations.

(D) A blanket transportation certificate is issued to RH energytrans under Subpart G of Part 284 of the Commission's regulations.

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

(F) RH energytrans's proposed fuel rate is approved.

(G) RH energytrans shall file the negotiated rate agreements or tariff records at least 30 days, but no more than 60 days, prior to the effective date for such rates.

(H) Within three years after its FERC jurisdictional service commences, as discussed herein, RH energytrans shall file a cost and revenue study to justify its existing cost-based firm and interruptible recourse rates.

(I) RH energytrans's shall file actual tariff records that comply with the requirements contained in the body of this order no less than 60 days prior to the commencement of interstate service consistent with Part 154 of the Commission's regulations.

(J) RH energytrans shall adhere to the accounting and reporting requirements discussed in the body of the order, and submit the proposed accounting entries within six months of the date that the acquisition of facilities is consummated, and the accounting

submissions shall provide all of the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

(K) RH energytrans 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 RH energytrans. RH energytrans shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(L) William Pavolko's late motion to intervene is granted.

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

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

Commissioner McIntyre is not voting on this order.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions

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

1. RH energytrans, LLC (RH) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. RH 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 to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the Risberg Line Project (Project). This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from Project construction and operation.
3. **Prior to any construction**, RH shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of**

construction, RH 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.

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

5. RH shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and all staging areas, pipe storage and contractor yards, new access roads, and other areas that will 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 will be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

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

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

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

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

- a. how RH will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how RH will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions RH will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change), with the opportunity for OEP staff to participate in session(s);
 - f. the company personnel and specific portion of RH's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) RH 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. RH shall employ a team of EIs for the Project (i.e., two or more or as may be established by the Director of OEP). 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 its Implementation Plan, RH shall file updated status reports with the Secretary on a **biweekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on RH's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the Project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by RH from other federal, state, or local permitting agencies concerning instances of noncompliance, and RH's response.
9. RH must receive written authorization from the Director of OEP **before commencing construction of any Project facilities**. To obtain such authorization, RH must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. RH must receive written authorization from the Director of OEP **before placing the Project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the Project are proceeding satisfactorily.

11. **Within 30 days of placing the authorized facilities in service**, RH shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed and installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions RH has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. **Prior to commencement of service on the existing 12-inch-diameter pipeline**, RH shall confirm the location of the oil and gas well near Milepost 1.0. If this well is within the permanent right-of-way for the Project, RH shall file with the Secretary, for review and written approval by the Director of OEP, a site plan showing the location of the well relative to the pipeline and measures for protecting the well.
13. **Prior to construction of the Risberg Pipeline**, RH shall file with the Secretary, for review and written approval by the Director of OEP, a slope stability assessment. RH shall complete the assessment by a licensed geotechnical engineer to identify specific locations along the Risberg Pipeline with the potential for slope failure and site-specific measures to mitigate the potential hazard.
14. **Prior to construction of the Risberg Pipeline**, RH shall file with the Secretary, for review and written approval by the Director of OEP, a description of the parameters for pre- and post-construction testing of well yield and water quality.
15. **Prior to construction of the Risberg Pipeline**, RH shall file with the Secretary, for review and written approval by the Director of OEP, a revised Inadvertent Return Contingency Plan. The revised plan shall include a description of response actions to be taken by the Contractor and EIs in the event of a loss or significant reduction in fluid circulation to minimize the potential for and volume of any inadvertent returns.
16. **Prior to construction of the Risberg Pipeline**, RH 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 RH will utilize only pre-approved, non-petrochemical-based, non-hazardous additives that comply with the Ohio Environmental Protection Agency permit requirements and environmental regulations.

17. **Prior to resuming vegetation maintenance on the existing gathering pipeline permanent right-of-way**, RH shall file with the Secretary, for review and written approval by the Director of OEP:
 - a. the date that RH intends to clear vegetation for the existing gathering pipelines;
 - b. the results of wetland delineation surveys for the existing gathering pipeline permanent right-of-way;
 - c. revised alignment sheets indicating all delineated waterbodies and wetlands, and any other sensitive resources such as sensitive habitats; and
 - d. a statement that RH will install all of the proper signage near sensitive resources prior to any proposed maintenance clearing to ensure compliance with RH's Procedures.

18. **Prior to construction of the Risberg Pipeline**, RH shall file with the Secretary, for review and written approval by the Director of OEP, a traffic plan for State Route 9N that includes:
 - a. a timeline for construction activities at this location;
 - b. details of how traffic will be managed around the construction, including any detours; and
 - c. safety measures such as signage, cones, barriers, and flaggers.

19. RH shall file a full load noise survey with the Secretary **no later than 60 days** after placing the new equipment at the North Kingsville Meter Station in service. If the noise attributable to the operation of all of the equipment at the North Kingsville Meter Station exceeds 55 A-weighted decibels (dBA) day-night sound level (L_{dn}) at any nearby noise sensitive area (NSA), RH shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. RH shall confirm compliance with the 55 dBA L_{dn} requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

20. RH shall file its proposed post-operation vibration survey **no later than 60 days** after placing the new equipment at the County Line Compressor Station in service to document the effectiveness of all mitigation measures RH implemented to reduce vibration at the nearby NSAs.

21. RH shall file a full load noise survey with the Secretary **no later than 60 days** after placing the Meadville and County Line Compressor Stations in service. If full load condition noise surveys are not possible, RH shall instead file an interim survey at the maximum possible horsepower load and file the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment

at the Meadville Compressor Station or County Line Compressor Station under interim or full horsepower load exceeds 55 dBA L_{dn} at any nearby NSA, RH shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. RH shall confirm compliance with the 55 dBA L_{dn} requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

RH energytrans, LLC

Docket No. CP18-6-000

(Issued December 7, 2018)

LaFLEUR, Commissioner, *concurring*:

Today's order grants RH energytrans, LLC's (RH energytrans) request for authorization to construct and operate the Risberg Line Project.¹ I believe the project is in the public interest after carefully balancing the need for the project and its environmental impacts. For the reasons discussed below, I concur.

The proposed Risberg Line Project will provide up to 55,000 dekatherms per day (Dth/day) of firm transportation service, with 40,000 Dth/day going to a local distribution company, Dominion Ohio, to serve their industrial, commercial and residential customers in Ashtabula, Ohio.² I believe it is reasonably foreseeable that the gas being transported will be burned and downstream greenhouse gas (GHG) emissions will result from burning that gas.³

¹ *RH energytrans, LLC*, 165 FERC ¶ 61,218 (2018).

² RH energytrans July 23, 2018 Response to Commission Staff's July 13, 2018 Data Request at 1-2 (explaining that gas transported on the Risberg Line can be expected to displace gas previously transported to the Ashtabula market area through other pipelines and is also going to displace other fuels or energy sources (*e.g.*, oil, propane, wood, electricity)).

³ *See Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 549 (8th Cir. 2003) (*Mid States*). In *Mid States*, the Court concluded that the Surface Transportation Board erred by failing to consider the downstream impacts of the burning of transported coal. Even though the record lacked specificity regarding the extent to which the transported coal would be burned, the Court concluded the nature of the impact was clear.

The Project's Environmental Assessment (EA) quantified the direct GHG emissions from the Project's construction and operation,⁴ but the EA did not consider the downstream emissions impacts.⁵ To address my concerns about the failure to consider downstream emissions impacts in this proceeding, I have myself considered the downstream GHG emissions as part of my public interest determination. Using a methodology developed by the U.S. Environmental Protection Agency to estimate the downstream GHG emissions from the Risberg Line Project, and assuming as an upper-bound estimate that all of the gas to be transported is eventually combusted, 55,000 Dth/d of natural gas service would result in the emission of approximately 1.064 million metric tons per year of downstream CO₂ emissions. This figure represents a 0.5 percent increase in GHG emissions within Ohio⁶ and 0.02 percent increase nationally.⁷

I acknowledge that the disclosure of state and national comparison data is only the first step to assist the Commission in ascribing significance to a given rate or volume of GHG emissions. However, to date, the Commission has not identified a framework for reaching a significance determination. The primary argument against using the Social Cost of Carbon metric is that monetized climate damages does not readily lend itself to the Commission's environmental review of natural gas facilities. I am confident that, given the importance of this issue, the Commission could find a way to adapt and apply a metric such as the Social Cost of Carbon⁸ to reach a significance threshold determination. The concern that making a significance determination on downstream GHG emissions would be difficult does not relieve the Commission of its responsibility to work on this issue. The Commission makes challenging determinations on quantitative and qualitative

⁴ EA at 83–87 & Tables B.8.4-1, B.8.5-1, & B.8.5-2.

⁵ This decision is consistent with the Commission's policy, with which I disagree, announced in *New Market* limiting the disclosure and consideration of downstream and upstream GHG emissions impacts in our project review. See *Dominion Transmission Inc.*, 163 FERC ¶ 61,128 (2018) (LaFleur, Comm'r, *dissenting in part*).

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

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

⁸ https://www.epa.gov/sites/production/files/2016-12/documents/social_cost_of_carbon_fact_sheet.pdf

issues in many other areas of our work.⁹

However, as I explained other cases,¹⁰ I am trying to move beyond my disagreement with the Commission's approach to its environmental review of proposed pipeline projects, and base my public interest determination on the facts in the record—even ones not discussed in our environmental documents or in the certificate order. I share many of the concerns voiced by Commissioner Glick in his dissent. The Commission must do its best to take climate change impacts into account in our proceedings. I appreciate that there is work to do to address this issue, but I believe it is work that must be done.

⁹ Many of the core areas of the Commission's work have required the development of analytical frameworks, often a combination of quantitative measurements and qualitative assessments, to fulfill the Commission's responsibilities under its broad authorizing statutes. This work regularly requires that the Commission exercise judgment, based on its expertise, precedent, and the record before it. For example, to help determine just and reasonable returns on equity (ROEs) under the Federal Power Act, Natural Gas Act, and Interstate Commerce Act, the Commission identifies a proxy group of comparably risky companies, applies a discounted cash flow method to determine a range of potentially reasonable ROEs (i.e., the zone of reasonableness), and then considers various factors to determine the just and reasonable ROE within that range. *See also, e.g., Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007) (establishing Commission regulations and policy for reviewing requests for transmission incentives); *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (requiring, among other things, the development of regional cost allocation methods subject to certain general cost allocation principles); *BP Pipelines (Alaska) Inc.*, Opinion No. 544, 153 FERC ¶ 61,233 (2015) (conducting a prudence review of a significant expansion of the Trans Alaska Pipeline System). I also note that the Commission is currently actively considering a broad topic – resilience – whose scope and complexity might similarly require the development of new analytical frameworks for conducting the Commission's work.

¹⁰ *See Texas Eastern Transmission, LP*, 165 FERC ¶ 61,132 (2018) (LaFleur, Comm'r, *concurring*); *PennEast Pipeline Company, LLC*, 164 FERC ¶ 61,098 (2018) (LaFleur, Comm'r, *concurring in part and dissenting in part*); and *Tennessee Gas Pipeline Company*, 163 FERC ¶ 61,190 (2018) (LaFleur, Comm'r, *concurring*).

Docket No. CP18-6-000

- 4 -

After balancing the economic need for the Risberg Line Project and its environmental impacts, I find this project to be in the public interest. For all of these reasons, I concur.

Cheryl A. LaFleur
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

RH energytrans, LLC

Docket No. CP18-6-000

(Issued December 7, 2018)

GLICK, Commissioner, *dissenting in part*:

In today's order, the Commission authorizes RH energytrans, LLC's (RH energytrans) proposed Risberg Line Project, which will allow RH energytrans to provide an additional 55,000 dekatherms per day (Dth/d) of firm transportation service to markets in northeast Ohio.¹ In doing so, the Commission again refuses to consider whether the Project's contribution to climate change from these emissions would be significant, even though it quantified the increase in greenhouse gas (GHG) emissions from the Project's construction and operation. Moreover, the Commission fails to consider the Project's contribution to climate change from upstream and downstream GHG emissions. The Commission's refusal to evaluate and consider the Project's harm from its contribution to climate change falls well short of our obligations under the Natural Gas Act (NGA)² and the National Environmental Policy Act (NEPA).³ Because I believe the Commission cannot find that the Project is in the public interest without evaluating and determining the significance of this impact based on information in the record, I respectfully dissent in part.⁴

¹ *RH energytrans, LLC*, 165 FERC ¶ 61,218 (2018) (Certificate Order).

² 15 U.S.C. 717f (2012).

³ National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852.

⁴ Section 7 of the NGA requires that, before issuing a certificate for new pipeline construction, the Commission must find both a need for the pipeline and that, on balance, the pipeline's benefits outweigh its harms. 15 U.S.C. § 717f (2012). Furthermore, NEPA requires the Commission to take a "hard look" at the environmental impacts of its decisions. *See* 42 U.S.C. § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). This means that the Commission must consider and discuss the significance of the harm from a pipeline's contribution to climate change by actually evaluating the magnitude of the pipeline's environmental impact. Doing so enables the Commission to compare the environment before and after the proposed federal action and factor the changes into its decisionmaking process. *See Sierra Club v.*

The Commission maintains that it need not consider the significance of the Project's contribution to climate change from increased GHG emissions because—the Commission claims—it simply cannot do so.⁵ We know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, which can be released in large quantities through the production and the consumption of natural gas. It is therefore critical that the Commission carefully consider the Project's contribution to climate change, both in order to fulfill NEPA's requirements and to determine whether the Project is in the public interest under the NGA.

In the Project's EA, the Commission quantified the Project's GHG emissions from construction and operation⁶ and acknowledged that GHG emissions due to human activity are the “primary cause” of climate change.⁷ But the Commission nevertheless refuses to consider whether the Project's contribution to climate change from these emissions is significant. Additionally, the Commission ignores the Project's reasonably foreseeable downstream GHG emissions, even though RH energytrans explains that the Project is designed to serve Dominion Ohio's “natural gas supply and delivery needs” in northeast Ohio,⁸ including by “enabl[ing] load growth” among its residential, commercial, and industrial customers and facilitating “new industrial/economic development in the area.”⁹ The Commission also gives no consideration to whether the

FERC, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (Sabal Trail) (“The [FEIS] needed to include a discussion of the ‘significance’ of this indirect effect.”); 40 C.F.R. § 1502.16 (a)–(b) (An agency's environmental review must “include the environmental impacts of the alternatives including the proposed action,” as well as a discussion of direct and indirect effects *and their significance*.) (emphasis added)). Today's decision and the record omit any meaningful discussion of the Project's contribution to climate change. That omission renders the Commission's order arbitrary and capricious and not the product of reasoned decisionmaking.

⁵ Certificate Order, 165 FERC ¶ 61,218 at n.118; Risberg Line Project Environmental Assessment (EA) at 115.

⁶ EA at 83–87 & Tables B.8.4-1, B.8.5-1, & B.8.5-2 (estimating the Project's proposed new GHG emissions from construction and operation).

⁷ *Id.* at 80.

⁸ RH energytrans Certificate Application at 3–4.

⁹ *Id.* at 8 (explaining that the Project will enable Dominion Ohio to “be in a position to grant requests for new service from potential large industrial and commercial

Project will lead to an increase in upstream GHG emissions from additional production. The Commission adopts an overly narrow and circular definition of indirect effects¹⁰ and disregards the Project's central purpose—to facilitate additional natural gas consumption.¹¹ The Commission cannot ignore the fact that adding firm transportation capacity is likely to “spur demand” for natural gas¹²—a fact that RH energytrans, Dominion Ohio, and the Public Utility Commission of Ohio each recognize¹³—and, for that reason, the Commission must at least examine the effects that an expansion of pipeline capacity might have on consumption and production.¹⁴ Indeed, if a proposed

customers”); *see also* RH energytrans July 23, 2018 Response to Commission Staff's July 13, 2018 Data Request at 1.

¹⁰ *See 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 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’” as “this statement is circular and worded as though it is a legal conclusion”). The Commission must use its “best efforts” to identify and quantify the full scope of the environmental impacts and, as the U.S. Court of Appeals for the District of Columbia found in *Sierra Club v. FERC*, educated assumptions are inevitable in the process of emission quantification. *See* 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*).

¹¹ *See supra* notes 8 and 9.

¹² *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.”).

¹³ *See* Dominion Ohio November 15, 2017 Comments at 4–7; *see also supra* notes 8 and 9.

¹⁴ As the United States Court of Appeals for the Eighth Circuit explained in *Mid States Coal. for Progress v. Surface Transp. Bd.*—a case that also involved the

pipeline neither increases the supply of natural gas available to consumers nor decreases the price that those consumers would pay, it is hard to imagine why that pipeline would be “needed” in the first place.

Even where exact information regarding the source of the gas to be transported and its end use is not available, the Commission will often be able to produce comparably useful information based on reasonable forecasts of the GHG emissions associated with production and consumption.¹⁵ Forecasting environmental impacts is a regular component of NEPA reviews and a reasonable estimate may inform the federal decisionmaking process even where the agency is not completely confident in the results of its forecast.¹⁶ Similar forecasts can play a useful role in the Commission’s evaluation of the public interest, even in those instances when the Commission must make a number of assumptions in its forecasting process.¹⁷

downstream 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).

¹⁵ NEPA, after all, does not require exact certainty; instead, it requires that the Commission engage in reasonable forecasting and estimation of possible effects of a major federal action where doing so would further the statute’s two-fold purpose of ensuring that the relevant agency will “have available, and will carefully consider, detailed information concerning significant environmental impacts” and that this information will also be “available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)); *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (2014).

¹⁶ In determining what constitutes reasonable forecasting, it is relevant to consider the “usefulness of any new potential information to the decisionmaking process.” *Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189, at 198 (D.C. Cir. 2017) (citing *Pub. Citizen*, 541 U.S. at 767).

¹⁷ In comments submitted in the Commission’s pending review of the natural gas certification process, the Environmental Protection Agency identified a number of tools the Commission can use to quantify the reasonably foreseeable “upstream and downstream GHG emissions associated with a proposed natural gas pipeline.” These include “economic modeling tools” that can aid in determining the “reasonably foreseeable energy market impacts of a proposed project.” U.S. Environmental

Quantifying the Project's GHG emissions is a necessary, but not sufficient, step in meeting the Commission's obligations to consider the Project's environmental effects associated with climate change. NEPA and the NGA's public interest standard require the Commission to consider not the GHG emissions themselves but the resulting environmental impact.¹⁸ The Commission claims that it cannot determine whether the Project's contribution to climate change is significant,¹⁹ relying instead on a vague assertion that "[t]here is no generally accepted significance criteria for GHG emissions."²⁰ These bald conclusions are no substitute for fulfilling the Commission's responsibility to carefully—and meaningfully—consider the public interest in the Project.

Under NEPA, the Commission must consider the harm from the Project's GHG emissions when the emissions are direct and indirect effects of the Project.²¹ Moreover, in *Sabal Trail*, the court left no room to question that GHG emissions from the downstream combustion of natural gas can be "an indirect effect of authorizing" a pipeline project, which the Commission can reasonably foresee, and which the agency has a legal authority to consider and mitigate.²² As the court explained, section 7 of the NGA requires the

Protection Agency, Comments, Docket No. PL18-1-000, at 3–4 (filed June 21, 2018) (explaining that the "EPA has emission factors and methods" available to estimate GHG emissions—from activities upstream and downstream of a proposed natural gas pipeline—through the U.S. Greenhouse Gas Inventory and the Greenhouse Gas Reporting Program); see *Certification of New Interstate Natural Gas Facilities*, Notice of Inquiry, 163 FERC ¶ 61,042 (2018).

¹⁸ NEPA requires the Commission to reach a determination regarding the significance of the Projects' indirect effects from upstream and downstream GHG emissions. Further, under section 7 of the NGA, the Commission must consider those harms as part of its determination whether the Projects are in the public interest. See *Florida Southeast Connection, LLC*, 164 FERC ¶ 61,099, at 2–3, 5–8 (Glick, Comm'r, dissenting).

¹⁹ Certificate Order, 165 FERC ¶ 61,218 at n.118.

²⁰ EA at 115.

²¹ 40 C.F.R. § 1508.8 (defining direct effects and indirect effects).

²² *Sabal Trail*, 867 F.3d at 1374 (citing the Commission's authority, pursuant to the NGA, to "attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require," 15 U.S.C. 717f(e)).

Commission to balance “the public benefits [of a proposed pipeline] against the adverse effects of the project,’ including adverse environmental effects.”²³ If a pipeline’s adverse effects outweigh its public benefits, the project is not in the public interest and the Commission must deny the section 7 certificate.²⁴ As relevant here, that means that the section 7 balancing test must incorporate an analysis of the environmental harms, including those caused by a proposed pipeline’s contribution to climate change. The Commission’s failure to consider the harm from the Project’s GHG emissions under NEPA and in its public interest determination reveals a stubborn adherence to the views that the *Sabal Trail* court rejected. It is also a feeble excuse for failing to use the Social Cost of Carbon to assess the Project’s contribution to climate change.

Contrary to the Commission’s conclusion today, the Commission has the tools to “determine the Project’s incremental physical impacts on the environment caused by GHG emissions.”²⁵ This is precisely what the Social Cost of Carbon delivers. By measuring the long-term damage done by a ton of carbon dioxide, it provides a method for linking GHG emissions to particular climate impacts, thereby providing both the Commission and the public with the “hard look” required to assess the magnitude of a proposed project’s impact on the climate. Especially when it comes to a global problem like climate change, a measure for translating a discrete project’s climate impacts into concrete and comprehensible terms can play a useful role in the NEPA process by putting the harms caused by the project in terms that are readily accessible for both agency decisionmakers and the public at large.

As in almost every aspect of the Commission’s regulation—from reviewing environmental and safety impacts to calculating expected rates of return on investment dollars—the Commission can manage uncertainty through probability and statistical analyses. In this same vein, “NEPA does not demand that every federal decision be verified by the reduction to mathematical absolutes for insertion into a precise formula.”²⁶ The fact that the Commission may not know the exact magnitude of the Project’s contribution to climate change is no excuse for assuming the impact is zero.

²³ *Sabal Trail*, 867 F.3d at 1373 (quoting *Myersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1309 (D.C. Cir. 2015)).

²⁴ *See id.* (explaining that the Commission may “deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment”).

²⁵ Certificate Order, 165 FERC ¶ 61,132 at P 45.

²⁶ *Sierra Club v. Lynn*, 502 F.2d 43, 61 (5th Cir. 1974).

Instead, the Commission must engage in a case-specific inquiry into the reasonably foreseeable effects and estimate the potential impact—making assumptions where necessary—and then give that estimate the weight it deserves.

The Commission has recognized that a variety of environmental impacts are best considered qualitatively but once again provides no answer for why the Commission—as the agency with both the mandate and technical expertise to consider the public interest in the Project—cannot use a quantitative measure of the Project’s contribution to climate change as input to making a qualitative determination of its significance.²⁷ In effect, the Commission maintains that it has satisfied its obligation under NEPA to consider the harm caused by the Project’s contribution to climate change by providing a generic, qualitative discussion that concludes it cannot accurately assess the impacts of GHG emissions generally. The reality is the Commission has still failed to make an explicit determination of whether the harm associated with the Project’s contribution to climate change is significant. In order to satisfy NEPA, the environmental review documents must both disclose direct and indirect impacts, which can include quantitative and qualitative considerations, and disclose their significance.²⁸

To support this directive, CEQ regulations expressly outline a framework for determining whether the Project’s impacts on the environment will be considered significant—and this CEQ framework requires considerations of both *context* and *intensity*, noting that significance of an action must be analyzed in several contexts.²⁹

²⁷ As the Environmental Protection Agency has explained, the Commission may use estimates of the Social Cost of Carbon “for project analysis when [the Commission] determines that a monetary assessment of the impacts associated with the estimated net change in GHG emissions provides useful information in its environmental review or public interest determination.” United States Environmental Protection Agency, Comments, Docket No. PL18-1-000, at 4–5 (filed June 21, 2018). In addition, the Council on Environmental Quality recognized under a prior administration that monetizing an impact is appropriate in the NEPA document, if doing so is necessary for an agency to fully evaluate the environmental consequences of its decisions. *See* CEQ, Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews at 32-33 (Aug. 1, 2016), https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf.

²⁸ 40 C.F.R. § 1502.16.

²⁹ *Id.* § 1508.27 (setting forth a list of factors agencies should rely on when

The Commission can use these factors to develop a framework to consider the significance of the Project's impact. Its failure to do so is no excuse for neglecting to consider the Project's harm from its contribution to climate change.

* * *

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

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner

determining whether a project's environmental impacts are "significant" considering both "context" and "intensity"); *id.* ("Context" . . . means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality."); *id.* ("Intensity" . . . refers to the severity of the impact, . . . [including t]he degree to which" it affects considerations including "public health or safety" and the environment).

Document Content(s)

CP18-6-000.DOCX.....1-84