

175 FERC ¶ 61,146
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Northern Natural Gas Company

Docket No. CP20-503-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued May 20, 2021)

1. On July 31, 2020, Northern Natural Gas Company (Northern) filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to construct and operate certain pipeline, compression, and auxiliary facilities in Dakota, Scott, Carlton, Morrison, and Pine Counties, Minnesota, and to abandon short segments of pipeline (2021 Expansion Project). The 2021 Expansion Project will enable Northern to provide 45,693 dekatherms per day (Dth/d) of additional firm natural gas transportation service. For the reasons discussed below, we will grant the requested authorizations, subject to conditions.

I. Background and Proposal

2. Northern, a corporation organized under Delaware law, is a natural gas company as defined by section 2(6) of the NGA,³ engaged in the transportation of natural gas in interstate commerce. Northern's 14,700-mile pipeline system extends from southwest Texas to the upper peninsula of Michigan.⁴

¹ 15 U.S.C. § 717f(b), (c).

² 18 C.F.R. pt. 157 (2020).

³ 15 U.S.C. § 717a(6).

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

3. Northern requests authorization to construct and operate the 2021 Expansion Project in order to provide an additional 45,693 Dth/d of firm transportation service in its Market Area.⁵ Specifically, Northern proposes to:

- construct and operate an approximately 0.80-mile-long extension of its 24-inch-diameter Willmar D branch line in Dakota and Scott Counties, Minnesota;
- construct and operate an approximately 0.63-mile-long, 24-inch-diameter pipeline loop of its Carlton interconnect branch line in Carlton County, Minnesota;
- replace an existing 0.08-mile-long, 8-inch-diameter branch line with a 12-inch-diameter pipeline of the same length in Morrison County, Minnesota (Viking interconnect);
- construct and operate a new compressor station in Pine County, Minnesota, consisting of one 11,153 horsepower (hp) natural gas-fired turbine compressor unit (Hinckley Compressor Station);⁶
- install and operate an additional 1,100 hp, electric motor-driven reciprocating compressor unit (Unit No. 3) at the Pierz Compressor Station, in Morrison County, Minnesota; and
- install appurtenant facilities including piping, valves, a pig launcher, and a pig receiver.

⁵ The 2021 Expansion Project is a discrete, stand-alone project under the umbrella of Northern's Northern Lights expansion plan, which is a multi-year commitment to expand Northern's Market Area capacity at least every two years through 2026 in response to customers' developing demand. The Commission has approved other projects related to the Northern Lights expansion plan. *E.g.*, *N. Nat. Gas Co.*, 166 FERC ¶ 61,136 (2019); *N. Nat. Gas Co.*, 160 FERC ¶ 61,017 (2017); *N. Nat. Gas Co.*, 158 FERC ¶ 61,079 (2017); *N. Nat. Gas Co.*, 127 FERC ¶ 61,133 (2009); *N. Nat. Gas Co.*, 119 FERC ¶ 61,111 (2007); *N. Nat. Gas Co.*, 118 FERC ¶ 61,136 (2007). Northern has also completed other construction activities related to the Northern Lights expansion plan pursuant to its Part 157 blanket certificate authority.

⁶ The Hinckley Compressor Station will also include a unit blowdown silencer, a compressor building, a control building, associated above- and below-grade piping, station valves, and instrumentation. Northern July 31, 2020 Application at 13.

4. Northern held an open season from August 13, 2019, through September 24, 2019, to solicit interest for firm transportation service commencing on or after November 1, 2021.⁷ As a result of the open season, Northern executed agreements with three shippers for 45,693 Dth/d of additional service in Minnesota and Wisconsin. Specifically, Northern will provide 34,880 Dth/d of service for CenterPoint Energy Resources Corporation (CenterPoint) and 9,459 Dth/d of service for Xcel Energy on behalf of Northern States Power Company-Minnesota (Xcel) pursuant to extension agreements executed in 2005 and 2004, respectively.⁸ Additionally, Northern executed one precedent agreement with Midwest Natural Gas (Midwest) for 1,354 Dth/d of firm transportation service.⁹ Northern received no requests to turn back capacity.

5. Northern estimates the cost of 2021 Expansion Project to be \$57,388,000.¹⁰ Northern proposes to charge its existing Rate Schedule TFX rates for firm service enabled by the project and requests a predetermination that rolled-in rate treatment for costs associated with the project will be appropriate in a future section 4 rate proceeding.¹¹

II. Notice, Interventions, and Comments

6. Notice of Northern's application was published in the *Federal Register* on August 18, 2020.¹² The notice established September 2, 2020, as the deadline for filing comments, protests, and motions to intervene. Northern Illinois Gas Company d/b/a Nicor Gas Company, CenterPoint, SEMCO Energy Gas Company, and Atmos Energy Corporation filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹³ Northern States Power Company-Minnesota and Northern States Power Company-Wisconsin jointly filed a late motion to intervene, which was denied by

⁷ *Id.* at 7.

⁸ The Xcel agreements are on file with the Commission in Docket No. RP06-302-000, and the CenterPoint agreements are on file with the Commission in Docket No. RP18-1035-000.

⁹ Application at 25.

¹⁰ *Id.* at 16.

¹¹ *Id.*

¹² 85 Fed. Reg. 50,822 (Aug. 18, 2020).

¹³ 18 C.F.R. § 385.214(c) (2020).

Secretary's notice on September 28, 2020. The International Union of Operating Engineers, Local 49 filed comments.

III. Discussion

7. Because the proposed project includes the abandonment of existing facilities¹⁴ and construction and operation of facilities to transport natural gas in interstate commerce subject to the Commission's jurisdiction, Northern's proposal is subject to subsections (b), (c) and (e) of section 7 of the NGA.¹⁵

A. Certificate Policy Statement

8. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁶ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

9. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might

¹⁴ Northern did not specifically request authority to abandon certain segments of pipeline it intends to replace. However, because approximately 422 feet of branch line at the Viking interconnect, 10 to 20 feet of pipeline at the takeoff for the Carlton branch line interconnect, 140 feet of station pipe at the tie-in for the interconnect loop within the Carlton Compressor Station, 60 feet of B-line at the Hinckley Compressor Station, and 150 feet of station and interconnect piping at the Pierz Compressor Station will be removed from service to accommodate new tie-ins, Northern must have authority to abandon the pipelines, which we grant herein.

¹⁵ 15 U.S.C. §§ 717f(b), (c), (e).

¹⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

have on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the construction of the new natural gas facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis where other interests are addressed.

10. Northern's proposal satisfies the threshold requirement that it financially support the project without subsidization from its existing customers. As discussed below, we will approve Northern's proposal to use its existing system rates as the initial recourse rates for services using the incremental capacity created by the proposed facilities because those rates exceed illustrative incremental rates calculated to recover the costs of the project. Further, as discussed in more detail below, we find that the revenues generated from Northern's agreements with the project shippers will exceed the estimated cost of service. Therefore, we find that Northern's existing customers will not subsidize the 2021 Expansion Project and that the threshold no-subsidy requirement is met.

11. We also find that the 2021 Expansion Project will not adversely affect service to Northern's existing customers because it will not degrade any existing service. The project is also not intended to replace existing transportation service on other pipelines. Further, no pipelines or their captive customers have objected to Northern's proposal. Thus, we find that there will be no adverse impacts on Northern's existing customers and other pipelines or their captive customers.

12. We are further satisfied that Northern's construction plan takes steps sufficient to minimize adverse impacts on landowners and surrounding communities. Northern's proposed project will disturb approximately 32.5 acres of land during construction; of this, only 9.5 acres will be permanently impacted.¹⁷ To the extent possible, Northern proposes to install new pipeline within existing easements and adjacent to its existing pipelines.¹⁸ Additionally, Northern has acquired the land rights for the new and expanded above-ground facilities.¹⁹

13. The proposed project will enable Northern to provide 45,693 Dth/d of incremental firm transportation service and Northern has entered into long-term agreements with

¹⁷ EA at 73.

¹⁸ Application Resource Report 8 at 8-5.

¹⁹ EA at 11.

three shippers for 100% of the project's capacity.²⁰ Accordingly, we find that Northern has demonstrated a need for the 2021 Expansion Project and further, that the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers, and that the project's benefits will outweigh any adverse economic effects on landowners and surrounding communities. Therefore, we conclude that the project is consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.²¹

B. Rates

1. Initial Recourse Rates

14. Northern proposes to use its existing Rate Schedule TFX rates for the incremental firm service created by the 2021 Expansion Project.²²

15. Northern calculated illustrative incremental cost-based rates for the 2021 Expansion Project based on a first-year cost of service of \$4,467,267.²³ This cost of service reflects a depreciation rate of 2.4%, a negative salvage rate of 0.1%, and an estimated net plant of \$11,429,836.²⁴ Northern estimates that the illustrative incremental

²⁰ Application Exhibit I.

²¹ See Certificate Policy Statement, 88 FERC at 61,745-46 (explaining that only when the project benefits outweigh the adverse effects on the economic interests will the Commission then complete the environmental analysis).

²² Northern Natural Gas Company, FERC NGA Gas Tariff, Gas Tariffs, Sheet No. 51, Currently Effective Rates TFX and LFT, 20.0.0.

²³ Northern Oct. 2, 2020 Response to Staff Data Request.

²⁴ Northern's depreciation and salvage rates were established in a settlement approved by the Commission in Docket No. RP19-1353-000. See *N. Nat. Gas Co.*, 172 FERC ¶ 61,287 (2020). Northern states that it uses a 9.16% rate of return and a 12% return on equity (ROE) in the calculation of its rates. The Commission's general policy with respect to developing incremental rates is to use the rate of return components approved in the pipeline's last NGA section 4 general rate proceeding. See *Texas Eastern Transmission, LP.*, 129 FERC ¶ 61,151, at P 36 (2009); *Northwest Pipeline Corp.*, 98 FERC ¶ 61,352, at 62,499 (2002). Northern has not supported that its ROE was stated and approved in the Docket No. RP19-1353-000 proceeding (Northern's last rate case proceeding); however, a correction to that component will not alter our ultimate determination that Northern's proposal to charge existing system rates will not result in subsidization of the project by existing customers.

reservation charges for the 2021 Expansion Project would be \$4.75 per Dth in the summer and \$12.66 per Dth in the winter, and estimates a usage charge of \$0.0053 per Dth.²⁵ Northern's currently effective Rate Schedule TFX summer and winter reservation charges are \$7.303 per Dth and \$19.471 per Dth, respectively, with a \$0.0165 usage charge.

16. The Commission has generally held that the existing, applicable system recourse rates are appropriate for a project if the estimated cost-based rate is less than the current system rates. Otherwise, the pipeline should be required to establish an incremental rate to ensure there is no subsidization from existing shippers.²⁶ We have reviewed Northern's rate analysis and find it demonstrates that Northern's maximum Rate Schedule TFX recourse reservation and usage charges are greater than the illustrative incremental reservation and usage charges. Accordingly, we will approve Northern's request to use its existing rates under Rate Schedule TFX as the initial recourse rates for the project facilities.

2. Fuel

17. Northern asserts that the fuel percentage in its Market Area will be reduced as a result of the incremental compression being constructed as part of the 2021 Expansion Project. As a result, Northern proposes to roll the incremental fuel costs for the 2021 Expansion Project into its Market Area Period Rate Adjustment calculations pursuant to section 53A of the General Terms and Conditions of its tariff.²⁷

18. In support of its request, Northern provided a fuel study demonstrating that the fuel consumption resulting from the 2021 Expansion Project is projected to be 61,000 Dth annually.²⁸ Northern explains that based on an annual throughput of 8,372,160 Dth for the 2021 Expansion Project, the projected incremental fuel percentage is equal to 0.729%, which is less than the current fuel percentage of 0.964%. Thus, we will approve the use of Northern's existing system fuel percentage for the 2021 Expansion Project.

²⁵ Northern's Oct. 2, 2020 Response to Staff Data Request.

²⁶ Certificate Policy Statement, 88 FERC at 61,745.

²⁷ Northern Natural Gas Company, FERC NGA Gas Tariff, Gas Tariffs, Sheet No. 54, Effective Rates TF TFX LFT GS-T TI and FDD, 27.0.0.

²⁸ See Application Exhibit Z.

3. Rolled-in Rate Determination

19. Northern requests a pre-determination of rolled-in rate treatment will be appropriate for costs associated with the 2021 Expansion Project.

20. To support a request for a pre-determination that a pipeline may roll the costs of a project into its system-wide rates in a future NGA general section 4 rate proceeding, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must demonstrate that the revenues to be generated by an expansion project will exceed the costs of the project. For purposes of making a determination in a certificate proceeding as to whether it would be appropriate to roll the costs of a project into the pipeline's system rates in a future section 4 proceeding, we compare the cost of the project to the revenues generated utilizing actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the recourse rate).²⁹

21. Northern states that the Northern Lights expansion plan is a multi-year commitment to expand Northern's Market Area, at least every two years through 2026, in response to customers' future growth requirements and to avoid termination of contracts for then-existing load subscribed by CenterPoint, Xcel, and Flint Hills Resources, LP.³⁰ Northern argues that the projects under the Northern Lights expansion plan umbrella must be analyzed on a cumulative basis rather than as individual projects in order to evaluate the full impact of the Northern Lights expansion plan on rates.³¹ Northern explains that without the Northern Lights expansion plan, these shippers and associated revenues would have left Northern's system and Northern would seek to recover its existing costs from the remaining shippers in a future section 4 proceeding.

22. When the Commission makes an upfront determination in a certificate proceeding as to whether a project should receive rolled-in treatment, it does so relying on the specific cost and revenue estimates associated with the facilities to be constructed. The Commission has previously determined that it will make rolled-in rate determinations for

²⁹ *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

³⁰ Application at 4, 6 n.4.

³¹ *Id.* at 17, 22; Northern Oct. 2, 2020 Response to Staff Data Request, revised Exhibit N-1.

each individual Northern Lights expansion project based on the costs and revenues for each separate project.³²

23. Northern has demonstrated that for the 2021 Expansion Project, the incremental revenues will exceed the cost of service by \$553,000 in the first year of operation and by increasing amounts through at least 2026, by which time the difference will have increased to \$1,378,000.³³ Therefore, the Commission will grant a presumption favoring rolled-in treatment for the cost of the 2021 Expansion Project in a future NGA section 4 rate proceeding, absent a significant change in circumstances.

4. Reporting Incremental Costs

24. The Commission will require Northern to keep separate books and accounting of costs and revenues attributable to the proposed incremental services and capacity created by the project in the same manner as required by section 154.309 of the Commission's regulations.³⁴ The books should be maintained with applicable cross-references and the information must be in sufficient detail that the data can be identified in Statements G, I, and J in any future NGA section 4 or section 5 rate case. The information must be provided consistent with Order No. 710.³⁵

C. Environmental Analysis

25. On December 6, 2019, Commission staff began its environmental review of the 2021 Expansion Project by granting Northern's request to use the pre-filing process in

³² See *N. Nat. Gas Co.*, 166 FERC ¶ 61,136 at P 26; *N. Nat. Gas Co.*, 158 FERC ¶ 61,079 at P 20; *N. Nat. Gas Co.*, 127 FERC ¶ 61,133 at P 21.

³³ Northern Oct. 2, 2020 Response to Staff Data Request, revised Exhibit N.

³⁴ 18 C.F.R. § 154.309 (2020). See *Gulf South Pipeline Co., LLC*, 173 FERC ¶ 61,049, at P 6 (2020) (*Gulf South*) (for projects that use existing system rates for the initial rates the Commission's requirement for separate books and accounting applies only to internal books and records).

³⁵ See *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008). In *Gulf South*, the Commission clarified that a pipeline charging its existing system rates for a project is not required to provide books and accounting consistent with Order No. 710. However, a pipeline is required to maintain its internal books and accounting such that it would have the ability to include this information in a future FERC Form No. 2 if the rate treatment for the project is changed in a future rate proceeding.

Docket No. PF20-1-000.³⁶ As part of the pre-filing review, staff participated in two open houses sponsored by Northern in Cold Spring and Prior Lake, Minnesota, on February 17 and 18, 2020, respectively, to explain the Commission's environmental review process to interested stakeholders.³⁷

26. On July 9, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned Northern Lights 2021 Expansion Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal Register*³⁸ and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. We received comments in response to the NOI from the U.S. Environmental Protection Agency (EPA); the Minnesota Pollution Control Agency; the Minnesota Department of Transportation; the City of Hinckley, Minnesota; and two landowners. The primary issues raised by commenters were impacts on farmland, wetlands, wildlife habitats, and surface and groundwater; erosion control best management practices; revegetation and invasive species monitoring; visual impacts of aboveground facilities; permitting; operational noise; air quality impacts; and cumulative impacts.

27. To satisfy the requirements of the National Environmental Policy Act of 1969,³⁹ Commission staff prepared an EA for Northern's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA. The EA was issued for a 30-day comment period and placed into the public record on December 15, 2020. EPA filed comments on the EA and Northern filed reply comments. The forgoing analysis of greenhouse gas emissions is offered for informational purposes only, does not inform any part of this order's holding, and shall not serve as precedent for any future certificate order.

³⁶ See 18 C.F.R. § 157.21(b) (2020).

³⁷ EA at 3.

³⁸ 85 Fed. Reg. 44,289 (July 22, 2020).

³⁹ 42 U.S.C. §§ 4321 *et seq.*; see also 18 C.F.R. pt. 380 (2020) (Commission's regulations implementing the National Environmental Policy Act).

1. U.S. Environmental Protection Agency

28. The EPA states that while the EA mostly identifies and assesses the potential environmental effects of construction and operation of the 2021 Expansion Project, and mitigation measures to reduce project impacts, it does not address the COVID-19 pandemic or the potential impacts to human health and local medical facilities due to the influx of 300 to 350 workers.⁴⁰ EPA recommends that Commission staff and Northern identify adequate measures Northern can implement to prevent and reduce the spread of COVID-19 between project workers and affected communities during construction-related activities.⁴¹ Additionally, EPA recommends Northern develop and implement a project-specific COVID-19 prevention plan in consultation with local and state health officials that complies with Centers for Disease Control and Prevention (CDC) and Minnesota Department of Health (MDH) guidelines, and Occupational Safety and Health Administration (OSHA) standards.⁴²

29. Northern is required to comply with construction safety regulations promulgated by OSHA and the OSHA-approved State Plan, including any guidance provided by OSHA⁴³ and the state related to COVID-19. The federal government has issued guidance that identifies construction workers supporting the energy sector as essential workers; and tasked states, like Minnesota, with the responsibility of “implementing and executing response activities in their communities, while the Federal Government is in a supporting role.”⁴⁴ In Minnesota, Governor Tim Walz issued Executive Order (EO) 21-01, effective Sunday, January 10, 2021, which requires workers and businesses to comply with

⁴⁰ EPA January 14, 2021 Letter at 1-2.

⁴¹ *Id.*

⁴² *Id.*

⁴³ See, e.g., OSHA, *COVID-19 Guidance for Construction Workers*, <https://www.osha.gov/Publications/OSHA4000.pdf> (last visited May 6, 2021); OSHA, *Guidance for Preparing Workplaces for COVID-19*, <https://www.osha.gov/Publications/OSHA3990.pdf> (last visited May 6, 2021); OSHA, *Construction Work*, <https://www.osha.gov/SLTC/covid-19/construction.html> (last visited May 6, 2021) (OSHA’s COVID-19 website relevant to construction work).

⁴⁴ Cybersecurity & Infrastructure Security Agency, *Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response* (Dec. 16, 2020), https://www.cisa.gov/sites/default/files/publications/ECIW_4.0_Guidance_on_Essential_Critical_Infrastructure_Workers_Final3_508_0.pdf.

requirements provided to mitigate the risk of transmission of COVID-19.⁴⁵ EO 21-01 requires that, in addition to the protections provided in EO 20-54,⁴⁶ workers and businesses adhere to Minnesota OSHA standards and MDH and CDC guidelines, including the implementation of a COVID-19 Preparedness Plan.⁴⁷

30. In response to EPA's comments, Northern notes that it has been proactive in responding to COVID-19 since the early stages of the pandemic.⁴⁸ On March 19, 2020, Northern adopted its COVID-19 Construction Plan Requirements (COVID-19 Requirements), which apply to all contractors conducting construction activities for Northern. The COVID-19 Requirements require contractors to adopt protocols to detect the presence of the virus and prevent its spread.⁴⁹ Northern commits to enforcing the COVID-19 Requirements through construction agreements with all contractors working on the 2021 Expansion Project.⁵⁰ Additionally, Northern commits to abide by all state

⁴⁵ See Minn. Exec. Order No. 21-01 (Jan. 10, 2021), https://mn.gov/governor/assets/Executive%20Order%2021-01%20Signed%20and%20Filed_tcm1055-462272.pdf.

⁴⁶ On May 13, 2020, Governor Tim Walz issued EO 20-54 (Protecting Workers from Unsafe Working Conditions and Retaliation During the COVID-19 Peacetime Emergency), which provides certain health and safety protections for workers during the COVID-19 pandemic. EO 21-01 specifies that the protections provided in EO 20-54 remain in full force and effect. *Id.* at 10; see Minn. Exec. Order No. 20-54 (May 13, 2020), https://mn.gov/governor/assets/2a.%20EO%2020-54%20Signed%20and%20Filed_tcm1055-443858.pdf.

⁴⁷ See *supra* note 45, at 10, 16-17; see also State of Minnesota, *COVID-19 Preparedness Plan Guidance: Requirements for all Indoor Businesses and Other Entities*, http://dli.mn.gov/sites/default/files/pdf/COVID_19_preparedness_plan_requirements_guidelines_businesses.pdf (last visited May 6, 2021) (providing the requirements for the COVID-19 Preparedness Plan required under EO 21-01).

⁴⁸ Northern January 19, 2021 Letter at 1.

⁴⁹ *Id.* (Northern attached its COVID-19 Construction Plan Requirements, which requires specific plan elements, and an example of a COVID-19 plan and protocols created by a Northern contractor in 2020).

⁵⁰ *Id.*

and local COVID-19 guidance.⁵¹ We find Northern's planned measures sufficient to address EPA's concerns.

2. Greenhouse Gas Emissions and Climate Change

31. The EA discusses the direct GHG impacts from construction and operation of the project, the climate change impacts in the region, and the regulatory structure for GHGs under the Clean Air Act.⁵² The EA estimates that the maximum potential GHG emissions from operation of the project to be 42,814 metric tons per year of carbon dioxide equivalent (CO₂e).⁵³

32. Additionally, we conservatively estimate the downstream emissions from a project assuming all the gas to be transported is eventually combusted. Here, the project shippers are local distribution companies. Northern identified the growing demand for natural gas as the purpose for the project⁵⁴ and stated that the project will meet growing energy demands for industrial, commercial and residential use, including the delivery of natural gas to heat homes and businesses and supplying natural gas for appliance and machinery operation.⁵⁵ The project can deliver up to 45,693 Dth per day of new volumes to end-use customers in the United States, which can produce 882,430 metric tpy of CO₂e from end-use combustion.⁵⁶ We note that this CO₂e estimate represents an upper bound amount of end-use combustion that could result from the gas transported by this project. This is because some of the gas may displace other fuels, which could actually lower total CO₂ emissions. It may also displace gas that otherwise would be transported via different means, resulting in no change in GHG emissions. Additionally, this estimate assumes

⁵¹ *Id.*

⁵² EA at 127-131.

⁵³ EA at 94. We note that this calculation does not include the total estimated construction-related emissions of 7,614 metric tons per year of CO₂e. *See* EA at 93 (Table B.8.3-1).

⁵⁴ Application at 25.

⁵⁵ *Id.*

⁵⁶ Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2018* at Annex 2.3, Table A-47 (2020) (Carbon Content Coefficients Used in this Report, Row: Carbon Content of Pipeline Natural Gas, Column: 2018 data), <https://www.epa.gov/sites/production/files/2020-04/documents/us-ghg-inventory-2020-main-text.pdf>. The 2019 Annex data has not been published as of the date of this order.

that the maximum capacity is transported 365 days per year, which is rarely the case because many projects are designed for peak use.

33. Next, we will compare the project's GHG emissions to the total GHG emissions of the United States as a whole. This comparison allows us to assess the project's share of contribution to GHG emissions at the national level. The annual GHGs from operation of the project, including the downstream combustion of the gas transported by the project, are 925,244 metric tpy CO₂e. To provide context to the GHG estimate, 5.769 billion metric tons of CO₂e were emitted at a national level in 2019 (inclusive of CO₂e sources and sinks).⁵⁷ Construction of this project could potentially increase CO₂e emissions based on the 2019 levels by 0.00013% in 2021; in subsequent years, the project operations and downstream combustion of gas transported by the project could potentially increase emissions by 0.016%.⁵⁸ When states have GHG emissions reduction targets we will also endeavor to consider the GHG emissions of a project as compared to those state goals. The State of Minnesota enacted statutory targets for reducing emissions to 30% below 2005 levels by 2025 and 80% below 2005 levels by 2050. The emissions from the project would represent 1.3% and 4.5% of Minnesota's 2025 and 2050 GHG inventory goals, respectively.⁵⁹

⁵⁷ U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2019* at ES-7 to -9 (Table ES-2) (2021), <https://www.epa.gov/sites/production/files/2021-04/documents/us-ghg-inventory-2021-main-text.pdf> (accessed Apr. 21, 2021).

⁵⁸ Although the national emissions reduction targets expressed in the EPA's Clean Power Plan were repealed, *EPA, Repeal of the Clean Power Plan; Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emissions Guidelines Implementing Regulations*, 84 Fed. Reg. 32,520, 32,522-32 (July 8, 2019), the Paris Climate Accord has been rejoined, *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg. 7619 (January 27, 2021). On April 21, 2021, the U.S. announced a goal of reducing its net greenhouse gas emissions by 50 to 52% below 2005 levels in 2030. *Reducing Greenhouse Gases in the United States: A 2030 Emissions Target* (Apr. 21, 2021), <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20States%20of%20America%20First/United%20States%20NDC%20April%202021%20Final.pdf>.

⁵⁹ Minnesota's 2005 CO₂ emissions were 101.8 million metric tons. U.S. Energy Information Administration, *Energy-Related CO₂ Emission Data Tables* (Table 1 - State energy-related carbon dioxide emissions by year, unadjusted (1990-2018)), <https://www.eia.gov/environment/emissions/state/>. Therefore, we consider the 2025

3. Environmental Conclusion

34. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed, and operated in accordance with Northern's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

IV. Conclusion

35. Based on our Certificate Policy Statement determination and our environmental analysis, we find under section 7 of the NGA that the public convenience and necessity requires approval of the 2021 Expansion Project, subject to the conditions in this order.

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

37. 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 and operation of facilities approved by this Commission.⁶⁰

GHG emission target to be 71.26 million metric tons and the 2050 GHG emission target to be 20.36 million metric tons.

⁶⁰ 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); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the Natural Gas Act to the extent it conflicts with federal

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Northern authorizing it to construct and operate the 2021 Expansion Project, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

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

- (1) completion of construction of the authorized facilities and making them available for service within two years of the date of this order, pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable Commission regulations, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) compliance with the environmental conditions listed in the appendix to this order; and
- (4) making a filing affirming that the parties have executed firm contracts for capacity levels and terms of service prior to commencing construction.

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

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

(E) Northern's existing rates for firm transportation under Rate Schedule TFX are approved as the initial recourse rate for the 2021 Expansion Project.

(F) Northern's request to utilize its Market Area system fuel rate for the 2021 Expansion Project is approved.

regulation, or would delay the construction and operation of facilities approved by the Commission).

(G) Northern's request for a pre-determination supporting rolled-in rate treatment for the costs of the 2021 Expansion Project in a future NGA section 4 general rate proceeding is approved, as discussed in the body of this order.

(H) Northern shall keep separate books and accounting of costs attributable to the proposed services, as more fully discussed above.

(I) Northern 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 Northern. Northern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission. Chairman Glick and Commissioner Clements are concurring in part and dissenting in part with a joint separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix – Environmental Conditions

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

1. Northern Natural Gas Company (Northern) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Northern must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP), or the Director's designee, **before using that modification.**
2. The Director of the OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Northern 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**, Northern shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for

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.

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

5. Northern shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP, or the Director's designee, **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands. Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

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

Director's designee. Northern must file revisions to the plan as schedules change. The plan shall identify:

- a. how Northern will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Northern will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of environmental inspectors assigned (per spread), and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Northern will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Northern's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Northern will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Northern shall employ at least one EI for the project. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;

- e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Northern 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 Northern's efforts to obtain the necessary federal authorizations;
 - b. the construction status of each project spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints that may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Northern from other federal, state, or local permitting agencies concerning instances of non-compliance, and Northern's response.
9. Northern must receive written authorization from the Director of OEP, or the Director's designee, **before commencing construction of any project facilities**. To obtain such authorization, Northern must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Northern must receive written authorization from the Director of OEP, or the Director's designee, **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the rights-of-way and other areas affected by the project are proceeding satisfactorily.

11. **Within 30 days of placing the authorized facilities in service**, Northern shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Northern 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 construction of the WBL P4-1 and WBL P4-2 horizontal directional drills (HDDs)**, Northern shall file with the Secretary, for the review and written approval by the Director of OEP, or the Director's designee, a HDD noise mitigation plan to reduce the projected noise levels attributable to the proposed HDD operations at noise sensitive areas (NSAs). During drilling operations, Northern shall implement the approved plan, monitor noise levels, document the noise levels in the biweekly status reports, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than a day-night noise level (L_{dn}) of 55 A-weighted decibels (dBA) at the NSAs.

13. Northern shall file noise surveys with the Secretary **no later than 60 days** after placing the new Hinckley and modified Pierz Compressor Stations in service. If a full load condition noise survey is not possible, Northern shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of the equipment at each of the Hinckley and Pierz Compressor Stations under interim or full horsepower load conditions exceeds an L_{dn} of 55 dBA at any nearby NSAs, Northern shall:
 - a. file a report with the Secretary, for review and written approval by the Director of OEP, or the Director's designee, on what changes are needed;
 - b. install the additional noise controls to meet the level within 1 year of the in-service date; and
 - c. confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

14. **Within 5 days of receipt of a water quality certification issued by the Minnesota Pollution Control Agency**, Northern shall file the complete certification, including all conditions. All conditions attached to the water quality certification constitute mandatory conditions of this Certificate Order. **Prior to**

construction, Northern shall file, for review and written approval by the Director of OEP, or the Director's designee, any revisions to its project design necessary to comply with the water quality certification conditions.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company

Docket No. CP20-503-000

(Issued May 20, 2021)

GLICK, Chairman, and CLEMENTS, Commissioner, *concurring in part and dissenting in part*:

1. We write separately to address two issues regarding Northern Natural Gas Company's (Northern) 2021 Expansion Project (Project): the need for the Project and the Commission's consideration of the greenhouse gas (GHG) emissions it will cause.
2. The question of need is relatively straightforward. Northern has executed precedent agreements with unaffiliated local distribution companies to transport natural gas that will be used to heat homes and businesses during the winter months. That is enough to find that the Project is needed, and we concur with the Commission's determination on that point.
3. We dissent, however, from the Commission's decision not to prepare a supplemental environmental impact statement (EIS) to examine the effect that the GHG emissions caused by the Project will have on climate change. The National Environmental Policy Act¹ (NEPA) requires the Commission to prepare an EIS for a certificate order unless the Commission can determine either that the project will not cause any significant adverse impacts or such impacts will be mitigated.² In other words, when there are any "arguably significant" environmental impacts, the Commission must address them in an EIS.³

¹ National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*

² *E.g.*, *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 985 F.3d 1032, 1039 (D.C. Cir. 2021) ("If *any* 'significant' environmental impacts might result from the proposed agency action[,] then an EIS must be prepared *before* agency action is taken." (citing [Grand Canyon Trust v. FAA](#), 290 F.3d 339, 340 (D.C. Cir. 2002) and quoting [Sierra Club v. Peterson](#), 717 F.2d 1409, 1415 (D.C. Cir. 1983))); *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (EIS required where there might be significant impacts unless the impacts are mitigated) (quoting *TOMAC v. Norton*, 433 F.3d 852, 860 (D.C. Cir. 2006)); *see* 40 C.F.R. § 1501.3 (2020).

³ *See Myersville*, 783 F.3d at 1322 (quoting *TOMAC*, 433 F.3d at 860).

4. Unlike the Commission’s recent order in *Northern Natural*,⁴ we do not believe that we confidently answer that question one way or another on the present record. As a result, NEPA requires us to perform a supplemental EIS to fully examine the issue and determine whether the Project’s adverse effect on climate change is significant—just as we would any other environmental impact. Nevertheless, instead of performing a supplemental EIS, the Commission relies on an environmental assessment that does not assess the significance of the Project’s GHG emissions or their effect on climate change. Because we believe that is insufficient to satisfy our responsibilities under NEPA, we have no choice but to dissent.

5. Finally, we observe that finding a project’s GHG emissions to be significant is not a death knell for that project. The Commission may very well conclude that the project’s benefits outweigh even *significant* adverse impacts.⁵ In addition, the Commission could require a pipeline to adopt measures that would mitigate the GHG emissions of the project, or the project developer could propose voluntary measures that would be incorporated as certificate conditions to mitigate those adverse impacts, further increasing the likelihood that a project’s benefits outweigh its adverse impacts. But before the Commission can engage in that balancing process, it must first adequately assess the significance of a project’s adverse impacts, including its impact on climate change.

For these reasons, we respectfully concur in part and dissent in part.

Richard Glick
Chairman

Allison Clements
Commissioner

⁴ *N. Nat. Gas Co.*, 174 FERC ¶ 61,189 (2021).

⁵ See *Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (explaining that section 7 of the NGA requires the Commission to balance “the public benefits [of a proposed pipeline] against the adverse effects of the project,’ including adverse environmental effects” (quoting *Myersville*, 783 F.3d at 1309)).