

164 FERC ¶ 61,101
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP17-490-000

ORDER ISSUING CERTIFICATE

(Issued August 10, 2018)

1. On August 31, 2017, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application pursuant to section 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 and metering facilities in New Jersey (the Rivervale South to Market, or RSM Project).

2. For the reasons discussed below, we will grant the requested authorization, subject to certain conditions.

I. Background and Proposal

3. Transco, a limited liability company formed under Delaware law, is a natural gas company as defined by section 2(6) of the NGA³ engaged in the transportation and storage of natural gas in interstate commerce and subject to the Commission's jurisdiction. Transco's transmission system extends from Texas, Louisiana, and the offshore Gulf of Mexico area, through Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the metropolitan New York City area.

4. Transco proposes to construct and operate the RSM Project to provide up to 190,000 dekatherms per day (Dth/d) of firm transportation service from the interconnection with Tennessee Gas Pipeline Company, L.L.C. (Tennessee) in Bergen

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2017).

³ 15 U.S.C. § 717a(6) (2012).

County, New Jersey (Rivervale Interconnect), to Transco's Central Manhattan Meter Station in Hudson County, New Jersey, and the Station 210 pooling point in Mercer County, New Jersey. To provide the firm transportation service, Transco proposes to construct or uprate, as well as operate, the following facilities:

- construction of 0.61 mile of 42-inch-diameter pipeline loop along Transco's Mainline A, from milepost 1825.80 to milepost 1826.41; and
- uprating of 10.35 miles of the existing 24-inch North New Jersey Extension from the Paramus Metering and Regulating (M&R) Station to the Orange and Rockland M&R Station, from a maximum allowable operating pressure of 650 pounds per square inch gauge (psig) to 812 psig.

5. Transco also proposes to upgrade existing valves and yard piping at the existing Central Manhattan, Orange and Rockland, and Emerson M&R Stations; to add regulation and overpressure protection valves at the Paramus and Emerson M&R Stations; to remove a valve from its current location on the North New Jersey Extension and replace it with a mainline valve at the Emerson M&R Station; and to construct and operate additional appurtenant facilities. Transco plans to place the new facilities in service no later than November 1, 2019. The estimated cost of the project is \$127.6 million.⁴

6. Transco states that the total project capacity of 190,000 Dth/d is fully subscribed by Direct Energy Business Marketing, LLC (Direct Energy)⁵ and UGI Energy Services, LLC (UGI).⁶ Transco states that each shipper executed a binding precedent agreement with a minimum term of fifteen years. Transco explains that 50,000 Dth/d of firm transportation service will be provided from the Rivervale Interconnect to Transco's Central Manhattan M&R Station and 140,000 Dth/d of firm transportation service will be provided from the Rivervale Interconnect to the Station 210 pooling point. Transco

⁴ Transco acknowledges that in order to accommodate the incremental receipt volume at the Rivervale Interconnect, Tennessee has agreed to modify its existing meter station at the Rivervale Interconnect, and Transco will reimburse Tennessee an estimated \$6.8 million for the modifications. Application at 6 n.2.

⁵ Direct Energy, a subsidiary of Direct Energy Business, LLC with its principal place of business in the State of New Jersey, is a limited liability company engaged in the marketing of natural gas.

⁶ UGI, the midstream and retail marketing subsidiary of UGI Corporation, is a limited liability company organized under the laws of the Commonwealth of Pennsylvania and engaged in the sale of electricity, natural gas, liquid fuels, and renewable energy products.

proposes to establish an incremental firm recourse reservation charge for project service of \$0.36676 per Dth and utilize its currently effective system-wide Rate Schedule FT - Non-Incremental Commodity Rate as it is higher than the calculated incremental recourse commodity charge of \$0.0000 per Dth. Because no additional compression will be installed as part of the project, Transco proposes to assess its generally applicable system fuel retention and electric power rates for project service.

7. Direct Energy and UGI have elected to pay negotiated rates for service on the proposed facilities, and Transco states that it will file tariff records reflecting its negotiated rate agreements with the project shippers. Transco also requests that the Commission make an upfront determination on two non-conforming provisions contained within the service agreements.⁷ Transco contends that the non-conforming provisions contained in the service agreements constitute permissible deviations from Transco's *pro forma* service agreement.

8. Transco states that its proposal will enable the project shippers to access natural gas supplies by the 2019/2020 winter seasons to serve growing markets, which include commercial, residential, and industrial end users. Transco suggests that the project will increase the reliability of its pipeline by creating firm capacity on its system downstream of the Rivervale Interconnect, promoting competitive markets by increasing gas supply access to Transco's Station 210 pooling point, and enhancing the security of natural gas supplies to the Central Manhattan M&R Station (a key delivery point servicing New York City). Further, Transco states that there will be no adverse impact on its existing customers or existing competing pipelines or their captive customers.

II. Notice, Interventions, Comments, and Protests

9. Notice of Transco's application was published in the *Federal Register* on September 22, 2017.⁸ The notice established October 6, 2017, as the deadline for filing comments and interventions. The parties listed in Appendix A filed timely, unopposed

⁷ As provided in Attachment A and Paragraph 2(d) of Transco's Precedent Agreements, Direct Energy's and UGI's service agreements will include non-conforming provisions regarding the minimum receipt pressure at the Rivervale Interconnect receipt point and certain term extension provisions that do not conform to Exhibit C of Transco's Rate Schedule FT *pro forma* service agreement. Transco states that the project service agreements will conform in every other respect to Transco's Rate Schedule FT *pro forma* service agreement.

⁸ 82 Fed. Reg. 44,398 (2017).

motions to intervene.⁹ Hackensack Riverkeeper, Gary Ascolese, the U.S. Environmental Protection Agency, and the U.S. Fish and Wildlife Service (FWS) filed comments on the proposed project.

10. On December 18, 2017, and January 4, 2018, respectively, 350NJ and Food & Water Watch, jointly with the New Jersey Sierra Club (together, Sierra Club), filed late motions to intervene and comments. Although the late intervenors did not demonstrate good cause, because the late-filed motions to intervene were filed before the Commission announced its new policy governing late interventions in *Tennessee Gas Pipeline Company, L.L.C.*,¹⁰ the late motions to intervene are granted.¹¹

III. Discussion

11. Because the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to subsections (c) and (e) of the NGA.

A. Application of the Certificate Policy Statement

12. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹² The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, avoidance of

⁹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1) (2017).

¹⁰ *Tennessee Gas Pipeline Co., L.L.C.*, 162 FERC ¶ 61,167, at P 51 (2018) (noting that the Commission will be less lenient in the grant of late interventions that do not comply with our regulations) (citing 18 C.F.R. § 385.214(b)(3) and (d) (2017)).

¹¹ 18 C.F.R. § 385.214(d) (2017).

¹² *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order on clarification*, 90 FERC ¶ 61,128; *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

13. 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 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 proposed route or location of 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.

14. 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 Commission has determined, in general, that when a pipeline proposes an incremental rate for service utilizing proposed expansion capacity that is higher than the generally applicable system rate, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing customers.¹³ As noted above, Transco has proposed an incremental recourse rate to recover the costs of the project and that rate is higher than its existing applicable system recourse rate.

15. We find that the proposed project will have no adverse effect on service to Transco's existing customers because the project is designed to provide the proposed service while maintaining service to Transco's existing customers. We also find that there will be no adverse impact on other pipelines in the region or their captive customers because the project shippers – Direct Energy and UGI – will use the project's capacity to serve the incremental growth requirements of their markets, not to displace existing service providers. Further, none of Transco's existing customers and no other pipelines or their captive customers have filed adverse comments regarding Transco's proposal.

16. We also find that Transco's proposal will have minimal impacts on landowners and surrounding communities. The project involves activities at existing facilities and within and adjacent to Transco's existing right-of-way, and would require only 5.02 acres

¹³ See, e.g., *Dominion Transmission, Inc.*, 155 FERC ¶ 61,106, at P 15 (2016); *Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155, at 61,552 (2002).

of new permanent right-of-way. Additionally, no affected landowners opposed the proposal.

17. 350NJ-Rockland and Food & Water Watch comment on the need for the project. 350NJ Rockland claims that not enough information has been provided to the public regarding the need for the project, and that such information is required before the Commission may issue a certificate of public necessity and convenience.¹⁴ Food & Water Watch cite a recent Union of Concerned Scientists' report finding that New Jersey has an over-reliance of natural gas that may result in consumers bearing the financial risk of price swings.¹⁵ It also expresses concern that as the demand for and price of natural gas remains low, the additional capacity proposed by applicants will be used to transport gas from the Marcellus Shale to out-of-state markets and export facilities.¹⁶

18. 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 percentage of the proposed capacity be subscribed under long-term precedent or service agreements.¹⁷ These factors might include, but are not limited to, precedent agreements, demand projects, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.¹⁸ 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.¹⁹ 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 Certificate Policy Statement or in any precedent construing it suggests that the policy statement requires, rather than permits, the Commission to assess a project's benefits by looking beyond the market need

¹⁴ 350NJ Rockland's April 16, 2018 Comments at 2.

¹⁵ Food & Water Watch's April 16, 2018 Comments at 2.

¹⁶ *Id.*

¹⁷ Certificate Policy Statement, 88 FERC ¶ 61,227, at 61,747. Prior to the Certificate Policy Statement, the Commission required a new pipeline project to have contractual commitments for at least 25 percent of the proposed project's capacity. *See* Certificate Policy Statement at 61,743.

¹⁸ *Id.* at 61,747.

¹⁹ *Id.* at 61,748.

reflected by the applicant's precedent agreements with shippers.²⁰ Moreover, it is current Commission policy to not look beyond precedent or service agreements to make judgments about the needs of individual shippers.²¹

19. We find that Transco has sufficiently demonstrated that there is market demand for the project, and that sufficient information regarding project need has been available to the public throughout the application process. Transco has entered into long-term, precedent agreements for firm service with two shippers, Direct Energy and UGI for the full transportation service to be created by the project.²² Further, ordering paragraph (B) of this order requires that Transco file a written statement affirming that it has executed contracts for service at the levels provided for in their precedent agreements prior to commencing construction. Given the substantial financial commitment required under these contracts by project shippers, we find that these contracts are the best evidence that the service to be provided by the project is needed in the markets to be served. We also find that end users will generally benefit from the project because it would develop gas infrastructure that will enhance the pipeline grid by providing additional transportation capacity connecting sources of natural gas to markets in New Jersey.

20. We are unpersuaded by the studies submitted by commenters in their attempt to show that there is insufficient demand for the project²³ and by their assertions that the Commission is required to examine the need for pipeline infrastructure on a regional basis. The Certificate Policy Statement does not suggest that the Commission should examine a group of projects together and pick which project(s) best serve an estimated future regional demand. To the extent 350NJ-Rockland and Food & Water Watch would have the Commission look at information beyond precedent agreements to assess need, we would note that countering the position advanced by the studies urged by 350NJ-Rockland and Food & Water Watch, the record also contains evidence of growing

²⁰ *Minisink Residents for Env'tl. Pres. & Safety v. FERC*, 762 F.3d 97, 110 n.10 (D.C. Cir. 2014); *see also Myersville Citizens for a Rural Cmty, Inc. v. FERC*, 183 F.3d 1301, 1311 (D.C. Cir. 2015).

²¹ *Id.* at 61,744 (citing *Transcontinental Gas Pipe Line Corp.*, 82 FERC ¶ 61,084, at 61,316 (1998)).

²² EA at 1.

²³ Food & Water Watch Comments at 2. In support of their arguments regarding demand, commenters cite general forecasts for load growth in New Jersey or certain LDC supply forecast projections through 2020 made to state commissions.

demand for natural gas pipeline transportation capacity²⁴ Commission policy is to examine the merits of individual projects and assess whether each project meets the specific need demonstrated. However, projections regarding future demand often change and are influenced by a variety of factors, including economic growth, the cost of natural gas, environmental regulations, and legislative and regulatory decisions by the federal government and individual states. Given this uncertainty associated with long-term demand projections, including those presented in the studies noted by commenters above, where an applicant has precedent agreements for long-term firm service, the Commission deems the precedent agreements to be the better evidence of demand. The Commission evaluates individual projects based on the evidence of need presented in each proceeding. Under section 7(c) of the NGA, the Commission shall issue a certificate for any proposal found to be required by the public convenience and necessity.²⁵ Where, as here, it is demonstrated that specific shippers have entered into precedent agreements for project service, the Commission places substantial reliance on those agreements to find that the project is needed.

21. Based on the benefits the project will provide and the minimal adverse impacts on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of the project, subject to the environmental and other conditions in this order.

B. Rates

22. Transco estimates the cost of the project to be \$127.6 million. Transco proposes to establish an initial incremental firm recourse reservation charge of \$0.36676 per Dth,²⁶

²⁴ See Exhibit F-1 of Transco's application, Resource Report 1 – General Project Description, section 1.1.1 – Purpose and Need. In describing the need for the project, Transco references the Energy Information Administration's (EIA) Annual Energy Outlook 2017, which states that natural gas use is increasing more than other fuel sources in terms of energy consumed. U.S. Energy Information Admin., *Annual Energy Outlook 2017* 10 (Jan. 2017), <https://www.eia.gov/outlooks/archive/aeo17/>.

²⁵ 15 U.S.C. 717(f) (2012).

²⁶ The initial incremental reservation charge is calculated as follows: (first-year cost of service/(daily contract demand x 365 days)) or (\$25,434,965/(190,000 Dth per day x 365 days)), equating to \$0.36676 per Dth.

based on a proposed incremental cost of service for the first year of \$25,434,965.²⁷ Transco also proposes to charge the currently effective Rate Schedule FT – Non-Incremental commodity charge for shippers utilizing capacity on the project.²⁸ Transco’s proposed cost of service reflects its system-wide depreciation rate of 2.61 percent and a pre-tax rate of return of 15.34 percent.²⁹ Transco states that the project shippers chose to pay a negotiated rate for their firm transportation service. Transco also proposes to charge the generally applicable fuel retention and electric power unit rate from its currently effective Rate Schedule FT because no additional compression will be installed as part of the project.

23. In a February 1, 2018 response to a staff data request, Transco provided an adjusted cost of service and recalculated its initial incremental recourse reservation charge to reflect changes in the federal tax code, as per the Tax Cuts and Jobs Act of 2017,³⁰ which became effective January 2018. Transco’s work papers show that the effect of the tax code change is a reduction in the estimated first year cost of service to \$23,634,966 and a reduction in the initial incremental firm recourse reservation charge to \$0.34081 per Dth. As Transco’s February 1, 2018 calculation reflects the federal tax code that will be in effect when the project goes into service, the Commission will use the revised incremental recourse reservation charge for the purpose of establishing the initial incremental rates.³¹ Under the Commission’s Certificate Policy Statement, there is a

²⁷ Transco’s reimbursement to Tennessee for the cost associated with modifications to a Tennessee meter station is included in the project’s cost of service. Application at 6 n. 2.

²⁸ Transcontinental Gas Pipe Line Company, LLC, FERC NGA Gas Tariff, Fifth Revised Volume No. 1, Section 1.1.1, FT - Non-Incremental Rates, 16.0.0.

²⁹ Transco states that its pre-tax rate of return is from its approved settlement rates in Docket No. RP01-245-000, *et al.* (RP01-245 Settlement) and its depreciation rate is from its rates approved in its Stipulation and Agreement in Docket No. RP12-993-000, *et al.* (RP12-933 Agreement). Transco explains that it used the pre-tax return and certain other cost factors underlying the RP01-245 Settlement rates because the RP12-993 Agreement was a “black box” settlement that does not specify most cost-of-service components, including rate of return.

³⁰ Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

³¹ In an April 17, 2018 Response to a staff data request, Transco stated that under the terms of its settlement agreement resolving its last general rate case proceeding in Docket No. RP12-993-000, *et al.*, approved by the Commission on December 6, 2013 (145 FERC ¶ 61,205 (2013)), Transco must file an NGA section 4(e) general rate case no later than August 31, 2018. Transco acknowledged that it anticipates that whether, and to

presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate exceeds the maximum system recourse rate.³² Because the revised initial incremental recourse reservation charge of \$0.34081 per Dth is higher than the currently-effective Rate Schedule FT system recourse Zone 6 to 6 reservation charge of \$0.12984,³³ we will require Transco to establish the revised charge of \$0.34081 per Dth as its initial incremental recourse reservation charge. Transco's proposal to use its existing system commodity charge is approved.

1. Fuel Retention and Electric Power Unit Rates

24. Transco proposes to charge its generally applicable system-wide fuel retention percentage electric power rates for transportation on the project.³⁴ Transco asserts that because no additional compression will be installed as part of the project, applying its generally applicable system fuel retention and electric power rates is appropriate. In support of its proposal, Transco submitted a fuel study demonstrating the project's impact on fuel use.³⁵ Transco's study demonstrates that the project facilities will result in a reduction in system fuel consumption attributable to existing customers. Based on the overall anticipated reduction in fuel usage, the Commission approves Transco's proposal to charge its generally applicable system-wide fuel retention percentage and electric power rates.

2. Negotiated Rates

25. Transco and the project shippers agreed to negotiated rates. Transco must file either the negotiated rate agreements or tariff records setting forth the essential elements

what extent, the "Revised Policy Statement on Treatment of Income Taxes" in Docket No. PL17-1-000 (*Revised Policy Statement*) may apply to Transco will be addressed in the section 4(e) proceeding. Additionally, Transco stated it is not a Master Limited Partnership as the term is used in the *Revised Policy Statement*; however, it is a limited liability company indirectly owned by Williams Partners, L.P.

³² Certificate Policy Statement, 88 FERC at 61,746.

³³ Transcontinental Gas Pipe Line Company, LLC, FERC NGA Gas Tariff, Fifth Revised Volume No. 1, Section 1.1.1, FT - Non-Incremental Rates, 16.0.0.

³⁴ Firm and Interruptible Transportation Fuel percentages are located in Transco's currently effective tariff, Section 12.1, Firm and Interruptible Transportation Fuel Percentages, 11.1.0.

³⁵ Transco's February 1, 2018 response to staff's January 24, 2018 data request.

of the agreements in accordance with the Alternative Rate Policy Statement³⁶ and the Commission's negotiated rate policies.³⁷ Such filing must be made at least 30 days, but not more than 60 days, before the proposed effective date for such rates.

3. Reporting Incremental Costs and Revenues

26. Section 154.309 of the Commission's regulations includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are charged to ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers.³⁸ Therefore, Transco must keep separate books and accounting of costs and revenues attributable to the project, as required by section 154.309 of the Commission's regulations. The books should be maintained with applicable cross-references as required by section 154.309. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.³⁹

4. Non-Conforming Provisions

27. Transco states that the precedent agreements under Rate Schedule FT that will be executed between Transco and the project shippers will deviate in two respects from its Rate Schedule FT *pro forma* service agreements. Transco requests that the Commission make a finding that its minimum receipt pressure and term extension provisions constitute permissible deviations from Transco's *pro forma* service agreement. Transco states that the precedent agreements contain confidential commercial information and were filed as privileged pursuant to section 388.112 of the Commission's regulations.

³⁶ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g denied*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066, *petition denied sub nom. Burlington Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998).

³⁷ *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, *reh'g dismissed and clarification denied*, 114 FERC ¶ 61,304 (2006).

³⁸ 18 C.F.R. § 154.309 (2017).

³⁹ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

Transco provided the verbatim language and explanations of the non-conforming provisions within its application.⁴⁰

28. Transco proposes a minimum receipt pressure provision in order to ensure the viability of the project due to the unique operating conditions of the Northern New Jersey Extension Line. Transco states that in order to provide the requested firm transportation service of 190,000 Dth/day, Transco will require project shippers to maintain a minimum daily average pressure of 685 psig at the Rivervale Interconnect. Transco states that this minimum pressure requirement is necessary in order for Transco to redeliver gas to the project shippers and not degrade service for Transco's existing firm customers receiving gas at the Rivervale Interconnect.

29. Section 12 of Transco's General Terms and Conditions (GT&C) states:

Seller shall deliver natural gas to Buyer at Seller's line pressure at the point or points of delivery designated in the service agreement, but the maximum and minimum pressures may be as agreed upon by Buyer and Seller in the service agreement. The minimum pressure shall be not less than fifty (50) pounds per square inch gauge except as provided under Rate Schedule LG-S.

Transco states that its project design⁴¹ will enable it to provide 190,000 Dth/day of firm transportation service so long as the project shippers maintain the pressure commitment at the Rivervale Interconnect. If project shippers do not maintain the minimum receipt pressure requirement at the Rivervale Interconnect, Transco may not have sufficient pressure to deliver the project shippers' contracted volumes.

30. Additionally, Transco states that the project shippers' service agreements will include two contract term extension rights of five years each after the end of each prior term.⁴² Transco states that section 44 of its GT&C permits it to mutually agree with a shipper to an extension of the term of a service agreement.

⁴⁰ Application at 9-12.

⁴¹ Transco explains that a suitable and economically viable location for compression facilities that would be necessary to provide additional firm transportation is not available at the Rivervale Interconnect or on the Northern New Jersey Extension, making minimum pressure requirements critical to providing the service requested.

⁴² Transco Application at 11.

31. In *Columbia Gas*, the Commission clarified that a material deviation is any provision in a service agreement that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (b) affects the substantive rights of the parties.⁴³ The Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than that offered other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.⁴⁴ However, not all material deviations are impermissible. As the Commission explained in *Columbia Gas*,⁴⁵ provisions that materially deviate from the corresponding *pro forma* agreement fall into two general categories: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (b) provisions the Commission can permit without a substantial risk of undue discrimination.⁴⁶

32. The Commission finds that the incorporation of the two non-conforming provisions in the project shippers' service agreements constitute material deviations from Transco's *pro forma*. 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. We find the non-conforming provisions identified by Transco to be permissible because they do not present a risk of undue discrimination. We further find that the non-conforming provisions are not discriminatory because they conform to Transco's tariff under GT&C sections 12 and 44, respectively.⁴⁷

33. As discussed further below, when Transco files its non-conforming service agreements, it must identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement. This required disclosure includes any such transportation provision or agreement detailed in a precedent agreement that survives the execution of the service agreement.

34. Transco is required to file any non-conforming service agreements associated with this project with the Commission at least 30 days, but not more than 60 days, before the

⁴³ *Columbia Gas Trans. Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia Gas*).

⁴⁴ *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

⁴⁵ *Columbia Gas*, 97 FERC at 62,003-04.

⁴⁶ *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

⁴⁷ *Transcontinental Gas Pipe Line, LLC*, 145 FERC ¶ 61,152, at P 34 (2013).

proposed effective date for such agreements. A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreements and a tariff record identifying the agreements as non-conforming are filed with the Commission consistent with the Commission's regulations at 18 C.F.R. § 154.112 (2017).

C. Environmental Analysis

35. On October 19, 2017, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Rivervale South to Market Project and Request for Comments on Environmental Issues (NOI). The NOI was published in the Federal Register on October 25, 2017,⁴⁸ and sent to about 240 individuals, organizations, federal and state agency representatives, county and local government agencies, elected officials, local media, and affected property owners.

36. The primary environmental issues raised in response to the notice and during scoping included impacts on drinking water, wetlands, and wildlife; pipeline safety and oversight; pollution prevention practices; the continued reliance on fossil fuels and the necessity for the Rivervale South to Market Project;⁴⁹ long-term environmental impacts; improper segmentation; evaluation of cumulative, indirect, and secondary impacts; environmental impacts from increased shale gas development; evaluation of alternatives, including those outside the Commission's jurisdiction; climate change; environmental justice; and the need for an environmental impact statement (EIS) rather than an environmental assessment (EA).⁵⁰

37. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),⁵¹ our staff prepared an EA for Transco's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, visual resources, cultural resources, air quality, noise, safety, environmental justice, cumulative impacts, and alternatives. All

⁴⁸ 82 Fed. Reg. 49,364 (2017).

⁴⁹ Comments related to the nation's energy policy were outside the scope of the EA, and are unrelated to the Commission's determination under the NGA.

⁵⁰ The EA did not identify any construction or operation impacts that would significantly affect the quality of the human environment. Based on the project scope and associated impacts, an EA, rather than an EIS, was appropriate.

⁵¹ 42 U.S.C. §§ 4321 *et. seq.* (2012). *See also* 18 C.F.R. pt. 380 (2017) (Commission's regulations implementing NEPA).

substantive and environmental comments received in response to the NOI were addressed in the EA.

38. The EA was issued for a 30-day comment period and placed into the public record on March 16, 2018. The Commission received comments on the EA from 350NJ-Rockland; the New Jersey Department of Environmental Protection (NJDEP); the New Jersey Sierra Club (Sierra Club); the Hackensack Riverkeeper; Food & Water Watch; a joint filing by the Montana Environmental Information Center, the Institute for Policy Integrity at New York University School of Law, the Sierra Club, and the Union of Concerned Scientists (Conservation Groups); and an individual, Rosemary Carey. A summary of the comments and our responses is provided below.

1. Cumulative Impacts

39. Sierra Club comments that the EA failed to address three projects that it claims may, when combined with the RSM Project, have secondary and cumulative impacts on resources in the project area.⁵² First, Sierra Club contends that the EA should have considered the planned North Bergen Liberty Generating Project (NBLG Project), a contemplated power plant project in development that would be located within the geographic scope of certain impacts of the RSM Project. Sierra Club also contends that the EA should have considered Transco's proposed Garden State Expansion compressor station, which would connect into a New Jersey Natural Gas pipeline in Chesterfield, New Jersey, and Transco's proposed Northeast Supply Enhancement Project, which would add a compressor station and a pipeline to the Raritan Bay between Staten Island, New York and northern New Jersey. Food & Water Watch contends that the EA should have considered the cumulative impacts of shale gas development.

40. A cumulative impact is "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."⁵³ The "determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies."⁵⁴

⁵² Sierra Club did not specify which resources would be cumulatively impacted by these projects.

⁵³ 40 C.F.R. § 1508.7 (2017).

⁵⁴ *Kleppe v. Sierra Club*, 427 U.S. 390, 413 (1976).

41. In considering cumulative impacts, CEQ advises that an agency first identify the significant cumulative effects associated with a proposed action.⁵⁵ The agency should then establish the geographic scope for analysis.⁵⁶ Next, the agency should establish the time frame for analysis, equal to the timespan of a proposed project's direct and indirect impacts.⁵⁷ Finally, the agency should identify other actions that potentially affect the same resources, ecosystems, and human communities that are affected by the proposed action.⁵⁸ As noted above, CEQ advises that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action.⁵⁹

42. The geographic scope used by Commission staff in its cumulative impact analysis was based on the limited scope and minimal environmental footprint of the RSM Project. As explained in table B-11 of the EA, Commission staff identified areas of impact within which to assess various resource areas, including Hydrologic Unit Code (HUC) 12 watersheds for water resources, fisheries, vegetation, and wildlife; a 0.25-mile radius for land use, visual impacts, and construction-related air quality; immediately adjacent areas for geology and soils; and overlapping noise sensitive areas for construction noise.⁶⁰

⁵⁵ CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 11 (January 1997), <https://ceq.doe.gov/docs/ceq-publications/ccenepa/sec2.pdf>.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *See* CEQ, *Memorandum on Guidance on the Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (June 24, 2005), https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf, which notes that agencies have substantial discretion in determining the appropriate level of their cumulative impact assessments and that agencies should relate the scope of their analyses to the magnitude of the environmental impacts of the proposed action. Further, the Supreme Court held that determining the extent and effect of cumulative impacts, “and particularly identification of the geographic area within which they occur, is a task assigned to the special competency of the agenc[y],” and is overturned only if arbitrary and capricious. *See Kleppe*, 427 U.S. at 414-15.

⁶⁰ EA at 53.

43. The RSM Project facilities would fall within five separate HUC-12 watersheds.⁶¹ The EA's use of the HUC-12 watershed as the geographic scope resulted in the inclusion of six other projects or activities occurring within the HUC-12 watersheds that could impact surface water, wetlands, air, noise, groundwater, soils, land use, vegetation, and wildlife.⁶² The EA concluded that the project's direct impacts to these resource areas will be minimal and would not contribute to adverse cumulative impacts.

44. The NBLG Project is a planned 1,200 megawatt gas-fueled power plant that would be constructed approximately one mile east of Transco's proposed Bergen Loop in a heavily industrialized area near existing energy and utility infrastructure. Based on available information, the proposed location for the NBLG Project is currently used by a demolition company and is zoned for a power plant. The NBLG Project contemplates beginning operations in 2022.⁶³

45. The NBLG Project would be within the same geographic scope for cumulative impacts on certain environmental resources, namely, water resources, wildlife, and vegetation. Construction of the NBLG Project would begin near the projected in-service date for the RSM Project and would overlap primarily with project restoration activities. The proposed Bergen Loop portion of the RSM Project is within a region covered by tidally influenced wetlands with historic development and wetland loss. Although RSM Project impacts include long-term and permanent impacts on wetlands, the extent of these impacts would not be significant. The EA concluded that the limited permanent impact on wetlands from the project would be cumulatively minor when considered in the context of the other projects' wetland impacts. Based on the industrialized location of the NBLG Project, we conclude that these two projects would not result in significant cumulative impacts on water resources, wildlife, or vegetation.

46. Transco's proposed Garden State Expansion will include the installation of a new compressor station and a meter and regulating station in Burlington County, New Jersey, as well as modifications at an existing compressor station in Mercer County, New Jersey. Its proposed Northeast Supply Enhancement Project will include new pipeline facilities in Lancaster and Middlesex Counties, New Jersey, and in New York State waters between New Jersey and Staten Island, as well as additional compression at an existing compressor station in Chester County, Pennsylvania.

⁶¹ EA at Appendix D, Figure 1.

⁶² EA at 54-55.

⁶³ Although it appears likely the NBLG Project, if constructed, will seek a connection to Transco, it is not a shipper on the RSM Project.

47. Because both the Garden State and Northeast Supply Enhancement Projects will be located outside the geographic scope for impacts on the resources considered in the EA, we find that the EA appropriately omitted both projects from its cumulative impacts review. We find that the EA's use of a geographic scope was reasonably based on the expected extent of effects. The fact that projects are being proposed by the same proponent and will be located in the same state does not necessarily mean that those projects will have cumulative effects.

48. Finally, the EA concluded, and we agree, that Marcellus shale development will not result in cumulative impacts to resources affected by the RSM Project. With respect to upstream gas development activities, given the large geographic scope of the Marcellus and Utica Shale natural gas production areas, and the potential consumptive resources, the magnitude of analysis requested by Food & Water Watch bears no relationship to the limited magnitude of the project's 52 acres required for construction of the facilities. Even if the Commission were to vastly expand the geographic scope of the cumulative effects analysis, which would be inappropriate, the impacts from such shale gas development are not reasonably foreseeable. Accordingly, the EA appropriately excluded potential upstream activities (e.g., induced gas extraction and hydraulic fracturing) from the cumulative impacts analysis.

2. Upstream GHG Emissions

49. Food & Water Watch comments that the direct and indirect effects from shale gas production, which is facilitated by hydraulic fracturing, should be included in the EA. The RSM Project does not involve shale gas development and will, therefore, not involve any direct effects associated with shale gas production.

50. Nor are upstream effects related to the production of natural gas indirect effects of the RSM Project. CEQ regulations state that an agency's NEPA review must analyze a project's indirect impacts, which are causally connected to the proposed action and occur "later in time or farther removed in distance [than direct impacts], but are still reasonably foreseeable."⁶⁴ Indirect impacts may include the impacts of other activities induced by a proposed project, including growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water.⁶⁵ However, for an agency to include consideration of an impact in its NEPA analysis as an indirect effect, approval of the proposed project and the related

⁶⁴ 40 CFR §1508.8(b) (2017).

⁶⁵ *Id.*

secondary effect must be causally related, i.e., the agency action and the effect must be “two links of a single chain.”⁶⁶

51. The fact that natural gas production and transportation facilities are all components of the general supply chain required to bring domestic natural gas to market does not mean that our approval of the RSM Project will cause or induce the effect of additional or further shale gas production. The purpose of the proposed project is to meet demand for long-term firm transportation of natural gas supplies to the project shippers. The demand for energy and the proposed project are a result of, rather than a precursor to, development in this region. Therefore, we conclude that the project will not result in adverse growth-inducing effects.

52. As we have previously concluded in natural gas infrastructure proceedings, the environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline (or other natural gas infrastructure) nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ regulations.⁶⁷ A causal relationship sufficient to warrant Commission analysis of the non-pipeline activity as an indirect impact would only exist if the proposed pipeline would transport new production from a specified production area and that production would not occur in the absence of the proposed pipeline (i.e., there will be no other way to move the gas).⁶⁸ To date, the Commission has not been presented with a proposed pipeline project that the record shows will cause the predictable development of gas reserves. In fact, the opposite causal relationship is more likely; i.e., once production begins in an area, shippers or end users will support the development of a pipeline to move the produced gas. It would make little economic sense to undertake construction of a pipeline in the hope that production might later be determined to be economically

⁶⁶ *Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394 (9th Cir. 1980).

⁶⁷ See, e.g., *Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81–101 (2011), *order on reh’g*, 138 FERC ¶ 61,104, at PP 33–49 (2012), *petition for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474–75 (2d Cir. 2012) (unpublished opinion).

⁶⁸ Cf. *Sylvester v. U.S. Army Corps of Engin’rs*, 884 F.2d 394, 400 (9th Cir. 1989) (upholding the environmental review of a golf course that excluded the impacts of an adjoining resort complex project). See also *Morongo Band of Mission Indians v. F.A.A.*, 161 F.3d 569, 580 (9th Cir. 1998) (concluding that increased air traffic resulting from airport plan was not an indirect, “growth-inducing” impact); *City of Carmel-by-the-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1162 (9th Cir. 1997) (acknowledging that existing development led to planned freeway, rather than the reverse, notwithstanding the project’s potential to induce additional development).

feasible and that the producers will choose the previously constructed pipeline as best suited for moving their gas to market.

53. Therefore, we conclude that any incremental increase in high volume hydraulic fracturing is not an indirect effect of the project. Further, because the exact location, scale, and timing of any future production facilities are unknown, additional analysis will not inform our decision making.

3. Segmentation of Projects

54. The CEQ regulations require the Commission to include “connected actions,” “cumulative actions,” and “similar actions” in its NEPA analyses. An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration. “Connected actions” include actions that: (a) automatically trigger other actions, which may require an EIS; (b) cannot or will not proceed without previous or simultaneous actions; or (c) are interdependent parts of a larger action and depend on the larger action for their justification.⁶⁹

55. In evaluating whether multiple actions are, in fact, connected actions, courts have employed a “substantial independent utility” test, which the Commission finds useful for determining whether the three criteria for a connected action are met. The test asks “whether one project will serve a significant purpose even if a second related project is not built.”⁷⁰ For proposals that connect to or build upon an existing infrastructure network, this standard distinguishes between those proposals that are separately useful from those that are not. While the analogy between the two is not apt in many regards, similar to a highway network, “it is inherent in the very concept of” the interstate pipeline grid “that each segment will facilitate movement in many others; if such mutual benefits compelled aggregation, no project could be said to enjoy independent utility.”⁷¹

⁶⁹ 40 C.F.R. § 1508.25(a)(1) (2017).

⁷⁰ *Coalition on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987). See also *O’Reilly v. U.S. Army Corps of Eng’rs*, 477 F.3d 225, 237 (5th Cir. 2007) (defining independent utility as whether one project “can stand alone without requiring construction of the other [projects] either in terms of the facilities required or of profitability.”).

⁷¹ *Coalition on Sensible Transp., Inc. v. Dole*, 826 F.2d at 69.

56. In *Delaware Riverkeeper Network*, the court ruled that individual pipeline proposals were interdependent parts of a larger action where four pipeline projects, when taken together, would result in “a single pipeline” that was “linear and physically interdependent” and where those projects were financially interdependent.⁷²

57. Food & Water Watch comments that the environmental impacts of Transco’s Gateway Expansion Project (Docket No. CP18-18-000) and Northeast Supply Enhancement Project (Docket No. CP17-101-000) should be reviewed along with those of the current project in a single NEPA document.

58. The Gateway Expansion Project will involve compressor station upgrades in Roseland, New Jersey, and an M&R station replacement in Paterson, New Jersey. The closest Gateway Expansion Project facility (the Paterson M&R) is approximately 5.5 miles from the RSM Project’s Paramus M&R. The remaining Gateway Expansion facilities are over 10 miles from any project facilities.⁷³

59. The Northeast Supply Enhancement Project will involve 10.2 miles of pipeline loop in Lancaster County, Pennsylvania; 3.4 miles of pipeline loop in Middlesex County, New Jersey; 23.5 miles of pipeline loop in Middlesex and Monmouth Counties, New Jersey, and Queens and Richmond Counties, New York; modification of existing Compressor Station 200 in Chester County, Pennsylvania; construction of new Compressor Station 206 in Somerset County, New Jersey; and ancillary facilities. The closest Northeast Supply Enhancement Project facility (the Madison Loop) is approximately 20 miles from the RSM Project’s Central Manhattan M&R.⁷⁴

60. Without providing any support, Food & Water Watch simply states that “[t]he projects are clearly connected.”⁷⁵ The Gateway Expansion, Northeast Supply Enhancement, and RSM Projects are neither connected actions nor “closely related” actions, nor do they automatically trigger other actions requiring a combined NEPA review. Actions are not connected if they display independent utility. The Northeast Supply Enhancement, Gateway Expansion, and Rivervale South to Market Projects will

⁷² *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, at 1314 (D.D.C. 2014).

⁷³ A Notice of Intent to prepare an EA for the Gateway Expansion Project was issued on January 2, 2018.

⁷⁴ A draft environmental impact statement for the Northeast Supply Enhancement Project was issued on March 23, 2018.

⁷⁵ Food & Water Watch’s Comments at 3.

supply either different shippers or common shippers beginning in different heating seasons. The RSM Project will supply Direct Energy's and UGI's residential and commercial customers in the New York City area beginning in the 2019/2020 heating season.⁷⁶ The Northeast Supply Enhancement Project is designed to supply Brooklyn Union Gas Company's and KeySpan Gas East Corporation's residential and commercial customers in the New York City area beginning in the 2019/2020 heating season. The Gateway Expansion Project is being developed to supply Public Service Enterprise Group Power's and UGI's residential and commercial customers in the New York City area beginning in the 2020/2021 heating season.

61. Additionally, construction and operation of the Northeast Supply Enhancement, Gateway Expansion, and Rivervale South to Market Projects do not require other previous or simultaneous actions to be taken. Each project comprises discrete facilities in separate locations. Further, the RSM project has separate shipper receipt and delivery points from the Northeast Supply Enhancement and Gateway Expansion Projects. In addition, Commission staff has independently examined the submitted flow diagrams for the three projects and has determined that the design of the RSM Project submitted in this application is not affected by either the Northeast Supply Enhancement or the Gateway Expansion Project and that RSM can provide all required transportation services to its shippers independently of the other two projects.

62. Although the actions may have similar timing, they have geographical differences, and each project addresses separate needs. Unlike the projects at issue in *Delaware Riverkeeper Network*, the Northeast Supply Enhancement, Gateway Expansion, and Rivervale South to Market Projects are not "financially and functionally interdependent."⁷⁷ Transco's proposed Northeast Supply Enhancement Project and proposed Gateway Expansion Project are independent projects that are not in any way reliant upon the RSM Project (or vice versa). We therefore agree with the conclusions in the EA that analyzing the impacts of these three projects in one single document, either a combined EA or EIS, is not warranted.

4. Surface Waters

63. Hackensack Riverkeeper, Food & Water Watch, and Sierra Club express concern that construction of the RSM Project poses a risk to two reservoirs that are sources of

⁷⁶ EA at 1.

⁷⁷ *Delaware Riverkeeper Network*, 753 F.3d 1304, at 1319. See also *City of Boston Delegation, et al. v. FERC*, No. 16-1081, *et al.*, slip op. 13-18 (D.C. Cir. July 27, 2018) (providing an overview of other FERC segmentation and cumulative impacts cases).

drinking water. Sierra Club also asserts that the reservoirs would be threatened with contamination. Two project facilities (the proposed Orange and Rockland M&R and the J199 Valve) are adjacent to the Lake Tappan and the Oradell Reservoirs, respectively. As stated in the EA,⁷⁸ Transco proposes to utilize water from Lake Tappan for hydrostatic testing of the pipeline. However, no water would be discharged into Lake Tappan after the completion of hydrostatic testing. Transco would minimize the potential for erosion to impact nearby surface waters during construction by implementing the measures contained in its *Upland Erosion Control, Revegetation and Maintenance Plan* (Plan) and its *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures), such as installing silt fencing and restoring the areas disturbed by construction as soon as possible following the completion of construction. Therefore, the EA concluded that the project's impacts on surface waters would be temporary and minor.⁷⁹ We agree.

64. Hackensack Riverkeeper expresses concern that the project risks dredging up contaminated sediment from the bed of the Hackensack River. In addition, the Hackensack River qualifies for listing on the National Priorities List, and listing of the river as a Superfund site is pending. Sierra Club comments that heat from the pipeline would change water quality. The project does not involve any pipeline construction within waterbodies, including the Hackensack River. Hackensack Riverkeeper comments that compressor stations create water pollution by releasing toxic chemicals. However, the project does not involve the construction of new or modified compressor stations. As stated in section B.3.3 of the EA, Transco will use the Hackensack River for the withdrawal and discharge of hydrostatic test water, and as stated in section B.4.3 of the EA, Transco would use floating intakes so they are not laying directly on the streambed. In addition, the test water discharge rate would be regulated, and energy dissipating devices would be utilized to prevent streambed scour. If necessary, the test water would be treated prior to discharge in accordance with all applicable permit conditions. Therefore, the EA concluded that impacts on waterbodies would be temporary and minor.⁸⁰ We agree.

65. The NJDEP comments that any discharge upstream of the Oradell Reservoir must be closely monitored to ensure that no contaminants are discharged that could affect the water quality or threaten public health. The withdrawal and possible discharge location that Transco would use is downstream of the Oradell Reservoir. Regardless, any discharges would be permitted through the NJDEP, and Transco would be required to

⁷⁸ EA at 25-27.

⁷⁹ EA at 25.

⁸⁰ EA at 27.

adhere to any permit conditions, including testing of water prior to discharge. Therefore, we conclude that the project would not impact the water quality of the Oradell Reservoir.

5. Wetlands

66. Sierra Club and Hackensack Riverkeeper express concern about the project's impacts on wetlands. Specifically, Hackensack Riverkeeper is concerned about impacts on the existing Marsh Resources Inc. Mitigation Bank. As stated in the EA, Transco would limit construction of the project to wetlands entirely on Transco-owned land adjacent to this wetland mitigation bank. The impacts on wetlands would mostly be temporary, with the exception of a 0.06-acre area that would be permanently impacted by the construction of a pig receiver and thermoelectric generator. The EA concluded that the project would not have a significant impact on wetland resources because Transco would construct the Bergen Loop in accordance with its Procedures and would restore all temporary workspaces in coordination with the Marsh Resources, Inc. Mitigation Bank Program. Further, the minor permanent impacts on wetlands would be offset by purchasing mitigation credits. Therefore, the EA concluded that the project's impacts on wetlands would be sufficiently minimized and would not represent a significant impact on this resource.⁸¹ We agree.

67. Hackensack Riverkeeper comments that a major or minor failure of the pipeline would pose a risk to wetlands (and wildlife). Although a pipeline failure scenario could impact certain nearby resources, this is not an anticipated part of the project, nor a likely occurrence requiring evaluation in the EA. We note that pipeline safety is addressed in section B.9 of the EA and is discussed further below. The EA concluded that the project represents a minimum increase in risk to the public.⁸² Therefore, we conclude that the risk of a pipeline failure to impact wetlands or other environmental resources is minimal.

6. Wildlife

68. Hackensack Riverkeeper comments that aspects of the project are already impacting osprey due to deflectors installed above previous nest locations in accordance with depredation permits issued to Transco by the NJDEP on March 8, 2018. The deflectors that the Hackensack Riverkeeper refers to are a permitted activity that has been approved by the NJDEP to deter osprey from nesting at existing Transco facilities. If indeed osprey are being deterred from the area, that is by specific design, and the NJDEP-administered program is working as intended. This activity (deterrence of osprey nesting at existing infrastructure facilities) is necessary regardless of the construction of

⁸¹ EA at 28.

⁸² EA at 51.

the proposed project. The EA concluded that the project's impacts on adult birds would be of limited duration and would not result in substantial or long-term change in migration patterns nor constitute a population-level impact.⁸³ We agree.

69. Hackensack Riverkeeper asserts that the disturbance of contaminated sediment in the Hackensack River would affect bald eagle populations. As previously discussed, the only impact on the Hackensack River would be the withdrawal and possible discharge of hydrostatic test water. Transco proposes to use floating intakes so they are not laying directly on the streambed, regulate the test water discharge rate, and use energy dissipating devices to minimize streambed scour. With these mitigation measures, the EA concluded that impacts on the Hackensack River would be minor and temporary.⁸⁴ We agree.

70. Hackensack Riverkeeper, Food & Water Watch, and Sierra Club comment that much of the area in question provides natural habitat for deer, birds, and other wildlife which would be further threatened by construction-related activity, including the felling of trees, and application of herbicides during maintenance of the right-of-way. The project would involve a minor amount of tree felling (1.73 acres). The disruption of wildlife would be short-term during the 8- to 11-month construction period. Herbicides would only be utilized if necessary to control invasive plant species. The EA concluded that the project would not have a significant impact on wildlife or their habitat.⁸⁵ We agree.

7. Climate Change

71. Conservation Groups, Sierra Club, Food & Water Watch, and 350NJ-Rockland all express concern about the impact on climate change from the project and criticize the EA's analysis of greenhouse gas (GHG) emissions. Conservation Groups and Food p/& Water Watch advocate for the inclusion of Social Cost of Carbon in the EA in order to monetize climate change impacts. Conservation Groups also filed detailed comments on the history, value, and methodology for employing the Social Cost of Carbon method. In addition, 350NJ-Rockland requests further information about the calculations and assumptions for GHG emissions, as well as the downstream use of the gas.

⁸³ EA at 32-33.

⁸⁴ EA at 25.

⁸⁵ EA at 30.

72. The EA discusses climate change and GHG emissions directly related to the project.⁸⁶ Further, the EA went beyond that which is required by NEPA and discussed the GHG emissions related to consumption of the natural gas delivered by the project.⁸⁷ As we have previously stated, where the record does not show a specific end use of the gas transported by the project, as is the case here, downstream emissions from the consumption of that natural gas are not indirect effects as defined by CEQ.⁸⁸

73. As stated in the EA, emissions of GHGs are typically quantified in terms of carbon dioxide equivalents by multiplying emissions of each GHG by its respective global warming potential. Methane emissions were included in the total estimated carbon dioxide equivalent emissions for the project. Estimates of applicable emissions that would be generated during construction and operation of the project are presented in tables B-5 and B-6,⁸⁹ including fugitive emissions. Detailed calculations for these GHG values can be found in Appendix 9A of Transco's environmental resource reports.⁹⁰ The EA's use of the global warming potential for methane designated as "25" specifically follows U.S. Environmental Protection Agency guidance for methane.⁹¹

⁸⁶ EA at B.8.1.

⁸⁷ EA at 59.

⁸⁸ See *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 39, 40-42 (2018) (explaining that the upper-bound estimates of downstream consumption provide the worst-case scenarios of peak use and are therefore inherently speculative when "there is nothing in the record that identifies any specific end use or new incremental load downstream of the [Project]. [K]nowledge of these and other facts would indeed be necessary in order for the Commission to fully analyze the effects related to the . . . consumption of natural gas."). See also *Tennessee Gas Pipeline Co., L.L.C.*, 163 FERC ¶ 61,190, at P 61 (2018) (explaining that the downstream consumption of transported gas is not an indirect impact because the gas to be transported by the Broad Run Expansion Project will be delivered by the project's sole shipper, a producer, into the interstate natural pipeline grid and not to a specific end user).

⁸⁹ EA at 45 and 46, respectively.

⁹⁰ The environmental resource reports for the project are publicly available on FERC's e-library at accession number 20170831-5268 as part of Transco's 7(c) certificate application on August 31, 2017.

⁹¹ Available at <https://www.epa.gov/criteria-air-pollutants/naaqs-table>.

74. Commenters object to the EA's assertion that no significance determination can be made with respect to climate change and request that the Commission reject the project based on the increase in emissions inherent to any incremental expansion of natural gas infrastructure. We continue to find that the EA correctly concluded that no standard methodology exists for ascribing significance to a given volume of GHG emissions.⁹² Without an accepted methodology, the Commission cannot make a finding whether a particular quantity of GHG emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change.⁹³

75. Our decision not to use integrated assessment models or other atmospheric modeling methods does not in any way indicate that the Commission is not cognizant of the potentially severe consequences of climate change, does not undermine our hard look at the effects of the project and our disclosure of these effects to the public, or undermine informed public comment or informed decision making. Nevertheless, the Commission is committed to monitoring climate science, state and national targets, and climate models that may inform our decision making.⁹⁴

8. Specific Air, Noise, and Safety Impacts

76. The NJDEP provides comments regarding construction emissions associated with the project. The NJDEP recommends specific mitigation measures including adhering to New Jersey's No Idling Law and otherwise limiting exposure to diesel exhaust from construction vehicles. We encourage and expect Transco to cooperate with state and local regulations, including those limiting idling vehicles and designating truck routes.

⁹² EA at 59. See also *DTE Midstream Appalachia, LLC*, 162 FERC ¶ 61,238, P 79 (2018) (explaining that “[t]he Commission’s policy on the use of the Social Cost of Carbon has been to recognize the availability of this tool, while concluding that it is not appropriate for use in project-level NEPA reviews”); *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233, PP 30-51 (2018) (discussing determination not to employ the Social Cost of Carbon in FERC proceedings); *Western Organization of Resource Councils v. U.S. Bureau of Land Management*, CV 16-21-GF-BMM, slip op. at 36 (D. Mon. Mar. 23, 2018) (holding that NEPA does not require an agency to use a global carbon budget analysis or to undertake cost-benefit analysis using the Social Cost of Carbon protocol).

⁹³ See *National Fuel Gas Supply Corp. and Empire Pipeline, Inc.*, 158 FERC ¶ 61,145, at P 187 (2017).

⁹⁴ See *WildEarth Guardians*, 738 F.3d 298, 309 (D.C. Cir. 2013) (“Because current science does not allow for the specificity demanded . . . , the BLM was not required to identify specific effects on the climate in order to prepare an adequate EIS.”).

The NJDEP also notes that a new General Conformity Applicability Analysis should be performed if other projects, such as Transco's Gateway Expansion Project or other activities related to Transco's Individual Permit under Section 404 of the Clean Water Act, be considered a part of the RSM Project. General Conformity Applicability Analysis is presented in the EA in section 8.1⁹⁵ and shows all estimated construction emissions to be well below thresholds for further analysis. As discussed above, we do not consider any additional unrelated projects or activities to be part of the RSM Project.

77. Hackensack Riverkeeper and Sierra Club express concern about operational air emissions from compressor stations. Hackensack Riverkeeper suggests that the uprate of the pipeline facilities would result in "uprating the emissions" at a compressor station. However, there are no changes to compressor station facilities associated with this project and there would be no increase in the maximum potential-to-emit at any existing compressor station associated with the project.

78. Rosemary Carey also notes the existing noise impacts from the current Orange and Rockland M&R in River Vale and expresses concern that noise impacts would worsen. Estimates of noise from the existing and modified meter and regulator stations are presented in EA table B-7.⁹⁶ Operational noise from the Orange and Rockland M&R is expected to decrease by 2 decibels, which may or may not be noticeable to nearby residents.⁹⁷

79. Hackensack Riverkeeper, 350NJ Rockland, Food & Water Watch, and Rosemary Carey all state that natural gas facilities represent some risk to public safety and specifically express concern about the possibility of the pipeline leaking. The EA addressed safety concerns in section B.9. We note that the U.S. Department of Transportation regulations require Transco to inspect and patrol for leaks, especially in populated areas. The project also includes construction of new pig launching facilities, which will facilitate continued internal inspections of the pipeline.⁹⁸

9. Conclusions

80. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Transco's application and supplements, and in compliance with the

⁹⁵ EA at 45.

⁹⁶ EA at 48.

⁹⁷ *Id.*

⁹⁸ A "pig" is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

environmental conditions in Appendix B 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. Commission staff will only issue a notice to proceed with an activity when satisfied that the applicant has complied with all applicable conditions. 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.

81. 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.⁹⁹

82. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Transco, authorizing it to construct and operate the proposed facilities, as described and conditioned herein, and as more fully described in the application.

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

⁹⁹ 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).

(1) Transco's 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) Transco's compliance with all applicable Commission regulations under the NGA 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;

(3) Transco's compliance with the environmental conditions listed in the appendix to this order; and

(4) Transco's filing written statements affirming that it has executed firm service agreements for volumes and service terms equivalent to those in its precedent agreement, prior to commencing construction.

(C) Transco's revised incremental monthly reservation charge and system commodity charge under Rate Schedule FT are approved as the initial rates for the project, as described above.

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

(E) Transco's proposal to utilize its existing, system-wide fuel retention and electric power unit rates is approved.

(F) Transco shall file revised tariff records no earlier than 60 days and no later than 30 days prior to the date the project facilities will go into service.

(G) Transco must file not less than 60 days before the in-service date of the proposed facilities an executed copy of the non-conforming agreements reflecting the non-conforming language and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.

(H) Transco shall keep separate books and accounts of costs attributable to the proposed incremental services, as described above.

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

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

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A – Timely Intervenors

Atlanta Gas Light Company, *et. al.*

NJR Energy Services Company

New Jersey Natural Gas Company

Hackensack Riverkeeper

Direct Energy Business Marketing, LLC

Philadelphia Gas Works

Exelon Corporation

Piedmont Natural Gas Company, Inc.

PSEG Energy Resources & Trade LLC

National Grid Gas Delivery Companies

Municipal Gas Authority of Georgia, jointly with the Transco Municipal Group

Appendix B – Environmental Conditions

1. Transco shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by the Order. Transco must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Transco 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.

Transco'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. Transco's right of

eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

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

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

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction begins**, Transco shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Transco must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Transco 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 Transco 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 Transco 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 Transco's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Transco 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. Transco shall employ at least one EI per construction spread. The EI shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 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, Transco 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 Transco'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(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Transco from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transco's response.
9. Transco must receive written authorization from the Director of OEP **before commencing construction of any project facilities**. To obtain such authorization, Transco must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Transco 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**, Transco 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 Transco 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 Central Manhattan Meter and Regulation Station**, Transco shall consult with the New Jersey Department of Environmental Protection regarding appropriate groundwater containment and disposal guidelines and practices, and file the results of this consultation, along with any proposed

mitigation measures, with the Secretary, for review and written approval by the Director of OEP.

13. Transco **shall not begin construction** of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. Transco files with the Secretary the New Jersey State Historic Preservation Officer's comments on the January 12, 2018 project modification information; and
 - b. the Director of OEP notifies Transco in writing that construction may proceed.
14. **Prior to any construction activity outside of typical construction hours (i.e., 7 a.m – 7 p.m.),** Transco shall file with the Secretary, for review and written approval by the Director of OEP, a nighttime construction mitigation plan that:
 - a. describes reasonable measures Transco will implement to reduce anticipated traffic and light pollution impacts;
 - b. estimates the noise levels attributable to construction at the nearest noise sensitive areas (NSA) and mitigation measures Transco will implement to restrict noise to no more than a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at the NSAs; and
 - c. provides noise monitoring measures.
15. Transco shall file noise surveys with the Secretary **no later than 60 days after placing the Orange and Rockland Meter and Regulation Station in service.** If a full load condition noise survey is not possible, Transco shall provide an interim survey at the maximum possible power load and provide the full power load survey **within six months.** If the noise attributable to the operation of all the equipment at the facility at interim or full power load conditions exceeds 55 decibels on the A-weighted scale day-night averaged sound level at any nearby noise sensitive areas, Transco shall file a report on what changes are needed and shall install additional noise controls to meet the recommended noise level **within one year** of the in-service date. Transco shall 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.**

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP17-490-000

(Issued August 10, 2018)

LaFLEUR, Commissioner, *concurring*:

Today's order grants Transco's request for authorization to construct and operate the Rivervale South to Market Project (RSM Project).¹ After carefully balancing the need for the project and its environmental impacts, I believe the project is in the public interest. I write separately to note my ongoing concerns regarding the Commission's policy approach to the consideration of climate change impacts in our environmental reviews of proposed pipeline projects.

In this case, the Commission quantified and disclosed the upper-bound estimate of downstream greenhouse gas (GHG) emissions associated with the RSM Project.² The volume of GHG emissions associated with the downstream use would result in an approximate 3.3 percent increase in GHG emissions in New Jersey and .071 percent increase of national GHG emissions. At a minimum, I believe we should continue to do this GHG quantification and analysis as part of our environmental review of pipeline projects. I recognize that this full-burn estimate is simply a mathematical derivative of pipeline volume, but I believe it should be disclosed, as I consider it part of my public interest determination, particularly where there is not more precise evidence of downstream pipeline utilization. In the future, more information in the record regarding the identified end uses would enable the Commission to more accurately assess indirect impacts of downstream GHG emissions by calculating gross and net GHG emissions as part of our National Environmental Policy Act (NEPA) responsibilities.

While the Commission did disclose the state and national comparison data, it did

¹ *Transcontinental Gas Pipe Line Company, LLC*, 164 FERC ¶ 61,101 (2018) (Certificate Order).

² Using a methodology developed by the Environmental Protection Agency to conduct an upper-bound estimate of the downstream GHG emissions from the project, and assuming that the maximum quantity of gas potentially transported by the project is eventually combusted, would result in the emission of as much as 3.7 million metric tpy of CO₂e.² Environmental Assessment at 59.

not ascribe significance to the percent increase in GHG emissions, and instead concludes that it cannot making a finding on whether a particular amount of GHG emissions is significant.³ We are required by NEPA to reach a determination regarding the significance of all environmental impacts, including the indirect impacts of downstream GHG emissions. It is our responsibility to use the best information we have, on a case-by-case basis, to make that determination.

We could also translate the GHG emissions from a particular project into monetized climate damages using the Social Cost of Carbon, allowing the Commission to provide context to the quantified rate or volume of GHG emissions of a pipeline project and ascribe significance as part of our NEPA review.⁴ That is precisely the use for which the Social Cost of Carbon was developed – it is a scientifically-derived tool to translate tonnage of carbon dioxide or other GHGs to the cost of long term climate harm. As I have stated before, I believe the Social Cost of Carbon can meaningfully inform the Commission’s decision-making to reflect the climate change impacts of a particular project. I appreciate that regardless of the approach, deciding how to determine significance would require thoughtful analysis and decision-making by the Commission, such as we apply in many other areas of our work.

For these reasons, I respectfully concur.

Cheryl A. LaFleur
Commissioner

³ Certificate Order at P 76.

⁴ Social Cost of Carbon is meant to measure the physical, incremental impacts from a project including changes in net agricultural productivity, human health, property loss and damages from increased flood risk, and energy demand changes.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP17-490-000

(Issued August 10, 2018)

GLICK, Commissioner, *dissenting in part*:

In today's order, the Commission grants Transcontinental Gas Pipe Line Company's (Transco) request for authorization to construct and operate its Rivervale South to Market Project (Project), finding that the Project is required by the public convenience and necessity.¹ The Commission also concludes that the Project will not have a significant effect on the environment.² In reaching these conclusions, the Commission maintains that it need not consider the harm from the Project's contribution to climate change. I believe that the Commission's refusal to do so falls well short of our obligations under the Natural Gas Act (NGA)³ and the National Environmental Policy Act (NEPA).⁴ While the Commission quantifies the Project's downstream greenhouse gas (GHG) emissions, the Commission nonetheless determines that upstream and downstream GHG emissions are not reasonably foreseeable and that it is not obligated to determine whether the resulting harm from the Project's contribution to climate change is significant.⁵ I dissent in part from today's order because I disagree with these conclusions and believe the Commission cannot find that the Project is in the public interest without first considering the significance of the Project's contribution to climate change.⁶

¹ *Transcontinental Gas Pipe Line Company, LLC*, 164 FERC ¶ 61,101 (2018). (Certificate Order).

² *Id.* P 36 n.50; *see also* Final Environmental Assessment at 65 (EA).

³ 15 U.S.C. § 717f (2012).

⁴ 42 U.S.C. § 4321 *et seq.* (2012).

⁵ Certificate Order, 164 FERC ¶ 61,101 at PP 50–51, 53, 72.

⁶ 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

The Commission continues to avoid addressing the harm caused by the Project's contribution to climate change, claiming that the "Commission cannot make a finding whether a particular quantity of GHG emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change."⁷ However, the EA for the Project includes a "full-burn" analysis that quantifies the potential downstream GHG emissions associated with combusting the amount of gas that the Project could transport.⁸ Nevertheless, the Commission refuses to recognize the harm from these emissions as an indirect effect of the Project, surmising that only where the record shows definitive information about the end use of the gas transported can the Commission conclude that downstream emissions from the consumption indirect effects.⁹ Similarly, the Commission concludes that the incremental transportation capacity of the pipeline will not "cause or induce the effect of additional or further shale gas production" absent information regarding the exact location, scale, and timing of any future production facilities.¹⁰ Such definitions of upstream and downstream indirect effects are overly narrow and circular.¹¹ NEPA does

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).

⁷ Certificate Order, 164 FERC ¶ 61,101 at P 74.

⁸ EA at 59 (Calculating downstream GHG emissions based on the full design capacity of the Project). This calculation was made prior to the policy change, announced in *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 38–42, 59–63 (2018) (*New Market*), to exclude downstream GHG emissions calculations in cases where the exact end use location for consumption is not known.

⁹ Certificate Order, 164 FERC ¶ 61,101 at P 72 ("[W]here the record does not show a specific end use of the gas transported by the project, as is the case here, downstream emissions from the consumption of that natural gas are not indirect effects.").

¹⁰ *Id.* at PP 50-51, 53.

¹¹ *See San Juan Citizens All. et al. v. United States 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"). In adopting this narrow and circular

not permit agencies to so easily shirk their responsibilities to consider environmental consequences. Instead, it requires that the Commission engage in reasonable forecasting and estimation 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 be "available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision."¹²

As the U.S. Court of Appeals for the District of Columbia Circuit explained in *Sierra Club v. FERC (Sabal Trail)*, in the face of indefinite variables, "agencies may sometimes need to make educated assumptions about an uncertain future."¹³ The Commission cannot point to the mere presence of uncertainty over upstream and downstream GHG emissions to excuse it from considering the harm from the Project's contribution to climate change. In the case of new natural gas pipelines, it is reasonable to assume that building incremental transportation capacity will result in some level of combustion of natural gas and spur additional production, even if the exact details are not available. As the United States Court of Appeals for the Eighth Circuit explained in *Mid States*—a case that also involved downstream GHG emissions from new infrastructure for transporting fossil fuels—when the "nature of the effect" (end-use emissions) is reasonably foreseeable, but "its extent is not" (specific consumption activity producing emissions), an agency may not simply ignore the effect.¹⁴

Based on the record here, it is entirely foreseeable that some portion of the natural gas transported through the Project will be combusted, emitting GHGs that contribute to climate change.¹⁵ While the applicant states generally that the project will support

definition, the Commission disregards the Project's central purpose—to facilitate natural gas consumption by providing new supplies.

¹² *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)).

¹³ 867 F.3d 1357, 1374 (D.C. Cir. 2017).

¹⁴ *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2003).

¹⁵ *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004). In order to evaluate circumstances in which downstream impacts of a pipeline facility are reasonably foreseeable results of constructing and operating the proposed facility, I am relying on precisely the sort of "reasonably close causal relationship" that the Supreme Court has required in the NEPA context and analogized to proximate cause. *See id.* at 767 ("NEPA requires a 'reasonably close causal relationship' between the environmental effect and the

growing markets serving commercial, industrial and residential consumers, it also identifies the the potential beneficial impacts of the Project “on air quality by virtue of the fact that natural gas is a clean burning fuel in comparison to other fossil fuels.”¹⁶ It is equally foreseeable that the “nature of effect” will be GHG emissions resulting from end-use combustion, and the Commission can produce comparably useful information based on reasonable forecasts of the GHG emissions.¹⁷ This is the case here, where the Commission did estimate and disclose the potential GHG emissions resulting from downstream consumption, utilizing information provided in the record and publicly available analytical tools.¹⁸ Under these circumstances, the Commission must consider the harm caused by the Project’s contribution to climate change resulting from this likely end use.¹⁹

alleged cause. The Court [has] analogized this requirement to the ‘familiar doctrine of proximate cause from tort law.’”) (quoting *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)); see also *Paroline v. United States*, 134 S. Ct. 1710, 1719 (2014) (“Proximate cause is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct.”); *Staelens v. Dobert*, 318 F.3d 77, 79 (1st Cir. 2003) (“[I]n addition to being the cause in fact of the injury [the but for cause], the plaintiff must show that the negligent conduct was a proximate or legal cause of the injury as well. To establish proximate cause, a plaintiff must show that his or her injuries were within the reasonably foreseeable risks of harm created by the defendant’s negligent conduct.”) (internal quotation marks and citations omitted).

¹⁶ Transco Application at 15, 17.

¹⁷ In comments recently submitted in the Commission’s pending review of the natural gas certification process, the Environmental Protection Agency recommended 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.” United States Environmental 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 EA at 59.

¹⁹ *Sabal Trail*, 867 F.3d at 1371–72; *id.* at 1374.

As I have said previously, quantifying a project's GHG emissions, including reasonably foreseeable upstream and downstream emissions, is a necessary—but not sufficient—step in meeting the Commission's obligations to consider a project's environmental effects associated with climate change.²⁰ NEPA and the NGA's public interest standard require the Commission to consider not the GHG emissions themselves but the resulting environmental impact. The Commission not only refuses to consider the significance of the Project's climate-change impact, but also maintains that it lacks the means to do this.²¹

The Commission is incorrect insofar as it concludes that there is no “no standard methodology exists for ascribing significance to a given volume of GHG emissions.”²² That is precisely what the Social Cost of Carbon provides. It translates the long-term damage done by a ton of carbon dioxide into a monetary value, thereby providing a meaningful and informative approach for satisfying an agency's obligation to consider how its actions contribute to the harm caused by climate change. The U.S. Environmental Protection Agency recommended this approach in its comments on the Commission's pending review of the natural gas certification process, explaining that estimates of the Social Cost of Carbon “may be used 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.”²³ Furthermore, the U.S. Council on Environmental Quality regulations themselves outline a framework for determining

²⁰ See *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197, at 7 (2018) (Glick, Comm'r, dissenting); *Tennessee Gas Pipeline Company, L.L.C.*, 163 FERC ¶ 61,190, at 2 (2018) (Glick, Comm'r, dissenting in part); *Fla. Se. Connection, LLC*, 163 FERC ¶ 61,158, at 1–2 (Glick, Comm'r, dissenting in part); *Gulf South Pipeline Company, LP.*, 163 FERC ¶ 61,124, at 1–2 (Glick, Comm'r, dissenting in part); *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,223, at 6 (2018) (Glick, Comm'r, dissenting).

²¹ Certificate Order, 164 FERC ¶ 61,101 at P 74; *see also* EA at 59.

²² Certificate Order, 164 FERC ¶ 61,101 at P 74.

²³ United States Environmental Protection Agency, Comments, Docket No. PL18-1-000, at 4–5 (filed June 21, 2018).

whether a project's impacts on the environment will be considered significant.²⁴

* * *

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 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.²⁵ 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 the existential threat of climate change.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner

²⁴ 40 C.F.R. § 1508.27 (2017) (setting forth a list of factors agencies should rely on when determining whether a project's environmental impacts are "significant" considering both "context" and "intensity").

²⁵ 15 U.S.C. 717f(c)(1)(A).