No. ___

IN THE

Supreme Court of the United States

NORTH CAROLINA UTILITIES COMMISSION,

Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Natural Gas Act provides States and State regulatory commissions procedural rights to challenge Federal Energy Regulatory Commission orders in order to protect States' interests. 15 U.S.C. § 717r(a), (b). This Court's opinion in *Massachusetts v. Environmental Protection Association*, 549 U.S. 497, 518-520 (2007) held that States are entitled to special solicitude in courts' standing analyses because they are not normal litigants for purposes of invoking federal jurisdiction. While courts of appeals have offered varying views of *Massachusetts'* scope, in this case, the District of Columbia Circuit did not address *Massachusetts*. Instead, it held a State litigant had not demonstrated injury-in-fact and, therefore, lacked standing to challenge Federal Energy Regulatory Commission orders that authorized construction of interstate pipeline facilities that will be located within the State's borders and that were marketed to serve the State's ratepayers.

The questions presented are:

1. If a court of appeals finds a State litigant failed to demonstrate injury-in-fact that is traceable to the challenged action and redressable by the court, must it separately consider whether the State litigant has standing under *Massachusetts* to challenge orders by a federal agency that implicate the State's quasi-sovereign and *parens patriae* interests?

2. If a federal statute affords a State litigant procedural rights to challenge agency actions that affect the State's quasi-sovereign and *parens patriae* interests, do *Massachusetts* and *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 n.7 (1992) require the State to demonstrate injury-in-fact that is traceable to the

challenged action and redressable by the court in order to establish Article III standing?

PARTIES TO THE PROCEEDING

Petitioner appearing in this Court is the North Carolina Utilities Commission. Petitioner was the appellant in the court of appeals. Petitioner is a governmental entity that is not required to file a Rule 29.6 statement.

Respondent is the Federal Energy Regulatory Commission. Respondent was the appellee in the court of appeals.

The following entities were intervenors in the court of appeals: (1) Transcontinental Gas Pipe Line Company, LLC; (2) The New York State Public Service Commission; and (3) Oglethorpe Power Corporation.

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Pursuant to D.C. Circuit Rule 36, the judgement below was not published. The judgement was issued on April 3, 2019 in *North Carolina Utilities Commission v. F.E.R.C.*, D.C. Circuit Case No. 18-1018. Pet. Appendix-A at 1a-4a.

The orders of the Federal Energy Regulatory Commission that were on appeal below are reported at: (1) 156 FERC ¶ 61,092 (2016), Pet. Appendix-B at 5a-80a; (2) 161 FERC ¶ 61,211 (2017), Pet. Appendix-C at 81a-90a; (3) 156 FERC ¶ 61,022 (2016), Pet. Appendix-D at 91a-129a; (4) 161 FERC ¶ 61,212 (2017), Pet. Appendix-E at 130a-135a; (5) 158 FERC ¶ 61,125 (2017), Pet. Appendix-F at 136a-273a; and (6) 161 FERC ¶ 61,250 (2017), Pet. Appendix-G at 274a-344a.

STATEMENT OF JURISDICTION

The judgement of the court of appeals was entered on April 3, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

In pertinent part, 15 U.S.C. § 717r(a) provides that a "State commission aggrieved by an order issued by the [Federal Energy Regulatory] Commission in a proceeding under this chapter to which such . . . State commission is a party may apply for a rehearing within thirty days after the issuance of such order." Pet Appendix-I at 347a.

In pertinent part, 15 U.S.C. § 717r(b) provides:

> Any party to a proceeding under this chapter aggrieved by an order issued by the [Federal Energy Regulatory] Commission in such

> proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. Pet. Appendix-I at 348-349a.

Other relevant statutes and regulations are contained in the appendix.

STATEMENT OF THE CASE

This case presents a recurring question of exceptional importance that circuit courts have grappled with—the scope and durability of this Court's holding in *Massachusetts v. EPA*, 549 U.S. 497 (2007) regarding the special solicitude afforded to State litigants that challenge federal agency actions affecting the State's interests. Petitioner in the case below, the North Carolina Utilities Commission ("North Carolina Commission"), "is authorized and empowered to initiate and appear before federal and State courts and agencies as in its opinion may be necessary to secure for the users of public utility service in [North Carolina] just and reasonable rates and service" (N.C. Gen. Stat. § 62-48(a), Pet. Appendix-M at 360a). The North Carolina Commission sought judicial review of Federal Energy Regulatory Commission ("FERC") orders that authorized construction of interstate pipeline facilities that were marketed to the State's citizens and that will be constructed and operated within the State's borders. The North Carolina Commission

asserted that *Massachusetts* entitled it to special solicitude in the court's standing analysis. Petitioner Initial Brief at 32-34; Petitioner Reply Brief at 19-21. Without addressing *Massachusetts*, the District of Columbia Circuit dismissed the appeal on the grounds that the North Carolina Commission failed to demonstrate injury-in-fact and, therefore, lacks standing. Pet. Appendix-A at 1a-4a. This finding conflicts directly with this Court's holding in *Massachusetts*; ignores the procedural rights the Natural Gas Act affords State litigants to challenge FERC orders (15 U.S.C. § 717r(a), (b), Pet. Appendix-I at 347a-349a); and deprives North Carolina of the ability to protect its quasi-sovereign and *parens patriae* interests in interstate pipeline facilities that will be constructed and operated within North Carolina's borders and the rates paid by North Carolina citizens for service on those facilities.

A. Legal Framework

1. Congress vested the authority to regulate interstate commerce solely in the federal government. US Const. Art. I, Sec. 8, Cl. 3. The Natural Gas Act vested the power to regulate interstate transportation of natural gas to FERC's predecessor, the Federal Power Commission. 15 U.S.C. § 717(a), (b). FERC's regulatory powers include the authority to determine whether construction and operation of interstate pipeline facilities is in the public interest. 15 U.S.C. § 717f(c), (e).

2. "[T]he regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States." *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 377 (1983). If a State had not joined the Union, it would have the sovereign right to regulate public utilities

that construct facilities located within its borders and that serve its citizens. By joining the Union, however, States relinquished that right to the extent those public utilities engage in interstate commerce. States must rely on the federal government to protect their interests when interstate pipelines impact the State and its citizens.

3. Though the Natural Gas Act vested FERC with authority to regulate interstate transportation of natural gas, it recognized States' special status concerning matters over which FERC has jurisdiction. The Natural Gas Act expressly recognizes States and State commissions as "parties" that may participate in FERC proceedings. 15 U.S.C. § 717n(e); *cf.* 18 C.F.R. § 385.214(a)(2) (unlike other parties that must seek leave to intervene, FERC's regulations authorize State commissions to intervene in proceedings as a matter of right, without motion), Pet. Appendix-O at 364a-365a. "The special solicitude for states and state agencies is also reflected in the provision governing those who may apply for rehearing, which is a prerequisite for judicial review." *Md. People's Counsel v. FERC*, 760 F.2d 318, 320-21 (D.C. Cir. 1985) (discussing 15 U.S.C. § 717r(a), Pet. Appendix-I at 347a). In addition, the Natural Gas Act provides a procedural right to seek relief from federal courts if they are "aggrieved" by FERC orders. 15 U.S.C. § 717r(b), Pet. Appendix-I at 348a-349a.

4. To establish Article III standing, a litigant must demonstrate injury-in-fact that is traceable to the challenged action and redressable by the court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61(1992). However, a litigant "who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal

standards of redressability and immediacy." *Id*., at 572, n.7. This Court's *Massachusetts* decision requires courts to afford State litigants special solicitude when analyzing standing, especially where Congress has provided the State litigant a concomitant procedural right to challenge actions by federal agencies that negatively impact the State's once-sovereign prerogatives. *Massachusetts*, 549 U.S. at 518-20.

B. Procedural Background

5. Transcontinental Gas Pipe Line Company, LLC ("Transco") is a natural gas pipeline company as defined by Natural Gas Act section 2(6). 15 U.S.C. § 717a(6), Pet. Appendix-H at 345a. In March 2015, Transco initiated the three FERC proceedings that give rise to this Petition by seeking authorization under 15 U.S.C. § 717f(c) to construct and operate interstate pipeline facilities. Pet. Appendix-B at 5a-8a; Pet. Appendix-D at 91a-93a; Pet. Appendix-F at 136a-140a. Those facilities were marketed to serve North Carolina residents and, in part, be constructed within North Carolina's borders. Pet. Appendix-B at 5a-7a; Pet. Appendix-D at 93a, 126a; Pet. Appendix-F at 136a-140a.

6. North Carolina law authorizes and empowers the North Carolina Commission "to . . . appear before federal . . . courts and agencies as in its opinion may be necessary to secure for the users of public utility service in [North Carolina] just and reasonable rates and service." N.C. Gen. Stat. § 62-48(a), Pet. Appendix-M at 360a. Given that Transco's proposed facilities implicated North Carolina's quasi-sovereign and *parens patriae* interests in interstate natural gas pipeline facilities that will be constructed and operated in North Carolina and the rates paid by North Carolina ratepayers for service on those facilities, the

North Carolina Commission became "party" to those FERC proceedings as the Natural Gas Act defines that term (15 U.S.C. § 717n(e)). Pet. Appendix-B at 10a; Pet. Appendix-D at 94a-95a; Pet. Appendix-F at 144a. The North Carolina Commission raised substantive concerns with Transco's proposals, arguing that they negatively impacted North Carolina's interests. Pet. Appendix-B at 10a; Pet. Appendix-D at 94a-96a; Pet. Appendix-F at 144a-145a. Aggrieved by the manner in which FERC's orders impacted North Carolina's interests, the North Carolina Commission sought rehearing and judicial review of FERC's orders under 15 U.S.C. § 717r(a), (b). Pet. Appendix-C at 81a-82a; Pet. Appendix-E at 130a-131a; Pet. Appendix-G at 275a-282a.

7. On appeal before the District of Columbia Circuit, the North Carolina Commission asserted that FERC's orders resulted in an injury-in-fact to North Carolina's interests that was traceable to the orders and redressable by the court. Petitioner Initial Brief at 29-32; *see also* Petitioner Reply Brief at 5-19. The North Carolina Commission also asserted that the District of Columbia Circuit must afford the North Carolina Commission special solicitude when analyzing standing under *Massachusetts*. Petitioner Initial Brief at 32-34; *see also* Petitioner Reply Brief at 19-21.

8. On April 3, 2019, the District of Columbia Circuit dismissed the appeal on the grounds that the North Carolina Commission did not demonstrate injury-in-fact. Pet. Appendix-A at 1a-4a. The District of Columbia Circuit did not address *Massachusetts* or acknowledge North Carolina's special status as a State litigant with a concomitant procedural right to challenge FERC orders.

REASONS FOR GRANTING THE PETITION

The Court should grant this Petition because the District of Columbia's standing analysis is in direct conflict with this Court's decision in *Massachusetts*. Massachusetts requires courts to afford State litigants special solicitude when analyzing questions of standing, especially when Congress has provided the State a concomitant procedural right to challenge federal agency actions that negatively impact the State's once-sovereign prerogatives and interests of its citizens. *Massachusetts*, 549 U.S. 518-20. In that regard, the District of Columbia's standing analysis is also in direct conflict with this Court's holding in *Lujan* that a litigant "who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards of redressability and immediacy." *Lujan*, 504 at 572, n.7. "The regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States." *Ark. Elec. Coop.*, 461 U.S. at 377. Because the Natural Gas Act vests FERC with jurisdiction over interstate pipeline matters that affect North Carolina's quasi-sovereign and *parens patriae* interests, the District of Columbia Circuit's failure to follow *Massachusetts* and *Lujan* deprives North Carolina of the ability to protect those interests with regard to interstate pipeline facilities that are constructed and operated within North Carolina's borders and rates paid by North Carolina citizens for service on those facilities.

The Court should grant this Petition because it presents an opportunity to address questions of exceptional importance—the scope and durability of *Massachusetts*. Circuit courts have grappled with interpreting *Massachusetts'* scope and meaning. *See Gvt.*

Province of Manitoba v. David Bernhardt, D.C. Cir. Case No. No. 17-5242, Slip Op. at 13 (May 3, 2019) ("*Massachusetts v. EPA* is not a *parens patriae* case. There is some confusion on this score most possibly caused by the opinion's discussion of quasi-sovereign interests."); *see also Connecticut v. Am. Elec. Power Co.*, 582 F.3d 309, 337 (2d Cir. 2009) ("the *Massachusetts* Court . . . arguably muddled state proprietary and *parens patriae* standing"), *aff'd by an equally divided Court*; *see also id*. at 338 ("The question is whether *Massachusetts'* discussion of state standing has an impact on the analysis of *parens patriae* standing[.] That is, what is the role of the Article III parens patriae standing in relation to the test set out in *Lujan*?"); *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015) (affording special solicitude doctrine relying on *parens patriae* standing), *aff'd by an equally divided Court*, 136 S. Ct. 2271, 2272 (2016).

A. The United States Court of Appeals for the District of Columbia Circuit Decision Conflicts with the Supreme Court's Decisions in *Massachusetts* and *Lujan*.

On appeal before the District of Columbia Circuit, the North Carolina Commission submitted that it met the traditional, three-part standing test for establishing Article III standing. Petitioner Initial Brief at 27-32; Petitioner Reply Brief at 5-19. However, the North Carolina Commission also expressly relied on its special status as a State litigant to establish standing under *Massachusetts*. Petitioner Initial Brief at 32-34; Petitioner Reply Brief at 19-21. The District of Columbia Circuit dismissed the North Carolina Commission's appeal without acknowledging that argument or addressing *Massachusetts*. Pet. Appendix-A

at 1a-4a. That decision is in direct conflict with this Court's holding in *Massachusetts*.

Massachusetts held that "States are not normal litigants for the purposes of invoking federal jurisdiction." *Massachusetts*, 549 U.S. at 518. "It is of considerable relevance that the party seeking review here is a sovereign state and not, as it was in *Lujan*, a private individual." *Id.* The distinction between State and private litigants is based on the fact that States "surrender[ed] certain sovereign prerogatives" when they entered the Union. *Id.* at 518-19. "These sovereign prerogatives are now lodged in the Federal Government" and, as such, states have standing to protect their *parens patriae* interests where federal law preempts them from exercising their once-sovereign abilities to protect the interests of their citizens. *Id.* at 519, n.17. As such, *Massachusetts* requires that courts afford State litigants special solicitude when analyzing questions of standing. *Id*., at 518-20.

Like the petitioner in *Massachusetts*, North Carolina is a sovereign State that surrendered certain sovereign prerogatives when it joined the Union, *i.e.*, the ability to regulate the rates for, and construction and operation of, pipeline facilities that are in North Carolina but that are engaged in interstate commerce. This Court recognizes that "the regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States." *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 377 (1983). By surrendering this important function to the federal government, it is imperative that North Carolina be afforded access to federal courts to challenge FERC actions that harm North Carolina's quasi-sovereign and *parens patriae* interests in interstate natural gas pipeline facilities con-

structed and operated within its borders and rates that North Carolina citizens pay for service on those facilities.

In discussing the special solicitude to which State litigants are entitled, *Massachusetts* emphasized that the State litigant in that proceeding was afforded a special procedural right to challenge the federal agency action at issue there:

> Given that procedural right [under the Clean Air Act to challenge the rejection of a rule-making petition as arbitrary and capricious] and Massachusetts' stake in protecting its quasi-sovereign interests, the Commonwealth is entitled to special solicitude in our standing analysis . . . . [T]here is a critical difference between allowing a State 'to protect her citizens from the operation of federal statutes' (which is what *Mellon* prohibits) and allowing a State to assert its rights under federal law (which it has standing to do).

Id. at 520, n.17. Similarly, in *Lujan*, a case addressed by *Massachusetts*, the Court discussed the important role of procedural rights in standing inquiries.

> There is this much truth to the assertion that "procedural rights" are special: The person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy.

Lujan, 504 U.S. at n.7.

The Clean Air Act's procedural right to challenge unlawful agency action is substantially similar to the procedural rights the Natural Gas Act affords to

States and State commissions to challenge FERC's actions. Under FERC's implementing regulations, State commissions are distinct from parties that must seek, and be granted, leave before they can become a party to FERC proceedings. *See* 18 C.F.R. § 385.214(a)(2) (permitting State Commissions to intervene in proceedings as a matter of right, without motion), Pet. Appendix-O at 364a-365a. Given its authority under State law "to . . . appear before federal . . . courts and agencies as in its opinion may be necessary to secure for the users of public utility service in [North Carolina] just and reasonable rates and service" (N.C. Gen. Stat. § 62-48(a), Pet. Appendix-M at 360a), the North Carolina Commission exercised this right and intervened in the underlying certificate proceedings, which implicated North Carolina's quasi-sovereign and *parens patriae* interests in interstate natural gas pipeline facilities constructed and operated within its borders and rates paid by North Carolina ratepayers for service on those facilities. Pet. Appendix-B at 10a; Pet. Appendix-D at 94a-95a; Pet. Appendix-F at 144a.

The Natural Gas Act also provides States procedural rights to challenge FERC orders. 15 U.S.C. §§ 717r(a), (b), Pet. Appendix-I at 347a-349a. The North Carolina Commission raised substantive concerns with Transco's proposals, arguing that they negatively impacted North Carolina. Pet. Appendix-B at 10a-18a; Pet. Appendix-D at 94a-96a; Pet. Appendix-F at 144a-145a. Aggrieved by the manner in which FERC's orders dismissed those challenges, the North Carolina Commission invoked its procedural rights by seeking rehearing and judicial review under 15 U.S.C. § 717r(a), (b). Pet. Appendix-C at 81a-82a; Pet. Appendix-E at 130a-131a; Pet. Appendix-G at 275-282a.

The District of Columbia Circuit dismissed the North Carolina Commission's appeal without acknowledging that argument or addressing *Massachusetts*' and *Lujan's* discussion of the importance of concomitant procedural rights. Pet. Appendix-A at 1a-4a. As such, its decision is in direct conflict with *Massachusetts* and *Lujan*. The effect of that erroneous decision is significant. It deprives a State litigant of access to federal courts to challenge federal agency actions that impact the State's quasi-sovereign and *parens patriae* interests in interstate natural gas pipeline facilities constructed and operated within its borders and rates paid by North Carolina ratepayers for service on such facilities.

B. In Reversing the District of Columbia Circuit's Dismissal of the North Carolina Commission's Appeal, the Court Should Address the Split Among the Circuits and Affirm the Scope and Durability of *Massachusetts*' Special Solicitude Doctrine for State Litigants.

The courts of appeals interpret Massachusetts differently. For example, despite ignoring *Massachusetts* altogether in the case below, the District of Columbia Circuit narrowly construed *Massachusetts* in *Center for Biological Diversity v. Department of Interior*, 563 F.3d 466, 476 (D.C. Cir. 2009), emphasizing the "uniqueness" of *Massachusetts*. According to the District of Columbia Circuit, *Massachusetts* "stands only for the limited proposition that, where a harm is widely shared, a sovereign, suing in its individual interest, has standing to sue where that sovereign's individual interests are harmed, wholly apart from the alleged general harm." *Id*. at 477. In stark contrast, the Fifth Circuit found it "obvious that being a state

greatly matters in the standing inquiry, and it makes no difference . . . whether [that] means that states are afforded a relaxed standing inquiry by virtue of their statehood or whether their statehood, in [and] of itself, helps confer standing." *Texas v. United States*, 809 F.3d 134, n.26 (5th Cir. 2015), *aff'd by an equally divided Court*, 136 S. Ct. 2271, 2272 (2016) (internal quotations omitted).

Similar to the Fifth Circuit's interpretation, but in contrast to the District of Columbia Circuit's narrow interpretation in *Centers for Biological Diversity*, District of Columbia Circuit Judge Brown opined that "[S]tate litigants" are afforded "laxity" in the standing analysis because "the [Supreme] Court lowered the bar [in *Massachusetts*], ruling that state litigants were 'entitled to special solicitude'" that "likely does not extend to non-state litigants . . . who must clear the ordinary hurdles to standing." *Arpaio v. Obama*, 797 F.3d 11, 27 (D.C. Cir. 2015) (Brown, J., concurring).

The Second Circuit has grappled with how to interpret and apply *Massachusetts*. For example, it suggested that "the *Massachusetts* Court . . . arguably muddled state proprietary and *parens patriae* standing." *Connecticut v. Am. Elec. Power Co.*, 582 F.3d 309, 337 (2d Cir. 2009), *juris. aff'd by an equally divided court*, 131 S. Ct. 2527, 2535 (2011); *see also id*. at 338 ("The question is whether *Massachusetts'* discussion of state standing has an impact on the analysis of *parens patriae* standing[.] That is, what is the role of the Article III *parens patriae* standing in relation to the test set out in *Lujan*?"). Despite acknowledging "confusion" on *Massachusetts*' impact on the analysis of *parens patriae* standing, the District of Columbia Circuit purports to know the answers to these questions. *See Gvt. Province of Manitoba v. David*

Bernhardt, D.C. Cir. Case No. No. 17-5242, Slip Op. at 13 (May 3, 2019) ("*Massachusetts v. EPA* is not a *parens patriae* case."). Notably, the Fifth Circuit's *Texas v. United States* decision did not rely on *parens patriae* standing in affording special solicitude to the State litigant.

As demonstrated above, this Petition raises a question of exceptional importance. Indeed, the Court has twice granted petitions for certiorari that addressed *Massachusetts*, splitting four-to-four both times. *Texas v. United States*, 136 S. Ct. at 2272; *Connecticut v. Am. Elec. Power Co.*, 131 S. Ct. at 2535. This Petition represents a unique opportunity to address this exceptional issue and provide critical clarity to State litigants that may be denied access to federal courts in circuits that construe *Massachusetts* narrowly. In that regard, had the North Carolina Commission's appeal been addressed by the Fifth Circuit, instead of the District of Columbia Circuit, it is likely that North Carolina would not have been denied the ability to challenge FERC orders that directly impact its quasi-sovereign and *parens patriae* interests. Thus, in addition to the importance of granting this Petition and allowing North Carolina the ability to ensure the federal government protects its interests, the Court should grant this Petition to clarify and affirm the scope and durability of *Massachusetts*' special solicitude doctrine for all State litigants.

CONCLUSION

The Petition for a writ of certiorari should be granted for the foregoing reasons.

Respectfully submitted,

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July 2, 2019

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Filed: April 3, 2019]

No. 18-1018

NORTH CAROLINA UTILITIES COMMISSION,

Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent,

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK AND TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC,

Intervenors.

Consolidated with 18-1019, 18-1020

On Petitions for Review of Orders of the
Federal Energy Regulatory Commission

September Term, 2018

Before: GARLAND, *Chief Judge*, and GRIFFITH and WILKINS, *Circuit Judges*.

JUDGMENT

This appeal was considered on the record from the Federal Energy Regulatory Commission ("FERC") and on the briefs of the parties and oral arguments of counsel. The court has accorded the issues full consideration and has determined that they do not warrant a published opinion. See D.C. CIR. R. 36(d). For the reasons stated below, it is

ORDERED and ADJUDGED that the petition for review be DISMISSED for lack of jurisdiction.

Petitioner North Carolina Utilities Commission ("NCUC") and Intervenor New York State Public Service Commission ("NYSPSC") ask this Court to set aside three FERC orders granting certificates to Transcontinental Gas Pipe Line Company, LLC ("Transco") to construct and operate interstate natural gas pipeline projects – the Virginia Southside Expansion Project, the Dalton Expansion Project, and the Atlantic Sunrise Project – in the Eastern United States. NCUC and NYSPSC contend that the recourse rate used in FERC's certification orders relies on an outdated and inflated pre-tax return. Thus, they argue, the agreed-upon negotiated rate is tainted, given FERC's intention for recourse rates to constrain a company's ability to exercise market power during rate negotiations.

The Natural Gas Act instructs that only "aggrieved" persons may seek judicial review of a FERC order. 15 U.S.C. § 717r(b). "A party is aggrieved only 'if it can establish both the constitutional and prudential requirements for standing.'" *PNGTS Shipper's Grp. v. FERC*, 592 F.3d 132, 136 (D.C. Cir. 2010) (quoting *Exxon Mobil Corp. v. FERC*, 571 F.3d 1208, 1219 (D.C. Cir. 2009)). The "irreducible constitutional minimum"

of standing requires that a petitioner allege an "an injury in fact" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61 (1992). These standing requirements apply equally to intervenors. *Alabama Mun. Distributors Group. v. FERC*, 300 F.3d 877, 879 n.2 (D.C. Cir. 2002) (per curiam).

Petitioner and Intervenor lack standing because they have failed to provide sufficient evidence to establish injury in fact. NCUC "assume[s]" that ratepayers in its state will use the facilities certificated on the Atlantic Sunrise Project. Appellant's Br. 31. NYSPSC, through declaration from the Deputy Director for Natural Gas and Water within the Office of Electricity, Gas, and Water at the New York State Department of Public Service, insists that the Atlantic Sunrise's project shippers will "almost certainly exercise their contractual rights to use the expansion capacity to ship at least some of their gas to New York." McCarran Declaration 7-8. But neither NCUC nor NYSPSC has shown a "substantial probability" that any capacity from the Atlantic Sunrise project will flow into their respective states, nor have they shown that any end-users in their states will pay higher rates as a result of the project. *Kansas Corp. Comm'n v. FERC*, 881 F.3d 924, 930 (D.C. Cir. 2018). Indeed, with respect to the Dalton Expansion or Virginia Southside Expansion Projects, they offer no evidence of injury. Any harm is therefore either non-existent or "conjectural or hypothetical," which does not suffice to demonstrate injury in fact. *Id.*

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after

resolution of any timely petition for rehearing or petition for rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Scott H. Atchue
Deputy Clerk

APPENDIX B

156 FERC ¶ 61,092

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. CP15-117-000

Before Commissioners: Norman C. Bay, Chairman; Cheryl A. LaFleur, Tony Clark, and Colette D. Honorable.

Transcontinental Gas Pipe Line Company, LLC

ORDER ISSUING CERTIFICATE

(Issued August 3, 2016)

1. On March 19, 2015, 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 regulations for a certificate of public convenience and necessity authorizing it to construct, lease, and operate pipeline, compression, metering, and appurtenant facilities in Virginia, North Carolina, and Georgia (Dalton Expansion Project). As discussed below, the Commission will grant the requested authorizations, subject to conditions.

I. Background and Proposal

A. Construction of Facilities

2. Transco is a natural gas company, as defined by section 2(6) of the NGA,[2] which transports natural gas in interstate commerce. Transco's natural gas transmission system extends through Texas, Louisiana, the offshore Gulf of Mexico area, Mississippi, Alabama,

[1] 15 U.S.C. § 717f(c) (2012).

[2] *Id*. § 717a(6).

Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the New York City metropolitan area.

3. Transco proposes to construct and operate approximately 114.99 miles of 30-, 24-, 20-, and 16-inch diameter pipeline (Dalton Lateral), three meter stations, and one compressor station (Compressor Station 116) in Georgia, as well as valves, yard piping, and other appurtenant facilities in Virginia and North Carolina. Specifically, Transco proposes to construct and operate:

- Dalton Lateral Segment 1 – Approximately 7.6 miles of 30-inch-diameter pipeline in Coweta and Carroll Counties, Georgia, from the discharge of the existing Compressor Station 115 to the proposed Compressor Station 116;
- Dalton Lateral Segment 2 – Approximately 51.3 miles of 24-inch-diameter pipeline in Carroll, Douglas, Paulding, and Bartow Counties, Georgia, from the discharge of proposed Compressor Station 116 to the proposed Beasley Road Meter Station;
- Dalton Lateral Segment 3 – Approximately 53.8 miles of 20-inch-diameter pipeline in Bartow, Gordon, Murray, and Whitfield Counties, Georgia, from the proposed Beasley Road Meter Station to the proposed Looper Bridge Road Meter Station;
- AGL Spur Lateral – Approximately 2.0 miles of 16-inch-diameter pipeline in Murray County, Georgia, from milepost (MP) 105.2 of the Dalton Lateral to the proposed Murray Meter Station;

- Beasley Road Meter Station (formally known as the AGL-Bartow Meter Station) – a new 190,000 dekatherms (Dth) per day meter station in Bartow County, Georgia;
- Looper Bridge Road Meter Station (formally known as the Oglethorpe-Smith Meter Station) – a new 208,000 Dth per day meter station in Murray County, Georgia;
- Murray Meter Station (formally known as the AGL-Murray Meter Station) – a new 50,000 Dth per day meter station in Murray County, Georgia;
- Compressor Station 116 – a new 21,830 horsepower compressor station in Carroll County, Georgia, with two Solar Taurus 70 gas turbine driven compressor units near MP 7.6 on the Dalton Lateral;
- Valves and yard piping for south flow compression at Compressor Stations 165 in Pittsylvania County, Virginia, and 180 in Prince William County, Virginia;
- Odor masking/deodorization of valves at valve sites between Compressor Stations 160 in Rockingham County, North Carolina, and 165 in Pittsylvania County, Virginia;
- Odor detection and supplemental odorization at 20 delivery meters on the South Virginia Lateral and between Compressor Stations 160 and 165 in Rockingham, Northampton and Hertford Counties, North Carolina, and Pittsylvania, Brunswick, Mecklenburg, Halifax, and Greensville Counties, Virginia;

- Valve site masking/deodorization at Compressor Station 167 in Mecklenburg County, Virginia; and
- Related appurtenant underground and above-ground facilities.

4. Transco states that the proposed project will enable it to provide 448,000 Dth per day of incremental firm transportation service from a receipt point in Zone 6 on its mainline in Mercer County, New Jersey, for delivery to an interconnection with Gulf South Pipeline Company, LP in Pike County, Mississippi, and to interconnections in northwest Georgia through the proposed Dalton Lateral.

5. Transco held an open season from May 30 through June 28, 2012. As a result of the open season, Transco executed binding precedent agreements with Atlanta Gas Light Company (Atlanta Gas Light or AGL) and Oglethorpe Power Corporation (Oglethorpe) for 240,000 and 208,000 Dth per day of firm transportation service, respectively, for 25 years. This represents all of the capacity associated with the proposed Dalton Expansion Project.

6. The project's estimated cost is approximately $471.9 million. Transco states that it will undertake permanent financing at a later date as part of its overall, long-term financing program. Transco has proposed an incremental recourse reservation rate for firm transportation service on the project facilities, as described in more detail below. Atlanta Gas Light and Oglethorpe have agreed to pay a negotiated rate. Transco will provide service under the terms and conditions of its existing Rate Schedule FT.

B. Lease of Facilities

7. Transco and Dogwood Enterprise Holdings, Inc. (Dogwood) will jointly own the Dalton Lateral, as tenants in common, with each holding a 50 percent undivided ownership interest.[3] Dogwood will hold its 50 percent ownership interest as a "passive owner" of the lateral. On the in-service date of the Dalton Lateral, Dogwood will lease its ownership interest in the lateral, including its share of the capacity rights, to Transco, which will have full possessory, operational, and capacity rights.

8. The lease agreement provides that Dogwood and Transco will jointly fund the cost to construct the Dalton Lateral facilities in proportion to their respective ownership interests. Transco is the sole applicant for the NGA section 7(c) certificate to construct and operate the Dalton Lateral, as Dogwood is not currently an NGA jurisdictional entity and does not intend to become one as part of the Dalton Lateral ownership structure.

II. Notice, Interventions, and Procedural Issues

9. Notice of Transco's application was published in the *Federal Register* on April 10, 2015 (80 Fed. Reg. 19,312). The parties listed in Appendix A filed timely, unopposed motions to intervene.[4]

10. The parties listed in Appendix B filed late motions to intervene. We will grant the late-filed motions to intervene, since to do so at this stage of the

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[3] Dogwood is an affiliate of AGL Resources, the parent company of Atlanta Gas Light.

[4] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2015).

proceeding will not delay, disrupt, or unfairly prejudice the proceeding or other parties.[5]

11. The North Carolina Utilities Commission and the New York State Public Service Commission (State Commissions) filed a joint protest to Transco's application. Transco filed an answer to the State Commissions' protest and the State Commissions filed an answer to Transco's answer. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers, the Commission finds good cause to waive its rules and accept the answers because they provide information that has assisted in our decision making process.[6]

12. The Bartow County School System and Bartow County Board of Education (Bartow), the 1460 Partnership, LLLP (1460 Partnership), and the State Commissions request an evidentiary hearing. Specifically, Bartow seeks a hearing on issues regarding the route of the Dalton Lateral, claiming that the pipeline is proposed to be located at an unsafe distance from two elementary schools and that the pipeline's proposed location will interfere with its ability to expand the schools on land that it specifically acquired for that purpose. The 1460 Partnership seeks a hearing on the route of the lateral across the Pole Cat Creek Farms, over which it has a fee simple property interest.[7] The State Commissions seek a hearing on (1) Transco's use of a 15.34 percent pre-tax rate of

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[5] *See* 18 C.F.R. § 385.214(c)(2) (2015).

[6] *Id*. § 385.213(a)(2).

[7] The Pole Cat Creek Farms is an undeveloped tract of land, consisting of 360 acres of forest wetland, freshwater lake, and field meadow. The 1460 Partnership states that the tract is home to more than 50 types of plants and 150 types of animals.

return in developing its proposed recourse rates and (2) whether the project is being subsidized by prior expansions that created southbound capacity on Transco's mainline. The State Commissions also request that we partially consolidate this proceeding with Transco's proposals to construct and operate the Virginia Southside Expansion Project II[8] and the Atlantic Sunrise Project[9] in order to address issues about Transco's pre-tax rate of return.

13. Although our regulations provide for a hearing, neither section 7 of the NGA nor our regulations require that such hearing be a trial-type evidentiary hearing.[10] When, as is usually the case, the written record provides a sufficient basis for resolving the relevant issues, it is our practice to provide for a paper hearing.[11] That is the case here. We have reviewed the

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[8] In the Virginia Southside Expansion Project II, Transco was authorized to construct and operate approximately 4.33 miles of pipeline and compression facilities. *See Transcontinental Gas Pipeline Co*., LLC, 156 FERC ¶ 61,022 (2016).

[9] In the Atlantic Sunrise Project, Docket No. CP15-138-000, Transco proposes to construct and operate approximately 57.3 miles of 30-inch-diameter pipeline and 125.2 miles of 42-inch-diameter pipeline in Pennsylvania.

[10] *See Minisink Residents for Environmental Preservation and Safety v. FERC*, 762 F.3d 97, 114 (D.C. Cir. 2014) ("FERC's choice whether to hold an evidentiary hearing is generally discretionary.").

[11] *See NE Hub Partners, L.P.*, 83 FERC ¶ 61,043, at 61,192 (1998), *reh'g denied*, 90 FERC ¶ 61,142 (2000); *Pine Needle LNG Co., LLC*, 77 FERC ¶ 61,229, at 61,916 (1996). Moreover, courts have recognized that even where there are disputed issues the Commission need not conduct an evidentiary hearing if the disputed issues "may be adequately resolved on the written record." *Minisink Residents*, 762 F.3d at 114 (quoting *Cajun Elec. Power Coop., Inc. v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1994)).

requests for an evidentiary hearing by Bartow, the 1460 Partnership, and the State Commissions and conclude that all issues of material fact relating to Transco's proposal are capable of being resolved on the basis of the written record. Accordingly, we will deny the requests for a formal hearing. As to the State Commissions' request for partial consolidation, the Commission's policy is to consolidate matters only if a trial-type evidentiary hearing is required to resolve common issues of law and fact and consolidation will ultimately result in greater administrative efficiency.[12] Since there is no need for an evidentiary hearing in this proceeding, we will deny the State Commissions' request for partial consolidation.

14. The Natural Gas Supply Association, Atlanta Gas Light, and Oglethorpe filed comments supporting the project. Numerous other parties filed comments regarding the routing of the Dalton Lateral, safety, sufficiency of information, and potential aesthetic, economic, and environmental impacts of the proposal. The concerns raised in the State Commissions' protest and in the comments by the other parties are addressed below or in the Environmental Assessment (EA).

III. Discussion

15. Since Transco proposes to construct and operate facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission,

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[12] *See Columbia Gulf Transmission Co.*, 139 FERC ¶ 61,236, at P 20 (2012); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 27 (2008); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008); *see also Mobil Oil Explor. & Prod. Serv. v. United Distrib. Cos.*, 498 U.S. 211, 230-31 (1991) (agencies "enjoy[] broad discretion" in determining how best to order its proceedings).

the proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.[13]

A. Certificate Policy Statement

16. The Certificate Policy Statement provides guidance for evaluating proposals for new construction.[14] The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

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[13] 15 U.S.C. §§ 717f(c) and (e) (2012).

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

the market and their captive customers, or landowners and communities affected by the construction. 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.

18. As discussed above, the threshold requirement for a new project is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined that, in general, where a pipeline proposes an incremental recourse rate for the project – as Transco does here – the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.[15] Because Transco proposes to charge an incremental rate for the services proposed in this proceeding that, as discussed below, exceeds the existing applicable system rate, we find that the threshold no-subsidy requirement under the Certificate Policy Statement has been met.

19. The State Commissions assert that Transco has not addressed the possibility that the proposed project will be subsidized by shippers on Transco's recently-approved Leidy Southeast Project in Pennsylvania, which has a higher recourse rate than the incremental recourse rate proposed for this project. The bulk of the

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[15] *See, e.g., Dominion Transmission, Inc.,* 155 FERC ¶ 61,106 (2016).

Leidy Southeast facilities are upstream of the proposed Dalton facilities and transport gas from receipt points on Transco's Leidy Line to Transco's mainline. We find that the Leidy Southeast facilities are not integral to the provision of the proposed Dalton Expansion Project services. The two projects' transportation paths and facilities are too dissimilar for subsidization to be a concern. Thus we find that existing Leidy Southeast Project shippers will not subsidize the Dalton Expansion Project shippers.

20. Transco has designed the Dalton Expansion Project to ensure that there will not be any adverse impacts on its existing shippers. With respect to other pipeline's customers, there will be no adverse impact on other pipelines in the region or their captive customers because the Project is not intended to replace service on other pipelines. Also, no pipeline company or their captive customers have protested Transco's application.

21. Regarding effects on landowners and communities, the proposed Dalton Expansion Project will disturb approximately 1,764 acres of land during construction and about 746.3 acres during operation. To minimize impacts on landowners, Transco will collocate approximately 49 percent of the proposed pipeline facilities with existing rights-of-way and on previously disturbed property. The modifications to existing compressor stations will take place within the fence lines of those existing facilities. Accordingly, we find that Transco has designed the project to minimize adverse impacts on landowners and surrounding communities.

22. Transco has entered into binding precedent agreements for 25 years with Atlanta Gas Light and Oglethorpe, which fully subscribe the project. Based

on the benefits the project will provide[16] 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 Transco's proposal, subject to the conditions discussed below.

B. Rates

1. Pre-tax Rate of Return

23. In their protest, the State Commissions take issue with Transco's proposed use of a pre-tax return of 15.34 percent in calculating its proposed incremental recourse rates in its applications for its Dalton Expansion Project proposal in this proceeding, as well as in its recently approved Virginia Southside Expansion II Project in Docket No. CP15-118-000, and its proposed Atlantic Sunrise Project in Docket No. CP15-138-000. The State Commissions acknowledge that Transco's use of the specified pre-tax return most recently approved in a section 4 rate case is consistent with Commission policy, but they emphasize that that rate case was fifteen years ago. They argue the incremental recourse rates approved in the current proceedings should take into account the significant changes in financial markets since then.[17] The State

[16] The shippers state that Commission approval of Transco's application will provide more diversified natural gas supply options (Oglethorpe intervention at 2 and comments in support of the EA at 2) and enable Atlanta Gas Light to meet growing customer demands in Georgia (Atlanta Gas Light intervention at 2 and June 10, 2016 support letter at 2).

[17] Transco's last section 4 rate case in which a specified rate of return was used in calculating Commission-approved rates was in Docket No. RP01-245-000, *et al.* A letter order issued in that

Commissions assert that the pre-tax return of 15.34 percent accounts for approximately half of Transco's proposed cost of service in these proceedings,[18] and their comments included a discounted cash flow (DCF) analysis, which they contend reflects current market conditions and reflects a median rate of return on equity (ROE) of 10.95 percent for natural gas pipelines.[19] They request partial consolidation of these proceedings to consider the appropriate pre-tax return in a full evidentiary hearing.

24. As the State Commissions argued in the recent proceeding regarding Transco's Virginia Southside Expansion II Project,[20] recent Commission orders provide valuable perspective indicating that Transco's proposed 15.34 percent pre-tax return is not reasonable. They reference the 2015 order where the Commission relied on a DCF analysis for a proxy group of pipelines based on a six-month period ending March 31, 2011, to limit Portland Natural Gas Transmission System's ROE to 11.59 percent, the top of the range of reasonable returns for which the median ROE was 10.28 percent.[21] The State Commissions also point to

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docket on July 23, 2002, accepted a partial settlement resolving cost classification, cost allocation, and rate design subject to certain reservations and adjustments, and revising Transco's generally applicable rates. *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085, at P 2 (2002).

[18] State Commissions' April 22, 2015 Protest in Docket No. CP15-117-000, *et al*.

[19] Preliminary Pipeline DCF Analysis Exhibit to State Commissions' Protest.

[20] *Transcontinental Gas Pipeline Co., LLC*, 156 FERC ¶ 61,022, at PP 23-26 (2016).

[21] *Portland Natural Gas Transmission System*, Opinion No. 524-A, 150 FERC ¶ 61,107, at P 195 (2015).

the Commission's 2013 orders that limited the ROEs for El Paso Natural Gas Company, L.L.C. and Kern River Gas Transmission Company to 10.5 percent and 11.55 percent, respectively.[22]

25. Transco's answer emphasizes that this proceeding and the proceedings on its proposed Virginia Southside Expansion II and Atlantic Sunrise projects are section 7 certificate proceedings, not section 4 rate cases, and that its proposed recourse rates in these certificate proceedings will be initial section 7 rates for incremental services using new expansion capacity. Transco further asserts its proposed initial section 7 recourse rates are consistent with Commission policy in section 7 proceedings, in that they are appropriately designed to recover each project's incremental cost of service.[23] In the State Commissions' answer to Transco's answer, they contend that when the Commission grants a pipeline negotiated rate authority, it relies on the availability of cost-based recourse rates to prevent the pipeline from exercising market power by ensuring that shippers will have the option of choosing to pay cost-based recourse rates for expansion capacity that becomes available on either an interruptible or firm

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[22] *El Paso Natural Gas Co., L.L.C.*, Opinion No. 528, 145 FERC ¶ 61,040, at P 686 (2013); *Kern River Gas Transmission Co.*, Opinion No. 486-F, 142 FERC ¶ 61,132, at P 263 (2013).

[23] Transco cites the Commission's order that certificated its Rock Springs Lateral and additional mainline compression to provide service for another new electric generating plant. In that order, the Commission approved Transco's proposed incremental recourse rate for that expansion capacity, which was calculated using the pre-tax return of 15.34 percent from its settlement rates in Docket No. RP01-245. *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,205, at P 17 (2015).

basis.[24] Therefore, the State Commissions assert that even if a pipeline has negotiated rate agreements for all of the expansion capacity proposed in a certificate proceeding, the recourse rates nevertheless need to be properly designed and based on a reasonable estimate of the actual costs to construct and operate the expansion capacity.

26. The State Commissions are correct that "the predicate for permitting a pipeline to charge a negotiated rate is that capacity is available at the recourse rate,"[25] and the Commission therefore requires that shippers have the option of choosing to pay a cost-based recourse rate for expansion capacity that becomes available. However, as the State Commissions acknowledge, the Commission's consistent policy in section 7 certificate proceedings is to require that a pipeline's cost-based recourse rates for incrementally-priced expansion capacity be designed using the rate of return from its most recent general rate case approved by the Commission under section 4 of the NGA in which a specified rate of return was used to calculate the rates.[26] Transco's proposed incremental

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[24] State Commissions' May 27, 2015 Answer at 2 (citing *Alternatives to Traditional Cost-of-Service Ratemaking*, 74 FERC ¶ 61,076).

[25] *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,004 (2001) (citing *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076).

[26] *See, e.g., Trunkline Gas Co., LLC*, 135 FERC ¶ 61,019, at P 33 (2011); *Florida Gas Transmission Co., LLC*, 132 FERC ¶ 61,040, at P 35 & n.12 (2010); *Northwest Pipeline Corp.*, 98 FERC ¶ 61,352, at 62,499 (2002); and *Mojave Pipeline Co.*, 69 FERC ¶ 61,244, at 61,925 (1994). *See also Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337, at P 132 (2006), *order on reh'g,* 118

recourse rate for the Dalton Expansion Project is based on the specified pre-tax return of 15.34 percent underlying the design of its approved settlement rates in Docket No. RP01-245-000, *et al*.[27] Since Transco's most recently approved general section 4 rate case settlements in Docket Nos. RP12-993-000, *et al*.[28] and RP06-569-004, *et al.*[29] were both "black box" settle-

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FERC ¶ 61,007, at PP 120 & 122-123 (2007) (allowing, on rehearing, Dominion Cove Point LNG to recalculate incremental rates using the rates of return ultimately approved in its pending rate case, as opposed to its proposed rates of return). If a pipeline's most recent general section 4 rate case involved a settlement that did not specify a rate of return or pre-tax return, the Commission's policy requires that incremental rates in the pipeline's certificate proceedings be calculated using the rate of return or pre-tax return from its most recent general section 4 rate case (or rate case settlement) in which a specified return component was used to calculate the approved rates. *See, e.g.*, *Equitrans, L.P.*, 117 FERC ¶ 61,184, at P 38 (2006). This policy applies even if a pipeline calculated its proposed incremental rates for expansion capacity using a rate of return *lower* than the most recently approved specified rate of return. *Id.* (rejecting Equitrans' proposed use of 14.25 percent ROE component for incremental rates for mainline extension and requiring recalculation using the specified pre-tax rate of return of 15 percent that was approved in its rate case).

[27] *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085.

[28] *Transcontinental Gas Pipe Line Co., LLC*, 144 FERC ¶ 63,029, at P 13 (2013) (certifying to the Commission an uncontested settlement in which, "[w]ith the exception of certain expressly designated items, the cost of service agreement was reached on a 'black box' basis"); *Transcontinental Gas Pipeline Co.*, *LLC*, 145 FERC ¶ 61,205 (2013) (approving and accepting tariff records to implement rate case settlement).

[29] *Transcontinental Gas Pipe Line Corp.*, 122 FERC ¶ 61,213 (2008) (approving and accepting tariff records to implement rate case settlement); *Transcontinental Gas Pipe Line Co., LLC*, 147 FERC ¶ 61,102, at P 53 (2014) (explaining that the settlement

ments that did not specify the rate of return or most other cost of service components used to calculate the settlement rates, Transco calculated its proposed incremental rates in this certificate proceeding consistent with Commission policy by using the last Commission-approved specified pre-tax return of 15.34 percent from its prior rate proceeding in Docket No. RP01-245.

27. Further, in section 7 certificate proceedings the Commission reviews initial rates for service using proposed new pipeline capacity under the public convenience and necessity standard, which is a less rigorous standard than the just and reasonable standard under NGA sections 4 and 5.[30] The Commission

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reached in Docket No. RP06-569 was a "black box" settlement that did not specify a rate of return).

[30] *Atlantic Refining Co. v. Public Serv. Comm'n of New York*, 360 U.S. 378 (1959) (*CATCO*). In *CATCO*, the Court contrasted the Commission's authority under sections 4 and 5 of the NGA to approve changes to existing rates using existing facilities and its authority under section 7 to approve initial rates for new services and services using new facilities. The Court recognized "the inordinate delay" that can be associated with a full-evidentiary rate proceeding and concluded that was the reason why, unlike sections 4 and 5, section 7 does not require the Commission to make a determination that an applicant's proposed initial rates are or will be just and reasonable before the Commission certificates new facilities, expansion capacity, and/or services. *Id.* at 390. The Court stressed that in deciding under section 7(c) whether proposed new facilities or services are required by the public convenience and necessity, the Commission is required to "evaluate all factors bearing on the public interest," and an applicant's proposed initial rates are not "the only factor bearing on the public convenience and necessity." *Id.* at 391. Thus, as explained by the Court, "[t]he Congress, in § 7(e), has authorized the Commission to condition certificates in such manner as the public convenience and necessity may require when the Commission exercises authority under section 7," *id.*, and the

develops the recourse rate for expansion capacity based on the pipeline's estimated cost of service. As discussed above, the State Commissions' protest included a DCF analysis for natural gas pipelines, which they contend reflects current market conditions and a median ROE of 10.95 percent. However, the Commission does not believe that conducting DCF analysis in individual certificate proceedings would be the most effective or efficient way for determining the appropriate ROEs for proposed pipeline expansions. While parties have the opportunity in section 4 rate proceedings to file and examine testimony with regard to the composition of the proxy group to use in the DCF analysis, the growth rates used in the analysis, and the pipeline's position within the zone of reasonableness with regard to risk, it would be difficult, if not impossible, to complete this type of analysis in section 7 certificate proceedings in a timely manner and attempting to do so would unnecessarily delay proposed projects with time sensitive in-service schedules. The Commission's current policy of calculating incremental rates for expansion capacity using the Commission-approved ROEs underling pipelines' existing rates is an appropriate exercise of its discretion in section 7 certificate proceedings to approve initial rates that will "hold the line" until just and reasonable rates are adjudicated under section 4 or 5 of the NGA.

28. Here, Transco is required to file an NGA general section 4 rate case by August 31, 2018, pursuant to the comeback provision in Article 6 of the settlement in

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Commission therefore has the discretion in section 7 certificate proceedings to approve initial rates that will "hold the line" and "ensure that the consuming public may be protected" while awaiting adjudication of just and reasonable rates under the more time-consuming ratemaking sections of the NGA. *Id.* at 392.

Docket No. RP12-993.[31] Parties in that future rate case will have an opportunity to review Transco's pre-tax return and other cost of service components. In addition, given the possibility that that rate case could result in another settlement for rates that are not based on a specified rate of return and, as discussed above, the Commission's policy in section 7 certificate proceedings is to require that a pipeline's initial rates for expansion capacity be designed using a Commission-approved, specified rate of return, the Commission would advise that parties in the rate case use that opportunity to address issues of concern relating to the rate of return that should be used in calculating initial rates in Transco's future certificate proceedings.[32]

29. For the reasons discussed above, and consistent with the rate of return accepted for the Virginia Southside Expansion II Project,[33] the Commission finds that it is appropriate to apply its general policy and accepts Transco's use of a pre-tax return of 15.34 percent to calculate Transco's initial recourse rate in this proceeding. Parties should raise, in Transco's upcoming general rate case, any issues and concerns they have regarding the rate of return or other cost of service components to be used in calculating Transco's recourse rates in subsequent certificate proceedings.

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[31] *Transcontinental Gas Pipe Line Co., LLC*, 144 FERC ¶ 63,029.

[32] *See, e.g.*, *Eastern Shore Natural Gas Co.*, 138 FERC ¶ 61,050 (2012) (approving settlement that established rates on "black box" basis but provided a specified pre-tax rate of return).

[33] *Transcontinental Gas Pipeline Co*., 156 FERC ¶ 61,022 at P 26.

2. Initial Rates

30. Transco proposes an initial incremental recourse reservation charge of $0.50580 per Dth/day under its existing Rate Schedule FT for service on the project. In support of the proposed initial rates, Transco submitted an incremental cost of service and rate design study showing the derivation of the recourse rate under the project based on a total first year cost of service of $82,708,551 and billing determinants of 448,000 Dth/day.[34] The proposed cost of service is based on a pre-tax rate of return of 15.34 percent, and Transco's system depreciation rates of 2.61 percent for onshore transmission facilities, including negative salvage, and 4.97 percent for solar turbines.[35] The proposed cost of service also includes the lease payments to Dogwood at an annualized amount equal to approximately $25,691,000.

31. On October 29, 2015, the Commission issued a data request directing Transco to provide a breakdown of its Operation and Maintenance (O&M) expenses by FERC account number and labor and non-labor costs for the project. In response, Transco identified a total of $357,883 in non-labor O&M costs in Account Nos. 853 and 864.[36] These non-labor costs are classified as variable costs, and section 284.7(e) of the Commission's regulations does not allow variable costs to be recovered through the reservation charge.[37] Therefore,

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[34] *See* Transco's Application at Exhibit P.

[35] *See Transcontinental Gas Pipe Line Co., LLC*, 145 FERC ¶ 61,205, which established the current system depreciation rate and the current negative salvage rate.

[36] Transco's November 2, 2015 Data Response, Response No. 1 and Schedule 1.

[37] 18 C.F.R. § 284.7(e) (2015).

Transco must recalculate its incremental recourse reservation rate to reflect the removal of variable costs.

32. Transco's proposed incremental reservation charge of $0.50590 per Dth/day is higher than the currently applicable Rate Schedule FT Zone 6-4 reservation charge of $0.41704 per Dth/day. We do not expect that recalculation of the proposed rate to remove the variable costs identified above will result in an incremental rate that is lower than the existing system rate. Accordingly, because an appropriately calculated incremental reservation charge will be higher than the currently applicable Rate Schedule FT reservation charge, the Commission will require use of the recalculated incremental reservation charge as the initial recourse reservation charge for firm service using the expansion capacity.[38]

33. Transco did not propose an incremental usage charge since its initial filing included no variable costs. An incremental usage charge calculated to recover the $357,883 in variable costs would be lower than the currently applicable Rate Schedule FT Zone 6-4 usage charge of $0.02375 per Dth. Therefore, the Commission will require Transco to charge its currently applicable Rate Schedule FT usage charge for the project.

34. Transco's application does not address recourse rates for interruptible service using the expansion capacity. Consistent with Commission policy, the Commission will require Transco to charge its currently

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[38] Under the Certificate Policy Statement there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate will exceed the maximum system-wide rate. Certificate Policy Statement, 88 FERC at 61,745.

effective system interruptible rates for interruptible service using the expansion capacity.[39]

35. Transco states that Atlanta Gas Light Company and Oglethorpe have elected to enter into negotiated rate agreements for their capacity. Transco states that it will file the negotiated rate agreements prior to the commencement of service as required by Commission policy.[40]

3. Fuel Retention and Electric Power Rates

36. Transco proposes to charge its generally applicable system fuel retention and electric power rates for service on the project. Transco states that the project facilities will reduce overall system fuel use (gas fuel consumption plus the gas equivalent of electric power consumption) to the benefit of non-project shippers.[41] Transco's fuel study shows that the project impact of fuel consumption will result in a 30.53 percent reduction in system fuel use attributable to existing shippers.[42] In view of this, we will approve Transco's proposal to charge its generally applicable system gas

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[39] *See, e.g., Trunkline Gas Co., LLC*, 153 FERC ¶ 61,300, at P 62 (2015).

[40] Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. *See, e.g.*, *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

[41] *See* Transco's Application at 11, Exhibit Z-1.

[42] Transco's study was based on ten representative days between November 1, 2013 and October 31, 2014. Transco states that the system was modeled with and without the incremental project facilities and transportation volumes. *See* Transco's Application at Exhibit Z-1.

fuel and electric power rates for service using the expansion capacity.

4. Inexpensive Expansibility

37. The State Commissions assert that Transco's application appears to be deficient because it fails to address the issue of inexpensive expansibility (i.e., whether it was possible to construct the Dalton Expansion Project at a lower cost because of the previous construction of the Leidy Southeast Project). The State Commissions claim that the Dalton Expansion Project allows shippers to transport gas on Transco's mainline from New Jersey to Mississippi, but not pay for any major facilities north of Georgia, which they contend raises the question of whether this project will be subsidized by shippers on prior expansions that created southbound capacity on Transco's mainline. The State Commissions note that the proposed $0.50580 recourse rate for the Dalton Expansion Project is significantly lower than the estimated recourse rate of $0.67393 for Leidy Southeast Project, which will enable shippers to transport gas from receipt points on Transco's Leidy Line in Pennsylvania to various delivery points along Transco's mainline as far south as Transco's existing Station 85 Zone 4 and 4A pooling points in Choctaw County, Alabama. Thus, the State Commissions argue the new Dalton Expansion Project will allow shippers to transport gas further south on Transco's mainline at a lower recourse rate than the Leidy Southeast Project shippers.

38. Transco states that the inexpensive expansibility doctrine has no application to the Dalton and Leidy Southeast Projects. Transco states that the Leidy Southeast Project involves construction of extensive looping and compression on Transco's Leidy Line. In contrast, the Dalton Expansion Project principally

involves the construction of a new, 111-mile lateral off the Transco mainline in Georgia. Transco states that the bulk of the Leidy Southeast Project costs are for facilities upstream of the point where the Dalton capacity commences, and include pipeline looping and compressor station horsepower additions on the Leidy Line necessary to transport gas from the Leidy Southeast receipt points on the Leidy Line to the point of interconnection between the Leidy Line and Transco's mainline. Thus, Transco asserts that the Leidy Southeast Project facilities do not beneficially affect the facility costs underlying the Dalton Expansion Project. Transco concludes that the primary firm capacity paths and facilities under the two projects are too dissimilar to consider a roll-in of the costs of the projects.

39. The Commission disagrees with the State Commissions that the Dalton Expansion Project is a result of inexpensive expansibility made possible by the Leidy Southeast Project. As Transco correctly stated, the bulk of the Leidy Southeast Project are facilities upstream of the point where the Dalton capacity commences and were constructed to enable delivery of gas from Transco's Leidy Line to Transco's mainline. Conversely, the Dalton Expansion Project transports gas from Transco's Station 210 Zone 6 Pooling Point in Mercer County, New Jersey, and transportation of the volumes entering this pool are not dependent on the Leidy Southeast Project being constructed. Due to the nature of pipeline construction, service on almost all incremental expansions use some part of the existing pipeline system to provide service, since expansion volumes can often be delivered by constructing discrete facilities in key areas to alleviate bottlenecks or increasing throughput by adding looping or compression. Thus, as we have here, the Commission addresses concerns about potential

subsidization by comparing the rate calculated to recover the costs associated with the proposed expansion capacity to the applicable existing system rate for the project service and requiring pipelines to use the higher of the two as the recourse rate for project service. Given the lack of interdependence between the Dalton Expansion Project and the Leidy Southeast Project, there is no basis for basing our subsidization determination on a comparison, instead, of the rates of the two expansion projects, as suggested by the State Commissions.

5. Reporting Incremental Costs

40. Section 154.309 of the Commission's regulations[43] includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are approved to ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers. Therefore, Transco must keep separate books and accounting of costs and revenues attributable to Dalton Lateral capacity and incremental services using that capacity as required by section 154.309. The books should be maintained with applicable cross-references. 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.[44]

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[43] 18 C.F.R. § 154.309 (2015).

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

6. Lease Agreement

41. The Dalton Lateral will be jointly owned and jointly funded by Transco and Dogwood, with each party holding a 50 percent undivided joint ownership interest. Dogwood will hold its 50 percent ownership interest as a "passive owner" of the Lateral. On the in-service date of the project, Dogwood will lease its 50 percent ownership interest to Transco for a primary term of 25 years. Transco asserts that during the lease term it will have full possessory and operational rights to the lateral and will have 100 percent of the capacity rights on the lateral.

42. The Construction and Ownership Agreement provides that Dogwood and Transco will jointly fund the cost to construct the Dalton Lateral facilities in proportion to their respective ownership interests. Because Dogwood will be a passive owner, Transco asserts that the Commission should find that Dogwood does not require a certificate in connection with the project. Accordingly, Transco requests that the certificate authority requested herein be granted solely to Transco and pertain to 100 percent of the Dalton Lateral facilities.

43. Transco asserts that it will utilize the capacity rights under the lease, in conjunction with the capacity to be created by the other project facilities, to provide transportation services under its Tariff. Transco further asserts that during the proposed lease, all operating and maintenance expenses will be Transco's responsibility. Transco states that the Lease Agreement includes a mechanism for Transco and Dogwood to share maintenance capital expenditures incurred by Transco to repair or replace the Dalton Lateral facilities.

44. The Lease Agreement provides for a primary term of 25 years and may be extended, at Transco's option, for two successive five-year terms. Subject to Transco's right to extend the term of the Lease Agreement, the Lease Agreement will continue in effect for successive one-year extensions until prior written notice to terminate is provided by Transco to Dogwood. Transco asserts that at the termination of the Lease Agreement, possessory and operational rights to the leased facilities will revert to Dogwood, subject to the receipt of the necessary authorizations from the Commission.

45. The Lease Agreement provides that Transco will pay to Dogwood a fixed monthly payment of $2,140,916.70 for the 25-year primary term. The monthly lease charge during each term extension will be determined in accordance with a formula detailed in Exhibit A of the Lease Agreement, reflecting an adjusted annual cost of service for the Dalton Lateral and a monthly unsubscribed capacity sharing factor, if any. In addition, Transco will pay Dogwood a maintenance capital surcharge in the form of a monthly cost of service payment based on the amount of maintenance capital expenditures, if any, reimbursed by Dogwood to Transco. Transco asserts that its annual lease payments to Dogwood under the Lease Agreement are less than the equivalent cost of service that would apply if Transco directly owned 100 percent of the Dalton Lateral facilities (i.e., if Transco constructed Dogwood's 50 percent ownership share of the Dalton Lateral instead of leasing Dogwood's 50 percent ownership share).

46. Consistent with Commission regulations, Transco proposes to record the lease as a capital lease in Account 101.1, Property under Capital Leases, and the

related obligation in Account 243, Obligations under Capital Leases – Current, and Account 227, Obligations under Capital Leases – Noncurrent. Transco contends that the lease qualifies as a capital lease because the present value at the beginning of the lease term of the minimum lease payments exceeds 90 percent of the fair value of the leased property to the lessor at the inception of the lease. Transco states that the costs and revenues associated with the project's leased facilities will be accounted for separately and segregated from its other system costs.

47. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.[45] To enter into a lease agreement, the lessee generally is required to be a natural gas company under the NGA and requires section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.[46]

48. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits from using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates

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[45] *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

[46] *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005).

for comparable service over the terms of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect existing customers.[47] We find that the proposed lease agreement between Transco and Dogwood satisfies these requirements.[48]

49. The Commission has found that capacity leases in general have several potential benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, and minimize environmental impacts.[49] In addition, leases can result in administrative efficiencies for shippers.[50]

50. The annual amount Transco would pay Dogwood under the lease is less than what it would cost if Transco constructed and owned the facilities being leased from Dogwood; thus, shippers will benefit from the lease arrangement. During the 25 year primary term of the Lease Agreement, Transco will pay

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[47] *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008), *order on reh'g*, 127 FERC ¶ 61,164 (2009), *order on remand*, 134 FERC ¶ 61,155 (2011); *Colorado Interstate Gas Co.*, 122 FERC ¶ 61,256, at P 30 (2008); *Gulf South Pipeline Co., L.P.*, 119 FERC ¶ 61,281, at P 37 (2007).

[48] The second criterion, that "the lease payments [be] less than, or equal to, the lessor's firm transportation rates for comparable service of the terms of the lease on a net present value basis," is not applicable to the circumstances here, as Dogwood does not provide transportation services and thus, has no firm transportation rates to which the lease payments may be compared.

[49] *See, e.g.*, *Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003) (*Dominion*); *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185 at P 9; *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 70 (2002).

[50] *Wyoming Interstate Co., Ltd.*, 84 FERC ¶ 61,007, at 61,027 (1998), *reh'g denied*, 87 FERC ¶ 61,011 (1999).

Dogwood a fixed lease payment of $2,140,916.70 per month for Dogwood's ownership interest in the Dalton Lateral. The annualized amount of such lease charge is $25,691,000,[51] which is then compared to the estimated annual cost of service of $46,445,747, assuming Transco constructed and owned Dogwood's share of the Dalton Lateral.[52] Since the annual amount to be paid under the lease is less than the comparable cost of service if Transco had constructed the facilities, approval of this lease agreement will reduce Transco's costs associated with the project and thus the amount shippers will pay under the recourse rate by an estimated $20,754,747 per year.[53]

51. The State Commissions argue that Transco has not demonstrated that its annual lease payments will be less than the equivalent cost of service that would apply if Transco directly owned 100 percent of the facilities. The State Commissions assert that Transco's analysis of its annual lease payments is deficient, because while the project lease has a 25-year primary term, Exhibit N only analyzes one year of the lease. Therefore, Transco's analysis does not take into account the impact of depreciation of the leased facilities on the cost of service. As the leased facilities are depreciated over time, the cost of service should decrease due to the decrease in rate base. The State Commissions contend that by limiting its analysis to one year, Transco has failed to show that the lease payments

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[51] *See* Exhibit N, Line 14. The annualized amount of such lease charge was calculated as follows: $2,140,916.70 times 12 equals approximately $25,691,000.

[52] *See* Exhibit N, Line 13 reflecting an estimated incremental total cost of service to construct Dogwood's ownership share of the Dalton Lateral.

[53] *See* Exhibit N, Line 15.

over the life of the lease will be less than the equivalent cost of service that would apply if Transco directly owned the facilities.

52. Transco states that it has included in its certificate application an analysis that includes a comparison of the annual lease charges to an incremental annual cost of service that would apply if Transco constructed and owned 100 percent of the project facilities. Transco states that its analysis used the first year of the lease arrangement consistent with section 157.14(a)(18) of the Commission's regulations, which Transco states requires Transco to calculate its initial recourse rates for the project using a cost of service for the first calendar year of operation after the proposed facilities are placed in service. Thus, Transco argues that when comparing Transco's annual lease payments under the lease arrangement to the estimated annual cost of service assuming Transco constructed and owned Dogwood's share of the corresponding project facilities, Transco appropriately used a first-year cost of service analysis.

53. Transco's analysis using the first year of the lease arrangement is consistent with section 157.14(a)(18) of the Commission's regulations,[54] and our approval of the lease agreement is consistent with previous Commission orders in which the Commission approved the leasing of new capacity being constructed as part

[54] Section 157.14(a)(18)(c)(ii)(a) of the Commission's regulations provides in relevant part that "[w]hen new rates . . . are proposed . . . [a statement explaining the basis used in arriving at the proposed rate] shall be accompanied by supporting data showing . . . system cost of service for the first calendar year of operation after the proposed facilities are placed in service."

of a project based on the costs of that capacity.[55] With the lease agreement in place, Transco's recourse rates are lower than if Transco had constructed the capacity itself, because Transco's cost of service is lower under the lease. The State Commissions are correct that, assuming Transco constructed and owned 100 percent of the facilities, its cost of service should decrease over time. But, as stated above, rates are based on a first year cost of service, and the pipeline is under no obligation to reduce those rates over time. Therefore, the lease arrangement provides lower rates and a benefit to shippers.

54. In addition, we find that the lease arrangement will not adversely affect Transco's existing customers. Transco proposes an incremental recourse rate designed to recover the cost of service attributable to the project facilities, including the payments under the Lease Agreement. Therefore, existing shippers will not subsidize the lease arrangement. In addition, Transco has agreed to separately account for the costs and revenues associated with the leased facilities and to segregate those costs and revenues from its other system costs during the term of the Lease Agreement. Accordingly, the lease arrangement will not result in adverse effects to Transco's existing customers or on any other pipelines or its customers.

55. The State Commissions are concerned that at the termination of the lease agreement, possessory and operational rights to the leased facilities will revert to Dogwood, arguing that the use of the lease ownership structure should not be allowed to evade or

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[55] *See, e.g.*, *Constitution Pipeline Co.,* 149 FERC ¶ 61,199 (2014); *Tennessee Gas Pipeline Co., L.L.C. and National Fuel Gas Supply Corp.*, 150 FERC ¶ 61,160 (2015).

weaken the certificate holder's obligations regarding continuity of service. Specifically, the State Commissions assert that Transco has not fully fleshed out the impact of its request that Dogwood, the co-owner of the leased capacity, be exempt from any certificate obligations with regard to the leased facilities. The State Commissions recognize that the reversion at the end of the term of the lease is subject to the receipt of the necessary authorization from the Commission; however, despite that qualification they are concerned that approval of the lease, including the provision regarding what occurs at the termination of the lease, should not prejudge any issues regarding continuity of service, or any other issue, at the end of the lease.[56] The State Commissions assert that the Commission's long-standing policy is that when examining proposals to abandon service, it weighs all relevant factors, but considers "continuity and stability of existing services . . . the primary considerations in assessing whether the public convenience and necessity permit abandonment." Accordingly, the State Commissions request that, in the event the Commission approves the lease, it should clarify that nothing therein prejudges any issues as to the status of the leased facilities, or the service provided on those facilities, at the end of the lease.

56. Transco asserts that it is not requesting pregranted abandonment authority at the end of the lease term. Transco further asserts that while the passive owner lessor under the lease arrangement is not required to apply for certificate authority, any certificate authority granted will attach to 100 percent

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[56] State Commission's Protest at 17 (citing *Northern Natural Gas Co.*, 142 FERC ¶ 61,120, at PP 10-11 (2013) and *El Paso Natural Gas Co.*, 136 FERC ¶ 61,180, at P 22 (2011)).

of the project's facilities and not just to Transco's ownership interest. Transco states that if at the end of the lease the lessor desires to use the facilities for a purpose other than that authorized by the certificate, then Transco and the lessor will be required to obtain the necessary abandonment authority under NGA section 7(b) and interested parties will have ample opportunity to participate in the section 7(b) proceeding for such abandonment.

57. The Commission clarifies that upon termination of the lease at the end of its term or otherwise, Transco must continue to provide jurisdictional service on the Dalton Lateral until it requests and is authorized to abandon the capacity under NGA section 7(b). Similarly, if Transco files for authorization to abandon the leased capacity, Dogwood or any other entity seeking to use the capacity for jurisdictional service will need to file for and receive the requisite certification authorizations under NGA section 7(c).

C. Environment

58. On April 25, 2014, the Commission staff began its environmental review of the Dalton Expansion Project by granting Transco's request to use the pre-filing process and assigning Docket No. PF14-10-000.[57]

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[57] Natural Resources Group, LLC (NRG) was selected at that time as third-party contractor to assist Commission staff in the development of the environmental assessment for the Dalton Expansion Project. In September 2014, Environmental Resources Group (ERM) acquired NRG. Subsequently, ERM notified Commission staff of a possible conflict of interest, as ERM had previously been engaged by Transco to provide air permitting support and air dispersion analyses for inclusion in Transco's Dalton Expansion Project application; ERM included updated Organizational Conflict of Interest forms with its notification. As mitigation for the potential conflict, ERM proposed to establish

As part of the pre-filing review, staff participated in open houses sponsored by Transco in Newnan, Carrollton, Dallas, Cartersville, Calhoun, and Dalton, Georgia between June 9 and September 25, 2014, to explain our environmental review process to interested stakeholders.

59. On October 21, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Dalton Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI). The NOI was published in the Federal Register[58] and mailed to interested parties including federal, state, and local officials; elected officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. FERC environmental staff conducted three scoping meetings on November 3, 4, and 5, 2014, in Dalton, Carrollton, and Cartersville, Georgia to receive verbal scoping comments on the

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an internal corporate firewall to isolate NRG and ERM project and client teams for the duration of the respective third-party contractor engagements. This mitigation was found to be acceptable. Though wholly-owned by ERM, NRG operated as a separate entity until after its work for the Commission on the Dalton Expansion Project was completed. Further, while NRG did review the analyses done by ERM for Transco, the air dispersion analyses were also independently reviewed by Commission staff and the conclusions on this modeling presented in the environmental assessment are those of staff. Moreover, the air permitting support provided by ERM was also independently reviewed by the Georgia Department of Natural Resources - Environmental Protection Division, which issued air quality permits on for Compressor Station 116 and the Looper Bridge Road Meter Station on March 11, 2015 and July 10, 2015, respectively.

[58] 79 Fed. Reg. 64186 (October 28, 2014).

project. On November 14, 2014, the Commission issued a *Supplemental Notice of Intent to Prepare an Environmental Assessment for the Planned Dalton Expansion Project and Request for Comments on Environmental Issues*. This notice was also published in the Federal Register[59] and was mailed to over 1,100 interested parties and property owners affected by the project facilities, notifying them that the scoping period was extended through December 20, 2014.

60. As a result of concerns raised during the pre-filing process by the Georgia Department of Natural Resources (GADNR), the U.S. Fish and Wildlife Service (FWS), and the Nature Conservancy, Transco revised its planned route to avoid and minimize potential environmental impacts on the biologically sensitive Raccoon Creek Watershed. Accordingly, on February 13, 2015, the Commission issued a second *Supplemental Notice of Intent to Prepare an Environmental Assessment for the Planned Dalton Expansion Project and Request for Comments on Environmental Issues*. This notice was published in the Federal Register[60] and was mailed to over 1,270 interested parties, including landowners that could be affected by the route variation. Transco held a public open house on February 24, 2015, in Dallas, Georgia to introduce the project to landowners potentially affected by the newly-developed route. Our environmental staff held a fourth scoping meeting in Dallas, Georgia on March 4, 2015, to receive verbal scoping comments from stakeholders about the adjusted route. Eighteen people spoke at the meeting. This newly-developed route, referred to as the Raccoon Creek Alternative,

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[59] 79 Fed. Reg. 69455 (Nov. 21, 2014).

[60] 80 Fed. Reg. 9710 (Feb. 24, 2015).

was subsequently incorporated into the application for the project on July 15, 2015.

61. In addition, as noted above, Bartow indicated concern in its motion to intervene that the proposed location of the Dalton Lateral would interfere with its ability to expand two of its elementary schools on land that it specifically acquired for that purpose. In a response to those comments filed on October 21, 2015, Transco stated it had incorporated Route Variation AK as part of the Dalton Lateral – Segment 3, moving the pipeline to a location slightly over 1000 feet from the Taylorsville Elementary School, such that the route no longer bisects the school property. The modified route was reflected in Transco's July 15, 2015 filing and reviewed in the EA. Regarding the location of the pipeline in the vicinity of the second school, Kingston Elementary School, the pipeline follows an existing overhead powerline, paralleling a corridor located about 1,500 feet west of the school.

62. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), our staff prepared an environmental assessment (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, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts, and alternatives. The EA addressed all substantive comments raised during the scoping period.

63. The EA was issued for a 30-day comment period and placed into the public record on March 31, 2016. The Commission received several comment letters on the EA from individual stakeholders, the U.S. Environmental Protection Agency (EPA), and the Coosa River Basin Initiative (CRBI) regarding the

impacts on the Etowah River, construction techniques, potential impacts on water supply, effects of blasting, cultural resources, cumulative effects, erosion and production and end-user emissions.

1. April 2016 Modifications

64. On April 13, 2016, Transco filed 27 proposed modifications to its project and on May 19 and 25, 2016, it filed additional information pertaining to these modifications. Transco's proposed modifications would affect a total of 43 landowners, two of whom were not previously affected by the project. Since these proposals were made after the issuance of the EA, while we will address them in this order, we will consider them under the criteria established in Environmental Condition 5. Environmental Condition 5 contemplates that there might be changes, such as route realignments, facility relocations, new staging areas, or access roads, identified after a project has been certificated. Requests for such modifications must include, among other information, documentation of affected-landowner approval and information regarding potentially affected cultural resources, endangered species, and environmentally sensitive areas. As detailed below and consistent with the criteria of Environmental Condition 5, we will only grant approval for the modifications for which Transco has both obtained landowner agreements and completed environmental surveys. For the remaining proposed modifications, we will allow Transco to present the required additional information and/or justifications for the changes as required by Environmental Condition 5 of this order.

65. While Transco's proposed modifications would increase the pipeline length by 0.2 mile and total land disturbance by 5.3 acres, the modifications would

decrease the amount of forested wetlands impacted by 0.9 acre and eliminate four waterbody crossings. Based on its May 19, 2016 filing, Transco has agreements with 25 of the 43 landowners impacted by the modifications (covering 11 of the 27 modifications). Transco continues to negotiate with the other 18 landowners. Transco has conducted environmental surveys along 20 of the 27 proposed modifications. We have reviewed the available survey reports for the modifications and determined that the modifications approved herein will not significantly increase impacts on sensitive resources.

66. Transco proposed relocation of eight of its mainline valves (MLV). Transco has completed environmental surveys and obtained landowner agreements for the following six modifications: relocation of MLV 3 (from MP 34.5 to MP 34.3), MLV 6 (from MP 67.8 to MP 64.2), and MLV 7 (from MP 77.9 to MP 78.2); shifting MLV 8 at MP 85.3 (no change in MP), and MLV 10 at MP 98.7 (no change in MP); and adding a new MLV at MP 71.8. Having reviewed the submitted information, we approve these modifications.

67. Transco has not completed environmental surveys and has not obtained landowner agreements for the property affected by the relocation of MLV 1 at MP 20.4 (no change in MP). Also, Transco has not obtained landowner agreement for the relocation of MLV 9 (from MP 92.2 to MP 92.3). Accordingly, we will not approve these modifications at this time.

68. Transco has completed environmental surveys and obtained landowner agreements for two modifications along the Dalton Lateral: the addition of extra workspace on the north and south sides of a railroad crossing near MP 58.2 and a reroute of the Dalton

Lateral between MPs 71.2 and 71.4 to avoid impacts on Green Pond. We approve these modifications.

69. Transco has not completed environmental surveys and/or obtained landowner agreement for the following eight proposed modifications to the Dalton Lateral: (1) a reroute between MPs 35.9 and 36.4 to the west based on a landowner request; (2) shifting the crossing of Highway 278 to the west between MPs 40.4 and 40.8 and the addition of two access roads; (3) addition of a cathodic protection site at MP 51.0; (4) reroute to the east between MPs 54.5 and 55.4 to avoid crossing GADNR-owned lands and addition of a new temporary access road; (5) reroute of an access road near MP 56.5; (6) addition of extra workspace at the Highway 278 crossing; (7) reroute and reduction of the bore length at the Interstate 75 crossing between MPs 76.6 and 77.9; and (8) reroute between MPs 95.7 and 96.9 to avoid multiple crossings of Polecat Creek. We do not approve these modifications.

70. Transco also proposes to: (1) added a new access road from the existing Compressor Station 115 to the Dalton Lateral right-of-way; (2) relocate the Beasley Road Meter Station (now called the Lucas Road Meter Station) and add a new tap site and pipeline spur from the Dalton Lateral at MP 53.2 to the new meter station site; and (3) modify the portage path, which will be used to move boats and kayaks around the construction area, on the southern side of the Etowah River. Transco has not completed the environmental surveys of the first of these modifications and has not obtained landowner agreements for all the properties affected by the second and third of these modifications. Therefore, we do not approve these modifications.

71. Transco proposes five modifications that would include locating workspace within streams. Because

each of these changes will require modifications to the project's Wetland and Waterbody Construction and Mitigation Procedures (Transco's Procedures; Appendix E of the EA), we will require additional information to evaluate the feasibility of an alternative workspace layout or if additional protection measures can be used to adequately protect the streams. Accordingly, we do not approve these modifications at this time.

72. Finally, Transco proposes to reroute a portion of the Dalton Lateral between MPs 30.3 and 30.4 to the west to avoid impacts on a cemetery and to maintain a 30-foot-wide no-disturbance buffer, as requested by the Georgia State Historic Preservation Office. Transco has neither completed the environmental surveys nor obtained landowner agreements for all the properties affected by this proposed reroute. Therefore, we will not approve this modification. Further, the workspace for this reroute would be located approximately 10 feet from a house that was previously 400 feet from the workspace. Additional information is needed for us to evaluate Transco's request and assess the feasibility of an alternative route or crossing method to avoid impacts on that residence.

73. To summarize, we approve incorporation of eight of Transco's requested modifications, as described above, into the route authorized with this order. The other 19 modifications are not approved. Transco may present the required additional information and/or justifications for these changes with its Implementation Plan and in accordance with Environmental Condition 5 of this order. This condition requires Transco to demonstrate compliance with Section 106 of the National Historic Preservation Act and Section

7 of the Endangered Species Act prior to receiving approval of any of the requested modifications.

2. Comments from the U.S. Environmental Protection Agency

74. In its May 2, 2016 comment letter, the EPA provided several recommendations and requested that the Commission issue a supplemental EA to address deficiencies identified in staff's EA and to include additional analysis addressing the 27 route modifications proposed after the EA was issued. In response, we address the various comments from EPA in this order and conclude that a supplemental EA for the Dalton Expansion Project is not warranted.

75. First, the EPA recommends we address the project's potential to cause acid rock drainage during construction. Acid-producing rocks are known to occur in Georgia, and typically include graphitic schist, phyllite, slate, coal, and carbonaceous shales, which often contain pyrite. Counties that are crossed by the Project in Georgia where these rocks are known to occur include Paulding, Bartow, and Gordon. Acid-producing rocks are generally recognizable in the field with an overall color of black or very-dark gray. Pyrite has a gold metallic appearance.

76. In response to the EPA's recommendation, Transco agrees to evaluate the potential presence of acid-producing rock or acidic soil along the project route through review of U.S. Geologic Survey geologic maps, U.S. Department of Agriculture – Natural Resources Conservation Service Soil Surveys, and the Soil Survey Geographic database, and to conduct field

testing.[61] Transco states that it will file with the Commission, prior to construction, the results of its desktop analysis identifying areas with the potential for acid-producing rock or acidic soils, and a detailed mitigation plan that outlines the procedures for field verification and the mitigation measures that will be implemented during construction.

77. Transco will also include a discussion on acid-producing rock and acidic soils in the environmental training that will be required for environmental inspectors before construction begins to familiarize the environmental inspectors with the specific conditions and issues associated with acid-producing rock and acidic soils. We conclude that Transco's proposed measures are sufficient to address the EPA concerns.

78. The EPA also recommends that we address karst areas of concern identified through desktop review (topographic maps, aerial photographs, and LiDAR) in Bartow and Murray Counties, Georgia. Transco has conducted geophysical investigations at eight locations to gather additional information about these features.[62] Based on anomalies that were identified during the geophysical investigations, soil borings were performed at two locations to further define the features and to determine if mitigation measures may be needed during construction. The results of the soil borings indicated that the conditions at the investigated locations should support the proposed pipeline construction without karst mitigation measures. Three

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[61] *See* Transco's Response to our November 13, 2015 Environmental Data Request, stating it will file the test borings before commencing construction.

[62] *See* Transco's Report of Geophysical Services Karst Evaluation filed on August 13, 2015 in this proceeding.

additional areas have been identified for soil borings once access is available prior to construction in order to determine if karst mitigation measures will be required. The pipeline was re-routed away from three of the eight locations where anomalies were identified; therefore soil borings were not performed at those locations. Environmental Condition 12 requires that Transco file a revised *Karst Mitigation Plan* prior to construction that includes the results of geotechnical borings to determine the nature and extent of the anomalies detected during the electric resistivity imaging investigations as well as site-specific mitigation measures (e.g., route adjustment) for any karst features identified. With this additional study, the Commission's review of the results, and Environmental Condition 12, we find the EPA's concerns are adequately addressed.

79. The EPA recommends that we address potential scouring, erosion of river banks, and associated sediment discharges that could impact habitat for federally listed mussels where waterbodies are crossed via dry-ditch and/or wet open crossings. On May 12, 2016, the FWS filed with the Commission its biological opinion (BO) on the project's potential impacts on aquatic species (see Threatened and Endangered Species discussion below).[63] The FWS states that federally listed freshwater mussels are not known to occur in the Oostanaula, Coosawattee, and Conasauga River tributaries that the pipeline will cross, with the exception of Holly Creek, where mussel populations occur well upstream of the proposed crossing location. The FWS also states that direct impacts on listed

[63] *See* FWS's Biological Opinion detailing potential impacts of Transco's proposed Dalton Expansion Project on aquatic species, filed on May 12, 2016 in this proceeding.

mussels are not anticipated but that erosion and excessive sediment transport from these tributaries due to pipeline construction and right-of-way could impact listed mussels and their designated critical habitat. However, the BO states that as proposed, the project is not likely to jeopardize the continued existence of federally listed freshwater mussels identified as potentially occurring in the project area and is not likely to destroy or adversely modify critical habitat. Based on analysis in the EA and the findings of the FWS' BO, we conclude that additional scour analysis as recommended by the EPA is not warranted.

80. The EPA requests that we assess the cumulative effects of collocating pipeline rights-of-way with existing rights-of-way, and that we evaluate the impacts on sensitive ecosystems crossed by the proposed route. As discussed in section B.3.c of the EA, although the project may contribute to forest fragmentation, collocation and construction in previously disturbed areas will minimize the effects of forest fragmentation and forest edge effect caused by construction of the pipeline.[64] In addition, Transco has deviated from existing rights-of-way in areas where expanding the existing right-of-way would affect sensitive habitats (e.g., portions of the Raccoon Creek watershed, Green Pond, and Drummond Swamp). Further, as noted in the EA, the presence of similar habitat types within the vicinity of the project area will help ensure that the project does not result in population-level or significant

[64] EA at 54, *see also* EA at 52-53 (noting that much of the woodland in the project area has already been fragmented by agricultural land, managed timber operations, and other developments).

measurable negative impacts on birds of conservation concern or other migratory birds.[65]

81. The EPA identifies concerns related to the transfer of hydrostatic test water between watersheds and expresses concerns about water withdrawals. The EPA asserts that the associated aquatic ecosystems should be assessed, particularly for drought conditions, the hydrostatic-testing frequency needed for operations/maintenance, and impacts on federally listed mussel species.

82. Transco states in its May 17, 2016 response that surface water used for project construction and operations will be removed from and returned to the same watershed (8-digit hydrologic unit code) and that no hydrostatic testing will be performed during operations/maintenance.[66] As stated in section B.2.b of the EA, Transco will be required to obtain authorization from the GADNR prior to any water withdrawals and to comply with all conditions set by the GADNR.[67] Further, Transco will implement the measures outlined in its Procedures (subject to Commission review and modification as necessary) to minimize impacts on waterbodies during withdrawals including maintaining adequate flow rates to protect aquatic life, provide for all waterbody uses, and provide for downstream withdrawals of water by existing users.[68] We conclude that Transco's measures address the concerns expressed by the EPA.

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[65] EA at 54-55.

[66] Transco's May 17, 2016 Response to the EPA's Comments on the EA.

[67] EA at 40.

[68] *Id.*; *see also* Environmental Condition 14.

83. The EPA recommends that the EA address the depth of the pipeline to mitigate the potential effects of severe flooding events such as a 500-year flood that could compromise the pipeline due to flood-water scouring of the stream bottom, and cites as an example the weakening and rupture of the Enterprise Product Pipeline that was buried to a depth of 20 feet beneath the Missouri River bed.

84. The Missouri River is the longest river in the United States and has a drainage area of more than half a million square miles. There is no waterbody crossed by the project that is comparable. Moreover, most of the larger waterbodies crossed by the project will be crossed using the horizontal direction drill (HDD) method, resulting in the pipeline being installed more than 30 feet below the streambed. Additionally, the pipeline will be constructed in accordance with Transco's Procedures and be subject to post-construction monitoring to identify areas of exposure as discussed in section A.7.e and Appendix E of the EA.

85. The EPA identifies concerns related to the crossing of three major waterbodies: an unnamed tributary to Jones Branch, an unnamed tributary to Crane Eater Creek, and Pole Cat Creek. Transco states in its May 17, 2016 response that the unnamed tributary to Jones Branch is a man-made intermittent pond that will be crossed using dry crossing methods. The unnamed tributary to Crane Eater Creek is an agricultural stock pond that will be drained under permission of the owner. Finally, the referenced crossing of Pole Cat Creek is no longer part of the proposed project. As outlined in its Procedures, Transco will file detailed, site-specific construction plans and scaled drawings identifying all areas to be disturbed by construction for each major waterbody crossing for the review and

written approval (and additional mitigation measures if warranted) by the Director of the Office of Energy Projects prior to construction.

86. The EPA questions the number of streams described in the EA. To clarify, the EA states that the project will cross 55 coldwater fishery streams; 41 of which will be crossed using a dry crossing method and one will be crossed using the HDD method. The remaining coldwater fisheries streams are within the proposed construction workspace but will not be crossed by the pipeline. Based on Transco's April 2016 Supplemental Filing, two additional coldwater fisheries streams will be crossed. Therefore, the current project, as modified, will cross 57 coldwater fisheries, 43 of which will be crossed using a dry crossing method, one will be crossed using the HDD method, and 13 that are within the proposed construction workspace but will not be crossed by the pipeline.

87. The EPA identifies concerns related to the crossing of a conservation easement associated with Snake Creek. This conservation easement was avoided by a route variation that was adopted in July 2015 and was considered in the EA.

88. The EPA identifies concerns related to the future conversion of the proposed pipeline from natural gas transportation to the transportation of natural gas liquids or petroleum products. Transco states that it does not have any plans to abandon or convert the pipeline to natural gas liquids or petroleum products. Prior to any abandonment of the pipeline, Transco would be required to obtain an approval from the Commission under section 7(b) of the NGA.

89. The EPA identifies concerns related to the storage of tert-butyl mercaptan, the odorant used to assist in the detection of pipeline leaks. Transco indicates that odorization facilities are not proposed for any component of the project. The supplemental odorization control proposed by Transco will analyze the gas composition and mercaptan levels in the gas stream and signal the existing odorization stations to inject less mercaptan or to supplement up to the established level. The net effect will be the same amount of mercaptan by volume in the delivered gas stream to the customer. Transco anticipates that the usage of the existing odorization facilities will be reduced.[69]

90. The EPA recommends that the Commission provide an estimate of both the production emissions, including production-related fugitive emissions, and end-user GHG emissions associated with the proposed action in a supplemental NEPA document. As identified by Transco, gas transported by the project will be delivered to the Oglethorpe Power – Chattahoochee Energy Facility and to Atlanta Gas Light. We have determined that there is no pending construction or air quality permit application pending for the Oglethorpe Power – Chattahoochee Energy Facility. The project would deliver approximately 208 million cubic feet per day to the facility, which may be used for either future expansion or to displace current natural gas supply. Should the gas be used for expansion, there would be an increase in greenhouse gas emissions (GHGs) as well as criteria pollutants. If the natural gas is displacing an existing gas supply, there would be no change in emissions. If the gas is used to

[69] Transco's May 17, 2016 Response to the EPA's Comments on the EA.

displace another fuel, such as oil or coal, then GHGs would most likely be reduced. Regardless, changes in the air permit would require approval by the Georgia Department of Environmental Protection.

91. The remaining 240 million cubic feet per day would be delivered to the Atlanta Gas Light, a local distribution company (LDC). The LDC could distribute the gas to residential, commercial, or industrial customers. Each of these end use scenarios result in very different lifecyle GHG or criteria pollutant emissions. We do not believe the potential increase of emissions associated with the production and combustion of natural gas is causally related to our action in approving this project, nor are the potential environmental effects reasonably foreseeable as contemplated by the Council on Environmental Quality's (CEQ) regulations. Moreover, as the Commission has previously stated, there is no standard method for determining fugitive methane emissions for pipelines and the level of fugitive methane releases during the lifecycle of natural gas are highly debated. Therefore, it is difficult to accurately quantify fugitive emissions of methane.[70] Further, the EA explains that there is no standard methodology to determine how a project's incremental contribution to GHG emissions would result in physical effects on the environment, either locally or globally.[71] We concur.[72] Even if we determined that a lifecycle GHG analysis was warranted, uncertainties regarding both the LDC end uses, as well as numerous

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[70] *See Transcontinental Gas Pipe Line Co. LLC*, 149 FERC ¶ 61,258, at P 109 (2014).

[71] EA at 122.

[72] *See, e.g., Sabine Pass Liquefaction Expansion, LLC*, 151 FERC ¶ 61,012 at P 97, *reh'g denied*, 151 FERC ¶ 61,253 (2015).

production/upstream variables (gas source, pipeline lengths, processing facilities, etc.) would make the analysis too speculative to permit any meaningful consideration. In addition, given that potential production areas are far removed from the geographic scope of the project, identifying emissions of criteria pollutants from production/upstream is even more speculative. Speculative estimates of the end use and production/upstream GHG emissions would not meaningfully inform the Commission's decision. There are no thresholds for significance, nor is there a meaningful method to determine the local or regional incremental impacts on ongoing climate change.

92. The EPA expressed concerns about impacts on carbon sequestration. Currently there are no federal or state regulations regarding carbon sequestration. According to the EPA, carbon sequestration is the process through which plant life removes carbon dioxide from the atmosphere and stores it in biomass. The project will affect approximately 796 acres of forested land, with 400 acres allowed to revert to forest over time. While there will be a long-term effect of reduced carbon sequestration due to removal of trees from the permanent right-of-way, areas of temporary disturbance will be allowed to revert to pre-existing conditions. The young vegetation of the restored temporary right-of-way will continue to perform the carbon sequestration process. The carbon sequestration ability of the permanent right-of-way will be reduced; however, we conclude that the project will not significantly impact cumulative carbon sequestration in the United States. We also do not believe that the potential reduction of greenhouse gas sinks will significantly exacerbate ongoing climate change.

3. Etowah River Crossing

93. The Commission received multiple comments regarding the proposed Etowah River Crossing, including comments from the EPA, the Coosa River Basin Initiative (CRBI), Darrel Cagle, and Troy Harris.

94. The EPA recommends that the EA evaluate blasting impacts on karst terrain, specifically the effects of blasting through karst during the crossing of the Etowah River, and recommends that we address sensitive ecosystem impacts.

95. The only waterbody for which blasting is currently proposed is the Etowah River. As discussed in section B.2.b of the EA, Transco conducted a geotechnical investigation of the Etowah River crossing. Given the degree of karst found during Transco's geophysical investigation, trenching for an open-cut crossing of the Etowah River will be through karst bedrock, which is likely to be conducive to techniques such as rock sawing and hammering. If conditions encountered are as expected, then blasting will not be necessary. However, if blasting becomes necessary, Transco will follow the pre-blasting monitoring requirements and post-blasting mitigation measures contained in its project blasting plan, which includes the development of site-specific mitigation measures. Moreover, Environmental Condition 12 requires that Transco file – for review and approval by the Commission – a revised *Karst Mitigation Plan* prior to construction that will include site-specific mitigation measures for any karst features identified.

96. The EPA requests information regarding compensatory mitigation related to the Etowah River crossing. Compensatory mitigation will be addressed by the U.S. Army Corps of Engineers (COE) during

the COE permitting process for the Etowah River crossing.[73]

97. The CRBI questions whether the EA fully evaluated alternative crossing methods and requests that the Commission independently review the feasibility of an HDD crossing of the river. Additionally, the EPA commented that the EA did not include a detailed analysis of the impacts associated with the proposed crossing and requests that turbidity modeling be used to determine impacts. Furthermore, the CRBI and Troy Harris question the reliability of the borings collected within the river and request the results of electric resistivity imaging testing near the river. Lastly, the CRBI, EPA, Darrel Cagle, and Troy Harris express concern regarding blasting and trenching and the resulting turbidity impacts. Troy Harris questions the efficacy of turbidity curtains used during construction, impacts associated with the installation of the curtains, and potential downstream impacts including stream bank erosion and sedimentation affecting a sensitive cultural resource site identified as the Indian Fish Weir.

98. As discussed in the EA, the information provided in Transco's application and supplemental filings is adequate to support the conclusion that the use of the HDD crossing method is not appropriate at this location. Environmental Condition 13 requires that Transco provide, prior to construction, quantitative modeling results of turbidity and sedimentation, including the duration, extent, and magnitude of elevated turbidity levels and sedimentation due to trenching, backfilling, and blasting (should it be

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[73] *See* Transco's May 17, 2016 Response to the EPA's Comments on the EA.

required). The condition also requires Transco to file its final Etowah River Turbidity Control and Monitoring Plan, which was developed in coordination with the GADNR and was provided to the FWS and COE for review. The analysis already included in the EA, as supplemented by the environmental conditions, is sufficient to assess the impacts.

99. The CRBI questions the appropriateness of the use of COE Nationwide Permit 12. The COE will make the final determination on which type of permit the project requires.

100. The CRBI requests that the Commission consider an alternative crossing location of the Etowah River that will avoid a wet trench crossing. As indicated in the EA, based on available U.S. Geological Survey data and the results of the field investigations, similar geologic conditions are expected within reasonable proximity to the proposed Etowah River crossing location.[74] Consequently, the alternative route identified by the CRBI would likely encounter similar geology as the proposed location, which would preclude the use of an HDD crossing method. In addition, the CRBI's alternative route is approximately 3 miles longer than the proposed route, which would result in additional terrestrial impacts.

101. The CRBI comments that the EA did not consider impacts on recreational use of the Etowah River. Impacts on recreational use of the Etowah River are addressed in section B.5.a of the EA. Transco's Draft Aid to Navigation Plan includes a plan identify-

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[74] *See* EA at 24. Environmental Condition 12 requires that, before commencing construction, Transco must file a revised *Karst Mitigation Plan* that includes site-specific mitigation measures for any karst features identified.

ing portage locations to be used by recreational users during construction and a detailed signage plan to inform recreational users of access limitations and portage locations.

4. Alternatives

102. The Commission received several comments on the EA regarding alternatives to the proposed pipeline route, including comments from 1460 Partnership; Evans & Rhodes, LLC; and the First Baptist Church of Atlanta. The 1460 Partnership, LLLP provided a map identifying three specific alternatives that avoided their property. Evans & Rhodes, LLC did not identify a specific alternative route but referenced an alternative route on an adjacent undeveloped property. Based on our review of available information, we determined that these alternatives are similar in length or longer and would cross the same sensitive resources (e.g., forest land) as the corresponding segment of the proposed route without conferring an obvious environmental advantage over the proposed route. Further, these alternatives would require moving the route onto other landowners. For these reasons, we are not authorizing these alternative routes.

103. The First Baptist Church of Atlanta identified an alternative that would follow the church property line, which is located adjacent to an existing powerline right-of-way. Based on a preliminary review of the alternative route, it appears to be feasible and remains on the church property. We agree in this case that co-locating along the power line right-of-way at the edge of the property is preferable to bisecting the property. Therefore, Environmental Condition 24 requires Transco to either modify the pipeline route as requested by the First Baptist Church of Atlanta, provide additional justification why the alternative route cannot be incor-

porated, or document landowner concurrence with the currently proposed route.

104. David Shumaker identifies an alternative route that would follow the existing access road to Compressor Station 115 then head east along the northern edge of Mr. Shumaker's property where it would connect with the proposed pipeline route. Based on a preliminary review of the alternative route, it appears to be feasible without impacting additional landowners. Environmental Condition 24 requires Transco to either modify the pipeline route as discussed above, provide additional justification why the alternative route cannot be incorporated, or document landowner concurrence with the currently proposed route.

5. Threatened and Endangered Species

105. The Commission received several comments on the EA regarding federally and state-listed species, including comments from the EPA and 1460 Partnership. Section B.4. of the EA determines that constructing and operating the project will result in no effect on 13 threatened and endangered species; may affect, but is not likely to adversely affect five threatened and endangered species; and will not contribute to the listing of one candidate species.

106. On April 5, 2016, the FWS filed a letter with the Commission stating that it did not concur with some of our staff's determinations, based largely on the possibility of erosion and sedimentation within affected watersheds. However, the EA does include measures to avoid and minimize potential erosion, turbidity, and sedimentation impacts, as well as effects attributable to hydrostatic test water withdrawals. Based on our past experience with natural gas pipeline

construction, the EA concludes that these measures provide adequate protection for all resources that are directly affected and substantially limits the potential for any indirect impacts. However, in deference to the opinions of the FWS, we adopted the FWS determinations in a letter to the FWS dated April 28, 2016. On May 2, 2016, the FWS concurred with our revised determinations. With receipt of the FWS concurrence, and the subsequent BO addressing terrestrial species dated May 9, 2016, the Endangered Species Act Consultation process is complete and, as a result, EA recommendation no. 19 is not included as a condition of this order.

107. In a letter filed on April 28, 2016, Troy Harris identifies concerns about the project's potential impacts on an active bald eagle nest along the Etowah River at Hardin Bridge. Because the closest construction areas are about 1.5 miles from the nest, construction or operation of the project is not likely to affect it.[75]

108. Concerns regarding state-listed species are adequately addressed in section B.4.b of the EA, which concludes that the project is expected to have no impact on 54 of the 58 state-listed species that are not also federally listed and will have temporary and minor impacts on four species.

6. Water Resources

109. On May 2, 2016, the CRBI filed a letter identifying several Clean Water Act section 303(d)-listed impaired waterbodies crossed by the proposed pipeline route that were not specifically discussed in

[75] As indicated on page 54 of the EA, Table B.3c-2, our environmental staff completed consultation with the FWS for the bald eagle as part of the Birds of Conservation Concern, which is a subset of the Migratory Bird Treaty Act.

the EA. Based on Transco's proposed construction techniques and the implementation of minimization and mitigation measures as outlined in section B.2.b and Appendix E of the EA, we do not anticipate any impact on the impairment criteria for these waterbodies during construction or operation of the project.

7. Land Use

110. Evans & Rhodes, LLC questions the use of Wahoo Overlook Trail as an access road, noting such use could block access to residents along the road. Transco states that it no longer proposes to use this road.[76] If Transco proposes to use this road, it must file a written request for our environmental staff's review and approval.

8. Environmental Conclusions

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

112. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage 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

[76] EA Environmental Condition 4.

the construction or operation of facilities approved by this Commission.[77]

IV. Conclusion

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

The Commission orders:

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

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

(1) completion of construction of the proposed facilities and making them available for service within two years of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) compliance with all applicable Commission regulations under the NGA including, but not

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[77] *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).

limited to Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) compliance with the environmental conditions in Appendix C to this order; and

(4) execution, prior to commencement of construction, of a firm contracts for the volumes and service terms equivalent to those in its precedent agreement.

(C) A certificate of public convenience and necessity is issued under section 7(c) of the NGA authorizing Transco to lease capacity from Dogwood, as described herein and in the application.

(D) Transco's initial incremental reservation charge under Rate Schedule FT as recalculated for the project to reflect the removal of variable costs is approved, as discussed above.

(E) Transco shall file actual tariff records with the recalculated base reservation charge no earlier than 60 days and no later than 30 days, prior to the date the project goes into service.

(F) As described in this order, not less than 30 days and not more than 60 days prior to the commencement of service using the authorized expansion capacity, Transco must file an executed copy of any non-conforming service agreement associated with the project as part of its tariff, disclosing and reflecting all non-conforming language, and a tariff record identifying each such agreement as a non-conforming agreement consistent with section 154.112 of the Commission's regulations.

(G) As described in the body of this order, Transco must file any negotiated rate agreement or tariff record setting forth the essential terms of the agreement

associated with the project at least 30 days, but not more than 60 days before the proposed effective date of such rates.

(H) Transco shall keep separate books and accounting of costs attributable to the incremental services using the expansion capacity created by the project, as discussed herein.

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

(J) The State Commissions' protest and request for partial consolidation and evidentiary hearing is denied.

(K) The late motions to intervene are granted.

By the Commission.

(SEAL)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Timely Motions to Intervene

Alabama Gas Corporation

Atlanta Gas Light Company

Atmos Energy Marketing, LLC

Bartow County School System and
Bartow County Board of Education

City of Cartersville, Georgia

Conoco Phillips Company

Consolidated Edison Company of New York, Inc.
and Philadelphia Gas Works

Duke Energy Carolinas, LLC

Municipal Gas Authority of Georgia[78] and
Transco Municipal Group[79]

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[78] The Gas Authority consists, *inter alia*, of the following municipalities which are served directly by Transco: the Georgia municipalities of Bowman, Buford, Commerce, Covington, Elberton, Hartwell, Lawrenceville, Madison, Monroe, Royston, Social Circle, Sugar Hill, Toccoa, Winder, and Tri-County Natural Gas Company (consisting of Crawfordville, Greensboro and Union Point); the East Central Alabama Gas District, Alabama; the towns of Wadley and Rockford, Alabama; the Utilities Board of the City of Roanoke, Alabama; Wedowee Water, Sewer & Gas Board, Wedowee, Alabama; and the Maplesville Waterworks and Gas Board, Maplesville, Alabama.

[79] The members of TMG include the Cities of Alexander City and Sylacauga, Alabama; the Commissions of Public Works of Greenwood, Greer, and Laurens, South Carolina; the Cities of Fountain Inn and Union, South Carolina; the Patriots Energy Group (consisting of the Natural Gas Authorities of Chester, Lancaster and York Counties, South Carolina); and the cities of

National Grid Gas Delivery Companies

New Jersey Natural Gas Company

NJR Energy Services Company

North Carolina Utilities Commission and New York State Public Service

Commission

Oglethorpe Power Corporation

Piedmont Natural Gas Company, Inc.

PSEG Energy Resources & Trade LLC

SCE & GPSC of North Carolina

UGI Distribution Company

Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson, North Carolina.

Appendix B

Late Motions to Intervene

1460 Partnership, LLLP

Coosa River Basin Initiative

David L. Shumaker

Handy Land and Timber, LLC

Ivan Goldenberg and Christine Cali Snellgrove Glenn

Paul Corley

Scott & Judy Mullis, Donna Gordon, Aimee and Phillip Hutzelman, Kathleen and Michael Rossi, Darlos and William Biossat, and Cynthia Schiller Jackson

Southern Company Services, Inc.

Virginia Corley Casey, Douglas Van Corley, Edward Daniel Corley, Wanda Corley Haight, and Mary Corley White

Appendix C

Environmental Conditions

As recommended in the environmental assessment (EA) this authorization includes the following conditions:

1. Transcontinental Gas Pipe Line Company, LLC (Transco) shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff data requests), and as identified in the 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 (Director of OEP) before using that modification.

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:

a. the modification of conditions of the Order; and

b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to ensure continued compliance with the intent of the environmental conditions as

well as the avoidance or mitigation of adverse environmental impact resulting from construction and operation of the project.

3. Prior to any construction of the facilities, 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 EIs' 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 for the project.

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 for the project 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 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 and ware yards, new access roads, and other areas for the project 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 Transco's Plan and/or minor field realignments per landowner needs and requirements that 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:

(i) implementation of cultural resources mitigation measures;

(ii) implementation of endangered, threatened, or special concern species mitigation measures;

(iii) recommendations by state regulatory authorities; and

(iv) agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. Within 60 days of the acceptance of the Certificate and before construction begins, Transco shall file an Implementation Plan for the project 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 on-site construction and inspection personnel;

c. the number of EIs assigned per spread, and how Transco 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 changes), with the

opportunity for OEP staff to participate in the training session;

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 chart (or similar project scheduling diagram), and dates for:

i. the completion of all required surveys and reports;

ii. the environmental compliance training of on-site personnel;

iii. the start of construction; and

iv. the start and completion of restoration.

7. Transco shall employ one or more EIs per construction spread. The EIs shall be:

a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;

b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;

c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;

d. a full-time position, separate from all other activity inspectors;

e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and

f. responsible for maintaining status reports.

8. Beginning with the filing of its Implementation Plan, Transco shall file updated status reports on a weekly basis for the project 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 of Transco's efforts to obtain the necessary federal authorizations;

b. the current construction status of each spread 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, and their cost;

e. the effectiveness of all corrective actions implemented;

f. a description of any landowner/resident complaints that may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and

g. copies of any correspondence received by Transco from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transco's response.

9. Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities, Transco shall 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 commencing service on each discrete facility of the project. 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 for the project into service, Transco shall file an affirmative statement, 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 Certificate conditions 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, Transco shall file with the Secretary, for review and approval by the Director of the OEP, a revised Karst Mitigation Plan that includes a comprehensive karst report providing a complete discussion of the desktop reviews and field surveys that were conducted to identify potential karst features along the route. The report shall:

a. provide the results of geotechnical borings to determine the nature and extent of the anomalies detected during the electric resistivity imaging investigations;

b. provide site-specific mitigation measures for any karst features identified (e.g., route adjustment); and

c. provide an analysis to determine the pipeline's intrinsic ability to span subsidence features and provide documentation showing where these data can be found.

13. Prior to any construction within the Etowah River, Transco shall file with the Secretary, for review and approval by the Director of OEP, quantitative modeling results of the turbidity and sedimentation associated with construction across the Etowah River. The modeling shall consider blasting activities; trench excavation and backfilling; and the installation and removal of the riprap, equipment bridges, and turbidity curtains. The results of the analysis shall illustrate the duration, extent, and magnitude of elevated turbidity levels and sedimentation. In addition, Transco shall provide its final Etowah River Turbidity Control and Monitoring Plan.

14. Prior to construction, Transco shall file with the Secretary, for review and written approval by the Director OEP, an updated version of its Procedures that complies entirely with section IV.A.1.d of the FERC Procedures.

15. Prior to construction, Transco shall file with the Secretary further site-specific justification for or modify its proposed workspaces related to waterbodies noted as "without sufficient justification" in Appendix L of the EA and file updated alignment sheets, as appropriate, for review and written approval by the Director of OEP.

16. Prior to construction, Transco shall file with the Secretary further site-specific justification for or modify its proposed workspaces related to wetlands noted as "without sufficient justification" in Appendix L of the EA and file updated alignment sheets, as appropriate, for review and written approval by the Director of OEP.

17. Prior to construction, Transco shall file with the Secretary a copy of its final wetland mitigation plan and documentation of COE approval of the plan.

18. Prior to construction, Transco shall file with the Secretary a plan describing the feasibility of incorporating plant seeds that support pollinators into the seed mixes used for restoration of construction workspaces. These plans shall also describe Transco's consultations with the relevant federal and/or state agencies.

19. Transco shall not begin implementation of any treatment plans/measures (including archaeological data recovery); construction of facilities; or use staging storage, or temporary work areas and new or to-be-improved access roads until:

a. Transco files with the Secretary:

i. all cultural resources survey reports, including special studies such as ground penetrating radar, evaluation reports, avoidance plans and treatment plans;

ii. comments on survey reports, special studies, evaluation reports, avoidance plans and treatment plans from the State Historic Preservation Office, as well as any comments from federally recognized Indian tribes;

iii. the Advisory Council on Historic Preservation is afforded an opportunity to comment on the undertaking if historic properties would be adversely affected; and

b. the FERC staff reviews and the Director of OEP approves all cultural resources reports and plans, and notifies Transco in writing that treatment plans/mitigation measures may be implemented and/or construction may proceed.

All material filed with the Commission that contains location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering "CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE."

20. If changes to the project construction schedule occur that would materially impact the amount of NO_X emissions generated in a calendar year, Transco shall file, in its weekly status report, revised construction emissions estimates prior to implementing the schedule modification with the Secretary demonstrating that the annual NO_X emissions resulting from the

revised construction schedule do not exceed general conformity applicability thresholds.

21. Prior to construction of the I-20, Highway 120, and Joe Frank Harris Parkway locations, Transco shall file with the Secretary, for review and written approval by the Director of OEP, an horizontal directional drill noise mitigation plan to reduce the projected noise level attributable to the proposed drilling operations at noise-sensitive areas (NSAs) with predicted noise levels above 55 decibels on the A-weighted frequency scale (dBA). During drilling operations, Transco shall implement the approved plan, monitor noise levels, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than an day-night averaged sound level (L_{dn}) of 55 dBA at the NSAs.

22. Transco shall file a noise survey with the Secretary no later than 60 days after placing Compressor Station 116 into 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 6 months. If the noise attributable to the operation of all of the equipment at any compressor station at interim or full power load conditions exceeds 55 dBA L_{dn} at any nearby NSAs, Transco shall file a report on what changes are needed and shall install additional noise controls to meet the level within 1 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.

23. Transco shall file a noise survey with the Secretary no later than 60 days after placing the Murray Meter Station in service. If the noise

attributable to the operation of the meter station at maximum flow exceeds an L_{dn} of 55 dBA at any nearby NSAs, Transco shall install additional noise controls to meet that level within 1 year of the in-service date. Transco shall confirm compliance with the L_{dn} of 55 dBA requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.

24. Transco shall incorporate the alternative route identified by Mr. Shumaker (MPs 0.0 to 0.7) and the route identified by the First Baptist Church of Atlanta (MPs 25.0 to 26.0) into the project alignment. If Transco determines that either of the alternative routes cannot be constructed, Transco must provide additional justification for the review of FERC staff or document landowner concurrence with the currently proposed route.

APPENDIX C

161 FERC ¶ 61,211

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. CP15-117-001

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and
Robert F. Powelson.

Transcontinental Gas Pipe Line Company, LLC

ORDER DENYING REHEARING

(Issued November 21, 2017)

1. On August 3, 2016, the Commission issued an order granting, subject to conditions, a certificate of public convenience and necessity authorizing Transcontinental Gas Pipe Line Company, LLC (Transco) to construct, lease, and operate pipeline, compression, metering, and appurtenant facilities in Virginia, North Carolina, and Georgia (Dalton Expansion Project).[1] In doing so, the Commission accepted, over protest from the North Carolina Utilities Commission (North Carolina Commission) and New York State Public Service Commission (collectively, State Commissions), Transco's use of a pre-tax return of 15.34 percent in calculating its proposed incremental recourse rates for the Dalton Expansion Project.[2] The Commission also rejected

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[1] *Transcontinental Gas Pipe Line Co., LLC*, 156 FERC ¶ 61,092 (2016) (August 3 Order).

[2] *Id*. PP 23-29. Transco proposed to use the same rate of return in calculating proposed recourse rates for its Virginia Southside Expansion II Project in Docket No. CP15-118-000. *See id.* P 23.

concerns raised by the State Commissions regarding Transco's calculation of annual lease payments under its project lease, finding that using costs from the first year of the lease to calculate rates for the 25-year term was consistent with Commission regulations and precedent, and that the lease arrangement provided benefits to shippers.[3]

2. In a joint request for rehearing filed on August 8, 2016, State Commissions renew their concerns regarding the rate of return used to calculate Transco's incremental recourse rates.[4] They contend that the Commission erred by failing to take into account the significant changes in the financial markets which have occurred since the Commission's approval of a 15.34 percent pre-tax return for Transco, which was the last specified rate of return from Transco's general rate case approved by the Commission under section 4 of the Natural Gas Act (NGA) in 2002 and the rate of return used to calculate Transco's incremental recourse rates.

3. In a separate filing on September 2, 2016, the North Carolina Commission seeks rehearing of the Commission's decision to accept Transco's lease of capacity based on a single year of cost and revenue. The North Carolina Commission contends that such an analysis fails to take into account the depreciation of the leased facilities and cannot support a finding that the lease payments will be less than the equiva-

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[3] *Id*. P 53.

[4] State Commissions filed the same rehearing request in this proceeding and in the proceeding on the Virginia Southside Expansion II Project in Docket No. CP15-118-001. An order is being issued concurrently in Docket No. CP15-118-001 addressing State Commissions' rehearing request with respect to the Virginia Southside Expansion II Project.

lent cost of service had Transco constructed the facilities itself. The North Carolina Commission advocates for a life-of-the-lease analysis of the pertinent costs.

4. For the reasons discussed below, we deny the requests for rehearing.

Commission Determination

A. Rate of Return

5. State Commissions acknowledge that, in the August 3 Order, the Commission applied its established policy in section 7 proceedings of requiring incremental recourse rates to be designed using the rate of return specified in the pipeline's most recent general rate case approved under section 4 of the NGA.[5] If the most recent section 4 rate case involved a settlement that did not specify a rate of return or pre-tax return, we look to the most recent prior rate case that did so specify.[6] State Commissions nevertheless assert that the Commission was arbitrary and capricious and failed to engage in reasoned decision-making because it: (1) failed to protect consumers from excessive rates by permitting Transco to calculate its recourse rates using an excessive pre-tax return,[7] and (2) did not require that the return be calculated based on current market conditions.[8] These arguments were advanced by State Commis-

[5] State Commissions Rehearing Request at 12. *See also* August 3 Order, 156 FERC ¶ 61,092 at P 26 (explaining Commission's policy).

[6] *See* August 3 Order, 156 FERC ¶ 61,092 at P 26 n.26 (citing cases).

[7] State Commissions Rehearing Request at 9-16.

[8] *Id*. at 16-17.

sions in their initial pleadings,[9] and fully addressed in the August 3 Order.[10] State Commissions present no new evidence or arguments that warrant reversing the Commission's application of its consistent policy in the August 3 Order, nor have they demonstrated that circumstances have changed such that the policy should no longer apply.

6. In addition to reiterating arguments addressed in the August 3 Order, State Commissions contend on rehearing that the Commission erred in referring to *Atlantic Refining Co. v. Pub. Serv. Comm'n of N.Y.* (*CATCO*),[11] a case regarding the Commission's discretion in section 7 proceedings to approve initial rates that will "hold the line" until just and reasonable rates are adjudicated under sections 4 or 5 of the NGA.[12] According to State Commissions, the cited case is inapplicable because it predates the existence of negotiated rates, and the fact that Transco will need to file an NGA general section 4 rate case by August 31, 2018, fails to protect customers from excessive rates charged before that time. We disagree.

7. Initially, State Commissions fail to explain how the advent of negotiated rates constitutes a "change in circumstance" negating the Commission's discretion to approve initial rates in this section 7 certificate proceeding under the public convenience and necessity standard pending the adjudication of just and reasonable rates in Transco's next NGA

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[9] *See* State Commissions April 22, 2015 Protest at 9-13; State Commissions May 27, 2015 Answer at 2-5.

[10] August 3 Order, 156 FERC ¶ 61,092 at PP 23-29.

[11] 360 U.S. 378 (1959).

[12] State Commissions Rehearing Request at 17-18.

general section 4 rate case.[13] In the August 3 Order, the Commission cited *CATCO* to contrast the less rigorous public convenience and necessity standard of review employed under section 7 to assess initial rates for new service or facilities with the just and reasonable standard of review for rate changes under sections 4 and 5.[14] The less exacting standard of review used in a section 7 certificate proceeding is intended to mitigate the delay associated with a full evidentiary rate proceeding, and the Commission has discretion to approve initial rates that will "hold the line" while awaiting the adjudication of just and reasonable rates.[15] State Commissions' observation that *CATCO* was decided before the development of negotiated and recourse rates does not detract from these basic tenets or their applicability in this proceeding. Whether the initial rates in question are recourse rates, serving as a check against the exercise of market power by pipelines with negotiated rate authority, or the rates actually charged to shippers, the Commission retains the discretion to protect the public interest while preventing the delays that can accompany full evidentiary proceedings.

8. The fact that the rates in Transco's next NGA general section 4 rate case will go into effect prospectively does not change this analysis. Indeed, this is always the case.[16] In light of the delay involved in

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[13] *Id*. at 17 ("To begin, negotiated rates did not exist in 1959 at the time of this decision. This change in circumstance renders this decision inapposite.").

[14] August 3 Order, 156 FERC ¶ 61,092 at P 27 and n.30 (citing *CATCO*, 360 U.S. at 390).

[15] *Id*. (citing *CATCO*, 360 U.S. at 391-92).

[16] *See CATCO*, 360 U.S. at 389 (noting that new rate changes filed under section 4 become effective upon filing, subject to

new rates becoming effective following the initial certification, the Commission must undertake "a most careful scrutiny and responsible reaction to initial price proposals of producers under [NGA section] 7."[17] In this case, the Commission appropriately examined Transco's proposal under the public convenience and necessity standard, applied its consistent policy to accept recourse rates designed using the last Commission-approved rate of return from a NGA general section 4 rate case in which a rate of return was specified in order to calculate the rates, but pointed out that, in any event, parties would have the opportunity to raise concerns regarding Transco's pre-tax return and other cost of service components in the next NGA general section 4 rate case, to be filed by August 31, 2018.[18] State Commissions have not persuaded us on rehearing to revisit this determination.

B. Lease Payments

9. In the August 3 Order, the Commission accepted a proposed lease arrangement under which the new pipeline lateral constructed for the Dalton Expansion Project would be jointly owned by Transco and Dogwood Enterprise Holdings, Inc. (Dogwood), with Dogwood leasing its 50 percent ownership interest in the lateral to Transco for a primary term of 25 years.[19] As relevant here, the Commission found that the annual amount Transco would pay Dogwood

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suspension and the posting of a bond, where required, and that just and reasonable rates fixed in a section 5 proceeding become effective prospectively only).

[17] *Id*. at 390-91.

[18] August 3 Order, 156 FERC ¶ 61,092 at P 28.

[19] *Id*. P 41.

under the lease (based on fixed lease payments of $2,140,916.70 per month) was $20,754,747 less than the equivalent cost of service that would result if Transco constructed and owned the facilities itself. The Commission thus concluded that the lease arrangement benefited shippers.[20] In so finding, the Commission rejected State Commissions' contention that Transco's analysis of the cost of the lease versus equivalent service on pipeline-owned facilities was deficient because Transco only analyzed cost data for the first year of the lease and did not account for depreciation of the facilities over the 25-year term.[21]

10. On rehearing, the North Carolina Commission again argues that the Commission's finding that approval of the lease agreement will reduce the amount shippers will pay under the recourse rate by an estimated $20,754,747 per year is unfounded because the Commission did not take into account depreciation of the facilities that should decrease the cost of service over the life of the lease.[22] The North Carolina Commission thus claims that the Commission "ignor[ed] 96% of the life of the lease in its economic analysis" and therefore failed to evaluate all factors bearing on the public interest determination regarding the lease.[23]

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[20] *Id*. P 50.

[21] *Id*. PP 51-53. *See* State Commissions April 22, 2015 Protest at 14-15; State Commissions May 27, 2015 Answer at 6-8.

[22] North Carolina Commission Rehearing Request at 5-11.

[23] *Id.* at 11. The North Carolina Commission also claims that the Commission's reliance on section 157.14(a)(18)(c)(ii)(a) of the Commission's regulations to approve the lease is misplaced. To clarify, that regulation addresses the support needed for initial rates and we agree that it does not directly address our lease policy. However, as explained in the August 3 Order and herein,

11. We deny rehearing and affirm the Commission's finding that the lease arrangement provides a lower rate than if Transco constructed the facilities itself and, as such, benefits shippers. As explained in the August 3 Order, rates are based on a first year cost of service and pipelines are under no obligation to revise their cost of service and associated recourse rates over time to account for depreciation.[24] Moreover, other cost factors could increase, or billing determinants could decrease, that would have the effect of offsetting the impact of depreciation on the cost of service in the future. There is simply no way to predict what the future cost of service or rates for the project would be over the lease term to the extent that Transco constructed and owned all of the project facilities. For these reasons, we find that the North Carolina Commission's assertion that the Commission ignored all factors bearing on the public interest is unfounded.

12. The North Carolina Commission alleges that "[t]he fact that Dogwood does not provide transportation services" has somehow "be[en] used to convert a life of the lease analysis requirement into a first year only analysis."[25] That is incorrect. In the August 3 Order, the Commission described and analyzed the three factors of its lease-approval analysis.[26] The

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the Commission's approval of the lease is consistent with our precedent.

[24] *See* August 3 Order, 156 FERC ¶ 61,092 at P 53.

[25] North Carolina Commission Rehearing Request at 9.

[26] *See* August 3 Order, 156 FERC ¶ 61,092 at P 48 (explaining that "[t]he Commission's practice has been to approve a lease if it finds that: (1) there are benefits from using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over

Commission noted that the second criterion – whether lease payments would be less than the lessor's firm transportation rates for comparable service over the term of the lease – was not applicable because Dogwood does not provide transportation services, and thus has no firm transportation rates to which the lease payments may be compared.[27] Second, in cases where the Commission applies the second criterion to compare lease payments to the lessor's firm transportation rates for comparable service over the term of the lease on a net present value basis, the Commission does not adjust the lessor's firm transportation rates to account for depreciation of the facilities over the term of the lease, the position the North Carolina Commission advocates here regarding the costs associated with Transco constructing the facilities itself. Rather, in those cases, the Commission compares the existing firm transportation rate of the lessor with the amount of the lease payments over the term of the lease.[28] There is no adjustment of the lessor's transportation rate for depreciation over time, because, as explained above, pipelines are under no obligation to revise their cost of service and associated recourse rates over time to account for depreciation. Accordingly, we continue to find that the lease arrangement provides lower rates and benefits shippers and is consistent with Commission precedent.

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the term of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect existing customers").

[27] *Id*. P 48 n.48.

[28] *See, e.g., Columbia Gas Transmission, LLC,* 145 FERC ¶ 61,028, at P19 (2013).

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(SEAL)

Kimberly D. Bose,
Secretary.

APPENDIX D

156 FERC ¶ 61,022

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. CP15-118-000

Before Commissioners: Norman C. Bay, Chairman; Cheryl A. LaFleur, Tony Clark, and Colette D. Honorable.

Transcontinental Gas Pipe Line Company, LLC

ORDER ISSUING CERTIFICATE

(Issued July 7, 2016)

1. On March 23, 2015, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application under section 7(c) of the Natural Gas Act (NGA)[1] and Part 157 of the Commission's regulations[2] for a certificate of public convenience and necessity to construct and operate the Virginia Southside Expansion Project II (VSEP II), which is intended to provide 250,000 dekatherms per day (Dth/day) of incremental firm transportation service for Virginia Power Services Energy Corporation, Inc. (Virginia Power).

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

I. Background and Proposal

3. Transco is a natural gas company, as defined by section 2(6) of the NGA,[3] engaged in the transportation

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[1] 15 U.S.C. § 717f(c) (2012).

[2] 18 C.F.R. pt. 157 (2015).

[3] 15 U.S.C. § 717a(6) (2012).

of natural gas in interstate commerce. It is a limited liability company organized and existing under Delaware law. Transco's system extends from Texas, Louisiana, Mississippi, Alabama, and the offshore Gulf of Mexico area, through Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the New York City metropolitan area.

4. Transco proposes to construct and operate the proposed project to provide 250,000 Dth/day of incremental firm transportation service to a delivery point at the end of its proposed 4.9-mile-long Greensville Lateral to serve a new electric power plant to be constructed in Greensville County, Virginia, by Virginia Power's affiliate, Virginia Electric and Power Company (VEPCO). The 250,000 Dth/day of firm service would include 165,000 Dth of service from Transco's Zone 6 Station 210 Pooling Point on Transco's mainline in Mercer County, New Jersey, and 85,000 Dth of service from its Zone 5 Station 165 Pooling Point in Pittsylvania County, Virginia.

5. Specifically, Transco proposes the construction and operation of the following new facilities and modifications to existing facilities:

1) the Greensville Lateral, consisting of approximately 4.19 miles of 24-inch-diameter pipeline extending from milepost 5.2 on Transco's existing Brunswick Lateral in Brunswick County, Virginia, to VEPCO's proposed power plant in Greensville County, Virginia;

2) one 25,000 horsepower (hp) electric-driven compressor unit at Transco's existing Compressor Station 185 in Prince William County, Virginia;

3) two 10,915 hp gas-driven compressor units, three bays of cooling equipment, and the re-

wheeling of two existing compressor units at Transco's existing Compressor Station 166 in Pittsylvania County, Virginia;

4) a new delivery meter station and gas heaters at the terminus of the Greenville Lateral at VEPCO's Greensville power plant;

5) modifications to odorization/deodorization facilities at Transco's Compressor Station 140 in Spartanburg County, South Carolina, and to valve settings and meter stations between Compressor Station 140 and Transco's Tryon Lateral and on Transco's mainline in North Carolina and South Carolina; and

6) various related appurtenances underground facilities and aboveground facilities such as valves and valve operators, launchers, and receivers.

Transco estimates that the project will cost approximately $190.8 million.

6. On May 30, 2014, Transco executed a binding precedent agreement with Virginia Power for 250,000 Dth/day of firm transportation service using the capacity to be created by VSEP II.[4] Subsequently, Transco held an open season from January 2, 2015 through January 30, 2015; however, Transco received no other bids for firm service. The precedent agreement with Virginia Power is for firm transportation service under Transco's Rate Schedule FT for an initial 20-year term.

[4] The precedent agreement was amended on June 4, 2014 and June 30, 2014.

7. Transco proposes an initial incremental recourse reservation charge under its existing Rate Schedule FT for firm service utilizing VSEP II capacity.[5] Transco proposes to provide any interruptible service using the expansion capacity at its generally applicable rate under existing Rate Schedule IT, and to apply its generally applicable system fuel retention and electric power rates under its existing Rate Schedules FT and IT for firm and interruptible services using the expansion capacity. Transco also requests a predetermination authorizing incremental rate treatment for the combined costs associated with VSEP II and Transco's previously-authorized Virginia Southside Expansion Project (VSEP I),[6] and approval to make a limited NGA section 4 rate filing for this purpose.

II. Notice, Interventions, and Protests

8. Notice of Transco's application was issued on April 1, 2015, and published in the *Federal Register* on April 7, 2015.[7] The notice established April 22, 2015, as the deadline for filing comments and interventions. The parties listed in Appendix A filed timely, unopposed motions to intervene, which were granted by operation of Rule 214(c)(1) of the Commission's Rules of Practice and Procedure.[8] Appendix A also includes the North Carolina Utilities Commission and the New York State Public Service Commission (collectively, State Commissions), which jointly filed a timely notice

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[5] Virginia Power, however, has agreed to a negotiated rate for its firm service.

[6] *Transcontinental Gas Pipe Line, LLC*, 145 FERC ¶ 61,152 (2013) (*Transco VSEP I*).

[7] 80 Fed. Reg. 18,613.

[8] 18 C.F.R. § 385.214(c)(1) (2015).

of intervention that was granted by operation of Rule 214(a)(2).[9]

9. On January 12, 2016, Sierra Club and Appalachian Mountain Advocates (collectively, Sierra Club) jointly filed a late motion to intervene, and comments. We find that the late intervenors have demonstrated an interest in the proceeding and that granting intervention at this stage will not cause undue delay or disruption, or otherwise prejudice the applicant or other parties. Accordingly, we grant the motion for late intervention.[10]

10. The State Commissions protest Transco's application. On May 12, 2015, Transco filed an answer to the protest. On May 27, 2015, the State Commissions filed an answer to Transco's answer. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers,[11] our rules provide that we may, for good cause, waive this provision.[12] We will admit Transco's and the State Commissions' answers because they have provided information that has assisted us in our decision-making process.

11. The State Commissions take issue with the pre-tax return used by Transco in calculating its proposed incremental recourse rates in this proceeding and in its applications for its proposed Dalton Expansion Project in Docket No. CP15-117-000 and Atlantic Sunrise Project in Docket No. CP15-138-000. The State Commissions request that the three certificate

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[9] 18 C.F.R. § 385.214(a)(2) (2015).

[10] 18 C.F.R. § 385.214(d) (2015).

[11] 18 C.F.R. § 385.213(a)(2) (2015).

[12] 18 C.F.R. § 385.101(e) (2015).

applications be partially consolidated to consider the appropriate pre-tax return in a full evidentiary hearing. The State Commissions' protest is addressed below.

12. Sierra Club's comments relating to the scope of the environmental analysis for Transco's VSEP II proposal were addressed in the Environmental Assessment (EA) prepared for the project, as discussed below.

III. Discussion

13. Since Transco's 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 the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Certificate Policy Statement

14. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.[13] The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization

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[13] *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).

by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

15. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from 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 route of the new facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

16. As noted above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Transco proposes an incremental recourse rate for services using expansion capacity created by VSEP II. However, while the rate was designed to recover the cost of service associated with the project, under the negotiated agreement with the project shipper, the revenue during the first year of service

would be less than the associated cost of service.[14] Therefore, as discussed below, we will not grant a presumption supporting rolling the VSEP II costs into either a single incremental rate recovering both the VSEP I and VSEP II costs, as requested by Transco, or into Transco's generally applicable system rates. If Transco seeks rolled-in rate treatment for costs associated with the VSEP II expansion capacity in any future rate proceeding, it will have the burden of proof to demonstrate that the project has resulted in system-wide benefits sufficient to justify rolled-in rate treatment.[15] Because we are denying the presumption, we find that there is adequate assurance that none of Transco's existing customers will subsidize the project, and the Certificate Policy Statement's threshold requirement of no subsidization is satisfied.

17. We find the proposed expansion will have no effect on service to Transco's existing customers. Further, no pipelines or their captive customers filed adverse comments regarding Transco's proposal. Thus, we find that Transco's proposed project will not adversely affect its existing customers or other pipelines and their captive customers.

18. We also find that Transco has routed and designed the VSEP II to have minimal adverse impact

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[14] In deciding whether to grant a presumption of rolled-in rate treatment in a certificate proceeding, the Commission compares the cost of the project to the revenues that would be generated using actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the maximum recourse rate). *See Gulf South Pipeline Co., LP*, 155 FERC ¶ 61,287, at P 28 (2016).

[15] *See, e.g., Dominion Transmission, Inc.*, 153 FERC ¶ 61,382, at P 44 (2015), and *Gulf Crossing Pipeline Company LLC*, 144 FERC ¶ 61,196, at P 16 (2013).

on landowners and communities. Proposed new pipeline construction is limited to the 4.19-mile-long Greensville Lateral, of which approximately 71.5 percent will be co-located with existing road and/or utility rights-of-way. While the construction activities will temporarily affect 180.1 acres of land, Transco will permanently maintain only approximately 29.3 acres of land for operation of the project facilities.

19. VSEP II will enable Transco to provide 250,000 Dth/day of incremental firm transportation service for Virginia Power, which has entered into an agreement for all of the expansion capacity in order to meet the gas requirements of the 1,580-megawatt electric generation plant that VEPCO is constructing in Greensville County, Virginia. In view of the benefits that will result from the project, with no adverse impacts on Transco's existing customers and other pipelines and their captive customers and minimal impacts on landowners and surrounding communities, the Commission finds that Transco's proposal satisfies the Certificate Policy Statement. Based on this finding and the environmental review for Transco's proposed project, as discussed below, the Commission further finds that the public convenience and necessity requires approval and certification of Transco's proposal under section 7 of the NGA, subject to the environmental and other conditions in this Order.

B. Rates

1. Pre-tax Rate of Return

20. In their protest, the State Commissions take issue with Transco's proposed use of a pre-tax return of 15.34 percent in calculating its proposed incremental recourse rates in its applications for its VSEP II proposal in this proceeding, its proposed Dalton

Expansion Project in Docket No. CP15-117-000, and its proposed Atlantic Sunrise Project in Docket No. CP15-138-000. The State Commissions acknowledge Transco's use of the specified pre-tax return most recently approved in a section 4 rate case is consistent with Commission policy, but they emphasize that rate case was fifteen years ago. They argue the incremental recourse rates approved in these proceedings should take into account the significant changes in financial markets since then.[16] The State Commissions assert that the pre-tax return of 15.34 percent accounts for approximately half of Transco's proposed cost of service in these proceedings,[17] and their comments included a discounted cash flow (DCF) analysis, which they contend reflects current market conditions and reflects a median rate of return on equity (ROE) of 10.95 percent for natural gas pipelines.[18] They request partial consolidation of these proceedings to consider the appropriate pre-tax return in a full evidentiary hearing.

21. The State Commissions argue that recent Commission orders provide valuable perspective indicating that Transco's proposed 15.34 percent pre-tax return is not reasonable. They reference the 2015 order where

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[16] Transco's last section 4 rate case in which a specified rate of return was used in calculating Commission-approved rates was in Docket No. RP01-245-000, *et al.* A letter order issued in that docket on July 23, 2002, accepted a partial settlement resolving cost classification, cost allocation, and rate design subject to certain reservations and adjustments, and revising Transco's generally applicable rates. *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085, at P 2 (2002).

[17] State Commissions' April 22, 2015 Protest in Docket No. CP15-118-000, *et al*.

[18] Preliminary Pipeline DCF Analysis Exhibit to State Commissions' Protest.

the Commission relied on a DCF analysis for a proxy group of pipelines based on a six-month period ending March 31, 2011, to limit Portland Natural Gas Transmission System's ROE to 11.59 percent, the top of the range of reasonable returns for which the median ROE was 10.28 percent.[19] The State Commissions also point to the Commission's 2013 orders that limited the ROEs for El Paso Natural Gas Company and Kern River Gas Transmission Company to 10.55 percent and 11.55 percent, respectively.[20]

22. Transco's answer emphasizes that this proceeding and the proceedings on its proposed Dalton and Atlantic Sunrise projects are section 7 certificate proceedings, not section 4 rate cases, and that its proposed recourse rates in these certificate proceedings will be initial section 7 rates for incremental services using new expansion capacity. Transco further asserts its proposed initial section 7 recourse rates are consistent with Commission policy in section 7 proceedings, in that they are appropriately designed to recover each project's incremental cost of service.[21] In the State Commissions' answer to Transco's answer, they contend that when the Commission grants a

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[19] *Portland Natural Gas Transmission System*, Opinion 524-A, 150 FERC ¶ 61,107, at P 195 (2015).

[20] *El Paso Natural Gas Co.*, Opinion No. 528, 145 FERC ¶ 61,040, at P 686 (2013); *Kern River Gas Transmission Co.*, Opinion No. 486-F, 142 FERC ¶ 61,132, at P 263 (2013).

[21] Transco cites the Commission's order that certificated its Rock Springs Lateral and additional mainline compression to provide service for another new electric generating plant. In that order, the Commission approved Transco's proposed incremental recourse rate for that expansion capacity, which was calculated using the pre-tax return of 15.34 percent from its settlement rates in Docket No. RP01-245. *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,205, at P 17 (2015).

pipeline company negotiated rate authority, it relies on the availability of cost-based recourse rates to prevent the pipeline from exercising market power by ensuring that shippers will have the option of choosing to pay cost-based recourse rates for expansion capacity that becomes available on either an interruptible or firm basis.[22] Therefore, the State Commissions assert that even if a pipeline has negotiated rate agreements for all of the expansion capacity proposed in a certificate proceeding, the recourse rates nevertheless need to be properly designed and based on a reasonable estimate of the actual costs to construct and operate the expansion capacity.

23. The State Commissions are correct that "the predicate for permitting a pipeline to charge a negotiated rate is that capacity is available at the recourse rate,"[23] and the Commission therefore requires that shippers have the option of choosing to pay a cost-based recourse rate for expansion capacity that becomes available. However, as the State Commissions acknowledge, the Commission's consistent policy in section 7 certificate proceedings is to require that a pipeline's cost-based recourse rates for incrementally-priced expansion capacity be designed using the rate of return from its most recent general rate case approved by the Commission under section 4 of the NGA in

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[22] State Commissions' May 27, 2015 Answer at 2 (citing *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at P 4, *order granting clarification*, 74 FERC ¶ 61,194 (1996) (*Alternatives to Traditional Cost-of-Service Ratemaking*)).

[23] *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,004 (2001) (citing *Alternatives to Traditional Cost-of-Service Ratemaking*, 74 FERC ¶ 61,076).

which a specified rate of return was used to calculate the rates.[24] Transco's proposed incremental project recourse rate in this certificate proceeding is based on the specified pre-tax return of 15.34 percent underlying the design of its approved settlement rates in Docket No. RP01-245-000, *et al*.[25] Since Transco's more recently approved general rate case settlements in Docket Nos. RP12-993-000, *et al*.[26] and RP06-569-004,

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[24] *See, e.g., Trunkline Gas Co., LLC*, 135 FERC ¶ 61,019, at P 33 (2011); *Florida Gas Transmission Co., LLC*, 132 FERC ¶ 61,040, at P 35 & n.12 (2010); *Northwest Pipeline Corp.*, 98 FERC ¶ 61,352, at 62,499 (2002); and *Mojave Pipeline Co.*, 69 FERC ¶ 61,244, at 61,925 (1994). *See also Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337, at P 132 (2006), *order on reh'g,* 118 FERC ¶ 61,007, at PP 120 & 122-23 (2007) (allowing, on rehearing, Dominion Cove Point LNG to recalculate incremental rates using the rates of return ultimately approved in its pending rate case, as opposed to its proposed rates of return). If a pipeline's most recent general rate case involved a settlement that did not specify a rate of return or pre-tax return, the Commission's policy requires that incremental rates in the pipeline's certificate proceedings be calculated using the rate of return or pre-tax return from its most recent general rate case (or rate case settlement) in which a specified return component was used to calculate the approved rates. *See, e.g.*, *Equitrans, L.P.*, 117 FERC ¶ 61,184, at P 38 (2006). This policy applies even if a pipeline calculated its proposed incremental rates for expansion capacity using a rate of return *lower* than the most recently approved specified rate of return. *Id.* (rejecting Equitrans' proposed use of 14.25 percent ROE component for incremental rates for mainline extension and requiring recalculation using the specified pre-tax rate of return of 15 percent that was approved in its rate case).

[25] *Transcontinental Gas Pipe Line Corp.,* 100 FERC ¶ 61,085.

[26] *Transcontinental Gas Pipe Line Co., LLC*, 144 FERC ¶ 63,029, at P 13 (2013) (certifying to the Commission an uncontested settlement in which, "[w]ith the exception of certain expressly designated items, the cost of service agreement was reached on a 'black box' basis"); *Transcontinental Gas Pipeline*

et al.[27] were both "black box" settlements that did not specify the rate of return or most other cost of service components used to calculate the settlement rates, Transco calculated its proposed incremental rates in this certificate proceeding consistent with Commission policy by using the last Commission-approved specified pre-tax return of 15.34 percent from its prior rate proceeding in Docket No. RP01-245.

24. Further, in section 7 certificate proceedings the Commission reviews initial rates for service using proposed new pipeline capacity under the public convenience and necessity standard, which is a less rigorous standard than the just and reasonable standard under NGA sections 4 and 5.[28] The Commission develops the

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Co., *LLC*, 145 FERC ¶ 61,205 (2013) (approving and accepting tariff records to implement rate case settlement).

[27] *Transcontinental Gas Pipe Line Corp.*, 122 FERC ¶ 61,213 (2008) (approving and accepting tariff records to implement rate case settlement); *Transcontinental Gas Pipe Line Co., LLC*, 147 FERC ¶ 61,102, at P 53 (2014) (explaining that settlement reached in Docket No. RP06-569 was a "black box" settlement that did not specify most cost of service components including rate of return).

[28] *Atlantic Refining Co. v. Public Serv. Comm'n of New York*, 360 U.S. 378 (1959) (*CATCO*). In *CATCO*, the Court contrasted the Commission's authority under sections 4 and 5 of the NGA to approve changes to existing rates using existing facilities and its authority under section 7 to approve initial rates for new services and services using new facilities. The court recognized "the inordinate delay" can be associated with a full-evidentiary rate proceeding and concluded that was the reason why, unlike sections 4 and 5, section 7 does not require the Commission to make a determination that an applicant's proposed initial rates are or will be just and reasonable before the Commission certificates new facilities, expansion capacity, and/or services. *Id.* at 390. The Court stressed that in deciding under section 7(c) whether proposed new facilities or services are required by the

recourse rate for expansion capacity based on the pipeline's estimated cost of service. As discussed above, the State Commissions' protest included a DCF analysis for natural gas pipelines, which they contend reflects current market conditions and a median ROE of 10.95 percent. However, the Commission does not believe that conducting DCF analyses in individual certificate proceedings would be the most effective or efficient way for determining the appropriate ROEs for proposed pipeline expansions. While parties have the opportunity in section 4 rate proceedings to file and examine testimony with regard to the composition of the proxy group to use in the DCF analysis, the growth rates used in the analysis, and the pipeline's position within the zone of reasonableness with regard to risk, it would be difficult, if not impossible, to complete this type of analysis in section 7 certificate proceedings in a timely manner and attempting to do so would unnecessarily delay proposed projects with time sensitive in-service schedules. The Commission's current policy of calculating incremental rates for expansion capacity using the Commission-approved ROEs underling pipelines' existing rates is an appropriate exercise of its discretion in section 7 certificate proceedings to

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public convenience and necessity, the Commission is required to "evaluate all factors bearing on the public interest," and an applicant's proposed initial rates are not "the only factor bearing on the public convenience and necessity." *Id.* at 391. Thus, as explained by the Court, "[t]he Congress, in § 7(e), has authorized the Commission to condition certificates in such manner as the public convenience and necessity may require when the Commission exercises authority under section 7," *id.*, and the Commission therefore has the discretion in section 7 certificate proceedings to approve initial rates that will "hold the line" and "ensure that the consuming public may be protected" while awaiting adjudication of just and reasonable rates under the more time-consuming ratemaking sections of the NGA. *Id.* at 392.

approve initial rates that will "hold the line" until just and reasonable rates are adjudicated under section 4 or 5 of the NGA.

25. Here, Transco is required to file an NGA general section 4 rate case by August 31, 2018, pursuant to the comeback provision in Article 6 of the settlement in Docket No. RP12-993.[29] Parties in that future rate case will have an opportunity to review Transco's pre-tax return and other cost of service components. In addition, given the possibility that that rate case could result in another settlement for rates that are not based on a specified rate of return and, as discussed above, the Commission's policy in section 7 certificate proceedings is to require that a pipeline's initial rates for expansion capacity be designed using a Commission-approved, specified rate of return, the Commission would advise that parties in the rate case use that opportunity to address issues of concern relating to the rate of return that should be used in calculating initial rates in Transco's future certificate proceedings.[30]

26. For the reasons discussed above, the Commission finds that it is appropriate to apply its general policy to calculate Transco's initial recourse rate in this proceeding and that parties raise in Transco's upcoming general rate case any issues and concerns they have regarding the rate of return or other cost of service components to be used in calculating Transco's recourse rates in subsequent certificate proceedings.

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[29] *Transcontinental Gas Pipe Line Co., LLC*, 144 FERC ¶ 63,029.

[30] *See, e.g.*, *Eastern Shore Natural Gas Co.*, 138 FERC ¶ 61,050 (2012) (approving settlement that established rates on "black box" basis but provided a specified pre-tax rate of return).

Therefore, the Commission will deny the State Commissions' request for partial consolidation of Transco's certificate proceedings and full trial-type evidentiary hearing on the rate of return issue.[31]

2. Initial Rates

27. Transco proposes an initial incremental recourse reservation charge of $0.44806 per Dth/day and a zero usage charge. Transco also proposes to assess its system interruptible, fuel, and lost and unaccounted for retention charges under its existing Rate Schedules FT and IT for the project. In support of the proposed initial rates, Transco submitted an incremental cost of service and rate design study showing the derivation of the project recourse rate for the mainline service based on a total first year cost of service of $40,885,593 and billing determinants of 250,000 Dth/day.[32] The proposed cost of service is based on Transco's pre-tax rate of return of 15.34 percent, the most recently established pre-tax return,[33] and its system deprecia-

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[31] The Commission's policy is to consolidate matters only if a trial-type evidentiary hearing is required to resolve common issues of law and fact and consolidation will ultimately result in greater administrative efficiency. *Columbia Gulf Transmission Co.*, 139 FERC ¶ 61,236, at P 20 (2012); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 27 (2008). A full trial-type evidentiary hearing is necessary only where there are material issues of fact in dispute that cannot be resolved on the basis of the written record. *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993); *Dominion Transmission, Inc.*, 141 FERC ¶ 61,183, at P 15 (2012).

[32] *See* Transco's Application at Exhibit P.

[33] *Transcontinental Gas Pipe Line Corp*., 100 FERC ¶ 61,085). Transco has used the specified pre-tax return and certain other cost factors underlying the Docket No. RP01-245 rates provided for in the settlement approved by the Commission in that rate proceeding because, as discussed above, the more recent Docket

tion rates of 2.61 percent for onshore transmission facilities, including negative salvage, and 4.97 percent for solar turbines.[34]

28. On April 30, 2015, the Commission issued a data request directing Transco to provide a breakdown of its Operation and Maintenance (O&M) expenses by FERC account number and labor and non-labor costs for the new compression, and measuring and regulating facilities. In response, Transco identified a total of $592,085 in non-labor O&M costs in Account Nos. 853 and 864.[35] These non-labor costs are classified as variable costs, and section 284.7(e) of the Commission's regulations does not allow variable costs to be recovered through the reservation charge.[36]

29. As a part of the April 30, 2015 data request, Commission staff requested that Transco recalculate its incremental recourse rates to reflect the removal of variable costs. Transco's recalculation reduced the reservation charge from $0.44806 to $0.44157 per Dth/day and increased the proposed zero usage charge to $0.00649 per Dth.[37] This recalculated incremental reservation charge of $0.44157 per Dth/day is still higher than the currently applicable Rate Schedule FT reservation charge. Therefore, the Commission will

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No. RP12-993 settlement agreement was a "black box" settlement, which does not specify a rate of return or most other cost of service components.

[34] *Transcontinental Gas Pipe Line Co.*, *LLC*, 145 FERC ¶ 61,205.

[35] Transco's May 11, 2015 Data Response, Response No. 1 and Schedule 1.

[36] 18 C.F.R. § 284.7(e) (2015).

[37] Transco's May 11, 2015 Data Response, Response No. 2 and Schedules 2 and 3.

require that the recalculated incremental base reservation charge of $0.44157 per Dth/day be the initial recourse charge for firm service using the expansion capacity.[38]

30. Transco's estimated incremental usage charge of $0.00649 per Dth attributable to the VSEP II expansion capacity is lower than the currently applicable Rate Schedule FT usage charge. Therefore, the Commission will require Transco to charge its currently applicable Rate Schedule FT usage charge for this project.

31. Transco proposes to charge its system interruptible transportation rates under existing Rate Schedule IT for interruptible service using the VSEP II expansion capacity.[39] The Commission will approve Transco's proposal as it is consistent with Commission policy requiring pipelines to charge their currently effective system interruptible rates for any interruptible service rendered using expansion capacity integrated with existing capacity.[40] The Commission also is approving Transco's proposal to assess its generally applicable system fuel retention and electric power rates.[41]

32. Transco states its negotiated rate agreement with Virginia Power contains non-conforming provi-

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[38] Under the Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate will exceed the maximum system-wide rate. Certificate Policy Statement, 88 FERC at 61,745.

[39] Transco's May 11, 2015 Data Response, Response No 3.

[40] *See, e.g.*, *Trunkline Gas Co., LLC,* 153 FERC ¶ 61,300, at P 62 (2015).

[41] Transco states that the project facilities are expected to result in an overall reduction in fuel use. Transco's Application at 9 and Exhibit Z-1.

sions similar to those approved in connection with Transco's VSEP I in Docket No. CP13-30-000. Transco states that it will file the negotiated rate agreement prior to the commencement of service as required by Commission policy.[42]

3. Preliminary Determination regarding Rolled-In Treatment for VSEP II Costs

33. Transco requests that the Commission make a finding that it will be appropriate for Transco to charge a single incremental recourse rate for firm VSEP I and VSEP II services, based on the combined costs of service and billing determinants of both projects. In addition, Transco requests authorization to make a filing under section 4 of the NGA for the limited purpose of consolidating the rates for VSEP I and VSEP II services into a single incremental rate to be effective on the projected December 1, 2017, in-service date for the VSEP II capacity.[43] Transco emphasizes that VSEP II will expand capacity on Transco's mainline and South Virginia Lateral for service utilizing the same path as VSEP I services and further asserts that VSEP II will benefit significantly from the relatively inexpensive expansibility made possible by VSEP I.

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[42] Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. *See, e.g.*, *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

[43] Transco cites *Tennessee Gas Pipeline Co., L.L.C.*, 139 FERC ¶ 61,161 (2012), *order on reh'g*, 142 FERC ¶ 61,025, at P 19 (2013) (*Tennessee*), where the Commission permitted Tennessee Gas Pipeline to make a section 4 filing for the limited purpose of consolidating the rates of its Northeast Upgrade Project and 300 Line Project into a single incremental rate.

34. The Commission will deny Transco's request. Notwithstanding that Transco is proposing here to roll the costs of this VSEP II expansion into the rates of another incrementally-priced project, VSEP I, rather than into its existing system rates, the standard for approval is the same. To receive a pre-determination in a certificate proceeding favoring rolled-in rate treatment in a future section 4 proceeding, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must show that the revenues to be generated by an expansion project will exceed the costs of the project. For purposes of making such a determination, we compare the cost of the project to the revenues generated utilizing actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the recourse rate).[44]

35. The Commission has determined Transco's projected revenue for the first year of project service to be $39,693,750, compared to the projected cost of service for the first year of $40,885,593. As a result, the projected cost of service would exceed projected revenues, suggesting that rolling the costs of VSEP II into a single incremental rate for all services using the combined VSEP I and VSEP II capacity would create the potential for the VSEP I shippers to subsidize services using the VSEP II expansion capacity.

36. Given that Transco's projected revenue for the first year of VSEP II service is less than the projected cost of service associated with VSEP II capacity and

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

service, we find the record does not support a finding creating a presumption favoring any type of rolled-in rate treatment for VSEP II's fixed and non-fuel gas costs. Further, even if projected VSEP II costs were less than projected VSEP II revenue, the Commission does not generally permit a pipeline to file a limited section 4 proceeding to change the rates for some services but not others. While Transco is correct that the Commission made an exception in *Tennessee*,[45] the circumstances in that proceeding were materially different.

37. Tennessee sought approval to make a limited section 4 filing to propose a single incremental recourse rate for services using capacity created by the incrementally-priced project authorized in that proceeding and another incrementally-priced project authorized in a previous proceeding and already in service. While the Commission denied Tennessee's request in the certificate order, it granted Tennessee's request for rehearing on the issue, recognizing that at the time Tennessee was precluded by a prior rate settlement moratorium from initiating a general section 4 rate proceeding for another thirteen months.[46] Here, while Transco's most recent rate settlement does not require it to initiate a new general rate case until August 31, 2018,[47] it has the option of making an earlier general section 4 rate case filing including a proposed single incremental recourse rate for service using the existing VSEP I expansion capacity or the

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[45] *Tennessee*, 139 FERC ¶ 61,16, *order on reh'g*, 142 FERC ¶ 61,025.

[46] *Tennessee*, 142 FERC ¶ 61,025 at P 18.

[47] *Transcontinental Gas Pipeline Co., LLC*, 145 FERC ¶ 61,205 at P 8.

VSEP II expansion capacity that it plans to place in service on December 1, 2017.[48]

38. In view of the above considerations, the Commission is denying Transco's requests for authorization to make a limited section 4 filing for purposes of rolling the costs of VSEP II into a single rate for VSEP I or VSEP II service and for a predetermination favoring such rolled-in rate treatment. However, this finding is without prejudice to Transco proposing to roll VSEP II's incremental fixed and non-fuel gas costs

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[48] The Commission also notes that Tennessee had agreed before proposing its earlier project to lower the negotiated rate being paid by that project's sole shipper once the second project's expansion capacity was in service in recognition that the first project likely would reduce the costs of the second project to create more expansion capacity for other shippers. *Tennessee*, 139 FERC ¶ 61,161 at P 24. While neither of Transco's expansion shippers subscribing its VSEP I capacity has objected to its request for a predetermination that would support rolling the VSEP II costs in with VSEP I costs, Transco does not assert that it had a similar agreement with the VSEP I shippers. Further, while Virginia Power will hold both VSEP I and VSEP II capacity, the other VSEP I shipper (Piedmont) has not subscribed any of the VSEP II capacity. As discussed above, since projected VSEP II costs will exceed VSEP II revenue during the first year of service, the result of Transco's roll-in proposal would be to increase the rate for VSEP I capacity. Finally, in granting Tennessee's request to make a limited section 4 filing to propose a single incremental rate for the capacity created by its two expansion projects, the Commission emphasized that "our ruling is procedural in nature and does not address the merits of Tennessee's specific proposal . . . ." *Tennessee*, 142 FERC ¶ 61,025 at P 19. In this proceeding, Transco asks not only for approval to make a limited section 4 filing to propose a single incremental rate for VSEP capacity, but also requests a finding creating a presumption that would shift the evidential burden of proof to any party opposing such rate treatment.

into its incremental VSEP I recourse rate in its next general section 4 rate case.

4. Reporting Incremental Costs

39. Section 154.309 of the Commission's regulations[49] includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are approved to ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers. Therefore, Transco must keep separate books and accounting of costs and revenues attributable to VSEP II capacity and incremental services using that capacity as required by section 154.309. The books should be maintained with applicable cross-references. 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.[50]

C. Environmental Analysis

40. On May 6, 2015, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the proposed Virginia Southside Expansion Project II and Request for Comments on Environmental Issues (NOI). The NOI was published in the Federal Register and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

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[49] 18 C.F.R. § 154.309 (2015).

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

41. We received comments in response to the NOI from the Virginia Department of Conservation and Recreation, the Virginia Department of Environmental Quality, the Virginia Department of Transportation, the Virginia Department of Historic Resources, the Prince William County Service Authority, and two individuals. The scoping comments concerned potential impacts on state-managed natural heritage resources, including state-listed Manassas stonefly habitat and a freshwater mussel concentration area, waterbodies, wildlife, public safety, and historic properties.

42. To satisfy the requirements of the National Environmental Policy Act of 1969, 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, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. The EA was placed into the public record on May 13, 2016. All substantive environmental comments received in response to the NOI were addressed in the EA, as were comments by Sierra Club that Transco's proposed VSEP II, its previously authorized VSEP I, and its proposed Atlantic Sunrise Project should be considered as connected, cumulative, and/or similar projects in the same environmental document, and that the environmental analysis also should include indirect and cumulative impacts of the Greensville power plant to be served using the VSEP II expansion capacity.[51] No further environmental comments were filed.

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[51] The environmental analysis for Transco's VSEP II considered VSEP I and the Atlantic Sunrise Project and concluded that each of the three projects is functionally independent and that the projects therefore did not need to be addressed in a single

43. The EA included a recommendation that prior to construction, Transco should file the results of an air quality screening (AERSCREEN), or refined modeling analysis (AERMOD or U.S. Environmental Protection Agency-approved alternative) for all of the emission generating equipment (including existing equipment) at Compressor Station 166. We note that Transco filed the required modeling on June 14, 2016, showing that the modeled existing emissions, plus the modeled incremental increase in emissions of criteria pollutants from the modifications, result in local concentrations below the national ambient air quality standards. Therefore, we will not include the EA's environmental recommendation regarding air modeling as a condition in this Order.

44. Based on the analysis in the EA, the Commission concludes that if constructed and operated in accordance with Transco's application and in compliance with the environmental conditions in the appendix to this Order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

45. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be

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NEPA document. EA, Section A.3, at 3-4. However, the cumulative impacts analysis included VSEP I and the Atlantic Sunrise Project and 14 other past, current, and planned jurisdictional and non-jurisdictional projects in the region, including the Greensville Power Station. EA, Section B.9, at 62 *et seq*., and Appendix E. The EA concluded that with the customary and recommended additional mitigation measures, VSEP II's impacts would be temporary and relatively minor and have a small and insignificant cumulative effect when added to the mostly temporary and minor impacts from the other projects. EA, Section B.9, at 78.

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.[52]

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Transco authorizing it to construct and operate the Virginia Southside Expansion Project II, as described in the application and conditioned herein.

(B) The certificate issued in ordering paragraph (A) is conditioned on Transco's:

(1) completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) compliance with all applicable regulations under the NGA, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

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[52] *See, e.g., Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers,* 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission); and *Iroquois Gas Transmission System, L.P.,* 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(3) compliance with the environmental conditions listed in Appendix B of this order; and

(4) executing, prior to the commencement of construction, firm contracts for volumes and service terms equivalent to those in its precedent agreements.

(C) Transco's initial incremental reservation charge under Rate Schedule FT as recalculated for the project to reflect the removal of variable costs is approved, as discussed above.

(D) Transco is required to charge its generally applicable Rate Schedule FT Zone 5-6 usage charge as part of its initial recourse rate.

(E) Transco's request to charge its generally applicable Zone 5-6 interruptible rates and fuel is approved.

(F) Transco's request for a pre-determination to roll-in its project costs with its Virginia Southside Expansion Project I is denied.

(G) Transco shall file actual tariff records with the recalculated base reservation charge no earlier than 60 days and no later than 30 days, prior to the date the project facilities go into service.

(H) As described in this order, not less than 30 days and not more than 60 days prior to the commencement of service using the authorized expansion capacity, Transco must file an executed copy of any non-conforming service agreement associated with the project as part of its tariff, disclosing and reflecting all non-conforming language, and a tariff record identifying each such agreement as a non-conforming agreement consistent with section 154.112 of the Commission's regulations.

(I) As described in the body of this order, Transco must file any negotiated rate agreement or tariff

record setting forth the essential terms of the agreement associated with the project at least 30 days, but not more than 60 days before the proposed effective date of such rates.

(J) Transco shall keep separate books and accounting of costs attributable to the incremental services using the expansion capacity created by the project, as discussed herein.

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

(L) The requests for partial consolidation and a full, trial-type evidentiary hearing are denied.

(M) The untimely motion to intervene filed jointly by Sierra Club and Appalachian Mountain Advocates is granted.

By the Commission.

(SEAL)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Virginia Southside Expansion Project II
Docket No. CP15-118-000

Timely, Unopposed Interventions

Alabama Gas Corporation

Atmos Energy Marketing, LLC

Columbia Gas of Virginia, Inc.

ConocoPhillips Company

Consolidated Edison Company of New York, Inc., and Philadelphia Gas Works

Duke Energy Carolinas, LLC; Duke Energy Progress, Inc.; and Duke Energy Florida, Inc. (jointly)

Exelon Corporation

Municipal Gas Authority of Georgia,[53] and
Transco Municipal Group[54] (jointly)

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[53] Municipal Gas Authority of Georgia includes the following municipalities served by Transco: the Georgia municipalities of Bowman, Buford, Commerce, Covington, Elberton, Hartwell, Lawrenceville, Madison, Monroe, Royston, Social Circle, Sugar Hill, Toccoa, Winder, and Tri-County Natural Gas Company (consisting of Crawfordville, Greensboro, and Union Point); the East Central Alabama Gas District, Alabama; the towns of Wadley and Rockford, Alabama; the Utilities Board of the City of Roanoke, Alabama; Wedowee Water, Sewer & Gas Board, Wedowee, Alabama; and the Maplesville Waterworks and Gas Board, Maplesville, Alabama.

[54] The Transco Municipal Group includes: the cities of Alexander City and Sylacauga, Alabama; the Commissions of Public Works of Greenwood, Greer, and Laurens, South Carolina; the cities of Fountain Inn and Union, South Carolina; the Patriots Energy Group (consisting of the Natural Gas Authorities of Chester, Lancaster, and York Counties, South Carolina); and the

New Jersey Natural Gas Company

National Grid Gas Delivery Companies

New York State Public Service Commission

NJR Energy Services Company

North Carolina Utilities Commission

Piedmont Natural Gas Company, Inc.

PSEG Energy Resources & Trade, LLC

Public Service Company of North Carolina, and South Carolina Electric & Gas Company (jointly)

UGI Distribution Companies[55]

Virginia Power Services Energy Corporation, Inc.

Washington Gas Light Company

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cities of Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson, North Carolina.

[55] UGI Distribution Companies include: UGI Utilities, Inc. and UGI Penn Natural Gas, Inc.

Appendix B

Virginia Southside Expansion Project II
Docket No. CP15-118-000

Environmental Conditions

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

1. Transcontinental Gas Pipe Line Company, LLC (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 EA, unless modified by the Order. Transco must:

a. request any modification to these procedures, measures, or conditions in a filing with the 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 has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:

a. the modification of conditions of the Order; and

b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the

intent of the environmental conditions as well as the avoidance or mitigation of 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 (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA. As 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 the Natural Gas Act 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 the Natural Gas Act section 7(h) does not authorize it to increase the size of its natural gas pipeline or facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. 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 FERC *Upland Erosion Control, Revegetation, and Maintenance Plan* or the company project specific plan described in the document 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 per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;

d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;

e. the location and dates of the environmental compliance training and instructions. 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 two EIs for the project facilities in Virginia, and one EI for the facility modifications in North Carolina and South Carolina. The EIs shall be:

a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;

b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;

c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;

c. for the Greensville Lateral, a full-time position, separate from all other activity inspectors;

d. 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

e. 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 EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;

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. Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities, Transco shall 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. Transco shall file a noise survey for Compressor Stations 166 and 185 no later than 60 days after placing the stations into service. If a full power load condition noise survey is not possible, Transco shall file an interim survey at the maximum possible power load within 60 days of placing the station into service and file the full power load survey within 6 months. If the noise attributable to operation of all equipment at the station under interim or full power load conditions exceeds predicted values at any nearby noise sensitive area, Transco should:

a. file a report with the Secretary, for review and written approval by the Director of the OEP, on what changes are needed;

b. install additional noise controls to meet that level within 1 year of the in-service date; and

c. confirm compliance with this requirement by filing a second full power load noise survey with the Secretary for review and written approval by the Director of the OEP no later than 60 days after it installs the additional noise controls.

APPENDIX E

161 FERC ¶ 61,212

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. CP15-118-001

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and
Robert F. Powelson.

Transcontinental Gas Pipe Line Company, LLC

ORDER DENYING REHEARING

(Issued November 21, 2017)

1. On July 7, 2016, the Commission issued an order granting, subject to conditions, a certificate of public convenience and necessity authorizing Transcontinental Gas Pipe Line Company, LLC (Transco) to construct and operate the Virginia Southside Expansion Project II.[1] In doing so, the Commission accepted, over protest from the North Carolina Utilities Commission and New York State Public Service Commission (collectively, State Commissions), Transco's use of a pre-tax return of 15.34 percent in calculating its proposed incremental recourse rates for the Virginia Southside Expansion Project II.[2]

2. In a joint request for rehearing filed on August 8, 2016, State Commissions renew their concerns regarding the rate of return used to calculate Transco's

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[1] *Transcontinental Gas Pipe Line Co., LLC*, 156 FERC ¶ 61,022 (2016) (July 7 Order).

[2] *Id.* PP 20-26. Transco proposed to use the same rate of return in calculating proposed recourse rates for its Dalton Expansion Project in Docket No. CP15-117-000. See id. P 20.

incremental recourse rates.[3] They contend that the Commission erred by failing to take into account the significant changes in the financial markets which have occurred since the Commission's approval of a 15.34 percent pre-tax return for Transco, which was the last specified rate of return from Transco's general rate case approved by the Commission under section 4 of the Natural Gas Act (NGA) in 2002 and the rate of return used to calculate Transco's incremental recourse rates.

3. For the reasons discussed below, we deny the request for rehearing.

Commission Determination

4. State Commissions acknowledge that, in the July 7 Order, the Commission applied its established policy in section 7 proceedings of requiring incremental recourse rates to be designed using the rate of return specified in the pipeline's most recent general rate case approved under section 4 of the NGA.[4] If the most recent section 4 rate case involved a settlement that did not specify a rate of return or pre-tax return, we look to the most recent prior case that did so specify.[5] State Commissions nevertheless assert that the Commission was arbitrary and capricious and failed to engage in reasoned decision-making because it: (1) failed to protect consumers from excessive rates by

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[3] State Commissions filed the same rehearing request in this proceeding and in the proceeding on the Dalton Expansion Project in Docket No. CP15-117-001. An order is being issued concurrently in Docket No. CP15-117-001 addressing State Commissions' rehearing request with respect to the Dalton Expansion Project.

[4] State Commissions Rehearing Request at 12. *See also* July 7 Order, 156 FERC ¶ 61,022 at P 23 (explaining Commission's policy).

[5] *See* July 7 Order, 156 FERC ¶ 61,022 at P 23 n.24 (citing cases).

permitting Transco to calculate its recourse rates using an excessive pre-tax return;[6] and (2) did not require that the return be calculated based on current market conditions.[7] These arguments were advanced by State Commissions in their initial pleadings,[8] and fully addressed in the July 7 Order.[9] State Commissions present no new evidence or arguments that warrant reversing the Commission's application of its consistent policy in the July 7 Order, nor have they demonstrated that circumstances have changed such that the policy should no longer apply.

5. In addition to reiterating arguments addressed in the July 7 Order, State Commissions contend on rehearing that the Commission erred in referring to *Atlantic Refining Co. v. Pub. Serv. Comm'n of N.Y.* (*CATCO*),[10] a case regarding the Commission's discretion in section 7 proceedings to approve initial rates that will "hold the line" until just and reasonable rates are adjudicated under section 4 or 5 of the NGA.[11] According to State Commissions, the cited case is inapplicable because it pre-dates the existence of negotiated rates, and the fact that Transco will need to file an NGA general section 4 rate case by August 31, 2018, fails to protect customers from excessive rates charged before that time. We disagree.

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[6] State Commissions Rehearing Request at 9-16.

[7] *Id.* at 16-17.

[8] *See* State Commissions April 22, 2015 Protest at 9-13; State Commissions May 27, 2015 Answer at 2-5.

[9] July 7 Order, 156 FERC ¶ 61,022 at PP 20-26.

[10] 360 U.S. 378 (1959).

[11] State Commissions Rehearing Request at 17-18.

6. Initially, State Commissions fail to explain how the advent of negotiated rates constitutes a "change in circumstance" negating the Commission's discretion to approve initial rates in this section 7 certificate proceeding under the public convenience and necessity standard pending the adjudication of just and reasonable rates in Transco's next NGA general section 4 rate case.[12] In the July 7 Order, the Commission cited *CATCO* to contrast the less rigorous public convenience and necessity standard of review employed under section 7 to assess initial rates for new service or facilities with the just and reasonable standard of review for rate changes under sections 4 and 5.[13] The less exacting standard of review used in a section 7 certificate proceeding is intended to mitigate the delay associated with a full evidentiary rate proceeding, and the Commission has discretion to approve initial rates that will "hold the line" while awaiting the adjudication of just and reasonable rates.[14] State Commissions' observation that *CATCO* was decided before the development of negotiated and recourse rates does not detract from these basic tenets or their applicability in this proceeding. Whether the initial rates in question are recourse rates, serving as a check against the exercise of market power by pipelines with negotiated rate authority, or the rates actually charged to shippers, the Commission retains the discretion to protect the public interest while preventing the delays that can accompany full evidentiary proceedings.

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[12] *Id.* at 17 ("To begin, negotiated rates did not exist in 1959 at the time of this decision. This change in circumstance renders this decision inapposite.").

[13] July 7 Order, 156 FERC ¶ 61,022 at P 24 and n.28 (citing *CATCO*, 360 U.S. at 390).

[14] *Id.* (citing *CATCO*, 360 U.S. at 391-92).

7. The fact that the rates in Transco's next NGA general section 4 rate case will go into effect prospectively does not change this analysis. Indeed, this is always the case.[15] In light of the delay involved in new rates becoming effective following the initial certification, the Commission must undertake "a most careful scrutiny and responsible reaction to initial price proposals of producers under [NGA section] 7."[16] In this case, the Commission appropriately examined Transco's proposal under the public convenience and necessity standard, applied its consistent policy to accept recourse rates designed using the last Commission-approved rate of return from a NGA general section 4 rate case in which a rate of return was specified in order to calculate the rates, but pointed out that, in any event, parties would have the opportunity to raise concerns regarding Transco's pre-tax return and other cost of service components in the next NGA general section 4 rate case, to be filed by August 31, 2018.[17] State Commissions have not persuaded us on rehearing to revisit this determination.

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[15] *See CATCO*, 360 U.S. at 389 (noting that new rate changes filed under section 4 become effective upon filing, subject to suspension and the posting of a bond, where required, and that just and reasonable rates fixed in a section 5 proceeding become effective prospectively only).

[16] *Id.* at 390-91.

[17] July 7 Order, 156 FERC ¶ 61,022 at P 25.

The Commission orders:

State Commissions' request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(SEAL)

Kimberly D. Bose,
Secretary.

APPENDIX F

158 FERC ¶ 61,125

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. CP15-138-000

Before Commissioners: Cheryl A. LaFleur, Acting Chairman; Norman C. Bay, and Colette D. Honorable.

Transcontinental Gas Pipe Line Company, LLC

ORDER ISSUING CERTIFICATE

(Issued February 3, 2017)

1. On March 31, 2015, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application under section 7(c) of the Natural Gas Act (NGA)[1] and Part 157 of the Commission's regulations[2] for authorization to construct and operate its proposed Atlantic Sunrise Project in Pennsylvania, Maryland, Virginia, North Carolina, and South Carolina. The purpose of the project is to increase firm incremental transportation service on the Transco system by 1,700,002 dekatherms (Dth) per day.

2. For the reasons discussed below, the Commission grants Transco's requested certificate authorizations, subject to conditions.

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[1] 15 U.S.C. § 717f(c) (2012).

[2] 18 C.F.R. pt. 157 (2016).

I. Background

3. Transco,[3] a Delaware limited liability company, is a natural gas company[4] that transports natural gas in interstate commerce through its natural gas transmission system extending 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.

II. Proposal

4. Transco proposes to construct and operate its Atlantic Sunrise Project to provide 1,700,002 Dth per day of incremental firm transportation service from northern Pennsylvania in its rate Zone 6 to its Station 85 in Alabama, including to markets along its pipeline system in Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, Alabama, and to interconnects with existing pipelines serving Florida markets.

5. Specifically, Transco proposes to construct the following pipeline facilities:

- Central Penn Line North, a 58.7-mile-long, 30-inch-diameter natural gas pipeline with a maximum allowable operating pressure (MAOP)

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[3] Transco is a wholly-owned subsidiary of Williams Partners Operating LLC, which is a subsidiary of Williams Partners L.P., which is a subsidiary of the Williams Companies, Inc. On February 2, 2015, Williams Partners L.P. merged with and into Access Midstream Partners, L.P. Transco's subsidiaries are Cardinal Operating Company, LLC; Cardinal Pipeline Company, LLC; Pine Needle Operating Company, LLC; TransCardinal Company, LLC; and TransCardinal LNG Company, LLC.

[4] *See* 15 U.S.C. § 717a(6) (2012).

of 1,480 pounds per square inch gauge (psig) from milepost L114.0 on Transco's Leidy Line in Columbia County, Pennsylvania, to the proposed Zick Meter Station in Susquehanna County, Pennsylvania (Zick Interconnection);

- Central Penn Line South, a 127.3-mile-long, 42-inch-diameter natural gas pipeline with a MAOP of 1,480 psig from milepost 1683.3 on Transco's mainline in Lancaster County, Pennsylvania, to milepost L114.0 on Transco's Leidy Line in Columbia County, Pennsylvania;[5]
- Chapman Loop, a 2.5-mile-long, 36-inch-diameter pipeline loop on Transco's Leidy Line with an MAOP of 1,200 psig from milepost L186.0 to milepost L188.6 in Clinton County, Pennsylvania; and
- Unity Loop, an 8.5-mile-long, 42-inch-diameter pipeline loop on Transco's Leidy Line with an MAOP of 1,200 psig from milepost L120.3 to milepost L128.9 in Lycoming County, Pennsylvania.[6]

6. Transco also proposes to replace 2.5 miles of noncontiguous segments of its existing 30-inch-diameter Mainline A pipeline and 30-inch-diameter Mainline B pipeline between milepost 1578.7 and milepost 1581.0 in Prince William County, Virginia (Mainline A & B Replacements).[7]

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[5] Central Penn Line North and Central Penn Line South are collectively known as the Central Penn Line.

[6] Once placed into service, the Chapman and Unity Loops would be referred to as the Leidy Line D.

[7] The pipeline replacements would be designed with an MAOP of 800 psig.

7. Transco proposes to construct the following aboveground facilities:

- Compressor Station 605: two new 15,000-horsepower (hp) electric motor-driven compressor units on the Central Penn Line North at milepost 44.9 in Wyoming County, Pennsylvania;
- Compressor Station 610: two new 20,000-hp electric motor-driven compressor units on the Central Penn Line South at milepost 112.5 in Columbia County, Pennsylvania;
- Two new meter stations (the Zick and Springville Meter Stations in Susquehanna and Wyoming Counties, Pennsylvania, respectively) and three new regulator stations (the North Diamond, West Diamond, and River Road Regulator Stations in Luzerne, Columbia, and Lancaster Counties, respectively) with interconnecting piping in Pennsylvania; and
- Related appurtenant aboveground facilities, such as mainline valves, cathodic protection, communication towers, and internal inspection device launchers and receivers along the Central Penn Line, Chapman Loop, Unity Loop, and the Mainline A and B Replacements.

8. In addition to the proposed new construction, Transco also proposes to make the following modifications to certain existing aboveground facilities:

- Install one new gas turbine compressor generator unit at each of its three existing Transco compressor stations:
    - A 16,000-hp unit at Compressor Station 520 in Lycoming County, Pennsylvania;

  - A 16,000-hp unit at Compressor Station 517 in Columbia County, Pennsylvania; and
  - A 30,000-hp unit at Compressor Station 190 in Howard County, Maryland (includes modifications to valves and yard piping for bidirectional flow and installation of a regulator setting);
- Make minor modifications to enable bidirectional flow at Transco's existing Compressor Stations 190, 185, 170, 160, 150, and 145 in Maryland, Virginia, and North Carolina;
- Install odor masking/deodorization equipment at Transco's existing Compressor Stations 160, 155, 150, and 145 in North Carolina;
- Install supplemental odorization, odor detection, and odor masking/deodorization at 42 existing metering and regulating stations along Transco's existing mainline system in North Carolina and South Carolina;
- Install odor masking/deodorization equipment at 14 existing mainline valve locations in North Carolina and South Carolina;
- Modify the existing Puddlefield Meter Station in Pennsylvania for shared use of the existing flare system, communication tower, and additional piping to the adjacent new Springville Meter Station; and
- Install ancillary facilities, such as mainline valves, cathodic protection, communication towers, and internal inspection device launchers and receivers.

9. Pursuant to a Construction and Ownership Agreement with Meade Pipeline Co LLC (Meade),[8] Transco will construct the Central Penn Line. Once constructed, Transco and Meade will jointly own the Central Penn Line.[9] Pursuant to a Lease Agreement between Transco and Meade, once the project is in service, Meade's interests in the Central Penn Line will be leased to Transco. Meade will be a passive owner. Meade is currently not an NGA jurisdictional entity and does not intend to become one as part of the project ownership structure. Transco will be the sole operator of the project.

10. Transco conducted two open seasons for the project. The initial open season, held from August 8 through September 27, 2013, resulted in commitments from eight shippers for 850,002 Dth per day of firm transportation service on the project, from Transco's Leidy Line to Station 85. A ninth shipper, Cabot Oil & Gas Corporation (Cabot), committed to 850,000 Dth per day of firm transportation service from a new interconnection in Susquehanna County, Pennsylvania, to a new interconnection to Transco's mainline in Lancaster County, Pennsylvania (delivering 500,000

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[8] Meade is an electrical, natural gas, and utilities contractor and is owned by WGL Midstream, Inc. (WGL Midstream); COG Holdings LLC; Vega Midstream MPC LLC; and River Road Interests LLC. WGL Midstream is the lead investor with a 55-percent ownership interest in Meade. WGL Midstream, as noted in this order, is a shipper on the project, having executed a precedent agreement for 44,048 Dth per day of firm transportation service.

[9] Central Penn Line South ownership interest will be divided 70.59 percent and 29.41 percent between Transco and Meade, respectively, while Central Penn Line North will be divided 41.18 percent and 58.82 percent, respectively, between the two owners. Transco's Application at 7.

of the 850,000 Dth per day), and to an existing interconnection between Transco's mainline and Dominion Transmission's pipeline in Fairfax County, Virginia (delivering the remaining 350,000 Dth per day). Transco held a supplemental open season in February 2014 to gauge additional interest for firm transportation service on the project. Transco received no bids as a result of the second open season. Transco also conducted a reverse open season from April 10 to April 25, 2014, and received no offers.

11. As a result of the open seasons, Transco executed binding precedent agreements with the following nine shippers (project shippers) for 100 percent of the incremental firm transportation service provided by the project (i.e., 1,700,002 Dth per day):

Shipper	Contracted Volumes
Anadarko Energy Services Company[10]	44,048 Dth per day
Cabot[11]	850,000 Dth per day[12]
Chief Oil & Gas LLC[13]	420,000 Dth per day
Inflection Energy LLC[14]	26,429 Dth per day
MMGS, Inc.[15]	22,024 Dth per day

[10] Anadarko Energy Services Company, a marketer, is a subsidiary of Anadarko Petroleum Corporation.

[11] Cabot is an exploration and production company.

[12] *See infra* note 19.

[13] Chief Oil & Gas LLC is an exploration and production company.

[14] Inflection Energy LLC is an exploration and production company.

[15] MMGS, Inc., a marketer, is a subsidiary of Mitsui & Co., Ltd.

Seneca Resources Corporation[16]	189,405 Dth per day
Southern Company Services, Inc.[17]	60,000 Dth per day
Southwestern Energy Services Company[18]	44,048 Dth per day
WGL Midstream, Inc.[19]	44,048 Dth per day

The precedent agreements require the project shippers to execute 15-year term firm transportation service agreements under Transco's existing Rate Schedule FT.

12. Transco estimates the cost of the proposed project is approximately $2.588 billion, of which Transco will be responsible for $1.839 billion.[20] Transco states that it will undertake permanent financing at a later date as part of its overall, long-term financing program. Transco has proposed an incremental recourse reservation rate for firm transportation service on the

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[16] Seneca Resources Corporation (Seneca), an exploration and production company, is a subsidiary of National Fuel Gas Corporation.

[17] Southern Company Services, Inc. (Southern Company Services), a public utility company, is a subsidiary of Southern Company and serves as an agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company.

[18] Southwestern Energy Services Company is a marketer.

[19] WGL Midstream, Inc., a marketer, is a subsidiary of Washington Gas Resources Corp., which is a subsidiary of WGL Holdings, Inc.

[20] Exhibit K of Transco's Application. Pursuant to the Construction and Ownership Agreement between Transco and Meade, Meade is responsible for funding its proportional share of the project cost.

project facilities, as described below. Each project shipper has agreed to pay a negotiated rate. Transco will provide service under the terms and conditions of its existing Rate Schedule FT.

III. Notice, Interventions, and Comments

13. Notice of Transco's application was published in the *Federal Register* on April 15, 2015 (80 Fed. Reg. 20,213), with interventions, comments, and protests due by April 29, 2015. The parties listed in Appendix A filed timely, unopposed motions to intervene. The North Carolina Utilities Commission and the New York State Public Service Commission filed timely notices of intervention. Timely, unopposed motions to intervene and notices of intervention are granted by operation of Rules 214(a)(2) and 214(c) of the Commission's Rules of Practice and Procedure.[21] Late interventions were granted by notice issued on November 15, 2016 and are listed in Appendix B of this order.[22]

14. Numerous entities and individuals filed comments regarding project route and system alternatives, land use, construction and operational safety, noise impacts, cumulative impacts, indirect effects, socioeconomic impacts, and project impacts on various natural and cultural resources, such as geology, air, groundwater, and wetlands. These concerns are addressed in the Final Environmental Impact Statement (EIS) and/or below.

IV. Procedural Issues

15. The North Carolina Utilities Commission and the New York State Public Service Commission (State

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[21] 18 C.F.R. §§ 385.214(a)(2) and 385.214(c) (2016).

[22] *See id.* § 385.214(d).

Commissions) filed a joint protest to Transco's application, the merits of which we discuss below.[23] The State Commissions also request an evidentiary hearing on the issues of: (1) Transco's use of a 15.34 percent pre-tax rate of return in developing its proposed recourse rates; and (2) whether the lease arrangement associated with the project benefits ratepayers. The State Commissions also request that we partially consolidate this proceeding with Transco's proposals to construct and operate the Virginia Southside Expansion Project II (VSEP II)[24] and the Dalton Expansion Project[25] in order to address issues about Transco's pre-tax rate of return. The Clean Air Council also seeks a hearing on whether Transco has presented enough evidence to demonstrate that the project is for public use and required by public convenience and necessity, and therefore eminent domain may be exercised for the project.

16. Although our regulations provide for a hearing, neither section 7 of the NGA nor our regulations require that such hearing be a trial-type evidentiary hearing.[26] When, as is usually the case, the written

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[23] *See infra* section V.B.1.

[24] In VSEP II, Transco was authorized to construct and operate approximately 4.33 miles of pipeline and compression facilities. *See Transcontinental Gas Pipeline Co., LLC*, 156 FERC ¶ 61,022 (2016), *reh'g pending*.

[25] In the Dalton Expansion Project, Transco was authorized to construct, lease, and operate approximately 115 miles of pipeline and compression, metering, and appurtenant facilities in Virginia, North Carolina, and Georgia. *See Transcontinental Gas Pipeline Co., LLC*, 156 FERC ¶ 61,092 (2016), *reh'g pending.*

[26] *See Minisink Residents for Environmental Preservation and Safety v. FERC*, 762 F.3d 97, 114 (D.C. Cir. 2014) (stating

record provides a sufficient basis for resolving the relevant issues, it is our practice to provide for a paper hearing.[27] That is the case here. We have reviewed the requests for an evidentiary hearing and conclude that all issues of material fact relating to Transco's proposal are capable of being resolved on the basis of the written record. Accordingly, we will deny the State Commissions' and the Clean Air Council's requests for a formal hearing.

17. As to the State Commissions' request for partial consolidation, the Commission's policy is to consolidate matters only if a trial-type evidentiary hearing is required to resolve common issues of law and fact and consolidation will ultimately result in greater administrative efficiency.[28] As we previously explained in the VSEP II and Dalton orders, we do not believe administrative efficiency will be served by consolidating the three separate certificate proceedings because the issues raised in the motion are addressed in this order without need for an evidentiary hearing.[29] Thus, we

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"FERC's choice whether to hold an evidentiary hearing is generally discretionary.").

[27] *See NE Hub Partners, L.P.*, 83 FERC ¶ 61,043, at 61,192 (1998), *reh'g denied*, 90 FERC ¶ 61,142 (2000); *Pine Needle LNG Co., LLC*, 77 FERC ¶ 61,229, at 61,916 (1996). Moreover, courts have recognized that even where there are disputed issues, the Commission need not conduct an evidentiary hearing if the disputed issues "may be adequately resolved on the written record." *Minisink Residents*, 762 F.3d at 114 (quoting *Cajun Elec. Power Coop., Inc. v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1994)).

[28] *See, e.g., Transcontinental Gas Pipeline Co., LLC*, 156 FERC ¶ 61,092 at P 13.

[29] *See Transcontinental Gas Pipeline Co., LLC*, 156 FERC ¶ 61,022 at P 26 and n.31; *Transcontinental Gas Pipeline Co., LLC*, 156 FERC ¶ 61,092 at P 13.

deny the State Commissions' request for partial consolidation.

18. Transco filed an answer to the State Commissions' protest and the State Commissions filed an answer to Transco's answer. Transco also filed an answer to the Clean Air Council's motion. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers, we find good cause to waive our rules and accept the answers because they provide information that has assisted in our decision making process.[30]

V. Discussion

19. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.[31]

A. Certificate Policy Statement

20. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.[32] The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits

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[30] *See* 18 C.F.R. § 385.213(a)(2) (2016).

[31] 15 U.S.C. §§ 717f(c) and 717f(e) (2012).

[32] *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).

against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

22. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined, in general, that where a pipeline proposes to charge incremental rates for new construction that are higher than the company's existing system rates, the pipeline

satisfies the threshold requirement that the project will not be subsidized by existing shippers.[33] As discussed below, Transco proposes an incremental recourse reservation rate that is higher than its existing system-wide rate to recover the cost of the project. The proposed incremental recourse reservation rate is calculated to recover all construction, installation, operation, and maintenance costs associated with the project. Accordingly, we find that the project will not be subsidized by Transco's existing customers and satisfies the threshold no-subsidy requirement under the Certificate Policy Statement.

23. The Atlantic Sunrise Project will provide 1,700,002 Dth per day of incremental firm transportation service on Transco's system from northern Pennsylvania in its Zone 6 to its Station 85 in Alabama. All of the proposed capacity has been subscribed under long-term precedent agreements with nine shippers.

24. The proposal will not adversely affect Transco's existing customers because the project will not degrade any existing service. Also, the project will not replace firm transportation service on any other pipeline. Further, no pipelines or their captive customers have protested Transco's application. Consequently, we find that there will be no adverse impacts on other pipelines or their captive customers.

25. Regarding the project's impacts on landowners and communities, the proposed Atlantic Sunrise Project will disturb approximately 3,741.0 acres of land during construction and about 1,235.4 acres during operation. To minimize impacts on landowners,

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[33] *Dominion Transmission, Inc.*, 155 FERC ¶ 61,106, at P 15 (2016).

Transco will, to the extent practicable, collocate the proposed pipeline facilities within or adjacent to existing rights-of-way. For example, Transco states that approximately 47 percent of the Central Penn Line North is collocated within existing rights-of way, approximately 11 percent of Central Penn Line South is collocated within existing rights of way, and the Chapman and Unity Loops and Mainline A & B Replacements are collocated completely within the right-of-way of Transco's Leidy Line and Mainline. Transco states that it will continue to negotiate with landowners for use of their land. Accordingly, we find that Transco's proposal has been designed to minimize impacts on landowners and the surrounding communities.

26. Clean Air Council, Friends of Nelson, Wild Virginia, and other commenters question the public need for the project. Clean Air Council alleges demand for the project is lacking because the project was not designed to provide natural gas service to any particular end user or market,[34] none of the project shippers are distribution companies, and some of the natural gas appears to be destined for export. As support, Clean Air Council filed a study by the Institute for Energy Economics and Financial Analysis (IEEFA), which argues, in part, that interstate pipeline infrastructure to ship natural gas from the Marcellus

[34] *See* Clean Air Council's June 27, 2016 Comment on the Draft EIS at 9 (citing Transco's September 3, 2014 Response to Scoping Issues Raised During the July 18, 2014 to August 18, 2014 Scoping Period at 14).

and Utica region[35] is overbuilt.[36] Clean Air Council also references an article that states the same.[37]

27. The IEEFA Study argues that five factors contribute to overbuilding of natural gas infrastructure. First, low natural gas prices in the Marcellus and Utica region are attracting natural gas developers, including producers, to build the pipelines to high-priced markets. Second, the lack of a national or regional planning process for natural gas infrastructure development impedes the ability to assess the need for new pipeline projects. The study suggests that the Commission should implement a planning process for natural gas infrastructure development that resembles the planning process for electric transmission instead of continuing to look primarily at whether an individual pipeline proposal is fully subscribed,

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[35] The Marcellus shale formation extends deep underground from Ohio and West Virginia, northeast through Pennsylvania and southern New York. The Utica shale formation lies a few thousand feet below Marcellus shale formation in primarily the same, but slightly larger area as the Marcellus shale formation. *See Beardslee v. Inflection Energy, LLC*, 761 F.3d 221, 224 (2d Cir. 2014).

[36] Institute for Energy Economics and Financial Analysis, *Risks Associated With Natural Gas Expansion in Appalachia*, April 2016 (filed as Exhibit E in Clean Air Council's June 27, 2016 Comment on the Draft Environmental Impact Statement) (IEEFA Study). Although the study focuses on the Mountain Valley Project (CP16-10- 000) and Atlantic Coast Project (CP15-554-000), both of which are not owned, operated, or constructed by Transco, we consider the study analysis here because it discusses in general terms risk factors that facilitate overbuilding of pipeline infrastructure.

[37] Natural Gas Intelligence, *Marcellus/Utica On Pace for Pipeline Overbuild, Says Braziel*, http://www.naturalgasintel.com/articles/106695-marcellusutica-on-pace-for-pipeline-overbuild-says-braziel (posted June 8, 2016).

which it alleges would likely result in overbuilding.[38] Third, authorized recourse rates for new pipeline infrastructure that are based on a 14-percent or greater return on equity, paired with the fact that in the event of cost over-recovery, a Commission NGA rate case would not result in a refund to the pipeline's customers. Fourth, state regulatory commissions lack the authority to alter Commission-approved recourse rates or negotiated rates. Last, the study asserts that the natural gas industry expects to overbuild pipeline capacity. The study provides analysis that pipeline capacity out of the Marcellus and Utica region will exceed expected production through 2030.[39] As a result of overbuilding, the study argues that investors in pipelines risk financial loss and affected landowners risk unnecessary land condemnation or property damage.

28. We disagree with the Clean Air Council's assertion that demand for the project is lacking. Under the Certificate Policy Statement, the Commission considers all evidence submitted reflecting on the need for the project, including, but not limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.[40] The IEEFA Study filed by Clean Air

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[38] Unlike under the Federal Power Act with respect to the regulation of electric transmission lines and electric markets, Congress has not authorized the Commission to plan either a regional or national natural gas pipeline system. 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.

[39] *See* IEEFA Study, *supra* note 36, at 11-12.

[40] *See Florida Southeast Connection, LLC*, 156 FERC ¶ 61,160, at P 5 (2016), *appeal docketed*, No. 16-1329 (D.C. Cir. Oct. 24, 2016); *see also Minisink Residents*, 762 F.3d at 111, n.10 (stating

Council speaks in generalities and does not assess the market for the proposed Atlantic Sunrise Project. However, it does suggest that pipelines like the proposed project may serve to aid in the delivery of lower-priced natural gas to higher-priced markets. Such a result would serve the public interest. Moreover, the Commission has found that long-term commitments serve as "significant evidence of demand for the project."[41] Here, nine project shippers have executed long-term binding precedent agreements for firm service using 100 percent of the design capacity of the proposed project.

29. While it is true that a number of the project shippers are producers, our policy does not require that shippers be end-use consumers of natural gas. Shippers may be marketers, local distribution companies, producers, or end users. As we have previously stated, a project driven primarily by marketers and producers does not render it speculative.[42] Marketers or producers who subscribe to firm capacity on a proposed project on a long-term basis presumably have made a positive assessment of the potential for selling gas to end-use consumers in a given market and have made a business decision to subscribe to the capacity on the basis of that assessment.[43] Here, Transco designed its project to meet the growing demand for natural gas in the Mid-Atlantic and south-

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that the Commission, under its Certificate Policy Statement, may assess public benefits of a project by looking at precedent agreements and other factors).

[41] Certificate Policy Statement, 88 FERC at 61,748.

[42] *See Maritimes & Northeast Pipeline, L.L.C.*, 87 FERC ¶ 61,061, at 61,241 (1999).

[43] *See id.*

eastern markets, and substantiated such demand by executing precedent agreements for 100 percent of the project's capacity.

30. The IEEFA Study that the Clean Air Council references does not demonstrate that natural gas is not needed in the southeastern U.S. markets. To the extent the IEEFA Study analyzes the underutilization rate in the Transco's service area, the study only states that existing pipelines are being underutilized in Virginia and North Carolina. Current underutilization does not presage low future demand for existing capacity. In fact, as part of this project, Transco proposes to utilize its underutilized capacity and reroute gas flows on its existing system in these two states in lieu of constructing new pipeline facilities, to serve the growing demand in the southeastern market. Moreover, project shippers have provided evidence of demand in the southeast. Southern Company Services, one of the project shippers, owns and operates 42,000 megawatts of generation facilities to serve its retail and wholesale customers in Alabama, Florida, Georgia, and Mississippi, and states that it needs firm transportation service that will be made available through the project.[44] Another project shipper, Seneca, stated that it has entered into long-term natural gas sales contracts with natural gas and electric end users for all of its capacity on the project.[45] Washington Gas Light Company, an existing end-use customer on Transco's southeastern system, also filed a similar

[44] *See* Southern Company Services' May 8, 2015 Motion for Leave to Intervene Out of Time and Supporting Comments at 3-4.

[45] *See* Seneca's February 8, 2016 Comment at 1.

comment that it needs the capacity provided by the project.[46]

31. In addition, the IEEFA Study improperly relies on a U.S. Department of Energy (DOE) study concerning the implication of increased demand for electricity on natural gas infrastructure.[47] The DOE Study does not demonstrate that pipelines are currently overbuilt. It concludes that demand for natural gas from the electric power sector will only result in modest additions of new pipeline capacity between 2015 and 2030 (34 to 38 billion cubic feet (Bcf) per day) compared to historical capacity additions between 1998 and 2013 (127 Bcf per day).[48] The study explains that natural gas production and natural gas demand are geographically dispersed and natural gas companies are increasingly utilizing underutilized capacity on existing pipelines, re-routing natural gas flows, and expanding existing pipeline capacity.[49] The DOE Study does not support the contention that natural gas infrastructure is currently being overbuilt.

32. With regard to IEEFA Study's argument that a 14-percent rate of return (ROE) generally is too high, as discussed below, the Commission's policy is to use the ROE approved in the applicant's last NGA general

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[46] *See* Washington Gas Light Company's April 29, 2015 Motion to Intervene and February 17, 2016 Comment.

[47] U.S. DEP'T OF ENERGY, NATURAL GAS INFRASTRUCTURE IMPLICATIONS OF INCREASED DEMAND FROM THE ELECTRIC POWER SECTOR, http://energy.gov/epsa/downloads/report-natural-gas-infrastructure-implications-increased-demand-electric-power-sector (issued Feb. 2015).

[48] *See id.* at 31.

[49] *See id.*

section 4 rate proceeding,[50] which for Transco is 15.34 percent.[51]

33. Based on the benefits that Transco's proposal will provide, the absence of adverse effects on existing customers and other pipelines and their captive customers, and the minimal adverse effects on landowners or surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of Transco's proposal, subject to the conditions discussed below.

B. Rates

1. Pre-tax Rate of Return

34. In their protest, the State Commissions take issue with Transco's proposed use of a pre-tax return of 15.34 percent in calculating its proposed incremental recourse rates. The State Commissions acknowledge Transco's use of the specified pre-tax return most recently approved in a section 4 rate case is consistent with Commission policy, but they emphasize that the Commission approved the settlement in that rate case almost 15 years ago. They argue the incremental recourse rates approved in these proceedings should take into account the significant changes in financial

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[50] *Texas Gas Transmission*, 153 FERC ¶ 61,323, at PP 18-19 (2015).

[51] *See infra* P 38. We also note that even with respect to greenfield natural gas pipeline projects, we have determined that a 14-percent ROE, based on a 50-50 debt/equity capital structure, is "in tune with prevailing returns in the marketplace." *Florida Southeast Connection*, 156 FERC ¶ 61,160 at P 20 (quoting *Gateway Pipeline Co.*, 55 FERC ¶ 61,488, at 62,678 (1991)).

markets since then.[52] The State Commissions assert that the proposed pre-tax return of 15.34 percent accounts for approximately half of Transco's proposed cost of service in these proceedings,[53] and their comments included a discounted cash flow analysis, which they contend reflects current market conditions and supports a median ROE of 10.95 percent for natural gas pipelines.[54]

35. The State Commissions argue that recent Commission orders provide valuable perspective indicating that Transco's proposed 15.34 percent pre-tax return is not reasonable. They reference a 2015 order where the Commission relied on a discounted cash flow analysis for a proxy group of pipelines based on a six-month period ending March 31, 2011, to limit Portland Natural Gas Transmission System's ROE to 11.59 percent, the top of the range of reasonable returns for which the median ROE was 10.28 percent.[55] The State Commissions also point to the Commission's 2013 orders that limited the ROEs for El Paso Natural Gas

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[52] Transco's last section 4 rate case in which a specified rate of return was used in calculating Commission-approved rates was in Docket No. RP01-245-000, *et al.* A letter order issued in that docket on July 23, 2002, accepted a partial settlement resolving cost classification, cost allocation, and rate design subject to certain reservations and adjustments, and revising Transco's generally applicable rates. *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085, at P 2 (2002).

[53] The State Commissions' April 22, 2015 Notice of Intervention, Protest, and Requests for Partial Consolidation and Evidentiary Hearing (State Commissions' Protest).

[54] Preliminary Pipeline Discount Cash Flow Analysis Exhibit to the State Commissions' Protest.

[55] *Portland Natural Gas Transmission System*, Opinion 524-A, 150 FERC ¶ 61,107, at P 195 (2015).

Company and Kern River Gas Transmission Company to 10.55 percent and 11.55 percent, respectively.[56]

36. Transco's answer maintains that its current application is a section 7 certificate proceeding, not a section 4 rate case, and that its proposed recourse rates will be initial section 7 rates for incremental services using new expansion capacity. Transco further asserts its proposed initial section 7 recourse rates are consistent with Commission policy in section 7 proceedings, in that they are appropriately designed to recover the project's incremental cost of service.[57]

37. In the State Commissions' answer to Transco's answer, they contend that when the Commission grants a pipeline company negotiated rate authority, it relies on the availability of cost-based recourse rates to prevent the pipeline from exercising market power by ensuring that shippers will have the option of choosing to pay cost-based recourse rates for expansion capacity that becomes available on either an interruptible or firm basis.[58] Therefore, the State

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[56] *El Paso Natural Gas Co.*, Opinion No. 528, 145 FERC ¶ 61,040, at P 686 (2013); *Kern River Gas Transmission Co.*, Opinion No. 486-F, 142 FERC ¶ 61,132, at P 263 (2013).

[57] Transco cites the Commission's order that certificated its Rock Springs Lateral and additional mainline compression to provide service for another new electric generating plant. In that order, the Commission approved Transco's proposed incremental recourse rate for that expansion capacity, which was calculated using the pre tax return of 15.34 percent from its settlement rates in Docket No. RP01-245. *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,205, at PP 17-19 (2015).

[58] The State Commissions' May 27, 2015 Answer at 2 (citing *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,240, *order*

Commissions assert that even if a pipeline has negotiated rate agreements for all of the expansion capacity proposed in a certificate proceeding, the recourse rates nevertheless need to be properly designed and based on a reasonable estimate of the actual costs to construct and operate the expansion capacity.

38. The State Commissions are correct that "the predicate for permitting a pipeline to charge a negotiated rate is that capacity is available at the recourse rate,"[59] and the Commission therefore requires that shippers have the option of choosing to pay a cost-based recourse rate for expansion capacity that becomes available. However, as the State Commissions acknowledge, the Commission's consistent policy in section 7 certificate proceedings is to require that a pipeline's cost-based recourse rates for incrementally-priced expansion capacity be designed using the rate of return from its most recent general rate case approved by the Commission under section 4 of the NGA in which a specified rate of return was used to calculate the rates.[60] Transco's proposed incremental project

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granting clarification, 74 FERC ¶ 61,194 (1996) (Alternatives to Traditional Cost-of-Service Ratemaking)).

[59] *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,004 (2001) (citing Alternatives to Traditional Cost-of-Service Ratemaking, 74 FERC at 61,241).

[60] *See, e.g., Trunkline Gas Co., LLC*, 135 FERC ¶ 61,019, at P 33 (2011); *Florida Gas Transmission Co., LLC*, 132 FERC ¶ 61,040, at P 35 & n.12 (2010); *Northwest Pipeline Corp.*, 98 FERC ¶ 61,352, at 62,499 (2002); *Mojave Pipeline Co.*, 69 FERC ¶ 61,244, at 61,925 (1994). *See also Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337, at P 132 (2006), *order on reh'g,* 118 FERC ¶ 61,007, at PP 120 & 122-23 (2007) (allowing Dominion Cove Point LNG to recalculate incremental rates using the rates of return ultimately approved in its pending rate case, as opposed to its proposed rates of return). If a pipeline's most recent general

recourse rate in this certificate proceeding is based on the specified pre-tax return of 15.34 percent underlying the design of its approved settlement rates in Docket No. RP01-245-000, *et al*.[61] Since Transco's more recently approved general rate case settlements in Docket Nos. RP12-993-000, *et al*.[62] and RP06-569-004, *et al.*[63] were both "black box" settlements that did not

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rate case involved a settlement that did not specify a rate of return or pre-tax return, the Commission's policy requires that incremental rates in the pipeline's certificate proceedings be calculated using the rate of return or pre-tax return from its most recent general rate case (or rate case settlement) in which a specified return component was used to calculate the approved rates. *See, e.g.*, *Equitrans, L.P.*, 117 FERC ¶ 61,184, at P 38 (2006). This policy applies even if a pipeline calculated its proposed incremental rates for expansion capacity using a rate of return lower than the most recently approved specified rate of return. *Id.* (rejecting Equitrans' proposed use of 14.25 percent ROE component for incremental rates for mainline extension and requiring recalculation using the specified pre-tax rate of return of 15 percent that was approved in its rate case).

[61] *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085 (2002). Transco has used the pre-tax return and certain other cost factors underlying the Docket No. RP01- 245 Settlement rates, because the more recent Docket No. RP12-993 Agreement is a "black box" settlement, which does not specify most cost of service components, including rate of return.

[62] *Transcontinental Gas Pipe Line Co.*, *LLC*, 144 FERC ¶ 63,029, at P 13 (2013) (certifying to the Commission an uncontested settlement in which, "[w]ith the exception of certain expressly designated items, the cost of service agreement was reached on a 'black box' basis"); *Transcontinental Gas Pipeline Co.*, *LLC*, 145 FERC ¶ 61,205 (2013) (approving and accepting tariff records to implement rate case settlement).

[63] *Transcontinental Gas Pipe Line Corp.*, 122 FERC ¶ 61,213 (2008) (approving and accepting tariff records to implement rate case settlement); *Transcontinental Gas Pipe Line Co., LLC*, 147 FERC ¶ 61,102, at P 53 (2014) (explaining that settlement reached in Docket No. RP06-569 was a "black box" settlement

specify the rate of return or other cost-of-service components used to calculate the settlement rates, Transco calculated its proposed incremental rates in this certificate proceeding consistent with Commission policy by using the last Commission-approved specified pre-tax return of 15.34 percent from its prior rate proceeding in Docket No. RP01-245.

39. Further, in section 7 certificate proceedings the Commission reviews initial rates for service using proposed new pipeline capacity under the public convenience and necessity standard, which is a less rigorous standard than the just and reasonable standard under NGA sections 4 and 5.[64] The Commission

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that did not specify most cost of service components including rate of return).

[64] *Atlantic Refining Co. v. Public Serv. Comm'n of New York*, 360 U.S. 378 (1959) (*CATCO*). In *CATCO*, the Court contrasted the Commission's authority under sections 4 and 5 of the NGA to approve changes to existing rates using existing facilities and its authority under section 7 to approve initial rates for new services and services using new facilities. The court recognized "the inordinate delay" that can be associated with a full-evidentiary rate proceeding and concluded that was the reason why, unlike sections 4 and 5, section 7 does not require the Commission to make a determination that an applicant's proposed initial rates are or will be just and reasonable before the Commission certificates new facilities, expansion capacity, and/or services. *Id.* at 390. The Court stressed that in deciding under section 7(c) whether proposed new facilities or services are required by the public convenience and necessity, the Commission is required to "evaluate all factors bearing on the public interest," and an applicant's proposed initial rates are not "the only factor bearing on the public convenience and necessity." *Id.* at 391. Thus, as explained by the Court, "[t]he Congress, in § 7(e), has authorized the Commission to condition certificates in such manner as the public convenience and necessity may require when the Commission exercises authority under section 7," *id.*, and the Commission therefore has the discretion in section 7 certificate

develops the recourse rate for expansion capacity based on the pipeline's estimated cost of service. As discussed above, the State Commissions' protest included a discounted cash flow analysis for natural gas pipelines, which they contend reflects current market conditions and a median ROE of 10.95 percent. However, the Commission does not believe that conducting discounted cash flow analyses in individual certificate proceedings would be the most effective or efficient way for determining the appropriate ROEs for proposed pipeline expansions. While parties have the opportunity in section 4 rate proceedings to file and examine testimony with regard to the composition of the proxy group to use in the discounted cash flow analysis, the growth rates used in the analysis, and the pipeline's position within the zone of reasonableness with regard to risk, it would be difficult, if not impossible, to complete this type of analysis in section 7 certificate proceedings in a timely manner and attempting to do so would unnecessarily delay proposed projects with time sensitive in-service schedules. The Commission's current policy of calculating incremental rates for expansion capacity using the Commission-approved ROEs underlying pipelines' existing rates is an appropriate exercise of its discretion in section 7 certificate proceedings to approve initial rates that will "hold the line" until just and reasonable rates are adjudicated under section 4 or 5 of the NGA.

40. Here, Transco is required to file an NGA general section 4 rate case by August 31, 2018, pursuant to the comeback provision in Article 6 of the settlement in

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proceedings to approve initial rates that will "hold the line" and "ensure that the consuming public may be protected" while awaiting adjudication of just and reasonable rates under the more time-consuming ratemaking sections of the NGA. *Id.* at 392.

Docket No. RP12-993-000.[65] Parties in that future rate case will have an opportunity to review Transco's pre-tax return and other cost of service components and to specifically address issues of concern relating to the rate of return that should be used in calculating initial rates in Transco's future certificate proceedings.[66]

41. For the reasons discussed above, the Commission finds that it is appropriate to apply its general policy to calculate Transco's initial recourse rate in this proceeding and that parties raise in Transco's upcoming general rate case any issues and concerns they have regarding the rate of return or other cost of service components to be used in calculating Transco's recourse rates in subsequent certificate proceedings.

2. Initial Recourse Transportation Rate

42. Transco proposes an incremental recourse reservation charge of $0.77473/Dth and a commodity charge of zero. In support of the proposed initial rates, Transco submitted an incremental cost of service and rate-design study showing the derivation of the project recourse rate for the mainline based on the total first year cost of service of $480,719,972 divided by billing determinants of 1,700,002 Dth per day.[67] The proposed cost of service is based on Transco's pre-tax rate of return of 15.34 percent, as stated above, and Transco's system depreciation rates of 2.61 percent (for Transco's onshore transmission, including negative salvage) and 4.97 percent (for Transco's Solar turbines, as included

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[65] *Transcontinental Gas Pipeline Co., LLC*, 144 FERC ¶ 63,029 at P 18.

[66] *See, e.g.*, *Eastern Shore Natural Gas Co.*, 138 FERC ¶ 61,050 (2012) (approving settlement that established rates on "black box" basis, but provided a specified pre-tax rate of return).

[67] *See* Exhibit P of Transco's Application.

in the Stipulation and Agreement in Docket Nos. RP12-993-000, *et al*).[68]

43. Section 284.7(e) of the Commission's regulations requiring the use of straight-fixed variable rate design prohibits the recovery of variable costs in the reservation charge.[69] Because Transco's application included $42,009,849 in Operation and Maintenance (O&M) expenses, which are classified as variable costs under the Commission's Uniform System of Accounts, in the reservation charge, Commission staff issued a data request on June 17, 2015, directing Transco to provide a breakdown of the O&M expenses by FERC account number and labor and non-labor costs for the new pipeline facilities, compression and measuring and regulating facilities. In response, Transco identified a total of $1,672,201 in non-labor O&M costs in Account Nos. 853 and 864.[70] Excluding the non-labor O&M costs, Transco stated its total first year cost of service is $479,047,771.[71]

44. In the data request, Commission staff also requested that Transco recalculate the incremental daily reservation charge to exclude the project's variable costs. In response, Transco recalculated the reservation charge to be $0.77203 per Dth and the incremental commodity charge to be $0.00152 per Dth

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[68] *Transcontinental Gas Pipeline Co., LLC*, 145 FERC ¶ 61,205.

[69] 18 C.F.R. § 284.7(e) (2016).

[70] *See* Transco's June 23, 2015 Response to Data Request No. 1, Schedule No. 1.

[71] *See* Transco's June 23, 2015 Response to Data Request No. 2, Schedule No. 2.

(Zone 4), $0.00135 per Dth (Zone 5), and $0.00098 per Dth (Zone 6).[72]

45. Under the Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate will exceed the maximum system-wide rate.[73] Because Transco's recalculated incremental reservation charge of $0.77203 per Dth is higher than the currently applicable Rate Schedule FT reservation charge,[74] we will require the use of the recalculated incremental base reservation charge of $0.77203 per Dth per day as the initial recourse reservation charge for firm service using the expansion capacity. Furthermore, Transco's estimated project commodity charge is lower than the currently applicable Rate Schedule FT commodity charge.[75] Therefore, we will require Transco to charge its currently applicable Rate Schedule FT commodity charge for Zones 4, 5 and 6 for this project.

46. Transco did not propose interruptible transportation rates. Consistent with Commission policy, Transco is directed to charge its currently effective system interruptible rates under Rate Schedule IT for

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[72] *See id.*, Schedule Nos. 2 and 3.

[73] *See* Certificate Policy Statement, 88 FERC at 61,746.

[74] The current Zone 6-4/4-6 Rate Schedule FT maximum rate is $0.41155 per Dth. Transcontinental Gas Pipe Line Company, LLC, FERC NGA Gas Tariff, Fifth Revised Volume No. 1, Section 1.1.1, FT - Non-Incremental Rates, 14.0.0.

[75] The currently effective Rate Schedule FT commodity charges are: $0.01387 per Dth (Zone 4), $0.01020 per Dth (Zone 5), and $0.00596 per Dth (Zone 6). Transcontinental Gas Pipe Line Company, LLC, FERC NGA Gas Tariff, Fifth Revised Volume No. 1, Section 1.1.1, FT - Non-Incremental Rates, 14.0.0.

any interruptible service rendered on the additional capacity made available as a result of the project.[76]

47. Transco states that the project shippers have elected to enter into negotiated rate agreements for their capacity. Transco must file either its negotiated rate agreements or tariff records setting forth the essential terms of the agreements in accordance with the Alternative Rate Policy Statement and the Commission's negotiated rate policies.[77] Such filing must be made at least 30 days, but not more than 60 days, before the proposed effective date for such rates.[78]

3. Reporting Incremental Costs

48. Consistent with the Certificate Policy Statement, the Commission directs Transco to keep separate books and accounting of costs attributable to the project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations.[79] This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA

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[76] *See, e.g., Dominion Carolina Gas Transmission, LLC*, 155 FERC ¶ 61,231, at P 22 (2016); *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138, at P 31 (2012).

[77] *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).

[78] Pipelines are required to file any service agreement containing nonconforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. *See* 18 C.F.R. § 154.112(b) (2016).

[79] *Id.* § 154.309.

section 4 or 5 rate case and the information must be provided consistent with Order No. 710.[80]

4. Fuel Retention and Electric Power Charges

49. Transco proposes to charge its applicable general system fuel retention and electric power charges for services using the project's expansion capacity. Transco also proposes to assess its system fuel, lost and unaccounted for retention charges under its existing Rate Schedule FT for the project. Based on a study that was designed to determine the impact of fuel consumption (compressor fuel plus the fuel equivalent of electricity consumed), Transco determined that the project would result in a 30.02 percent reduction in system fuel use attributable to existing shippers.[81] Based on the projected overall reduction in fuel use, the Commission approves Transco's proposal to charge its generally applicable system fuel retention and electric power rates.

5. Lease of the Central Penn Line

50. On February 14, 2014, Meade and Transco entered into three agreements concerning the ownership, operation, and lease of the Central Penn Line: a Construction and Ownership Agreement, a Lease Agreement, and an Operation and Maintenance Agreement. Under the Construction and Ownership Agreement, Transco will construct the Central Penn

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

[81] The study was based on ten representative days from 2014. The portion of Transco's system studied includes all facilities between Station 65 and Transco's Leidy Hub in western Pennsylvania, as well as the new pipeline to be constructed under the project. *See* Exhibit Z-1 of Transco's Application.

Line, and Meade and Transco will jointly fund the construction of the Central Penn Line facilities in proportion to their respective ownership interests. Specifically, Transco will hold a 41.18 percent undivided joint ownership interest in the Central Penn Line North and a 70.59 percent undivided joint ownership interest in Central Penn Line South. Meade will hold a 58.82 percent undivided joint ownership interest in the Central Penn Line North and a 29.41 percent undivided joint ownership interest in the Central Penn Line South. Transco states that Meade will be a passive owner. Meade is not currently an NGA jurisdictional entity and does not intend to become one as a result of the construction and operation of the Central Penn Line. Transco requests that the Commission find that Meade does not require a certificate in connection with the project and that the certificate authority be granted solely to Transco.

51. Under the Lease Agreement, Meade will lease its ownership interest in the Central Penn Line, including its interest in the pipeline capacity, to Transco for a 20-year primary term (beginning from the date of service on the project) at a fixed monthly lease charge of $7,964,908. At the termination of the Lease Agreement, Transco and Meade will be discharged from any further obligations under such agreement, including any obligation to provide (in the case of Meade) or to pay for (in the case of Transco) the lease of facilities, subject to the receipt of the necessary authorizations from the Commission.

52. As the sole applicant for the NGA section 7(c) certificate, Transco will operate and maintain the Central Penn Line during the lease term. Pursuant to the Lease Agreement, Transco will have full possessory and operational rights to the Central Penn Line

and will have 100 percent of the capacity rights on the Central Penn Line.

53. Transco asserts that it will utilize the capacity rights under the Lease Agreement in conjunction with the capacity to be created by the other project facilities to provide transportation services under its tariff. Transco further asserts that during the proposed lease, all operating and maintenance expenses will be Transco's responsibility.

54. Consistent with Commission regulations, Transco proposes to record the lease as a capital lease in Account 101.1, Property under Capital Leases, and the capital lease obligation in Account 243, Obligations under Capital Leases – Current, and Account 227, Obligations under Capital Leases – Noncurrent.[82] Transco affirms that the lease qualifies as a capital lease because the present value at the beginning of the lease term of the minimum lease payments exceeds 90 percent of the fair value of the leased property to the lessor at the inception of the lease, which is consistent with section 367.18 of the Commission's regulations.[83] Transco states that the costs and revenues associated with the project's leased facilities will be accounted for separately and segregated from its other system costs.

55. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the

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[82] 18 C.F.R. § 367.19 (2016).

[83] *Id.* § 367.18.

lessor's pipeline.[84] To enter into a lease agreement, the lessee generally is required to be a natural gas company under the NGA and required to obtain section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers.

56. The Commission's practice has been to approve a lease if the Commissions finds that: (1) there are benefits from using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect existing customers.[85] We find that the proposed lease agreement between Transco and Meade satisfies these requirements. Therefore, we approve the capacity lease arrangement because it is required by public convenience and necessity.

57. First, the Commission has found that capacity leases in general have several potential benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, and minimize environmental impacts.[86] In this case, the lease will reduce

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[84] *Florida Southeast Connection*, *LLC,* 156 FERC ¶ 61,160 at P 12.

[85] *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002).

[86] *See, e.g., Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003); *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 9 (2005); *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276 at P 70.

Transco's costs because the cost of leasing Meade's ownership interest is lower than the incremental cost of Transco's sole ownership of the Central Penn Line. Second, we find that Transco has demonstrated that the annual amount it would pay Meade under the lease is less than what it would cost if Transco constructed and owned the facilities being leased from Meade; thus, the lease arrangement will benefit project shippers. During the lease term, Transco will pay Meade a fixed lease payment of $7,964,908 per month for Meade's ownership interest in the Central Penn Line. The annualized amount of such lease charge is $95,578,896,[87] which is then compared to the estimated annual cost of service of $162,009,014, assuming Transco constructed and owned Meade's share of the Central Penn Line.[88] Since the annual amount to be paid under the lease is less than the comparable cost of service, approval of this lease agreement will reduce Transco's costs associated with the project by an estimated $66,430,118 per year.[89]

58. The State Commissions argue that Transco has not demonstrated that its annual lease payments will be less than the equivalent cost of service that would apply if Transco directly owned 100 percent of the facilities. The State Commissions assert that Transco's analysis of its annual lease payments is deficient because, while the project lease has a 20-year primary term, Exhibit N of Transco's application only analyzes one year of the lease. Therefore, the State Commis-

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[87] *See* Exhibit N of Transco's Application, Line 14.

[88] *See id.*, Line 13, reflecting an estimated incremental total cost of service to construct Meade's ownership share of the Central Penn Line.

[89] *See id*., Line 15.

sions contend that Transco's analysis does not take into account the impact of depreciation of the leased facilities on the cost of service. As the leased facilities depreciate over time, the cost of service should decrease due to the decrease in rate base. The State Commissions contend that by limiting its analysis to one year, Transco has failed to show that the lease payments over the life of the lease will be less than the equivalent cost of service that would apply if Transco directly owned the facilities.

59. In response, Transco states that its application compares the annual lease charges to an incremental annual cost of service that would apply if Transco constructed and owned 100 percent of the project facilities. Transco states that its analysis used the first year of the lease arrangement consistent with section 157.14(a)(19) of the Commission's regulations, which requires applicants to calculate its initial recourse rates for the project using a cost of service for the first calendar year of operation after the proposed facilities are placed in service.[90] Transco therefore argues that when comparing Transco's annual lease payments under the lease arrangement to the estimated annual cost of service assuming Transco constructed and owned Meade's share of the corresponding project facilities, Transco appropriately used a first-year cost of service analysis.

60. Transco's analysis using the first year of the lease arrangement is consistent with section 157.14(a)(19) of the Commission's regulations, and our approval of the lease agreement is consistent with previous Commission orders in which the Commission approved the leasing of new capacity being con-

[90] 18 C.F.R. § 157.14(a)(19)(ii)(A) (2016).

structed as part of the project based on the costs of that capacity.[91] The State Commissions are correct that, assuming Transco constructed and owned 100 percent of the facilities, its cost of service should decrease over time. But, as stated above, rates are based on a first year cost of service, and the pipeline is under no obligation to reduce those rates over time. Therefore, the lease arrangement provides lower rates and a benefit to shippers.

61. Third, we find that the lease arrangement will not adversely affect Transco's existing customers. Transco proposes an incremental recourse rate designed to recover the cost of service attributable to the project facilities, including the payments under the Lease Agreement. Therefore, existing shippers will not subsidize the lease arrangement. In addition, Transco will separately account for the costs and revenues associated with the leased facilities and segregate those costs and revenues from its other system costs during the lease term. Accordingly, the lease arrangement will not result in adverse effects to Transco's existing customers or on any other pipelines or its customers.

62. The State Commissions assert that the Commission's long-standing policy is that when examining proposals to abandon service, it weighs all relevant factors, but considers "continuity and stability of existing services . . . the primary considerations in assessing whether the public convenience and necessity permit an abandonment." They are concerned that the Lease Agreement could allow Transco to evade or

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[91] *See, e.g., Tennessee Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160 (2015); *Constitution Pipeline Co.*, 149 FERC ¶ 61,199 (2014).

weaken its obligations to continue service after the lease term ends. Accordingly, the State Commissions request that, in the event the Commission approves the lease arrangement, it should clarify that nothing therein prejudges any issues as to the status of the leased facilities, or the service provided on those facilities, at the end of the lease. Similarly, Geraldine Turner Nesbitt, a landowner affected by the project, is concerned whether the pipeline would be abandoned at the end of the lease term.

63. Transco asserts that it is not requesting pre-granted abandonment authority at the end of the lease term. Transco further asserts that while Meade is not obtaining a certificate in this proceeding, any certificate authority granted will attach to 100 percent of the project facilities and not just to Transco's ownership interest. Moreover, Transco also acknowledges that at the end of the lease term, if Transco intends to abandon service or the facilities, Transco must obtain the necessary abandonment authority under NGA section 7(b).[92] Interested parties would have ample opportunity to participate in a NGA section 7(b) proceeding for such abandonment.

64. The Commission clarifies that upon termination of the lease, Transco must continue to provide jurisdictional service on the Central Penn Line facilities until appropriate abandonment authorization is requested and granted under NGA section 7(b). Further, if Transco is authorized to abandon service, no other entity will be able to use the capacity for jurisdictional service prior to filing for and receiving the requisite certification authorizations.

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[92] 15 U.S.C. ¶ 717f(b) (2012).

C. Passive Ownership of the Proposed Facilities

65. Ms. Nesbitt and the Clean Air Council argue that because Meade, as a passive co-owner of the project, will not be a natural gas company subject to the Commission's jurisdiction, we would be unable to ensure the project will comply with the conditions of the certificate order. We disagree. The Commission does not certificate ownership under the NGA – mere ownership of facilities does not subject an entity to Commission's jurisdiction under the NGA.[93] Commission jurisdiction over the operator of facilities is sufficient to ensure the Commission's ability to exercise its regulatory responsibilities.[94] Here, Meade will lease its ownership interest in the project to Transco before the in-service date of the project. As a result, Transco will have full possessory rights for the project. Transco will also be the sole operator.[95] As the certificate holder, Transco will be responsible for complying with the conditions of the order and the Commission will be able to exercise its regulatory responsibilities. If Transco intends to abandon jurisdictional facilities or services by transfer to Meade, Transco would be required to file an application with the Commission seeking such authorization under section 7(b) of the NGA and Meade would be required

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[93] *El Paso Natural Gas Co.*, 19 FPC 371 (1958); *Montana-Dakota Utilities Co.*, 8 FPC 409 (1949).

[94] *See generally Dome Pipeline Corp.*, 22 FERC ¶ 61,277 (1983); *El Paso Natural Gas Co.*, 47 FPC 1527, at 1532 (1972) ("It is essential that some entity be identified as the recipient of regulatory responsibility and the source of regulatory responsiveness").

[95] *See* Transco's Application at 8. The Clean Air Council incorrectly alleges that Meade will operate the pipeline. *See* Clean Air Council's June 27, 2016 Comments on the Draft EIS at 30.

to file an application pursuant to section 7(c) to acquire and operate the jurisdictional facilities.

D. Eminent Domain

66. Clean Air Council argues that the Takings Clause of the U.S. Constitution[96] prohibits Transco from exercising eminent domain if the project only benefits private companies. In addition to demonstrating public convenience and necessity under the NGA, Clean Air Council contends that Transco must also demonstrate the project is for "public use" in order to exercise eminent domain. In response, Transco maintains that Congress, by enacting section 7(h) of the NGA,[97] concluded that the use of eminent domain to construct a pipeline to transport natural gas in interstate commerce is a public use and that a certificate of public convenience and necessity is the only prerequisite to obtain the right of eminent domain.

67. To satisfy the Takings Clause, the taking must serve a "public purpose."[98] The U.S. Supreme Court has "[w]ithout exception . . . defined that concept broadly, reflecting [the court's] longstanding policy of deference to the legislative judgments in this field."[99] In this case, Congress' intent was clearly articulated in the NGA: the transportation and sales of natural gas in interstate commerce for ultimate distribution to

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[96] U.S. CONST. amend. V.

[97] 15 U.S.C. § 717f(h) (2012).

[98] *Kelo v. City of New London, Conn.*, 545 U.S. 469, 479-80 (2005) (explaining that the Court long ago adopted a broader and more natural interpretation of "public use" within the meaning of the Takings Clause as "public purpose") (citing *Fallbrook Irrigation Dist. v. Bradley*, 164 U.S. 112, 158-164 (1896)).

[99] *Kelo*, 545 U.S. at 480.

the public is in the public interest.[100] Once a natural gas company obtains a certificate of public convenience and necessity, it may exercise the right of eminent domain in a U.S. District Court or a state court. The power of eminent domain conferred by section 7(h) of the NGA is a necessary part the statutory scheme to regulate the transportation and sale of natural gas in interstate commerce.[101] In regulating this area, Congress may delegate the power of eminent domain to a corporation, which would be subject to the regulation of the federal government.[102] We therefore are not persuaded by Clean Air Council's argument that the U.S. Constitution requires a holder of a certificate of public convenience and necessity to separately demonstrate "public use" or that the Constitution prohibits the use of eminent domain by private companies that have demonstrated public convenience and necessity.

E. Environmental Analysis

1. Pre-filing Review

68. On April 4, 2014, Commission staff granted Transco's request to use the pre-filing process in Docket No. PF14-8-000. As part of the pre-filing review, on July 18, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Atlantic Sunrise Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI).

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[100] 15 U.S.C. § 717(a) (2012).

[101] *See Thatcher v. Tennessee Gas Transmission Co.*, 180 F.2d 644, 647 (5th Cir. 1950), *cert. denied*, 340 U.S. 829 (1950); *Williams v. Transcontinental Gas Pipe Line Corp.*, 89 F.Supp. 485, 487-88 (W.D.S.C. 1950).

[102] *See Thatcher*, 180 F.2d at 647.

The NOI was published in the *Federal Register* on July 29, 2014,[103] and mailed to nearly 2,500 interested parties, including federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; affected property owners; other interested parties; and local libraries and newspapers. The NOI briefly described the project and the environmental review process, provided a preliminary list of issues identified by Commission staff, invited written comments on the environmental issues that should be addressed in the draft EIS, listed the date and location of four public scoping meetings[104] to be held in the project area, and established August 18, 2014, as the deadline for comments.

69. Ninety-three speakers provided oral comments on the Atlantic Sunrise Project at the scoping meetings. In addition to the comments received at the meetings, we received over 600 written comments from federal, state, and local agencies; elected officials; environmental and public interest groups; potentially affected landowners; and other interested stakeholders regarding the project. These comments were placed into the public record for the project for consideration in the draft EIS.[105]

2. Application Review

70. Transco filed its project application on March 31, 2015. On October 22, 2015, Commission staff

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[103] 79 Fed. Reg. 44,023 (2014).

[104] Commission staff held the public scoping meetings between August 4 and 7, 2014, in Millersville, Annville, Bloomsburg, and Dallas, Pennsylvania.

[105] Table 1.3-1 of the final EIS provides a detailed and comprehensive list of issues raised during scoping.

mailed a letter to landowners potentially affected by the path of several proposed project reroutes under evaluation. The letter was mailed to over 300 affected property owners, government officials, and other stakeholders. The letter briefly described the proposed alternative routes, invited newly affected landowners to participate in the environmental review process, and opened a special 30-day limited scoping period.

71. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),[106] Commission staff evaluated the potential environmental impacts of the proposed project in an EIS. The U.S. Army Corps of Engineers (U.S. Army Corps) and the U.S. Department of Agriculture's Natural Resources Conservation Service (Conservation Service) participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal.

72. Commission staff issued the draft EIS for the project on May 5, 2016, which addressed the issues raised during the scoping period and up to the point of publication. Notice of the draft EIS was published in the *Federal Register* on May 12, 2016, establishing a 45-day public comment period ending on June 27, 2016.[107] The draft EIS was mailed to the environmental mailing list for the project, including additional interested entities that were added since issuance of the NOI. Commission staff held four public comment

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[106] 42 U.S.C. §§ 4321 *et seq.* (2012). *See also* 18 C.F.R. pt. 380 (2016) (Commission's regulations implementing NEPA).

[107] 81 Fed. Reg. 29,557 (2016).

meetings between June 13 and 16, 2016.[108] Approximately 203 speakers provided oral comments regarding the draft EIS at these meetings. We also received over 560 written comments from federal, state, and local agencies; Native American tribes; companies/organizations; and individuals in response to the draft EIS. In addition, we received over 900 nearly identical letters. The transcripts of the public comment meetings and all written comments on the draft EIS are part of the public record for the project.

73. On October 13, 2016, the Commission staff mailed a letter to landowners potentially affected by two alternative pipeline routes identified following the issuance of the draft EIS. The letter was mailed to 56 potentially affected property owners, government officials, and other stakeholders. The letter briefly described the proposed alternative routes, invited potentially affected landowners to participate in the environmental review process, and opened a special 30-day comment period. FERC staff received 25 comment letters from individuals regarding the proposed alternative.

74. On November 3, 2016, the Commission issued for comment a draft General Conformity Determination, which assessed the potential air quality impacts associated with construction of the project in accordance with NEPA, the Clean Air Act, and the Commission's regulations.[109] The Pennsylvania Department of Environmental Protection (PADEP), Clean

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[108] Commission staff held the public comment meetings in Lancaster, Annville, Bloomsburg, and Dallas, Pennsylvania.

[109] The draft General Conformity Determination is publically available at: https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14391786.

Air Council, Lebanon Pipeline Awareness, Sierra Club Pennsylvania Chapter, Concerned Citizens of Lebanon County, Lancaster Against Pipelines, and Elise Kucirka Salahub filed timely comments on the draft General Conformity Determination. The final General Conformity Determination addressed all the comments received prior to the close of the comment period on December 5, 2016.[110]

75. On December 30, 2016, Commission staff issued the final EIS for the project which was published in the *Federal Register* on January 9, 2017.[111] The final EIS addresses timely comments received on the draft EIS.[112] The final EIS was mailed to the same parties as the draft EIS, as well as to newly identified landowners and any additional parties that commented on the draft EIS.[113] The final EIS addresses geology; soils; water resources; wetlands; vegetation; wildlife and fisheries; special status species; land use, recreation, and visual resources; socioeconomics; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and aboveground site alternatives and

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[110] The final General Conformity Determination is publically available at: https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20170117-3039.

[111] 82 Fed. Reg. 2,344 (2017).

[112] Volume III of the final EIS includes responses to comments on the draft EIS received through the close of the comment period on June 27, 2016, and responses to additional comments received between June 28 and November 14, 2016, that raised new issues not previously identified prior to the close of the comment period. Any new issues raised after November 14, 2016, which were not previously identified, are addressed in this order.

[113] The distribution list is provided in Appendix A of the final EIS.

minor route variations incorporated into the project's design.

3. The EIS Process and Procedural Concerns

76. Several commenters, including the Accokeek, Mattawoman, Piscataway Creeks Community Council (Accokeek), requested that the Commission extend the draft EIS public comment period because Transco filed supplemental information about a route alternative on June 24, 2016, three days before the comment period closed on June 27, 2016. On October 20, 2016, Commission staff revised the environmental schedule, postponing the issuance of the final EIS from October 21, 2016 to December 30, 2016.[114] Nearly a hundred additional comments were filed and considered by staff during this period. Because Accokeek and other stakeholders had the opportunity to submit comments on the project during this additional period, we find their request to be moot.

77. Accokeek also requested public meetings be held in areas affected by Transco's route alternative, as identified in Transco's June 24, 2016 Supplemental Information filing. Our regulations and CEQ regulations do not require public meetings to be held for alternatives proposed after issuance of the draft EIS. The Commission accepts and gives full consideration to all written comments. To that end, Commission staff mailed notice on October 13, 2016, to all landowners potentially affected by the alternative, as well as government officials, and other stakeholders. The notice described the proposed alternative routes, invited participation, and opened a special 30-day limited

[114] *See* 81 Fed. Reg. 74,420 (2016) (Commission staff revised the environmental schedule because a General Conformity Determination was required).

scoping period. We received twenty-five comments in response to the notice, which are addressed in section 3.3.2 of the final EIS.

78. Accokeek requests that we deny Transco's request to treat site-specific information regarding threatened and endangered species as privileged information. It is not uncommon for information regarding the precise location of protected species to be afforded privileged treatment, in order to protect the species from illegal poaching and collecting. If the reason for Accokeek's request is to prevent Transco from withholding a comprehensive list of affected species, we find that the final EIS fully identifies and analyzes the project's potential effects on federally-listed, state-listed, and other special status species.[115] To the extent Accokeek's concerns are broader, as a party to this proceeding, access to privileged, non-public filings is available pursuant to the procedures set forth in 18 C.F.R. § 388.112(b)(2).

4. Major Environmental Issues Addressed in the Final EIS

79. The final EIS concludes that the project will result in some adverse environmental impacts, but these impacts will be reduced to less-than-significant levels with the implementation of the mandatory mitigation measures, set forth in the 56 conditions in Appendix C of this order.[116] This determination is based on a review of the information provided by Transco, and in its application and in response to

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[115] *See* section 4.7 of the Final EIS.

[116] *See* Final EIS at 5-1; 5-26 - 5-36. The final EIS contained 57 recommended conditions. Recommended Condition 35 in the final EIS is no longer necessary because the required information has since been filed.

data requests; field investigations; scoping; literature research; alternatives analyses; and consultation with federal, state, and local agencies as well as Native American tribes and individual members of the public. Major issues of concern addressed in the final EIS are summarized below and include: karst terrain and abandoned mine lands; waterbodies and wetlands; vegetation, forested land, and wildlife; threatened, endangered, and other special status species; land use concerns; cultural resources; air quality; safety; cumulative impacts; and alternatives.

a. Geological Resources

i. Karst Terrain

80. Several commenters expressed concern regarding the potential for groundwater contamination and subsidence affecting the integrity of the pipeline in areas of karst terrain.

81. The final EIS determined that there are several areas along the Central Penn Line South pipeline route in Lancaster, Lebanon, and Columbia Counties, Pennsylvania; and within the workspace for existing Compressor Stations 190 and 145 in Howard County, Maryland, and Cleveland County, North Carolina, respectively, where a karst hazard may be present. Transco developed a draft Karst Investigation and Mitigation Plan, which includes mitigation measures to be employed in areas of karst terrain to minimize the risk of sinkhole formation.[117] The mitigation measures include designing the pipeline to maximize its intrinsic ability to span sinkholes, minimizing the extent and time that open-cut trench excavations for pipeline installation are left open, reducing the

[117] *See* Appendix J of the Final EIS.

potential for surface water run-on and ponding in open trenches by directing surface water runoff away from work areas and removing ponded water from open excavations as soon as practicable, directing stormwater runoff away from any known or exposed karst feature during construction, completing refueling activities away from any known or exposed karst feature, and regular monitoring during construction to observe for signs of potentially developing sinkhole features. In general, we find the draft plan will adequately mitigate potential adverse impacts from karst hazards. Accordingly, we require in Environmental Condition 22 that Transco file a final Karst Investigation and Mitigation Plan that includes and addresses the results of missing karst survey areas and any additional karst features identified through examination of the 1937 to 1942 aerial photography, 2014 Light Detection and Ranging imagery, and 1999 color infrared imagery.

82. In addition, to mitigate the risk of subsidence and groundwater contamination, Transco will implement the measures in its Abandoned Mine Investigation and Mitigation Plan, Karst Investigation and Mitigation Plan, and Spill Plan. We also require in Environmental Condition 25 that Transco develop a Well and Spring Monitoring Plan for the pre- and post-construction monitoring of well yield and water quality and identify any wells and springs within 150 feet of the construction workspace and, in areas of known karst terrain, of wells within 500 feet of the construction workspace and file that information prior to construction. We agree with the final EIS's conclusions that, with implementation Transco's mitigation measures, as well as its Abandoned Mine Investigation and Mitigation Plan, Karst Investigation and Mitigation Plan, and the other plans contained in its

Environmental Construction Plan[118] (including the Spill Plan), impacts on groundwater resources will be adequately minimized.[119]

ii. Mine Fires

83. Several commenters expressed concern regarding the potential hazards of abandoned mines and underground mine fires. Transco completed an investigation of mine fires as part of its Abandoned Mine Investigation and Mitigation Plan. Transco's investigation was based on its consultations with the PADEP's Bureau of Abandoned Mine Reclamation; a study of active mine fires prepared for the PADEP; a review of aerial photography; ground reconnaissance to identify evidence of possible fires, such as smoke plumes, posted warning signs, burnt vegetation, visible flame, smoke, steam, and odor; and an evaluation of the occurrence of the No. 8 Coal Vein (source of the Glen Burn Luke Fidler Mine Fire) in relation to the planned pipeline.

84. The final EIS found the project would not cross any active mine fire.[120] We did identify six historic mine fires within three miles of the project, three of which are active.[121] The closest active mine fire (the Glen Burn Luke Fidler Mine Fire) is about 0.4 mile west of the project in Northumberland County,

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[118] Transco's Environmental Construction Plan incorporates measures adopted in the Commission's Upland Erosion Control, Revegetation and Maintenance Plan and Wetland and Waterbody Construction and Mitigation Procedures.

[119] Final EIS at 4-52.

[120] *Id.* at 4-25.

[121] *Id.* at 4-23 and 4-25.

Pennsylvania.[122] There is no evidence, however, to suggest that this or any of the other mine fires are actively migrating.[123] However, in recognition of the safety and integrity concerns that mine fires could pose during operation of the project facilities, we require in Environmental Condition 23 that, before construction, Transco file with the Commission an Abandoned Mine Investigation and Mitigation Plan that identifies: (1) the depth and extent of coal seams that could pose a risk to the project facilities; and (2) mitigation measures that would be implemented to protect the integrity of the pipeline from underground mine fires during the lifetime operation of the project. If it is found that pipeline integrity and safety could be compromised anytime during the lifetime operation of the project due to the current and future predicted location of the mine fires, the plan should also provide for Transco proposing revisions to the pipeline route. We note the Commission has the ongoing authority during construction and through the life of the project to impose any additional mitigating measures to ensure the protection of all environmental resources during construction and operation of the project.[124]

85. We agree with the conclusion in the final EIS that the project's effect on geological resources and the potential for geological hazards will be minor.[125] With the implementation of Transco's mitigation measures as well as its Abandoned Mine Investigation and Mitigation Plan, Karst Investigation and Mitigation Plan, the other plans contained in its Environmental

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[122] *Id.* at 4-23 - 4-24.

[123] *Id.* at 4-23.

[124] *See* Environmental Condition 2 of this order.

[125] Final EIS at 5-1 - 5-3.

Construction Plan, as well as the environmental conditions in Appendix C of this order, the impacts on geological resources will be adequately minimized.[126]

b. Waterbodies

86. We received a number of comments regarding potential effects on waterbodies during construction and operation of the project due to sedimentation, spills or leaks of hazardous materials, or the introduction of chemicals or biocides.

87. The project will cross 388 waterbodies.[127] Implementation of the mitigation measures outlined in Transco's Environmental Construction Plan and other project-specific mitigation plans will minimize the impacts associated with the withdrawal and discharge of water and impacts associated with open-cut waterbody crossings during construction and operation of the project. Construction-related effects associated with dry-ditch crossing method would be short term and would be minimized by several mitigation measures, such as installing temporary erosion controls and requiring bank stabilization.[128] In addition, Transco must obtain appropriate National Pollutant Discharge Elimination System discharge permits prior to conducting hydrostatic testing. Transco does not propose to add any chemicals or biocides to the test water. Accidental spills and leaks during construction and operations will be prevented or adequately minimized through implementation of Transco's Spill Plan for Oil and Hazardous Materials. Thus, we agree with the final EIS's conclusion that,

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[126] *Id.* at 5-3.

[127] *Id.* at 4-52.

[128] *Id.* at 4-67.

with the implementation of the mitigation measures in Environmental Conditions 26 through 29, the project would not have adverse long-term impacts on surface water resources.[129]

c. Wetlands

88. Construction of the pipeline facilities associated with the project will affect a total of 46.4 acres of wetlands, including 11.3 acres of forested wetlands, 4.3 acres of scrub-shrub wetlands, and 30.8 acres of emergent wetlands.[130]

89. We received a number of comments regarding impacts on exceptional value wetlands as a result of construction and operation of the project. One hundred five of the wetlands crossed by the proposed pipelines in Pennsylvania are classified as exceptional value, with 32 of these containing a forest component.[131] Of these 32 wetlands with a forest component, 17 are the Hemlock/Mixed Hardwood Palustrine Forest Community type, which the Pennsylvania Department of Conservation and Natural Resources identified as a natural or special concern community. In total, construction will temporarily affect about 3.6 acres and operation will permanently affect about 1.8 acres of this community type. No exceptional/designated wetland communities were identified along the Virginia facilities.

90. In general, construction and operation-related impacts on wetlands will be mitigated by Transco's compliance with the conditions of the Clean Water Act sections 404 and 401 permits, administered by the

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[129] *Id.* at 4-72.

[130] *Id.* at 4-75.

[131] *Id.* at 4-74.

U.S. Army Corps and PADEP, respectively, and by implementing the wetland protection and restoration measures contained in its Environmental Construction Plan. Transco will also conduct routine wetland monitoring of all wetlands affected by construction until revegetation is successful. Further, mitigation measures will be implemented to control invasive species.

91. Transco will minimize and compensate for effects on the Hemlock/Mixed Hardwood Palustrine Forest Community-type wetland in the same manner as for other forested wetlands. Specifically, Transco is developing its Permittee-Responsible Mitigation Plan to compensate for unavoidable forested wetland impacts by reestablishing, rehabilitating, enhancing, and preserving wetlands at off-site mitigation locations. We require in Environmental Condition 31 that Transco file its final Permittee-Responsible Mitigation Plan with the Commission prior to construction. The final EIS concludes that the construction and operation of the project would result in minor adverse and long-term effects on wetlands.[132] With implementation of the acceptable avoidance and minimization measures, as well as the environmental conditions in Appendix C of this order, we agree with the final EIS's conclusion that impacts on wetland resources, including exceptional value wetlands, will be appropriately mitigated and reduced to less than significant levels.[133]

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[132] *Id.* at 4-78.

[133] *Id.* at 4-78.

d. Vegetation, Forested Land, and Wildlife

92. The project will affect vegetation communities of special concern, including Hemlock/Mixed Hardwood Palustrine Forest Communities, the Safe Harbor East Woods – County Natural Heritage Inventory, and 45 interior forests. Transco routed the pipelines adjacent to existing rights-of-way when possible (43 percent of Central Penn Line North, 12 percent of Central Penn Line South, and 100 percent of Chapman and Unity Loops), to avoid and minimize effects on interior forest habitat.[134] After issuance of the draft EIS, Transco incorporated several additional minor reroutes that reduced the amount of interior forest crossed by 11.9 acres.[135] Nevertheless, the project will affect 262.6 acres of interior forest habitat during construction and 118.5 acres during operations.[136]

93. The U.S. Fish and Wildlife Service (FWS) provided recommendations to Transco regarding mitigation of forest impacts through avoidance and minimization measures to address migratory bird habitat loss. Transco is consulting with the FWS to develop a project-specific memorandum of understanding that will specify the voluntary conservation measures that will be provided to offset the removal of upland forest and indirect impacts on interior forest. We require in Environmental Condition 34 that, prior to construction, Transco file the memorandum of understanding with the FWS that specifies voluntary conservation measures that Transco will provide to offset the removal of upland forest and indirect impacts on

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[134] *Id.* at 4-85.

[135] *Id.* at 4-86.

[136] *Id.* at 4-83.

interior forests. To further minimize impacts on forested areas (including interior forests) during and after construction of the project, Transco will implement the measures in its Environmental Construction Plan, Migratory Bird Plan, final Permittee-Responsible Mitigation Plan, and final Noxious and Invasive Plant Management Plan.

94. Several commenters expressed concerns regarding potential disease spread to forest industries, specifically tree farms, from the construction corridor. To minimize forest disease spread and noxious weed revegetation, we require in Environmental Condition 32 that, prior to construction, Transco file complete results of noxious weed surveys and a final Noxious and Invasive Plant Management Plan that includes mitigation measures to address forest disease spread from the construction corridor.

95. The final EIS concludes and we agree that, due to the prevalence of forested habitats within the project area, the eventual regrowth of the cleared areas outside of the permanent right-of-way, and Transco's avoidance measures during pipeline routing and alternatives consideration, impacts on vegetation, including forested areas, will be reduced to less-than-significant levels.[137] In addition, impacts on forested and non-forested vegetation types, as well as the introduction or spread of noxious weeds or invasive plant species, will be further mitigated through adherence to the measures described in Transco's Environmental Construction Plan, Permittee-Responsible Mitigation Plan, Transco's Noxious and Invasive Plant Management Plan, migratory bird provisions, the environmental conditions in Appendix

[137] *Id.* at 4-90.

C of this order, and other mitigation measures described above.[138]

96. We also concur with the final EIS's conclusion that the construction and operation of the project will not have a significant adverse effect on wildlife based on the presence of suitable adjacent habitat available for use and given Transco's impact avoidance, minimization, and mitigation measures as well as our recommendations.[139] In addition, Transco has or will minimize effects to the extent possible through adhering to its Environmental Construction Plan, routing the pipeline to minimize effects on sensitive areas; and reducing the construction right-of-way through wetlands and interior forests.

e. Threatened, Endangered, and Other Special Status Species

97. Based on input from the FWS, the draft EIS identified eight federally-listed species that potentially occur in the project area. The draft EIS later concluded that four of the species (the gray bat, dwarf wedgemussel, dwarf-flowered heartleaf, and harperella) would not be affected by construction and operation of the project.[140] The final EIS concludes, and we agree, that the project may affect but is not likely to adversely affect the federally listed Indiana bat, bog turtle, northern long-eared bat, and northeastern bulrush.[141] The final EIS recommended that Transco not begin construction until Commission staff receives written comments from the FWS regarding the

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[138] *Id.* at 5-9.

[139] *Id.* at 5-10.

[140] Draft EIS at 4-105 (Table 4.7.2-1).

[141] Final EIS at 5-12.

proposed action and completes formal consultation with the FWS, if required. Commission staff received a letter from the FWS on December 20, 2016 (while the final EIS was in production), confirming its concurrence with the determinations of effect for these eight federally-listed species. Therefore, consultation with FWS for the project under the Endangered Species Act[142] is complete, making it unnecessary to adopt the final EIS recommendation on this issue.

98. Although a number of other candidate, state-listed, or special-concern species[143] were identified as potentially present in the project area, none were detected during surveys. Accordingly, no adverse effects are expected given Transco's proposed mitigation measures. Based on implementation of these z and the environmental conditions in Appendix C of this order, we agree with the final EIS's conclusion that impacts on special-status species will be adequately avoided or minimized.[144]

f. Land Use

99. Construction of the project will affect a total of 3,741.0 acres of land.[145] About 75 percent of this acreage will be utilized for the pipeline facilities, including the construction right-of-way (62 percent) and additional temporary workspace (13 percent). The remaining acreage affected during construction will be associated with contractor yards and staging areas (11 percent), new and modified aboveground facilities (8 percent), and access roads (6 percent). During

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[142] 16 U.S.C. §§ 1531-1544 (2012).

[143] *See* Table 4.7.3-1 of the final EIS.

[144] Final EIS at 5-13.

[145] *Id.* at 4-131.

operation, the new permanent pipeline right-of-way, aboveground facilities, and permanent access roads will newly encumber 1,235.4 acres of land.

100. A number of landowners expressed concerns regarding their ability to maintain organic certification of their farms because the project would cross their farms.

101. The final EIS states that the Central Penn Line would cross about 123 acres of organic farmland during construction and 43.7 acres would be affected by operations.[146] Only Pennsylvania farmland would be impacted. If accidental spilling of fuels, lubricants, or other substances associated with the project were to occur on certified organic farmland, only those affected areas would be removed from organic certification.[147] The final EIS recommends, and we require in Environmental Condition 40, that prior to construction, Transco file an organic certification mitigation plan developed in consultation with Pennsylvania Certified Organic to ensure organic certification is maintained on the organic farms crossed by the project. Further, the mitigation plan will include a plan to address landowners' complaints about the loss of organic certification, which would include measures to facilitate reinstatement of certification or compensate landowners.[148]

102. The Pennsylvania Department of Conservation and Natural Resources expressed concerns regarding the project's potential impacts on Pennsylvania park

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[146] *Id.* at 4-145.

[147] *Id.* (referring to the policy of Pennsylvania Certified Organic, an organic certifying organization).

[148] *Id.*

property that was previously funded with Federal Land and Water Conservation Funds. The Pennsylvania Department of Conservation and Natural Resources states that any impacts to such land that will result in a change of use or transfer of rights from the Pennsylvania Department of Conservation and Natural Resources would constitute conversion, which must comply with the state's conversion policy. The project will cross several Pennsylvania parks.[149] Transco has worked with the Pennsylvania Department of Conservation and Natural Resources to identify suitable measures to minimize disturbances to the parks. Moreover, the final EIS recommends, and we require in Environmental Condition 41, that Transco file copies of correspondence with the Pennsylvania Department of Conservation and Natural Resources confirming all Pennsylvania Department of Conservation and Natural Resources -funded properties crossed by the project have been identified and any change in use or transfer of rights for the Pennsylvania Department of Conservation and Natural Resources -funded properties is in compliance with Pennsylvania Department of Conservation and Natural Resources' conversion policies. Transco will also submit site-specific crossing plans that would minimize the effects on the parks.

103. Several commenters expressed concerns regarding local and private conservation easements not previously identified, including Lancaster Farmland Trust and Lebanon Valley Conservancy easements. Transco provided an updated list of conservation easements in Pennsylvania crossed by the project in August 2016. This information was included in table

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[149] *See id.* at 4-152 - 4-159.

4.8.6-3 of the draft and final EIS. To ensure that all conservation easements have been identified prior to construction, we require in Environmental Condition 44 that Transco file with its Implementation Plan a revised table 4.8.6-3 that includes any newly identified conservation easements and copies of correspondence documenting any mitigation measures developed in consultation with the administering agency. In addition, we require in Environmental Condition 43 that Transco notify the Conservation Service one week prior to the start of construction across Conservation Service-held conservation easements to facilitate Conservation Service monitoring of construction and restoration of disturbed areas within these easements.

104. In general, the final EIS concludes that the effects of the project on recreational and special interest areas occurring outside of forestland will be temporary and limited to the period of active construction, which typically lasts several weeks or months in any one area.[150] These effects will be minimized by implementing the measures in Transco's Environmental Construction Plan and other project-specific construction plans. In addition, Transco will continue to consult with the owners and managing agencies of recreation and special interest areas regarding the need for specific construction mitigation measures.

105. We agree with the final EIS's conclusion that, with adherence to Transco's proposed impact avoidance, minimization, and mitigation plans, and implementation of the environmental conditions in

[150] *See id.* at 5-15.

Appendix C of this order, the overall impacts on land use will be adequately minimized.[151]

g. Property Values, Mortgages, and Insurance

106. Several commenters expressed concerns regarding the potential effect of the project on property values, mortgages, and property insurance. The final EIS identifies six studies that conclude that the presence of a pipeline either has no effect or an insignificant effect on property values.[152] Accokeek submitted a comment on the draft EIS, challenging these studies' conclusions. To support its claim, Accokeek provides an analysis by Dr. Lynne Y. Lewis, the Chair of Economics at Bates College, that concludes that the project "can be expected to negatively impact property values in the short term and very likely in the long term as well."[153] Dr. Lewis argues that in the event of environmental damage caused by a pipeline (e.g., spills, ruptures, pollution, or explosions), property values and market prices near the source of the damage are expected to decrease.[154] This argument does not support Accokeek's claim that the mere presence of a new pipeline facility will devalue property. In fact, the study also notes that home sales prices do not change (i.e., before and after pipeline installation) if pipelines, whether related or unrelated to the installed pipeline, operate safely and do not experience fatal explosions. Dr. Lewis also offers a study that concludes that homes near pipelines sell at a lower price because homebuyers

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[151] *Id.* at 5-17.

[152] *See id.* at 4-183.

[153] Accokeek's June 27, 2016 Comment on the Draft EIS at 5.

[154] *See id.* at 4-5.

evaluate environmental and health risks primarily based on emotions rather than risk analysis even if the pipeline poses a low risk, accident-free, and "non-sensory disamenity."[155] That study's finding that home buying decisions are based, at least in part, on subjective criteria does not discredit the studies cited in the final EIS. Accordingly, we conclude here, as we have in other cases, that the proposed project is not likely to significantly impact property values in the project area.[156]

107. Several commenters also expressed concern about mortgage companies re-categorizing properties based on proximity to pipelines or federally-insured mortgages being revoked due to proximity to pipelines. We have not been able to document any specific trends regarding adverse effects of pipelines on mortgages or the ability of landowners to obtain mortgages for similar projects. Therefore, we concur with the final EIS's conclusion and find that nothing in the record supports the claim that landowners would lose their mortgages or experience a re-categorization as a result of the project.[157]

108. Several landowners contend that their insurance policy holder would either cancel their homeowner's insurance due to the presence of a natural gas pipeline on their property or amend the policy to exclude

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[155] *See* Julia Freybote and Eric Fruits, *Perceived Environmental Risk, Media and Residential Sales Prices*, at 24-25, http://pages.jh.edu/jrer/papers/pdf/forth/accepted/Perceived%20Environmental%20Risk,%20Media%20and%20Residential%20Sales%20Prices.pdf.

[156] *See, e.g.*, *Central New York Oil & Gas Co, LLC*, 116 FERC ¶ 61,277, at P 44 (2006).

[157] *See* Final EIS at 4-183; *see also Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163, at P 98 (2015).

coverage for incidents related to the pipeline. We have no insurance industry data to suggest that the project will adversely affect homeowners' insurance rates, the ability to acquire a new homeowner's insurance policy, or that insurance policies will be discontinued due to the presence of a natural gas pipeline on a property. The final EIS concludes that insurance underwriters do not consider the presence of a transmission pipeline when determining the cost and coverage of the property insurance.[158] In addition, Transco's insurance coverage extends to landowners from the start of the survey process through the life of the pipeline and will pay for damage caused by the construction and operation of the pipeline. However, to address any potential insurance-related issues, we are requiring in Environmental Condition 46 that Transco file reports describing any documented complaints from a homeowner that a homeowner's insurance policy was cancelled, voided, or amended due directly to the grant of the pipeline right-of-way or installation of the pipeline and/or that the premium for the homeowner's insurance increased materially and directly as a result of the grant of the pipeline right-of-way or installation of the pipeline, as well as how Transco has mitigated the impact. Based on the foregoing, we agree with the final EIS's conclusion that the project would not adversely affect homeowners' insurance rates, the ability to acquire a new homeowner's insurance policy, or that existing insurance policies would be discontinued due to the presence of a natural gas pipeline on the property.[159]

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[158] Final EIS at 4-183 - 4-184.

[159] *Id.* at 4-184.

h. Cultural Resources

109. Transco identified 440 architectural resources and 149 archaeological sites within the area of direct impact for the proposed pipeline facilities in Pennsylvania. The Pennsylvania State Historic Preservation Office's (SHPO) preliminary review of the architectural resources recommended that 415 of the architectural resources be found ineligible and 24 be found eligible for the National Register of Historic Places (National Register). The Pennsylvania SHPO has not yet commented on the eligibility of the one remaining architectural resource site. Of the 24 architectural sites recommended as eligible, the Pennsylvania SHPO made a recommendation of "no adverse effect" for nine sites and a recommendation of "adverse effect" for two sites, namely the Nesbitt Estate Rural Historic District and the Pedrick Farm. The Pennsylvania SHPO has not yet made a recommendation for the other 13 eligible sites. Environmental Condition 47 provides that no construction or staging can occur until all cultural resources reports and avoidance and treatment plans, if appropriate, are reviewed by the SHPO and the Commission.

110. Of the 149 archaeological sites, the Pennsylvania SHPO approved the treatment plan for 3 sites, and considered that 134 sites are not eligible for the National Register and 5 sites will require additional testing for the National Register or will be avoided. Transco identified two additional sites as not eligible but the Pennsylvania SHPO has not provided comments on their eligibility. Four additional sites were not formally evaluated for their National Register eligibility because they will not be affected during construction. One site is listed on the National Register but will be avoided by horizontal directional drill.

There are pending comments from the Virginia SHPO for one archaeological resource that was recommended ineligible. As with respect to architectural resources, Environmental Condition 47 provides that no construction or staging can occur until the SHPO has commented on all the cultural resources surveys and avoidance and treatment plans, if appropriate.

111. Commission staff consulted, and Transco conducted outreach, with 21 federally-recognized tribes and three tribes not federally recognized, as well as several other non-governmental organizations, local historical societies, museums, historic preservation and heritage organizations, conservation districts, and other potential interested parties to provide them an opportunity to comment on the project. Several tribes and organizations requested additional consultation or information, and the Delaware Nation requested mitigation of sites that cannot be avoided by the project in Lancaster County, Pennsylvania. The Reading Company Technical and Historical Society requested that railroad structures associated with the Reading Railroad be preserved. Transco confirmed that railroad structures crossed by the project will be avoided through use of the bore-crossing method.

112. To ensure that our responsibilities under section 106 of the National Historic Preservation Act[160] are met, as indicated above we require in Environmental Condition 47 that Transco not begin construction until any additional required surveys are completed, survey reports and treatment plans (if necessary) have been reviewed by the appropriate parties, and the Director of the Office of Energy Projects provides written notification to proceed. With the inclusion of

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[160] 54 U.S.C.A. §§ 300101 *et seq.* (West 2016)

Environmental Condition 47 in this order, we agree with the final EIS's conclusions that completion of the studies and implementation of the impact avoidance, minimization, and other measures proposed by Transco, as well as the environmental conditions in Appendix C of this order, will ensure that any adverse effects on cultural resources and historic properties will be appropriately mitigated.[161]

i. Air Quality Impacts

113. General Conformity Determinations stem from section 176(c) of the Clean Air Act,[162] which requires a federal agency to demonstrate that a proposed action conforms to the applicable State Implementation Plan, a state's plan to attain the National Ambient Air Quality Standards (NAAQS) for nonattainment pollutants. A General Conformity Determination is required when the federal agency determines that an action will generate emissions exceeding conformity threshold levels of pollutants in the nonattainment area to assess whether the federal action will conform to the State Implementation Plan. Because the project will be located in a nonattainment area, primarily in Lancaster County, Pennsylvania, Commission staff reviewed the criteria pollutant emissions expected to be generated during construction of the project and compared them to the General Conformity thresholds in section 93.153(b)(1) of the Environmental Protection Agency's (EPA) regulations.[163]

114. Based on Transco's September 2016 revised construction emission estimates, which compressed

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[161] *See* Final EIS at 5-19.

[162] 42 U.S.C. § 7506(c) (2012).

[163] 40 C.F.R. § 93.153(b)(1) (2016).

the construction schedule for the project to one year (2017), the nitrogen oxides (NO_X) emissions from project construction emissions in Lancaster County, Pennsylvania will exceed the General Conformity applicability threshold.[164] All other emissions generated during all years of construction will not exceed General Conformity applicability thresholds.

115. Commission staff developed a draft General Conformity Determination for the project and placed it in the record on November 3, 2016, for 30-day public notice. Transco has committed to using emission reduction credits to demonstrate conformity. On December 29, 2016, the PADEP informed the Commission that the use of credits is an acceptable method for demonstrating compliance with the Pennsylvania State Implementation Plan and that sufficient NO_X credits are available to offset the estimated 2017 NO_X construction emissions for Lancaster County.[165] The PADEP process of approving any transfer of credits requires a 30-day public comment period. These credits, as indicated the January 13, 2017 final General Conformity Determination, would satisfy the Clean Air Act requirement for federal agencies to ensure that the action would be in conformance with the Pennsylvania State Implementation Plan. We are modifying Environmental Recommendation 49 in the final EIS and adopting Environmental Condition 48 to require Transco to provide final evidence of an enforceable credit transfer prior to construction within Lancaster County. Should the transfer not execute, or significant changes to the project require a reevaluation of General Conformity,

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[164] Final EIS at 4-219.

[165] *See* PADEP's December 29, 2016 Comment for the Draft General Conformity Determination at 1-2.

Commission staff would undertake the reevaluation in accordance with the Clean Air Act General Conformity regulations.[166]

116. Air quality impacts associated with construction of the project will include emissions from fossil-fueled construction equipment and fugitive dust. Local emissions may be elevated, and nearby residents may notice elevated levels of fugitive dust, but these would not be significant. We agree with the final EIS's conclusion that, with implementation of Transco's proposed mitigation measures and the environmental conditions in Appendix C of this order, air quality impacts from construction activities, such as elevated dust levels near construction areas, will be temporary or short term, and will not result in a significant impact on local and regional air quality.[167]

117. Commission staff conducted a supplemental modeling of Compressor Stations 517, 520, and 190 to analyze potential impacts associated with the operation of the existing emission sources at these stations, along with the proposed new sources, including monitored background. Based on this analysis, the existing sources at Compressor Stations 190, 517, and 520 are shown to be in compliance with the NAAQS for all pollutants, with the exception of the one-hour nitrogen dioxide (NO_2) standard at Compressor Stations 517 and 520. Based on the modeling analysis, concentrations for one-hour NO_2 for existing sources at Compressor Stations 517 and 520 have the potential to exceed the NAAQS during some operating scenarios and meteorological conditions. However, project operations will not incrementally contribute to the potential exceed-

[166] 40 C.F.R. § 93.157 (2016).

[167] Final EIS at 4-221.

ance of the one-hour NO_2 standard. Rather, the modeled exceedances are from existing equipment.[168]

118. To ensure that the operation of Compressor Stations 190, 517, and 520 do not result in a violation of the NAAQS, the final EIS recommends, and we require in Environmental Condition 51, that Transco continue to operate the air quality monitoring stations at Compressor Stations 190, 517, and 520 for a period of three years after the newly modified facilities begin operation. In the event that the air quality monitoring shows a violation of the NAAQS, Transco shall immediately contact the state air quality agency to report the violation and establish a plan of action to correct the violation in accordance with the terms of the facility air permit and applicable state law.

119. We agree with the final EIS's conclusion that, with the additional data provided, continued monitoring at the compressor stations, and implementation of the environmental conditions in Appendix C of this order, operational emissions will not have a significant impact on local or regional air quality.[169]

j. Safety

120. Numerous commenters questioned the general safety of the project. The final EIS states that the project facilities must be designed, constructed, operated, and maintained to meet or exceed the U.S. Department of Transportation's Minimum Federal Safety Standards[170] and other applicable federal and state regulations. These regulations include specifications for material selection and qualification; minimum design require-

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[168] *Id.* at 4-228.

[169] *Id.* at 5-20.

[170] *See* 49 C.F.R. pt. 192 (2016).

ments; and protection of the pipeline from internal, external, and atmospheric corrosion.

121. Several commenters expressed concern about long-term pipeline maintenance and operations. The Commission has a Memorandum of Understanding on Natural Gas Transportation Facilities with the Department of Transportation, which has exclusive authority to promulgate federal safety standards used in the transportation of natural gas. These regulations are implemented by the Department of Transportation's Pipeline and Hazardous Material Safety Administration (PHMSA). Once a natural gas pipeline is constructed, PHMSA maintains oversight of safety during operations. The Department of Transportation rules require regular inspection and maintenance, including repairs as necessary, to ensure the pipeline has adequate strength to transport the natural gas safely.[171] Further, although regulations requiring remote control shut-off valves have not yet gone into effect and would apply to pipelines built in the future, Transco committed to the use of remote control shut-off valves for the proposed pipelines.

122. Several commenters expressed concerns regarding potential effects of a pipeline rupture and natural gas ignition (the area of potential effect is sometimes referred to as the potential impact radius). While a pipeline rupture does not necessarily ignite, the Department of Transportation's regulations define high consequence areas where a gas pipeline accident could do considerable harm to people and their property and require an integrity management program to minimize the potential for an accident. Transco routed the pipeline to minimize risks to local residents and vul-

[171] *See* 49 C.F.R. pt. 192 subpt. O (2016).

nerable locations/populations (e.g., hospitals, prisons, schools, daycare facilities, retirement or assisted-living facilities) and will follow federal safety standards for pipeline class locations based on population density. The Department of Transportation regulations are designed to ensure adequate safety measures are implemented to protect all populations.

123. Based on available data, we agree with the final EIS's conclusions that Transco's implementation of the measures provided in the final EIS would ensure compliance with the Department of Transportation regulations, which would minimize the risk of public harm related to the construction and operation of the project.[172]

k. Indirect Effects

124. Several commenters, including Oil Change International,[173] request that the final EIS include the greenhouse gas (GHG) emissions associated with the upstream production and downstream combustion of the natural gas to be transported by the projects. The commenters cite the CEQ's Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews issued

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[172] *See* Final EIS at 5-22 - 5-23; *see also EarthReports, Inc. v. FERC*, 828 F.3d 949, 958-59 (D.C. Cir. 2016) (reliance on the opinions and standards of relevant federal and state authorities, including the Department of Transportation, is a reasonable component of the Commission's review of safety considerations).

[173] Oil Change filed comments on behalf of the Sierra Club, Earthworks, Appalachian Voices, Chesapeake Climate Action, 350.org, Bold Alliance, Environmental Action, Blue Ridge Environmental Defense League, Protect Our Water, Heritage and Rights (Virginia & West Virginia), Friends of Water, Mountain Lakes Preservation Alliance, Sierra Club West Virginia, and Sierra Club Virginia.

on August 1, 2016 (CEQ Final Guidance),[174] noting that the CEQ Final Guidance includes end use fossil fuel combustion as an example of an indirect emission that should be considered.

125. The CEQ Final Guidance recognizes this potential issue, recommending that the final guidance apply "to all new proposed agency actions when a NEPA review is initiated" and that "[a]gencies should exercise judgment when considering whether to apply this guidance to the extent practicable to an on-going NEPA process."[175] The CEQ Final Guidance also emphasizes that "this guidance is not a rule or regulation, and the recommendations it contains may not apply to a particular situation based upon the individual facts and circumstances," and "agencies should provide the public and decision makers with explanations of the basis for agency determinations."[176]

126. CEQ's regulations direct federal agencies to examine the indirect impacts of proposed actions.[177] Indirect impacts are defined as those "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable."[178] Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth

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[174] CEQ, Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Review (issued Aug. 1, 2016), https://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance.

[175] *Id*. at 33.

[176] *Id*. at 1-2.

[177] *See* 40 C.F.R. § 1508.25(c) (2016).

[178] *Id.* § 1508.8(b).

rate, and related effects on air and water and other natural systems, including ecosystems."[179] Accordingly, to determine whether an impact should be studied as an indirect impact, the Commission must determine whether it: (1) is caused by the proposed action; and (2) is reasonably foreseeable.

127. With respect to causation, "NEPA requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause"[180] in order "to make an agency responsible for a particular effect under NEPA."[181] As the Supreme Court explained, "a 'but for' causal relationship is insufficient [to establish cause for purposes of NEPA]."[182] Thus, "[s]ome effects that are 'caused by' a change in the physical environment in the sense of 'but for' causation," will not fall within NEPA if the causal chain is too attenuated.[183] Further, the Court has stated that "where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions,

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[179] *Id.*

[180] *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

[181] *Pub. Citizen*, 541 U.S. at 767.

[182] *Id.; see also Sierra Club v. FERC*, 827 F.3d 36, 46 (D.C. Cir. 2016) (Freeport LNG) (FERC need not examine everything that could conceivably be a but-for cause of the project at issue); *Sierra Club v. FERC*, 827 F.3d 59, 68 (D.C. Cir. 2016) (Sabine Pass LNG) (FERC order authorizing construction of liquefied natural gas export facilities "are not the legally relevant cause" of increased production of natural gas).

[183] *Metro. Edison Co.*, 460 U.S. at 774.

the agency cannot be considered a legally relevant 'cause' of the effect."[184]

128. An effect is "reasonably foreseeable" if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision."[185] NEPA requires "reasonable forecasting," but an agency is not required "to engage in speculative analysis" or "to do the impractical, if not enough information is available to permit meaningful consideration."[186]

129. The Commission does not have jurisdiction over natural gas production. The potential impacts of natural gas production, with the exception of greenhouse gas emissions and climate change, would be on a local and regional level. Each locale includes unique conditions and environmental resources. Production activities are thus regulated at a state and local level. In addition, deep underground injection and disposal of wastewaters and liquids are subject to regulation by the EPA under the Safe Drinking Water Act. The EPA also regulates air emissions under the Clean Air Act. On public lands, federal agencies are responsible for

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[184] *Pub. Citizen*, 541 U.S. at 770; *see also* Freeport LNG, 827 F.3d at 47 (affirming that *Public Citizen* is explicit that FERC, in authorizing liquefied natural gas facilities, need not consider effects, including induced production, that could only occur after intervening action by DOE); Sabine Pass LNG, 827 F.3d at 68 (same); *EarthReports*, 828 F.3d at 956 (same).

[185] *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992). *See also City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005).

[186] *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

the enforcement of regulations that apply to natural gas wells.

130. We have previously concluded in natural gas infrastructure proceedings, based on the specifics of the project being proposed in each proceeding, that the environmental effects resulting from natural gas production are generally neither sufficiently causally related to specific natural gas infrastructure projects nor are the potential impacts from gas production reasonably foreseeable such that the Commission could undertake a meaningful analysis that would aid our determination.[187] A causal relationship sufficient to warrant Commission analysis of the upstream production activity as an indirect impact would only exist if a proposed pipeline or Commission-jurisdictional infrastructure project would transport new production from a specified production area and such production would not occur in the absence of the proposed project facilities (i.e., there will be no other way to move the gas).[188] To date, the Commission has not been pre-

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[187] *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).

[188] *Cf. Sylvester v. U.S. Army Corps of Eng'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. FAA*, 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. Dep't 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).

sented 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.

131. Even accepting, *arguendo*, that a specific pipeline project will cause natural gas production, to date, we have found that the potential environmental impacts resulting from such production are not reasonably foreseeable. As we have explained, generally there is not sufficient information available to determine the origin of the gas that will be transported. It is the states, rather than the Commission, that have jurisdiction over the production of natural gas and thus would be most likely to have the information necessary to reasonably foresee future production. We are aware of no such forecasts by the states or any other entities, rendering the Commission unable to meaningfully predict production-related impacts, many of which are highly localized. Thus, even if the Commission knows the general source area of gas likely to be transported on a given pipeline, a meaningful analysis of production impacts would require more detailed information regarding the number, location, and timing of wells, roads, gathering lines, and other appurtenant facilities, as well as details about production methods, which can vary per producer and depending on the applicable regulations in the various states. Accordingly, to date, the impacts of natural gas production are not reasonably foreseeable because they are "so nebulous" that we "cannot forecast [their] likely effects" in the context of an environmental analysis of the impacts related to

construction and modification of natural gas pipeline facilities.[189]

132. Nonetheless, we note that, although not required by NEPA, a number of federal agencies have examined the potential environmental issues associated with unconventional natural gas production in order to provide the public with a more complete understanding of the potential impacts. The DOE has concluded that such production, when conforming to regulatory requirements, implementing best management practices, and administering pollution prevention concepts, may have temporary, minor impacts to water resources.[190] The EPA has concluded that hydraulic fracturing can impact drinking water resources under some circumstances and identified conditions under which impacts from hydraulic fracturing activities can be more frequent or severe.[191] With respect to air quality, the

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[189] *Habitat Educ. Ctr. v. U.S. Forest Serv.*, 609 F.3d 897, 902 (7th Cir. 2010) (agency need not discuss projects too speculative for meaningful discussion).

[190] U.S. DEP'T OF ENERGY, ADDENDUM TO ENVIRONMENTAL REVIEW DOCUMENTS CONCERNING EXPORTS OF NATURAL GAS FROM THE UNITED STATES (issued Aug. 2014) (DOE Addendum), http://energy.gov/sites/prod/files/ 2014/08/f18/Addendum.pdf.

[191] *See* U.S. EPA, HYDRAULIC FRACTURING FOR OIL AND GAS: IMPACTS FROM THE HYDRAULIC FRACTURING WATER CYCLE ON DRINKING WATER RESOURCES IN THE UNITED STATES, at ES3-4 (issued Dec. 2016) (final report), http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=529930 (finding significant data gaps and uncertainties in the available data prevented EPA from calculating or estimating the national frequency of impacts on drinking water resources from activities in the hydraulic fracturing water cycle). *See also* Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands, 80 Fed. Reg. 16,128, 16,130 (Mar. 26, 2015) (Bureau of Land Management promulgated regulations for hydraulic fracturing on federal and Indian lands to "provide

DOE found that natural gas development leads to both short- and long-term increases in local and regional air emissions.[192] It also found that such emissions may contribute to climate change.[193] But to the extent that natural gas production replaces the use of other carbon-based energy sources, DOE found that there may be a net positive impact in terms of climate change.[194]

i. Causation

133. The record in this proceeding does not demonstrate the requisite reasonably close causal relationship between the Atlantic Sunrise Project and the impacts of future natural gas production to necessitate further analysis. 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 is not in dispute. This does not mean, however, that the Commission's approval of this particular pipeline project will cause or induce the effect of additional or further shale gas production. The proposed project is responding to the need for transportation, not creating it.

134. Furthermore, arguments raised by commenters about the Atlantic Sunrise project inducing natural gas production are similar to the arguments that were raised and rejected by both the Commission and Second Circuit Court of Appeals in *Central New York Oil and*

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significant benefits to all Americans by avoiding potential damages to water quality, the environment, and public health").

[192] DOE Addendum at 32.

[193] *Id.* at 44

[194] *Id.*

Gas Co., LLC.[195] In that case, the Commission concluded, and the Second Circuit agreed, that under NEPA, Marcellus shale development activities are not sufficiently causally-related to the project to warrant in-depth consideration of the gas production impacts because, in part, Marcellus shale development activities were not "an essential predicate" for the project.[196]

135. Similarly here, the Commission has not found any evidence that future gas development is an essential predicate for the project. Moreover, whether or how much *induced* gas will travel through the project cannot be known given that a significant amount of unconventional natural gas production currently exists.[197] Commenters fail to identify any new production specifically associated with the proposed project.

136. As we have explained in other proceedings, a number of factors, such as domestic natural gas prices and production costs drive new drilling.[198] If the pro-

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[195] *Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121); *order on reh'g*, 138 FERC ¶ 61,104; *pet. for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 Fed. App'x 472 (2d Cir. 2012).

[196] *Central New York*, 137 FERC ¶ 61,121 at P 91; *Coal. for Responsible Growth*, 485 F. App'x at 474 ("FERC reasonably concluded that the impacts of that [shale gas] development are not sufficiently causally-related to the project to warrant a more in-depth [NEPA] analysis").

[197] For example, in 2014, unconventional natural gas production in Pennsylvania was approximately 11.15 Bcf per day. Penn. Dep't of Envtl. Prot., *2014 Oil and Gas Annual Report* at 7 fig. (July 2015), http://www.portal.state.pa.us/portal/server.pt/community/annual_report/21786 (aggregate 2014 unconventional production divided by 365 days yields 11.15 billion cubic feet per day).

[198] *See e.g., Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161, at P 39 (2015). *See also Sierra Club v. Clinton*, 746 F. Supp. 2d 1025, 1045 (D. Minn. 2010) (holding that the U.S. Department of

posed project were not constructed, it is reasonable to assume that any new production spurred by such factors would reach intended markets through alternate pipelines or other modes of transportation.[199] Again, any such production would take place pursuant to the regulatory authority of state and local governments.

ii. Reasonable Foreseeability

137. In addition, even if a causal relationship between our action here and additional production were presumed, the scope of the impacts from any such induced production in this case is not reasonably foreseeable. Knowing the identity of a producer of gas to be shipped on a pipeline, and the general area where that producer's existing wells are located, does not alter the fact that the number of and precise location of any additional wells cannot be identified in this proceeding. As we have explained previously, factors such as market prices and production costs, among others, drive new drilling.[200] These factors, combined with the immense size of the Marcellus and Utica shale formations and the highly localized impacts of production would result in general estimates. Thus, a broad analysis, based on generalized assumptions will not meaningfully assist the Commission in its decision

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State, in its environmental analysis for an oil pipeline permit, properly decided not to assess the transboundary impacts associated with oil production because, among other things, oil production is driven by oil prices, concerns surrounding the global supply of oil, market potential, and cost of production); *Florida Wildlife Fed'n v. Goldschmidt*, 506 F. Supp. 350, 375 (S.D. Fla. 1981) (ruling that an agency properly considered indirect impacts when market demand, not a highway, would induce development).

[199] *Rockies Express*, 150 FERC ¶ 61,161 at P 39.

[200] *Dominion Transmission, Inc.*, 153 FERC ¶ 61,284 (2015).

making, e.g. evaluating potential alternatives. Accordingly, unless the Commission can ascertain specific factual information regarding the nature of the induced production, such induced production is not reasonably foreseeable.

138. We acknowledge that the CEQ Final Guidance includes the end-use combustion of coal as an example of an indirect emission from coal production. However, that example also notes that the indirect effects would vary with the circumstances of the proposed action. The final EIS explains that the upstream production and downstream combustion of gas is not causally connected because the production and end-use would occur with or without this project.[201] Therefore, the circumstances in this case do not warrant the inclusion of production or end-use as an indirect effect of the project. Although EPA disagrees with this justification, this explanation does meet the CEQ Final Guidance in considering specific project circumstances and explaining the basis for the analysis that was performed. Further, beyond a generic recommendation that we include upstream and end-use emission in our NEPA document, EPA provides no information to refute our justification that these emissions are not causally connected.

139. As noted above, upstream and downstream impacts of the type described by commenters do not meet the definition of indirect impacts. Therefore, they are not mandated as part of the Commission's NEPA review. However, to provide the public additional information and to inform our public convenience and necessity determination under section 7(e) of the

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[201] *See* Final EIS at 4-280 - 4-282.

NGA,[202] Commission staff, after reviewing publicly-available DOE and EPA methodologies, has prepared the following analyses regarding the potential impacts associated with unconventional gas production and downstream combustion of natural gas. As summarized below, these analyses provide only an upper-bound estimate of upstream and downstream effects. In addition, these estimates are generic in nature because no specific end uses have been identified and reflect a significant amount of uncertainty.

140. With respect to upstream impacts, Commission staff estimated the impacts associated with the production wells that would be required to provide 100 percent of the volume of natural gas to be transported by the Atlantic Sunrise Project, on an annual basis for GHGs. Commission staff also estimated land-use and water use within the Marcellus shale basin for the life of the project.[203] Commission staff estimated that approximately 1.48 acres of land is required for each natural gas well pad and associated infrastructure (i.e., road infrastructure, water impoundments, and pipelines).[204] Based upon the project volume and the expected estimated ultimate recovery of Marcellus shale

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[202] 15 U.S.C. § 717f(e) (2012).

[203] Commission staff assumed a 30-year life for the project, which is longer than the 15-year term of the precedent agreements and the 20-year term of the Lease Agreement. As a result, the production wells impacts were liberally estimated.

[204] U.S. DEP'T OF ENERGY, LIFE CYCLE ANALYSIS OF NATURAL GAS EXTRACTION AND POWER GENERATION (issued Aug. 30, 2016), at 22 (Table 3-6), https://www.netl.doe.gov/energy-analyses/temp/LifeCycleAnalysisofNaturalGasExtractionandPowerGeneration_083016.pdf (2016 DOE Life Cycle Analysis).

wells,[205] we have estimated that between 3,600and 7,100wells would be required to provide the gas over the estimated 30-year lifespan of the project. Therefore, on a normalized basis,[206] these assumptions lead us to estimate an upper bound of an additional 182 to 350 acres per year may be impacted by well drilling.[207] This estimate of the number of wells is imprecise and subject to a significant amount of uncertainty.

141. Commission staff also estimates the amount of water required for the drilling and development of these wells over the 30 year period using the same assumptions. Recent estimates[208] show that an average Marcellus shale well requires between 3.88 and 5.69 million gallons of water for drilling and well development, depending on whether the producer uses a recycling process in the well development. Therefore, the production of wells required to supply the project could require the normalized consumptive use of as much as 470 to 1.3 billion gallons of water per year over the 30 year life of the project.

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[205] James Staub, The Growth of U.S. Natural Gas: An Uncertain Outlook for U.S. and World Supply, 2015 EIA Energy Conference (2015), http://www.eia.gov/conference/2015/pdf/presentations/staub.pdf; U.S. DEP'T OF ENERGY, ENVIRONMENTAL IMPACTS OF UNCONVENTIONAL NATURAL GAS DEVELOPMENT AND PRODUCTION (May 29, 2014), https://www.netl.doe.gov/File%20Library/Research/OilGas/publications/NG_Literature_Review3_Post.pdf (DOE Production Report).

[206] Thirty-year impacts averaged on a per year basis.

[207] 2016 DOE Life Cycle Analysis at 22 (Table 3-6). This DOE Analysis estimates the land-use fractions of the Appalachian Shale region to be 72.3 percent forested lands, 22.4 percent agricultural land, and 5.3 percent grass or open lands. 2016 DOE Life Cycle Analysis at 24, Table 3-8.

[208] DOE Production Report at 76 (Exhibit 4-1).

142. The final EIS includes the direct GHG emissions from construction and operation of the project, mitigation measures to reduce GHG emissions, and climate change impacts in the project region, as well as generic downstream GHG emissions. The final EIS discusses the direct GHG impacts from construction and operation of the project and other projects that were considered in the Cumulative Impacts analysis. The final EIS includes a discussion of climate change impacts in the region, the regulatory structure for GHGs under the Clean Air Act, and the quantified GHG emissions from Atlantic Sunrise project construction (152,850 metric tons per year, CO2-equivalent [metric tpy CO_{2e}]) and operation (667,580 metric tpy CO_{2e}).[209] The final EIS does not include upstream emissions. However, Commission staff has conservatively estimated the upstream GHG emissions as having an upper bound of 1.4 million metric tpy CO_{2e} from extraction, 2.7 million metric tpy CO_{2e} from processing, and 1.2 million metric tpy CO_{2e} from the non-project pipelines (both upstream and midstream reversed flow pipelines).[210] Again, this is an upper-bound estimate that involves a significant amount of uncertainty.

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[209] These estimates include new project components, as well as flow reversal components.

[210] The upstream GHG emissions were estimated using DOE's Life Cycle Analysis of Natural Gas Extraction and Power Generation, issued on May 29, 2014, https://www.netl.doe.gov/energy-analyses/temp/NaturalGasandPowerLCAModelDocumentationNG%20Report_052914.pdf (2014 Life Cycle Analysis). Generally, Commission staff used the average leak and emission rates identified in the 2014 Life Cycle Analysis for each segment of extraction, processing, and transport. The method is outlined in Section 2 of the 2014 Life Cycle Analysis, and the background data used for the model is outlined in Section 3.1. Commission staff used the results identified in Tables 4.3, 4.4, and 4.5 to look

143. With respect to downstream GHG emissions, Commission staff used an EPA-developed methodology to estimate the downstream GHG emissions from a project, assuming all of the gas to be transported is eventually combusted. As such, in response to EPA's comments, we conservatively estimated the GHG emissions from the end-use combustion of the natural gas to be transported by the project. If all 1.7 million Dth per day of natural gas were transported to combustion end uses, downstream end-use would result in the emission of about 32.9 million metric tpy of CO_{2e}.[211] We note that this CO_{2e} estimate represents an upper bound for the amount of end-use combustion that could result from the gas transported by this project. This is because some of the gas may displace fuels (i.e., fuel oil and coal) which could result in lower total CO_{2e} emissions. It may also displace gas that otherwise would be transported via different means, resulting in no change in CO_{2e} emissions. This estimate also assumes the maximum capacity is transported 365 days per year, which is rarely the case because many projects are designed for peak use. As such, it is unlikely that this total amount of GHG emissions would occur, and emissions are likely to be significantly lower than the above estimate.

144. On August 8, 2016, Oil Change International filed comments, consisting of one paragraph and an

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at each segment and grossly estimate GHG emission. These estimates are conservative as Commission staff did not account for the new New Source Performance Standards oil and gas rules or other GHG mitigation. Additionally, staff made a conservative estimate of the length of non-jurisdictional pipeline prior to the gas reaching project components as well as the length of reversed flow pipelines.

[211] Final EIS at 4-318.

attached 32-page report, in 11 pipeline certificate proceedings, including the matter at hand. Oil Change International asserts that there should be a climate test for all natural gas infrastructure, that, in light of the CEQ Final Guidance, "the alignment of natural gas infrastructure permitting with national climate goals and plans should become a priority for FERC and other federal government agencies," and that the Commission should "conduct full Greenhouse Gas impact analysis as part of the NEPA process for all listed projects."[212] The report asserts generally that increased U.S. natural gas production in the Appalachian Basin is not consistent with safe climate goals, and that proposed pipeline projects will increase takeaway capacity from the basin and provide financial incentives for increased production.

145. The comments and the report provide no specific information about the Atlantic Sunrise Project (or any of the other listed projects). Accordingly, this material does not assist us in our analysis of the project. As discussed above, we indeed do analyze the greenhouse gas impacts of the proposed project as part of our NEPA and NGA review.

146. As to the more global issues raised by Oil Change International, while the Commission does not utilize a specific "climate test," we do examine the impacts of the project before us, including impacts on climate change. Under NEPA, we are required to take a "hard look" at the environmental impacts of the proposed project and we have done so. To the extent that Oil Change International suggests an alignment of project permitting with national climate change goals, we note that it is for Congress, the Executive Branch,

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[212] Oil Change International August 8, 2016 Comments at 1.

and agencies with jurisdiction over broad environmental issues to establish such goals; our role under the NGA is considerably more limited, and we have no authority to establish national environmental policy.

l. Cumulative Impacts

i. Climate Change

147. The EPA requests that we remove the comparison of the project's GHG emissions with state-wide GHG emission levels to provide a frame of reference. The EPA argues that although this type of comparison was included in the CEQ's draft guidance document,[213] it has been removed from the CEQ Final Guidance. Although this comparison was removed as a recommendation in the CEQ Final Guidance, it does not indicate that an EIS cannot include such information. We find that providing this frame of reference helps to better understand the magnitude of GHG emissions themselves compared to other pollutants. Further, the final EIS responds to the EPA's comment by explaining that while it compares project GHG emissions with state GHG emissions, the final EIS does not dismiss climate change impacts based on this comparison. Instead, the final EIS includes a discussion on climate change impacts in section 4.13.8.10 and identifies that the project will contribute GHG emissions.[214] We agree that the final EIS's discussion of climate change, including the final EIS's appendices, is adequate.

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[213] CEQ, Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews (Dec. 2014), https://www.whitehouse.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance_searchable.pdf.

[214] Final EIS at 4-316 - 4-319.

ii. Safety

148. Several comments were received regarding potential cumulative impacts on safety caused by the project and collocated pipelines that are unrelated to the project.[215] Based on the construction and design methods of pipelines collocated within a shared right-of-way and adherence to the Department of Transportation safety regulations, the final EIS concludes it is unlikely that one pipeline failure would cause the adjacent pipeline to also fail.[216] As previously described,[217] the project will be designed and constructed in accordance with or in exceedance of the Department of Transportation's Minimum Federal Safety Standards and to meet requirements established for protection of metallic facilities from external, internal, and atmospheric corrosion. We agree with the final EIS's conclusion that, with implementation of the mitigation measures adopted in Appendix C of the order, no cumulative impacts on safety and reliability are anticipated to occur as a result of the project.[218]

m. Alternatives

149. A number of commenters suggested that the contracted volumes of natural gas could be transported via existing pipeline systems. The final EIS concludes that no existing pipeline system in the vicinity of the project can meet the project's purpose without significant expansions, which would result in

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[215] Table 2.2.1-1 on pages 2-13 - 2-14 of the final EIS lists all the collocated pipelines.

[216] Final EIS at 4-320.

[217] *See supra* at PP 120-123.

[218] Final EIS at 4-320.

environmental impacts similar to or greater than the impacts of the proposed project.[219] We agree with these conclusions.

150. Commission staff evaluated the Transco System Alternative, which would avoid a greenfield pipeline alignment by siting the proposed facilities adjacent to Transco's existing Mainline and Leidy pipelines. The Transco System Alternative would be collocated with Transco's existing pipelines for about 91 percent of its length. The Transco System Alternative, however, would involve a significant expansion of the proposed project (it would require the construction of about 50 additional miles of pipeline)and would impact an additional 605 acres of land during construction. In addition, development of the Transco System Alternative would not be feasible in certain areas due to the significant amount of commercial, industrial, and residential development that has occurred adjacent to Transco's existing rights-of-way. The final EIS concludes, and we agree, that the Transco System Alternative will not be preferable to the project as proposed.[220]

151. Since pre-filing, Transco incorporated 132 route variations into the proposed route to avoid or reduce effects on environmental or other resources, resolve engineering or constructability issues, or address stakeholder concerns. This represents about a 50 percent change to Transco's original route design. Commission staff reviewed the route variations and agreed with Transco's conclusions regarding their incorporation into the proposed route. In response to Commission staff's recommendations in the draft EIS, Transco incorporated Central Penn Line North

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[219] *Id.*

[220] *Id.* at 5-25.

Alternative 5, Central Penn Line South Alternative 22, and minor realignments of Alternative 24C and the Neil Bushong Deviation into the proposed route to increase the distance of the pipeline from residential structures or to address other landowner concerns.

152. The final EIS evaluates five major route alternatives. The major route alternative that received the most stakeholder interest was the Western Central Penn Line South Alternative 3 (Alternative 3). Alternative 3 was identified by Patrick Kelsey to maximize collocation with existing rights-of-way. The environmental advantages of Alternative 3 are that it would increase the length of pipeline collocated with existing rights-of-way thereby reducing impacts on intact forest land. However, Alternative 3 would be three miles longer and cross 13 more waterbodies and two more wetlands than the corresponding segment of the proposed route. The final EIS concludes, and we agree, that the environmental advantages of Alternative 3 do not outweigh its additional environmental impacts and, therefore, is not preferable to the proposed route.[221]

153. The final EIS also evaluates 11 minor route alternatives along Central Penn Line North and 17 minor route alternatives along Central Penn Line South. To further address landowner concerns, the final EIS recommends, and we require in Environmental Conditions 13, 14, 16, 19, and 20, that Transco incorporate five additional minor route variations, each less than a mile in length, and one alternative valve site location (Environmental Condition 17). Transco identified the Conestoga River Alternative to avoid crossing a conservation easement along Central Penn Line South at milepost 12.3, where the proposed

[221] *Id.* at 3-15.

route crosses land subject to a Declaration of Restrictive Covenants for Conservation by PPL Holtwood, LLC to satisfy a condition of its U.S. Army Corps permit issued for construction and operation of the Holtwood Hydroelectric Expansion Project on the Susquehanna River. If Transco is unable to secure the necessary easement on tract PA-LA-137 B.000 along the proposed route due to the restrictive covenant, Environmental Condition 18 requires Transco to incorporate the Conestoga River Alternative.

154. Several comments were received regarding Central Penn Line North Alternative 12 West. Central Penn Line North Alternative 12 West was identified by Ms. Nesbitt to avoid crossing her property and minimize impacts on cultural resources and interior forest. However, stakeholders located along this proposed alternative route identified concerns related to the specific alignment across their property, pipeline safety, and potential effects of the pipeline on property values and future development. The final EIS concludes that both the proposed route and Central Penn Line North Alternative 12 West have advantages and disadvantages, trading increased impacts in certain categories for less impacts in other categories. For example, Central Penn Line North Alternative 12 West would reduce the amount of forestland and forested wetland crossings; avoid the Perrins Marsh Natural Heritage Area; and reduce the crossing length of the Nesbitt Estate Rural Historic District. But it is longer than the proposed route, would affect more land during construction, and affect more landowners. To mitigate the effect on Ms. Nesbitt, Transco modified its original pipeline alignment across her property, following issuance of the draft EIS, to avoid bisecting her tract by following her eastern property boundary and to reduce the amount of forested wetlands impacted.

Ultimately, an alternative that results in equal or minor advantages in terms of environmental impact would not compel us to shift the impacts from the current set of landowners to a new set of landowners.[222]

155. The final EIS states that the U.S. Army Corps was in the process of completing its public interest review of the proposed route and Central Penn Line North Alternative 12 West as part of its permitting requirements under section 404 of the Clean Water Act.[223] On December 20, 2016, the U.S. Army Corps issued a public notice requesting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties, which will be considered by the U.S. Army Corps to determine whether to issue, modify, condition or deny a permit for the project.[224] Because the U.S. Army Corps has not completed its public interest review, including site visits and public comment reviews, the U.S. Army Corps may acquire new data and conclude that the environmental impacts of the proposed route outweigh its advantages.[225] In comparing impacts on different

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[222] *See Vermonters for a Clean Env't, Inc. v. Madrid*, 73 F. Supp. 3d 417, 427 (D. Vt. 2014).

[223] Final EIS at 3-31.

[224] The public comment period ended on January 20, 2017, with additional site visits pending. Under the EPA's Clean Water Act section 404(b)(1) guidelines, no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. *See* 40 C.F.R. § 230.10(a) (2016).

[225] If the U.S. Army Corps were to find Central Penn Line North Alternative 12 West preferable, the final EIS finds this route would be environmentally acceptable and Transco would be

resources of the corresponding segment of the proposed route and Central Penn Line North Alternative 12 West, the final EIS concludes, and we agree, that the data available does not indicate that the alternative provides a significant environmental advantage over the proposed route.[226]

156. Over 400 comment letters were received that support the Central Penn Line South Alternative 24C. Alternative 24C was identified by Dr. Linda Quodomine to avoid crossing her existing equine veterinary clinic and pastures and to increase the distance of the pipeline from residences. The draft EIS recommended that Transco incorporate Alternative 24C into the proposed route. In its comments on the draft EIS, Transco identified a minor realignment to Alternative 24C to avoid a planned subdivision and improve the crossing location of Interstate 80,[227] but otherwise incorporated Alternative 24C as its proposed route. We agree with Transco's adoption of this revised route, identified in the final EIS as Alternative 24D, with minor modifications, as recommended in Environmental Condition 16.

157. Numerous comments regarding the Central Penn Line South Conestoga Alternative Route were received. During pre-filing, Transco's initial proposed alignment crossed Shenk's Ferry Wildflower Preserve and Tucquan Glen Nature Preserve. Through the pre-

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required to file an amendment to request approval of Central Penn Line North Alternative 12 West.

[226] Final EIS at 3-33.

[227] The referenced realignment to Alternative 24C is identified as Alternative 24D (see final EIS at 3-49). An additional minor modification to 24D was recommended as Route Deviation M-0431. *See infra* PP 166-167 and Environmental Condition 16 in Appendix C of this order.

filing process, over 240 comment letters were filed expressing concern about impacts on these nature preserves. In response, Transco's application modified the proposed route to avoid these areas. Over 600 comments were filed on the draft EIS suggesting that the pipeline alignment be moved back to the pre-filing pipeline route (now called the Conestoga Alternative Route) to minimize impacts on private landowners. The Conestoga Alternative Route would be slightly shorter, but would cross more recreation areas/ preserved lands and waterbodies than the corresponding segment of the proposed route. For this reason, the final EIS concludes, and we agree, that the Conestoga Alternative Route is not environmentally preferable to the proposed route.[228]

158. On November 21, 2016, after the close of the draft EIS comment period, David and Lucille Ruckle filed comments requesting evaluation of alternative alignments to Central Penn Line South Alternative 24D. The first alternative alignment would deviate from the proposed route at milepost M-0423 3.5 and proceed 1.3 miles north across primarily agriculture land between Thomas and Millville Roads before rejoining the proposed route at milepost 107.0. Our evaluation of this variation shows that Thomas and Millville Roads parallel Little Fishing Creek in this area and, due to residential development east of Thomas Road and steep slopes east of Millville Road and west of Thomas Road, we could not identify a practicable crossing location of Little Fishing Creek. For these reasons, we conclude that the alternative alignment is not preferable to the corresponding segment of the proposed route. The second alignment

[228] Final EIS at 3-57.

identified by the Ruckles would deviate from the proposed route at milepost M-0423 3.5 and proceed 0.2 mile north across agricultural land where it would turn and proceed 0.4 mile northeast across Little Fishing Creek and Mall Boulevard before rejoining the proposed route at milepost M-0423 4.1. Due to steep topography north of Mall Boulevard and the presence of Little Fishing Creek south of Mall Boulevard, we find that that the potential construction constraints would not make this alignment practicable and are, therefore, not recommending incorporation of either variation.

5. Comments on the Final EIS

a. Conestoga Petitioners

159. On January 4, 2017, the Conestoga Petitioners (Petitioners) filed a comment on the final EIS regarding the alternatives evaluation completed for the Conestoga Alternative Route. The Petitioners argue that information used in the alternatives analysis was inaccurate because it was not based on field data depicted on alignment sheets filed by Transco. As explained in section 3.0 of the final EIS, in analyzing the proposal and alternatives, Commission staff relied on information provided by Transco, aerial photographs, U.S. Geological Survey topographic maps and other publicly available information, input from cooperating and other agencies, public input from scoping, and site visits. To ensure that the comparisons are based on consistent data, Commission staff used these same desktop sources of information to compare the impacts of the proposed route and alternative routes.

160. The Petitioners also contend that the final EIS inaccurately identifies Clark Run, a waterbody crossed by the Conestoga Alternative Route, as a scenic river.

They state that the Pennsylvania Department of Conservation and Natural Resources only designates Tucquan Creek, a waterbody crossed by both the proposed route and the Conestoga Alternative Route, as a scenic river. The Petitioners are incorrect. Pennsylvania designates Clark Run as a scenic river from its headwaters at Mount Nebo, Pennsylvania, to its confluence with Tucquan Creek.[229]

161. The Petitioners also argue that because the Conestoga Alternative Route is one mile shorter than the proposed route, adopting the Conestoga Alternative Route would reduce construction emissions. While a shorter pipeline length may result in lower emissions during certain construction phases, the Conestoga Alternative Route would require an increased amount of forest clearing compared to the proposed route. Clearing forested vegetation requires more time and construction equipment compared to clearing vegetation on agricultural land, which is the dominant land use along the proposed route. Forest clearing will result in higher construction emissions during the clearing and grubbing phase of construction. Therefore, the Conestoga Alternative Route will unlikely result in lower construction emissions and could result in higher construction emissions compared to the proposed route.

b. Transco

162. In a letter dated January 13, 2017, Transco requested clarification of Commission staff's Environmental Recommendations 18, 20, and 42, which were included in section 5 of the final EIS.

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[229] Penn. Dep't of Conservation and Nat. Res., Scenic Rivers, http://www.dcnr.state.pa.us/brc/conservation/rivers/scenicrivers/tucquancreek/index.htm.

163. Environmental Recommendation 18 in the final EIS recommends that, with its Implementation Plan, Transco file documentation that it has acquired the necessary easement on tract PA-LA-137_B.000. In the event that Transco is unsuccessful in acquiring this easement necessary for the construction of its proposed route, the Recommendation would require Transco to incorporate the Conestoga River Alternative into the proposed route. In its January 13, 2017 letter, Transco indicated that it is in the process of acquiring the necessary easement on tract PA-LA-137_B.000. However, Transco states it may not complete the acquisition of the easement prior to the filing of its Implementation Plan. As a result, Transco is requesting it be allowed to provide documentation that it has acquired the easement necessary for construction of its proposed route after the filing of its implementation plan, but prior to construction. Transco also indicated that it will file information related to the Conestoga River Alternative with its Implementation Plan if it intends to incorporate this alternative into the proposed route. In order to allow additional time for Transco to secure the necessary easement across PA-LA-137_B.000, Environmental Recommendation 18 is revised in Environmental Condition 18 of this order to allow Transco to file the documentation that it has acquired the necessary easement prior to construction.

164. Environmental Recommendation 20 in the final EIS recommends that, prior to construction, Transco shall file with the Secretary a revised alignment sheet that adjusts the construction workspace associated with Route Deviation M-0209 to abut the western property boundary of Reeves F. Goehring, III. In its January 13, 2017 letter, Transco stated that adjusting the workspace to abut Mr. Goehring's property line will impact a gully and require constructing

on side-sloping topography. As a result, Transco indicted that it will reduce the construction right-of-way width to 75 feet and relocate additional temporary extra workspace to agricultural land located south of Mr. Goehring's property to minimize forest clearing impacts. In response to Transco's filing, Mr. Goehring submitted comments on January 13, 2017 indicating that Transco's modifications will not be acceptable to him and requests that Transco comply with our environmental recommendation to adjust the construction workspace to abut his western property boundary. In order to address the concerns of Mr. Goehring, Environmental Recommendation 20 is revised in Environmental Condition 20 of this order to require Transco to further assess the pipeline alignment and workspace requirements in coordination with Mr. Goehring and file with the Commission, for the review and written approval by the Director of Office of Energy Projects, revised alignment sheets and documentation of its landowner consultation regarding the crossing of Mr. Goehring's property.

165. Environmental Recommendation 42 in the final EIS requires that Transco file copies of correspondence with the Pennsylvania Department of Conservation and Natural Resources confirming all Pennsylvania Department of Conservation and Natural Resources -funded properties crossed by the project have been identified and any change in use or transfer of rights for the Pennsylvania Department of Conservation and Natural Resources -funded properties is in compliance with PADCNR's conversion policies. In its January 13, 2017 letter, Transco requested confirmation that this recommendation will only apply to properties funded with federal Land and Water Conservation Funds. We received comments on the draft EIS from the Pennsylvania Department of Conservation and Natural

Resources regarding its policies regarding conversion of property interest acquired with state or federal grants (e.g., Federal Land and Water Conservation Funds, Keystone Recreation, Park and Conservation Funds, and Snowmobile/All-terrain Vehicle Funds). Environmental Recommendation 42 applies to any Pennsylvania Department of Conservation and Natural Resources -funded property. We include Environmental Recommendation 42 as Environmental Condition 42 in Appendix C of this order.

c. Kenneth Shannon

166. On November 14, 2016, Transco filed Route Deviation M-0431 to avoid a new residence being constructed by Kenneth Shannon. On November 16, 2016, Mr. Shannon filed a comment, recommending that Route Deviation M-0431 be incorporated into the proposed route. On November 21, 2016, Transco filed a revised alignment of Route Deviation M-0431 to avoid affecting another new landowner. In the final EIS, we recommended that Transco incorporate Route Deviation M-0431 that was filed on November 21, 2016. On January 17, 2017, Mr. Shannon identified concerns with the alignment of Route Deviation M-0431 and requested that Transco adopt the alignment of Route Deviation M-0431 that was filed on November 14, 2016 to increase the distance separating the pipeline from his new residence. In order to address the concerns of Mr. Shannon, Environmental Recommendation 16 is revised in Environmental Condition 16 of this order to recommend Transco further assess this route variation in coordination with Mr. Shannon and file with the Commission, for the review and written approval by the Director of OEP, revised alignment sheets and documentation of its landowner consultation regarding the crossing of Mr. Shannon's property.

d. Justin and Susan Cappiello

167. On January 19, 2017, Justin and Susan Cappiello (Cappiellos) filed a comment on the final EIS, clarifying their concerns about the effects of the current pipeline alignment on an Amish family residing on their property. In comments on the draft EIS, the Cappiellos expressed concern that noise levels at the Amish residence (identified as noise sensitive area 1, which is the closest noise sensitive area to the horizontal directional drill entry site on figure 4.11.2-7 in the EIS) will exceed the day-night sound level (L_{dn}) threshold of 55 decibels on the A-weighted scale (dBA) at the residence or will negatively affect the farm animals kept on the property and that, according to the Cappiellos, the family will not be able to temporarily relocate due to the number of family members and farm animals present. The current ambient sound level at the Amish residence is 41.4 dBA $L_{dn.}$ Transco proposes to drill during the day time. However, when Transco pulls back the drill (an action which is not a significant noise source), it may occur at night at certain sites because the pull-back process cannot be interrupted. With implementation of the additional noise mitigation measures proposed by Transco at the Conestoga horizontal directional drill entry site, the anticipated sound level at the Amish residence during horizontal directional drill activities is estimated to be 52.9 dBA L_{dn}, which is below the 55 dBA L_{dn} threshold. Once drilling activities are complete, the ambient sound level at the Amish residence will return to 41.4 dBA $L_{dn.}$ Transco will notify the owners of the properties at the nearby noise sensitive areas in advance of planned nighttime construction activities, advising them that noise-generating equipment may be operated during nighttime hours. Because mitigated noise levels attributable to horizontal directional drills are

anticipated to be below the FERC-sound criterion at any noise sensitive areas, overnight construction, if necessary, is not expected to create significant impacts on surrounding noise sensitive areas. If the noise levels cannot be reduced to target levels, Transco has committed to providing temporary housing or equivalent monetary compensation to the occupants of affected noise sensitive areas in the project area until the construction activities are completed.

168. To further ensure that noise levels are adequately reduced at noise sensitive areas, we are requiring in Environmental Condition 53 that Transco file in its weekly construction status reports the noise measurements from the nearest noise sensitive area for the Central Penn Line North Susquehanna River horizontal directional drill-entry site and the Central Penn Line South Conestoga River horizontal directional drill- entry and exit sites, obtained at the start of drilling operations; any noise mitigation that Transco implemented at the start of drilling operations; and any additional mitigation measures that Transco will implement if the initial noise measurements exceed an L_{dn} of 55 dBA at the nearest noise sensitive area. Due to the noise mitigation measures that Transco will implement and with implementation of Environmental Condition 53, the final EIS concludes, and we agree, that the noise levels at the Amish residence will not exceed the 55-dBA L_{dn} threshold or cause adverse effects on the farm animals kept on the property.[230]

e. Cecilia Daubert

169. On January 20, 2017, Cecilia Daubert filed a comment on the final EIS regarding an abandoned landfill located near Central Penn Line South milepost

[230] Final EIS at 4-250.

66.8 and asked whether Transco will follow the mitigation measures in its Unanticipated Discovery of Contamination Plan. We fully expect Transco to implement the measures in the Unanticipated Discovery of Contamination Plan and applicable state and federal solid waste management regulations if contaminated soils are encountered during construction, as described in the final EIS.[231] In addition, an environmental compliance manager and environmental inspectors, hired by and reporting to Transco, will have overall responsibility for quality assurance and compliance with mitigation measures, other applicable regulatory requirements, and company specifications. Furthermore, Transco has committed to funding a FERC third-party compliance monitoring program during the construction phase of the project. Under this program, a contractor is selected by, managed by, and reports solely to the Commission staff to provide environmental compliance monitoring services.

170. In addition, Ms. Daubert expressed concern that Transco will not give nearby residents adequate notification of construction activities. Environmental Condition 7 of this order requires Transco to provide updated weekly status reports with the Commission, including the construction status of each spread, work planned for the following reporting period, any schedule changes for stream crossings or work in other environmentally sensitive areas, and a description of any landowner/resident complaints that may relate to compliance with the requirements of this order, and the measures taken to satisfy their concerns. In addition, Environmental Condition 9 of this order requires Transco to develop and implement an environmental

[231] *See* sections 2.3.1.5, 4.2.2.6, and 4.8.7 of the final EIS.

complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction and restoration of the right-of-way.

171. Ms. Daubert also recommended that Transco complete water well testing prior to and after construction. Environmental Condition 25 of this order requires Transco to file a Well and Spring Monitoring Plan for the pre- and post-construction monitoring of well yield and water quality of wells within 150 feet of the construction workspace and, in areas of known karst terrain, of wells within 500 feet of the construction workspace.

6. Environmental Analysis Conclusion

172. We have reviewed the information and analysis contained in the final EIS regarding the potential environmental effects of the Atlantic Sunrise Project. Based on our consideration of this information and the discussion above, we agree with the conclusions presented in the final EIS and find that the project, if constructed and operated as described in the application and the final EIS, is an environmentally acceptable action. We are accepting all but one of the environmental recommendations in the final EIS and are including them as conditions in Appendix C to this order.[232]

173. 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 inter-

[232] Recommended Condition 35 in the final EIS is not included in Appendix C of this order because the required information has since been filed.

state 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.[233]

VI. Conclusion

174. The Commission on its own motion received and made part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, and all comments submitted, 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 Atlantic Sunrise Project, as described and conditioned herein, and as more fully described in the application as supplemented.

(B) A certificate of public convenience and necessity is issued under section 7(c) of the NGA authorizing Transco to lease from Meade, as described more fully in the body of this order and in the application.

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

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[233] *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 proposed Atlantic Sunrise Project being constructed and made available for service within 3 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, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

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

(4) Transco's execution of firm contracts for volumes and service terms equivalent to those in its precedent agreements, prior to the commencement of construction.

(D) Transco is required to maintain separate accounting and reporting for the lease facilities, including separate accounting of the fuel costs due to compression, as explained in the body of this order, in a manner to comply with the requirements of section 154.309 of the Commission's regulations.

(E) Transco's initial incremental reservation charge under Rate Schedule FT as recalculated for the project to reflect the removal of variable costs is approved, as discussed above.

(F) Transco is required to charge its generally applicable Rate Schedule FT Zones 4, 5 and 6, commodity charge as part of its initial recourse rate.

(G) Transco's request for use of system fuel retention and electric power rates is approved.

(H) Transco shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by

other federal, state, or local agencies on the same day that such agency notifies Transco. Transco shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

By the Commission.

(SEAL)

Kimberly D. Bose,
Secretary.

Appendix A

List of Timely Intervenors

Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc.

Alabama Gas Corporation

Daryl L. Alger

Allegheny Defense Project

Township of Annville, Pennsylvania

Atmos Energy Marketing LLC

Henry M. Berger

Johan E. Berger

Lorrie and Bill Bernoski

Thomas Byron

Cabot Oil & Gas Corporation

Calpine Energy Services, L.P.

Chevron USA Inc.

Chief Oil & Gas LLC

Clean Air Council

Dennis M. College

Columbia Gas of Virginia, Inc.

Conestoga Community Group

ConocoPhillips Company

Consolidated Edison Company of New York, Inc.

Delaware Riverkeeper Network

Megan Detter

John and Linda Dietrichson

Duke Energy Carolinas, LLC

Duke Energy Florida, Inc.

Duke Energy Progress, Inc.

Ralph Duquette

Exelon Corporation

Florida Power & Light Company

Eileen Gibson

Reaves F. Goehring, III

John Timothy Gross

John E. Ground

John W. and Andrea L. Harrell

Linda Hartung

Dennis Hauenstein

James and Rachel Helper

Gale D. Hess

Stephen and Dorothea Hoffman

Carolyn Hostetter

Cara Longacre Hurst

Kevin L. Hurst

Inflection Energy LLC

Nancy E. Jeffries

Glenda Johnson

Kimberly Kann

Donna Kilgore

Walter and Robyn Kochan

Scott E. Kriner

Deirdre Lally

Lancaster County Conservancy

Lancaster Farmland Trust

Jeffrey Landis

Lebanon Pipeline Awareness

Lebanon Valley College

Lebanon Valley Conservancy

Laura Levy

Richard Lind

Robert H. Lowing

Lutheran Camping Corporation of Central Pennsylvania

Lycoming County Landowners (consisting of 21 landowners: Mary Wolf, Mike Wolf, Joseph L. Carey, Ellen R. Carey, Christine Heim, Joe Heim, Dennis Gilbert, Harold Kropp, Colette Kropp, Stephen Cutter, Margaret Cutter, Gloria Henne, Howard Henne, Russell Reitz, Shirley Purkiss, Walter D. Kilburn, Pat Dangle, Dave Dangle, Karen Lisi, Tony Lisi, Matt Henderson, and Vicki Henderson)

Robin Maguire

Martic SOUL Inc.

MFS, Inc. Carol Mohr

Municipal Gas Authority of Georgia (consisting of the following municipalities: Bowman, Buford, Commerce, Covington, Elberton, Hartwell, Lawrenceville, Madison, Monroe, Royston, Social Circle, Sugar Hill, Toccoa, and Winder; Tri-County Natural Gas Company (consisting

of Crawfordville, Greenboro and Union Point); the East Central Alabama Gas District, Alabama; the towns of Wadley and Rockford, Alabama; the Utilities Board of the City of Roanoke, Alabama; Wedowee Water, Sewer & Gas Board, Wedowee, Alabama; and the Maplesville Waterworks and Gas Board, Maplesville, Alabama).

National Fuel Gas Distribution Corporation

National Grid Gas Delivery Companies

Native Preserve and Lands Council

New Jersey Natural Gas Company

John Dewitt Nicholson

NJR Energy Services Company

Sharon K. Olt

Casey Pegg

Philadelphia Gas Works

Piedmont Natural Gas Company, Inc.

Ann K. Pinca

Pipeline Safety Coalition

Jane Popko

PSEG Energy Resources & Trade LLC

Public Service Company of North Carolina

Quittapahilla Watershed Association

Linda Quodomine

Range Resources-Appalachia, LLC

Edward S. Ritz

Elise Kucirka Salahub

John Salahub

Seneca Resources Corporation

Sequent Energy Management, L.P.

William M. Smith

Fred Snyder

Michelle Spitko

South Carolina Electric & Gas Company

South Londonderry Township

John R. Swanson

SWN Energy Services Company, LLC

Eva M. Telesco

Transco Municipal Group (consisting of Alabama cities of Alexander City and Sylacauga; the South Carolina Commissions of Public Works of Greenwood, Greer, and Laurens; the South Carolina cities of Fountain Inn and Union; the Patriots Energy Groups (consisting of the Natural Gas Authorities of Chester, Lancaster, and York Counties, South Carolina), and the North Carolina cities of Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson)

UGI Distribution Companies (consisting of UGI Utilities, Inc. and UGI Penn Natural Gas, Inc.)

Washington Gas Light Company

Joan Weaber

WGL Midstream, Inc.

Dale A. Wilkie

Sondra J. Wolferman

Eric Younkers

John Zerbe III and Patti Zerbe

Appendix B

List of Untimely Intervenors

Atlanta Gas Light Company

David N. Bomgardner and Sharon J. Bomgardner

Luke Bunting and Leslie Bunting, jointly

Susan Cappiello and Justin Cappiello

Concerned Landowners Along the Atlantic Sunrise and Energy Justice Network, jointly

County of Lebanon, Pennsylvania

Gary and Michelle Erb

David and Tracy Ferrick

Friends of Nelson

Eileen Gibson

Heartwood

Stephen Hoffman

Lancaster Against Pipelines

Rex Mohr

Geraldine Turner Nesbitt

Pivotal Utility Holdings, Inc.

Linda Quodomine

Follin Smith

Southern Company Services, Inc. (As agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company)

Sierra Club

South Annville Township Supervisors

Virginia Natural Gas, Inc.

Wild Virginia

Appendix C

Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

As recommended in the final environmental impact statement (EIS) and otherwise amended herein, this authorization includes the following conditions. The section number in parentheses at the end of a condition corresponds to the section number in which the measure and related resource impact analysis appears in the final EIS.

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 EIS, 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 has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Atlantic Sunrise Project. This authority shall allow:

a. the modification of conditions of the order; and

b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of 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 (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.

4. The authorized facility location(s) shall be as shown in the EIS, 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 this order. All requests for modifications of environmental conditions of this 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 the Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this 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 Transco's Upland Erosion Control, Revegetation, and Maintenance Plan and/or minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

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

a. implementation of cultural resources mitigation measures;

b. implementation of endangered, threatened, or special concern species mitigation measures;

c. recommendations by state regulatory authorities; and

d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. Within 60 days of the acceptance of the certificate and before construction begins, 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 EIS, and required by this 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 on-site construction and inspection personnel;

c. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;

d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;

e. the location and dates of the environmental compliance training and instructions Transco will

give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);

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:

i. the completion of all required surveys and reports;

ii. the environmental compliance training of on-site personnel;

iii. the start of construction; and

iv. the start and completion of restoration.

7. Transco shall employ a team of EIs (i.e., two or more or as may be established by the Director of OEP) per construction spread. The EI(s) shall be:

a. responsible for monitoring and ensuring compliance with all mitigation measures required by this 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 this 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 this 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, with copies provided to the appropriate Pennsylvania Department of Environmental Protection (PADEP) representative, on a weekly 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 and state authorizations;

b. the construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;

c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Federal Energy Regulatory Commission [FERC or 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, and their cost;

e. the effectiveness of all corrective actions implemented;

f. a description of any landowner/resident complaints that may relate to compliance with the requirements of this 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 shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. Prior to construction, Transco shall mail the complaint procedures to each landowner whose property would be crossed by the project.

a. In its letter to affected landowners, Transco shall:

i. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;

ii. instruct the landowners that if they are not satisfied with the response, they should call Transco's Hotline; the letter should indicate how soon to expect a response; and

iii. instruct the landowners that if they are still not satisfied with the response from Transco's Hotline, they should contact the Commission's Landowner Helpline at 877-337-2237 or at LandownerHelp@ferc.gov.

b. In addition, Transco shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:

i. the identity of the caller and date of the call;

ii. the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;

iii. a description of the problem/concern; and

iv. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.

10. Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities, Transco shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

11. 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.

12. 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 certificate conditions 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.

13. Prior to construction, Transco shall file with the Secretary a revised alignment sheet that incorporates the Kochan Preferred Alternative 1 between mileposts (MP) M-0142 0.1 and M-0142 0.4 into the proposed route. (*Section 3*.3.2)

14. Prior to construction, Transco shall file with the Secretary a revised alignment sheet that incorporates the Byron Reroute along Central Penn Line (CPL) North between MPs 23.3 and 24.1 into the proposed route. *(Section 3.3.2)*

15. Prior to construction across the Byron property, Transco shall develop and file with the Secretary, for review and written approval by the Director of OEP, a schedule for construction and restoration activities on the Byron property that minimizes conflict with the planned public use of the property. Transco shall develop the restoration activities in consultation with the Byrons. *(Section 3.3.2)*

16. Prior to construction, Transco shall further assess the pipeline alignment and workspace requirements in coordination with Mr. Shannon and file with the Secretary, for the review and written approval by the Director of OEP, revised alignment sheets and documentation of its landowner consultation regarding

the crossing of Mr. Shannon's property associated with the revised Route Deviation M-0431 between MPs M-0423 2.8 and M-0423 3.0. *(Section 3.3.2)*

17. Prior to construction, Transco shall file with the Secretary a revised alignment sheet that incorporates the Option A, B, or C valve site location for Alternative 24D. *(Section 3.3.2)*

18. Prior to construction, Transco shall file documentation that it has acquired the necessary easement on tract PA-LA-137_B.000 along the proposed route. In the event that Transco is unsuccessful in acquiring the necessary easement, Transco shall incorporate the Conestoga River Alternative into the proposed route. *(Section 3.3.2)*

19. Prior to construction, Transco shall file with the Secretary a revised alignment sheet that incorporates the Sharon and Russel Olt Option 2 Alternative between MPs 66.9 and M-0196 0.2 into the proposed route. *(Section 3.3.2)*

20. Prior to construction, Transco shall further assess the pipeline alignment and workspace requirements in coordination with Mr. Goehring and file with the Secretary, for the review and written approval by the Director of OEP, revised alignment sheets and documentation of its landowner consultation regarding the crossing of Mr. Goehring's property associated with Route Deviation M-0209. *(Section 3.3.3)*

21. With its Implementation Plan, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a final Abandoned Mine Investigation and Mitigation Plan. The final plan shall include the results of all abandoned mine land investigations, the results of secondary investigations to further characterize potential mine-related features,

and site-specific mitigation and monitoring measures Transco will implement when crossing abandoned mine lands, including measures to manage and dispose of contaminated groundwater. *(Section 4.1.7)*

22. With its Implementation Plan, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a final Karst Investigation and Mitigation Plan. The final plan shall include results of missing karst survey areas and any additional karst features identified through examination of the 1937 to 1942 aerial photography, 2014 Light Detection and Ranging (LiDAR) imagery, and 1999 color infrared imagery. *(Section 4.1.7)*

23. With its Implementation Plan, Transco shall file with the Secretary, for review and written approval by the Director of OEP, an Abandoned Mine Investigation and Mitigation Plan that:

a. identifies methods and surveys completed to define the locations of existing mine fires near the project and the depth and extent of coal seams that could pose a risk to the project facilities;

b. identifies any mitigation measures that Transco will implement to protect the integrity of the pipeline from underground mine fires during the lifetime operation of the project; and

c. provides for revisions to the pipeline route if it is found that pipeline integrity could be compromised anytime during the lifetime operation of the project due to the current and future predicted location of the mine fires. *(Section 4.1.7)*

24. Prior to construction, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a revised table 4.3.1-2 that includes

an updated list of water wells and springs within 150 feet of construction workspaces based on completed surveys. This table shall indicate any water wells and springs that are within 500 feet of construction workspaces in areas of known karst. *(Section 4.3.1.4)*

25. Prior to construction, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a Well and Spring Monitoring Plan for the pre- and post-construction monitoring of well yield and water quality of wells within 150 feet of the construction workspace and, in areas of known karst terrain, of wells within 500 feet of the construction workspace. Within 30 days of placing the project facilities in service, Transco shall file with the Secretary a report describing any complaints it received regarding water well yield or quality, the results of any water quality or yield testing performed, and how each complaint was resolved. *(Section 4.3.1.7)*

26. Prior to construction, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a notification plan developed in consultation with surface water intake operators. The notification plan shall identify the specific points of contact and procedures that Transco will implement in the event of an inadvertent release of hazardous materials within 3 miles upstream of a surface water intake or within Zone A source water protection areas. *(Section 4.3.2.6)*

27. Prior to construction, Transco shall file with the Secretary, and provide to other applicable agencies, a schedule identifying when trenching or blasting will occur within each waterbody greater than 10 feet wide, or within any coldwater fishery. Transco shall revise the schedule as necessary to provide at least 14 days advance notice. Changes within this last 14-day period

must provide for at least 48 hours advance notice. *(Section 4.3.2.6)*

28. In the event that the horizontal directional drill of the Central Penn Line North Susquehanna River, Central Penn Line South Susquehanna River, Conestoga River, or Interstate 80 (I-80)/Little Fishing Creek fails, Transco shall file with the Secretary, for review and written approval by the Director of OEP, final site-specific crossing plans concurrent with its application to the U.S. Army Corps of Engineers for an alternative crossing method. These plans shall include scaled drawings identifying all areas that will be disturbed by construction and a description of the mitigation measures Transco will implement to minimize effects on water quality and recreational boating. In addition, a scour analysis shall be conducted for each crossing and filed concurrently with the site-specific crossing plan. *(Section 4.3.2.6)*

29. With its Implementation Plan, Transco shall file with the Secretary additional justification for the additional temporary workspace associated with the waterbodies identified in bold in table K-5 in appendix K of the EIS. *(Section 4.3.2.6)*

30. With its Implementation Plan, Transco shall file with the Secretary additional justification for the additional temporary workspace associated with the wetlands identified in bold in table L-2 in appendix L of the EIS. *(Section 4.4.5)*

31. Prior to construction, Transco shall file with the Secretary a final copy of the Permittee-Responsible Mitigation Plan, including any comments and required approvals from the U.S. Army Corps of Engineers and the PADEP. The plan shall designate wetland seed

mixes to be used and which agency recommended them. *(Section 4.4.6)*

32. Prior to construction, Transco shall file with the Secretary, for review and written approval by the Director of OEP, complete results of noxious weed surveys and a final Noxious and Invasive Plant Management Plan. The final Noxious and Invasive Plant Management Plan shall be revised to include mitigation measures to prevent forest disease spread from the construction corridor. *(Section 4.5.4)*

33. Prior to construction of project facilities in Pennsylvania, Transco shall file with the Secretary all documentation of its correspondence with the Pennsylvania Game Commission and the Pennsylvania Department of Conservation and Natural Resources and any avoidance or mitigation measures developed with these agencies regarding the State Game Land and Sproul State Forest crossings. *(Section 4.6.1.2)*

34. With its Implementation Plan, Transco shall file with the Secretary, for review and written approval by the Director of OEP, its memorandum of understanding with the U.S. Fish and Wildlife Service (FWS) regarding the voluntary conservation measures that Transco will provide to offset the removal of upland forest and indirect impacts on interior forests. *(Section 4.6.1.3)*

35. With its Implementation Plan, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a complete set of site-specific residential construction plans for all project facilities. For all residences located within 10 feet of the construction work area, the plans shall be revised to either: (1) modify the construction work area so that it is not closer than 10 feet to a residence, or (2) provide

site-specific justification, including documentation of landowner or resident concurrence with the plan, for the use of any construction workspace within 10 feet of a residence. *(Section 4.8.3.1)*

36. Prior to construction across the commercial property at 1010 Susquehannock Drive near Central Penn Line South MPs 2.0 and 2.1, Transco shall file with the Secretary, for review and approval by the Director of OEP, a site-specific plan for minimizing impacts on the commercial structures, stormwater management facilities, and planned future warehouse expansion on the property, including documentation of consultation with the owner. *(Section 4.8.3.1)*

37. Prior to construction across the Justin and Susan Cappiello property, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a site-specific plan for minimizing construction impacts on the Cappiello's newly constructed barn including documentation of consultation with the landowner. *(Section 4.8.3.1)*

38. With its Implementation Plan, Transco shall file with the Secretary the final results of consultations with the landowner/developer of the Eastern Land and Resources Corporation commercial and residential development, including any project modifications or mitigation measures Transco will implement to minimize impacts on the Eastern Land and Resources Corporation development. *(Section 4.8.3.2)*

39. Prior to construction across the McCallum property, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a plan to minimize impacts on the market garden and previously unidentified greenhouse structure. *(Section 4.8.4)*

40. Prior to construction, Transco shall file with the Secretary, for review and written approval by the Director of OEP, an organic certification mitigation plan developed in consultation with Pennsylvania Certified Organic to ensure organic certification is maintained on the organic farms crossed by the project. The plan shall include:

a. specific mitigation measures to be implemented to maintain certification during and after construction of the project;

b. a plan for addressing complaints from landowners regarding loss of certification during and after construction, including measures to facilitate reinstatement of certification or to compensate the landowner if certification is lost or canceled; and

c. copies of consultations with Pennsylvania Certified Organic. *(Section 4.8.4.1)*

41. With its Implementation Plan, Transco shall file copies of correspondence with the Pennsylvania Department of Conservation and Natural Resources confirming all Pennsylvania Department of Conservation and Natural Resources -funded properties crossed by the project have been identified and any change in use or transfer of rights for the Pennsylvania Department of Conservation and Natural Resources -funded properties is in compliance with Pennsylvania Department of Conservation and Natural Resources' conversion policies. *(Section 4.8.6.1)*

42. With its Implementation Plan, Transco shall file with the Secretary final site-specific crossing plans for each of the recreation and special interest areas listed as being crossed or otherwise affected in table 4.8.6-1. The site-specific crossing plans shall include, as applicable:

a. site-specific timing restrictions;

b. proposed closure details and notifications (e.g., reroutes, signage, public notices);

c. specific safety measures; and/or

d. other mitigation Transco will implement to minimize effects on the recreation areas and their users during construction and operation of the project.

In addition, the site-specific crossing plan for State Game Land 206 shall include specific safety measures Transco will implement during work activities in the vicinity of the on-site shooting range. *(Section 4.8.6.1)*

43. Transco shall notify the U.S. Department of Agriculture's Natural Resources Conservation Service (Conservation Service) at least 1 week prior to the start of construction activities within each Conservation Service -held easement to facilitate Conservation Service monitoring of construction and restoration of disturbed areas within the Conservation Service -held easements. The Conservation Service notifications shall be documented in Transco's weekly status reports. *(Section 4.8.6.2)*

44. With its Implementation Plan, Transco shall file with the Secretary a revised table 4.8.6-3 that includes any newly identified conservation easements including copies of correspondence documenting any mitigation measures Transco will implement based on its consultation with the administering agency or agencies. *(Section 4.8.6.2)*

45. Prior to construction, Transco shall file with the Secretary copies of the Aids to Navigation Plans, approved by the Pennsylvania Fish and Boat

Commission, for each of the waterbody crossings listed in table 4.8.6-4. *(Section 4.8.6.3)*

46. Transco shall file with the Secretary reports describing any documented complaints from a homeowner that a homeowner's insurance policy was cancelled, voided, or amended due directly to the grant of the pipeline right-of-way or installation of the pipeline and/or that the premium for the homeowner's insurance increased materially and directly as a result of the grant of the pipeline right-of-way or installation of the pipeline. The reports shall also identify how Transco has mitigated the impact. During construction, these reports shall be included in Transco's weekly status reports (see recommendation 8) and in quarterly reports for a 2-year period following in-service of the project. *(Section 4.9.6)*

47. Transco shall not begin construction of facilities in Pennsylvania or use of staging, storage, or temporary work areas and new or to-be-improved access roads until:

a. Transco completes the remaining cultural resources surveys and files with the Secretary all remaining cultural resources survey and evaluation reports, any necessary avoidance or treatment plans that outline measures to avoid, reduce, and/or mitigate, effects on historic properties, and the Pennsylvania State Historic Preservation Office's comments on the reports and plans;

b. Transco completes the remaining geomorphological investigation of the west bank of Swatara Creek and files the report with the Secretary;

c. the Advisory Council of Historic Preservation is provided an opportunity to comment on the

undertaking if historic properties would be adversely affected; and

d. the Commission staff reviews and the Director of OEP approves all cultural resources survey reports and plans, and notifies Transco in writing that treatment plans/mitigation measures may be implemented or construction may proceed.

All material filed with the Secretary containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE." *(Section 4.10.5)*

48. Prior to construction in Lancaster County, Transco shall file with the Secretary final evidence of an enforceable transfer of oxides of nitrogen (NO_X) emission reduction credits to offset the estimated 2017 NO_X construction emissions for Lancaster County, Pennsylvania that exceed General Conformity thresholds. Transco must notify Commission staff if the transfer does not execute or significant changes to the project require a reevaluation of General Conformity. *(Section 4.11.1.2)*

49. Prior to construction, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a Construction Emission Plan identifying how Transco would track its construction schedule for each component of the project within the Lebanon County $PM_{2.5}$[234] Nonattainment Area and ensure that construction emissions of NO_X would remain below the General Conformity applicability threshold.

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[234] PM2.5 stands for inhalable particulate matter with an aerodynamic diameter less than or equal to 2.5 microns.

If a change in the construction schedule or Project results in emissions of NO_X greater than the General Conformity applicability threshold of 100 tons per year, Transco shall provide and document all mitigation measures it will implement to comply with the General Conformity regulations at 40 C.F.R. § 93.158. *(Section 4.11.1.2)*

50. Transco shall review the Northeast Diesel Collaborative's recommendations for reducing diesel emissions from new on- and off-road construction equipment and indicate in the project's Implementation Plan what measures it would implement. *(Section 4.11.1.3)*

51. Transco shall continue to operate the existing air quality monitors at Compressor Stations 517, 520, and 190 for carbon dioxide (CO_2), nitrogen dioxide (NO_2), inhalable particulate matter with an aerodynamic diameter less than or equal to10 microns (PM_{10}) and 2.5 microns ($PM_{2.5}$), and sulfur dioxide (SO_2) for a period of 3 years after the newly modified facilities begin operation. Transco shall file quarterly air quality monitoring reports with the Secretary. In the event that the air quality monitoring shows a violation of the National Ambient Air Quality Standards, Transco shall immediately contact the state air quality agency to report the violation and establish a plan of action to correct the violation in accordance with the terms of the facility air permit and applicable state law. *(Section 4.11.1.3)*

52. Prior to construction at the Central Penn Line South I-80/Little Fishing Creek horizontal directional drill at milepost M-0423 3.3, Transco shall file with the Secretary, for review and written approval by the Director of OEP, the results of the noise impact assessment for the nearest noise-sensitive areas within a 0.5-mile radius of the horizontal directional

drill- entry and exit points. If the results of the noise impact assessment indicate that the estimated noise attributable to horizontal directional drill-equipment operations would exceed FERC's day-night sound level (L_{dn}) criterion of 55 decibels on the A-weighted scale (dBA) at any of the noise-sensitive areas, Transco shall provide additional information on the mitigation measures, such as sound barriers, that will be implemented to reduce noise levels below 55 dBA. *(Section 4.11.2.2)*

53. Transco shall file in its weekly construction status reports the following information for the Central Penn Line North Susquehanna River horizontal directional drill-entry site and the Central Penn Line South Conestoga River horizontal directional drill-entry and exit sites:

a. the noise measurements from the nearest noise-sensitive area for the Central Penn Line North Susquehanna River horizontal directional drill-entry site and the Central Penn Line South Conestoga River horizontal directional drill-entry and exit sites, obtained at the start of drilling operations;

b. any noise mitigation that Transco implemented at the start of drilling operations; and

c. any additional mitigation measures that Transco will implement if the initial noise measurements exceed an L_{dn} of 55 dBA at the nearest noise-sensitive area. *(Section 4.11.2.3)*

54. Transco shall file a noise survey with the Secretary no later than 60 days after placing the authorized units at Compressor Stations 517 and 190 in service. If a full load condition noise survey is not possible, Transco shall provide an interim survey at the maximum possible horsepower load and provide

the full load survey within 6 months. If the noise attributable to the operation of all of the equipment at Compressor Stations 517 and 190 under interim or full horsepower load conditions exceeds an L_{dn} of 55 dBA at any nearby noise-sensitive areas, Transco shall file a report on what changes are needed and shall install the additional noise controls to meet the level within 1 year of the in-service date. 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. *(Section 4.11.2.3)*

55. Transco shall conduct a noise survey at Compressor Station 520 to verify that the noise from all the equipment operated at full capacity does not exceed the previously existing noise levels that are at or above an L_{dn} of 55 dBA at the nearby noise-sensitive areas. The results of this noise survey shall be filed with the Secretary no later than 60 days after placing the modified units in service. If any of these noise levels are exceeded, Transco shall, within 1 year of the in-service date, implement additional noise control measures to reduce the operating noise level at the noise-sensitive areas to at or below the previously existing noise level. Transco shall confirm compliance with this requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls. *(Section 4.11.2.3)*

56. Transco shall file a noise survey with the Secretary no later than 60 days after placing Compressor Stations 605 and 610 in service. If a full load condition noise survey is not possible, Transco shall provide an interim survey at the maximum possible horsepower load and provide the full load survey within 6 months. If the noise attributable to the

operation of all of the equipment at Compressor Stations 605 and 610 under interim or full horsepower load conditions exceeds an L_{dn} of 55 dBA at any nearby noise-sensitive areas, Transco shall file a report on what changes are needed and shall install the additional noise controls to meet the level within 1 year of the in-service date. 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. *(Section 4.11.2.3)*

APPENDIX G

161 FERC ¶ 61,250

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Docket Nos. CP15-138-001
CP15-138-004

Before Commissioners: Neil Chatterjee, Chairman; Cheryl A. LaFleur and Robert F. Powelson.

Transcontinental Gas Pipe Line Company, LLC

ORDER ON REHEARING

(Issued December 6, 2017)

1. On February 3, 2017, the Commission issued an order under section 7(c) of the Natural Gas Act (NGA)[1] authorizing Transcontinental Gas Pipe Line Company, LLC (Transco) to construct, lease, and operate its proposed Atlantic Sunrise Project in Pennsylvania, Maryland, Virginia, North Carolina, and South Carolina.[2] The project will include approximately 200 miles of new interstate pipeline and related facilities, the bulk of which will be constructed in Columbia, Susquehanna, Luzerne, Lancaster, Clinton, Lycoming, and Wyoming Counties, Pennsylvania. The project will connect to Transco's existing interstate natural gas pipeline to transport 1.7 million dekatherms (Dth) per day of natural gas from Appalachian supply areas in northeast Pennsylvania to its Station 85 in Alabama, including to markets in Pennsylvania,

[1] 15 U.S.C. § 717f(c) (2012).

[2] *Transcontinental Gas Pipe Line Co., LLC*, 158 FERC ¶ 61,125 (2017) (February 3 Order).

Maryland, Virginia, North Carolina, South Carolina, Georgia, Alabama, and Florida. On May 18, 2017, the Commission approved a certificate amendment to modify the route location.[3]

2. On February 10, 2017, Allegheny Defense Project, Clean Air Council, Concerned Citizens of Lebanon County (Concerned Citizens of Lebanon), Heartwood, Lancaster Against Pipelines, Lebanon Pipeline Awareness, and Sierra Club (collectively, Allegheny) sought rehearing of the February 3 Order. On February 24, 2017, the Accokeek, Mattawoman, and Piscataway Creeks Communities Council Inc. (Accokeek) sought rehearing.

3. On March 6, 2017, the North Carolina Utilities Commission (NCUC) and the New York Public Service Commission (NYPSC) (collectively, State Commissions); the Narragansett Indian Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) (collectively, the Tribes); and several landowners, including: Susan and Justin Cappiello (collectively, the Cappiellos); Stephen and Dorothea Hoffman and Gary and Michelle Erb (collectively, the Hoffman and Erb Landowners); Lynda Like; Blair and Megan Mohn (collectively, the Mohns); Geraldine Nesbitt; and Follin Smith sought rehearing. Also on March 6, Appalachian Mountain Advocates and Sierra Club (collectively, Mountain Advocates) submitted comments on the project.[4] On March 7,

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[3] *Transcontinental Gas Pipe Line Co., LLC*, 159 FERC ¶ 62,181 (2017).

[4] Rule 713(c)(2) of the Commission's Rules of Practice and Procedure requires that a rehearing request include a separate section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph. Any issue not so listed will be deemed waived. 18 C.F.R. § 385.713(c)(2) (2017). Mountain Advocates' comments do not satisfy these

2017, Walter and Robyn Kochan (collectively, the Kochans) and John Timothy Gross separately filed untimely requests for rehearing.[5]

4. Many of the requests for rehearing also sought a stay of the February 3 Order. The Commission denied those stay requests in an order issued on August 31, 2017.[6] On October 2, 2017, Allegheny and Accokeek (together, Intervenors) sought rehearing of the Stay Order.

5. For the reasons discussed below, the requests for rehearing of the February 3 Order and of the Stay Order are dismissed or denied.

I. Procedural Matters

A. Party Status

6. Under section 19(a) of the NGA and Rule 713(b) of our regulations, only a party to a proceeding has standing to request rehearing of a final Commission decision.[7] Any person seeking to intervene to become a party must file a motion to intervene pursuant to Rule 214 of the Commission's rules of Practice and

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requirements and thus we will not treat them as a request for rehearing. Accordingly, we dismiss Mountain Advocates' Filing.

[5] On April 7, 2017, MFS, Inc. d/b/a Eastern Land and Resources Company (EL&RC) filed a request for an order to show cause on Transco's alleged non-compliance with the February 3 Order. EL&RC subsequently withdrew this request on April 11, 2017. *See* Letter from Thomas J. Zagami, Counsel to EL&RC, to Alisa Lykens, Chief, Gas Branch 2, Office of Energy Projects, Federal Energy Regulatory Commission (Apr. 11, 2017).

[6] *Transcontinental Gas Pipe Line Co.*, 160 FERC ¶ 61,042 (2017) (Stay Order).

[7] 15 U.S.C. § 717r(a) (2012); 18 C.F.R. § 385.713(b) (2017).

Procedure.[8] The Concerned Citizens of Lebanon never sought to intervene in this proceeding and thus we must deny their attempt to join in the rehearing request filed by Allegheny.

7. On rehearing, the Mohns contend that their earlier comments submitted during the environmental review process should be construed as requests to intervene and that, as affected landowners, they should be permitted to intervene at this stage to protect their property rights. The Tribes contend that their consultation request under the National Historic Preservation Act is the functional equivalent of a motion to intervene.

8. The earlier filings by the Mohns and the Tribes do not meet the requirements of a motion to intervene. Nowhere in those earlier filings did either the Mohns or the Tribes seek to intervene in this proceeding.[9] And they may not avoid this requirement by joining other intervenors' requests for rehearing.[10]

9. With regard to the Mohns' motion to intervene out-of-time, the Commission has explained that "when late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late

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[8] 18 C.F.R. § 385.214(a)(3) (2017).

[9] Motions to intervene must also state, to the extent known, the position taken by the movant and the basis in fact and law for that position, as well as the movant's interest in sufficient factual detail to demonstrate that the movant has a right to participate conferred by statute or rule, an interest that may be directly affected by the outcome of the proceeding, or that the movant's participation is in the public interest. 18 C.F.R. § 385.214(b)(1) and (2) (2017).

[10] The Mohns joined Follin Smith's rehearing request, and the Tribes joined the rehearing request filed by Geraldine Nesbitt.

intervention may be substantial."[11] In such circumstances, movants bear a higher burden to demonstrate good cause for the granting of late intervention.[12] The Mohns did not explain why they waited to intervene in this proceeding and have not met their burden. Because the Mohns and the Tribes are not parties to this proceeding, they have no standing to seek rehearing of the February 3 Order, and we therefore dismiss the pertinent rehearing requests as to them. We nonetheless note that by answering other intervenors' concerns below, we also address the issues raised by the Concerned Citizens of Lebanon and the Mohns.

B. Untimely Requests for Rehearing

10. Pursuant to section 19(a) of the NGA, an aggrieved party must file a request for rehearing within 30 days after the issuance of the Commission's order.[13] In this case, the deadline to seek rehearing

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[11] *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,193, P 10 (2016).

[12] *See, e.g., Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

[13] 15 U.S.C. §717r(a) (2012) ("Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order"). The Commission has no discretion to extend this deadline. *See, e.g., North Amer. Elec. Reliability Corp.*, 147 FERC ¶ 61,140 (2014) (rejecting untimely request for rehearing); *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) ("The 30-day time requirement of [the analogous provision in the Federal Power Act] is as much a part of the jurisdictional threshold as the mandate to file for a rehearing."); *Boston Gas Co. v. FERC*, 575 F.2d 975, 977-98, 979 (1st Cir. 1978) (describing section 19(a) of the NGA as "a tightly structured and formal

was 5:00 pm U.S. Eastern Time, March 6, 2017.[14] The Kochans and John Timothy Gross filed requests for rehearing after the 5:00 pm deadline on March 6, 2017; therefore, they effectively sought rehearing on March 7, 2017.[15] Because the Kochans and Mr. Gross failed to meet the deadline, their requests must be dismissed as untimely.[16]

C. Certificate Amendment and Nesbitt Request

11. On March 6, 2017, Ms. Nesbitt and the Tribes filed a joint request for rehearing. The request urged the Commission to grant an alternative route to avoid Ms. Nesbitt's land based on alleged Commission violations of the National Historic Preservation Act, the National Environmental Policy Act (NEPA), the Clean Water Act, and Commission regulations.

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provision. Neither the Commission or the courts are given any form of jurisdictional discretion.").

[14] The Commission's regular business hours end at 5:00 PM, U.S. Eastern Time. 18 C.F.R. § 375.101(c) (2017).

[15] Documents received after regular business hours are deemed filed on the next regular business day. 18 C.F.R. § 385.2001(a)(2) (2017).

[16] On July 31, 2017, Mr. Gross filed a motion for leave to answer and answer to Transco's answer to his request for rehearing and motion for stay. In that filing, Mr. Gross attempted to explain why his rehearing request was filed late. The Commission's regulations do not generally permit answers to answers and we reject Mr. Gross's filing. 18 C.F.R. § 385.213(a)(2). Moreover, as noted above, the Commission has no discretion to waive the rehearing time limit. *See, e.g., Tennessee Gas Pipeline Company*, 95 FERC 61,169 (2001) ("Both the Commission and the courts have consistently held that the thirty-day requirement in section 19(a) is a jurisdictional requirement that the Commission does not have the discretion of waiving, even for good cause.").

12. On May 18, 2017, the Commission approved a request by Transco to amend its certificate to modify a 6.48 mile segment of the originally certificated route in Luzerne and Wyoming Counties, Pennsylvania, to address landowner and US Army Corps of Engineers (Army Corps) concerns. The new route, known as Central Penn Line North Alternative 13, avoids Ms. Nesbitt's property. Ms. Nesbitt supported the route amendment.[17]

13. Under section 19(a) of the NGA, only a party that has been aggrieved by a Commission order may file a request for rehearing. To establish aggrievement, a party must demonstrate, among other things, a concrete injury fairly traceable to the Commission's action.[18] Here, because the Commission has already granted the remedy supported by Ms. Nesbitt, we find that she has failed to demonstrate that she remains aggrieved by the February 3 Order. Accordingly, we dismiss Ms. Nesbitt's rehearing request.

II. Discussion

A. Initial Recourse Rates

1. Rehearing Request

14. In granting Transco's requested certificate in the February 3 Order, the Commission accepted, over protest from the State Commissions, Transco's use of a pre-tax return of 15.34 percent in calculating its proposed incremental recourse rates for the Atlantic

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[17] *See* Motion to Intervene of Geraldine Turner Nesbitt in Support of Amendment to Application, filed in Docket No. CP17-212-000 (May 12, 2017).

[18] *See Green Island Power Authority v. FERC*, 577 F.3d 148, 159 (2d Cir. 2009) (construing substantially similar provision of the FPA, 16 U.S.C. § 825*l* (2012)).

Sunrise Project.[19] The Commission also rejected concerns raised by State Commissions regarding Transco's calculation of annual lease payments under its project lease, finding that using costs from the first year of the lease to calculate rates for the | 20-year term was consistent with Commission regulations and precedent, and that the lease arrangement provided benefits to shippers.[20]

15. In their request for rehearing, State Commissions renew their concerns regarding the rate of return used to calculate Transco's incremental recourse rates. They contend that the Commission erred by failing to take into account the significant changes in the financial markets which have occurred since the Commission's approval of a 15.34 percent pre-tax return for Transco, which was the last specified rate of return from Transco's general rate case approved by the Commission under section 4 of the NGA in 2002 and the rate of return used to calculate Transco's incremental recourse rates. State Commissions also seek rehearing of the Commission's decision to accept Transco's lease of capacity based on a single year of cost and revenue. State Commissions contend that such an analysis fails to take into account the depreciation of the leased facilities and cannot support a finding that the lease payments will be less than the equivalent cost of service had Transco constructed the

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[19] February 3 Order, 158 FERC ¶ 61,125 at PP 34-41. Transco proposed to use the same rate of return in calculating proposed recourse rates for its Dalton Expansion Project in Docket No. CP15-117-000 and Virginia Southside Expansion II Project in Docket No. CP15-118-000.

[20] February 3 Order, 158 FERC ¶ 61,125 at P 60.

facilities itself. State Commissions advocate for a life-of-the-lease analysis of the pertinent costs.

16. For the reasons discussed below, we deny the request for rehearing.

2. Commission Determination

a. Rate of Return

17. State Commissions acknowledge that, in the February 3 Order, the Commission applied its established policy in section 7 proceedings of requiring incremental recourse rates to be designed using the rate of return specified in the pipeline's most recent general rate case approved under section 4 of the NGA.[21] If the most recent section 4 rate case involved a settlement that did not specify a rate of return or pre-tax return, we look to the most recent prior rate case that did so specify.[22] State Commissions nevertheless assert that the Commission was arbitrary and capricious and failed to engage in reasoned decision-making because it: (1) failed to protect consumers from excessive rates by permitting Transco to calculate its recourse rates using an excessive pre-tax return,[23] and (2) did not require that the return be calculated based on current market conditions.[24] These arguments were advanced by State Commissions in their initial

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[21] State Commissions Rehearing Request at 14. *See also* February 3 Order, 158 FERC ¶ 61,125 at P 38 (explaining Commission's policy).

[22] *See* February 3 Order, 158 FERC ¶ 61,125 at P 38 n.60 (citing cases).

[23] State Commissions Rehearing Request at 13-18.

[24] *Id*. at 19-21.

pleadings,[25] and fully addressed in the February 3 Order.[26] State Commissions present no new evidence or arguments that warrant reversing the Commission's application of its consistent policy in the February 3 Order, nor have they demonstrated that circumstances have changed such that the policy should no longer apply.

18. In addition to reiterating arguments addressed in the February 3 Order, State Commissions contend on rehearing that the Commission erred in referring to *Atlantic Refining Co. v. Pub. Serv. Comm'n of N.Y.* (*CATCO*),[27] a case regarding the Commission's discretion in section 7 proceedings to approve initial rates that will "hold the line" until just and reasonable rates are adjudicated under sections 4 or 5 of the NGA.[28] According to State Commissions, the cited case is inapplicable because it pre-dates the existence of negotiated rates, and the fact that Transco will need to file an NGA general section 4 rate case by August 31, 2018, fails to protect customers from excessive rates charged before that time. We disagree.

19. Initially, State Commissions fail to explain how the advent of negotiated rates constitutes a "change in circumstance" negating the Commission's discretion to approve initial rates in this section 7 certificate proceeding under the public convenience and necessity standard pending the adjudication of just and reasonable rates in Transco's next NGA general section 4

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[25] *See* State Commissions April 22, 2015 Protest at 9-13; State Commissions May 27, 2015 Answer at 2-5.

[26] February 3 Order, 158 FERC ¶ 61,125 at PP 34-41.

[27] 360 U.S. 378 (1959).

[28] State Commissions Rehearing Request at 20-21.

rate case.[29] In the February 3 Order, the Commission cited *CATCO* to contrast the less rigorous public convenience and necessity standard of review employed under section 7 to assess initial rates for new service or facilities with the just and reasonable standard of review for rate changes under sections 4 and 5.[30] The less exacting standard of review used in a section 7 certificate proceeding is intended to mitigate the delay associated with a full evidentiary rate proceeding, and the Commission has discretion to approve initial rates that will "hold the line" while awaiting the adjudication of just and reasonable rates.[31] State Commissions' observation that *CATCO* was decided before the development of negotiated and recourse rates does not detract from these basic tenets or their applicability in this proceeding. Whether the initial rates in question are recourse rates, serving as a check against the exercise of market power by pipelines with negotiated rate authority, or the rates actually charged to shippers, the Commission retains the discretion to protect the public interest while preventing the delays that can accompany full evidentiary proceedings.

20. The fact that the rates in Transco's next NGA general section 4 rate case will go into effect prospectively does not change this analysis. Indeed, this is always the case.[32] Here, the Commission appropriately

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[29] *Id*. at 20 ("To begin, negotiated rates did not exist in 1959 at the time of this decision. This change in circumstance renders this decision inapposite.").

[30] February 3 Order, 158 FERC ¶ 61,125 at P 39 and n.64 (citing *CATCO*, 360 U.S. at 390).

[31] *Id*. (citing *CATCO*, 360 U.S. at 391-92).

[32] *See CATCO*, 360 U.S. at 389 (noting that new rate changes filed under section 4 become effective upon filing, subject to suspension and the posting of a bond, where required, and that

examined Transco's proposal under the public convenience and necessity standard, applied its consistent policy to accept recourse rates designed using the last Commission-approved rate of return from a NGA general section 4 rate case in which a rate of return was specified in order to calculate the rates, but pointed out that, in any event, parties would have the opportunity to raise concerns regarding Transco's pretax return and other cost of service components in the next NGA general section 4 rate case, to be filed by August 31, 2018.[33] State Commissions have not persuaded us on rehearing to revisit this determination.

b. Lease Payments

21. In the February 3 Order, the Commission accepted a proposed lease arrangement under which the Central Penn line facilities constructed for the Atlantic Sunrise Project would be jointly owned by Transco and Meade Pipeline Co LLC (Meade), with Meade leasing its ownership interest in the facilities to Transco for a primary term of 20 years.[34] As relevant here, the Commission found that the annual amount Transco would pay Meade under the lease (based on fixed lease payments of $7,964,908 per month) was $66,430,118 per year less than the equivalent cost of service that would result if Transco constructed and owned the facilities itself. The Commission thus concluded that the lease arrangement benefited shippers.[35] In so finding, the Commission rejected State Commissions' contention that Transco's analysis of the cost of

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just and reasonable rates fixed in a section 5 proceeding become effective prospectively only).

[33] February 3 Order, 158 FERC ¶ 61,125 at P 40.

[34] *Id*. P 50.

[35] *Id*. P 57.

the lease versus equivalent service on pipeline-owned facilities was deficient because Transco only analyzed cost data for the first year of the lease and did not account for depreciation of the facilities over the 25-year term.[36]

22. On rehearing, State Commissions again argue that the Commission's finding that approval of the lease agreement will reduce the amount shippers will pay under the recourse rate by an estimated $66,430,118 per year is unfounded because the Commission did not take into account depreciation of the facilities that should decrease the cost of service over the life of the lease.[37] State Commissions thus claim that the Commission "ignor[ed] 95% of the life of the lease in its economic analysis" and therefore failed to evaluate all factors bearing on the public interest determination regarding the lease.[38]

23. We deny rehearing. In the February 3 Order, the Commission analyzed the three factors of its lease-approval analysis, and found that the lease arrangement provides a lower rate than if Transco constructed the facilities itself and, as such, benefits shippers.[39] As

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[36] *Id*. PP 58-60. *See* State Commissions April 22, 2015 Protest at 14-15; State Commissions May 27, 2015 Answer at 6-8.

[37] State Commissions Rehearing Request at 21-25.

[38] *Id.* at 25. State Commissions also claim that the Commission's reliance on section 157.14(a)(18)(c)(ii)(a) of the Commission's regulations to approve the lease is misplaced. To clarify, that regulation addresses the support needed for initial rates and we agree that it does not directly address our lease policy. However, as explained in the February 3 Order and herein, the Commission's approval of the lease is consistent with our precedent.

[39] *See* February 3 Order, 158 FERC ¶ 61,125 at P 56 (explaining that "[t]he Commission's practice has been to approve a lease if it finds that: (1) there are benefits from using a lease

the Commission explained, rates are based on a first year cost of service and pipelines are under no obligation to revise their cost of service and associated recourse rates over time to account for depreciation.[40] Moreover, other cost factors could increase, or billing determinants could decrease, that would have the effect of offsetting the impact of depreciation on the cost of service in the future. There is simply no way to predict what the future cost of service or rates for the project would be over the lease term to the extent that Transco constructed and owned all of the project facilities. For these reasons, we reject the State Commissions' assertion that the Commission ignored all factors bearing on the public interest and reaffirm that the lease arrangement provides lower rates and benefits shippers and is consistent with Commission precedent.

B. Public Purpose

1. Rehearing Requests

24. In the February 3 Order, the Commission rejected the Clean Air Council's assertion that Transco must demonstrate that the project is for "public use" in order to exercise eminent domain.[41] The Commission explained that, while the taking must serve a public purpose to satisfy the Takings Clause of the U.S. Constitution,[42] the United States Supreme Court has defined this concept broadly, "reflecting [the court's]

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arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the term of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect existing customers").

[40] *Id.* P 60.

[41] February 3 Order, 158 FERC ¶ 61,125 at PP 66-67.

[42] U.S. CONST. amend. V.

longstanding policy of deference to the legislative judgments in this field."[43] With respect to natural gas pipelines, the Commission explained, Congress has determined the business of transporting and selling natural gas for ultimate distribution to the public to be in the public interest,[44] and has provided that a company that has obtained a certificate of public convenience and necessity may exercise the right of eminent domain.[45]

25. On rehearing, the Hoffman and Erb Landowners, the Cappiellos, Follin Smith, and Lynda Like argue that the Commission erred in finding that the Project serves a "public purpose" for purposes of exercising the right of eminent domain.[46] The Hoffman and Erb

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[43] February 3 Order, 158 FERC ¶ 61,125 at P 67 (quoting *Kelo v. City of New London, Conn.*, 545 U.S. 469, 479-80 (2005) (*Kelo*) (citing *Fallbrook Irrigation Dist. v. Bradley*, 164 U.S. 112, 158-64 (1896)).

[44] 15 U.S.C. § 717(a) (2012).

[45] February 3 Order, 158 FERC ¶ 61,125 at P 67. *See* 15 U.S.C. § 717f(h) ("When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts.").

[46] Hoffman and Erb Landowners Rehearing Request at 2-3, 10-13; Cappiello Rehearing Request at 4-5, 9-12; Smith Rehearing Request at 5, 11-3; Like Rehearing Request at 3, 7-9. Geraldine Nesbitt also included this argument in her joint request for

Landowners further allege that the application of sections 717f(h) and 717r(a) of the NGA and the Commission's Rules of Practice and Procedure, combined with the Commission's practice of issuing tolling orders in response to rehearing requests, deprives landowners of their due process rights under the Fifth and Fourteenth Amendments.[47] Finally, the Cappiellos and Lynda Like assert that the February 3 Order violates the Uniform Relocation Act[48] because the Commission failed to instruct Transco's parent company, Williams Partners Operating LLC (Williams), to provide financial assistance to tenant farmers on their properties who could be displaced by the project.[49]

26. We deny rehearing for the reasons discussed below.

2. Commission Determination

a. Project Need

27. Allegheny and the Hoffman and Erb landowners assert that the Commission placed too much weight on the fact that Transco had secured long-term commitments from shippers as evidence of public need for the project, citing to former Commissioner Bay's

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rehearing, which has been dismissed as moot as discussed above. *See* Nesbitt Rehearing Request at 81-84.

[47] Hoffman and Erb Landowners Rehearing Request at 3-4, 13-16. Other parties advance similar arguments in connection with their motions for stay of the certificate. *See* Allegheny Rehearing Request at 38-39 (asserting that issuance of a tolling order would constitute an effective denial the rehearing requests).

[48] 42 U.S.C. § 4601 (2012).

[49] Cappiello Rehearing Request at 3-4, 7-8; Like Rehearing Request at 3, 6-7.

statement in *National Fuel Gas Supply Corp*.[50] It is well-established, however, that long-term commitments serve as "significant evidence of demand for the project."[51] And the Commission typically does not look behind such agreements to assess shippers' business decisions.[52] The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has confirmed that nothing in the Certificate Policy Statement, nor any precedent construing it, indicates that the Commission must look beyond the market need reflected by the applicant's contracts with shippers.[53] Here, all of the project's proposed capacity has been subscribed under long-term precedent agreements with nine shippers.[54]

28. To the extent these parties argue that the Commission should have independently evaluated the need for the project, we note that, in the February 3 Order, the Commission looked to the comments by three project shippers affirming their need for project

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[50] 158 FERC ¶ 61,145 (2017) (Commissioner Bay, Separate Statement). *See* Allegheny Rehearing Request at 36-38; Hoffman and Erb Landowners Rehearing Request at 11-12.

[51] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,748 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

[52] *See, e.g., Transcontinental Gas Pipe Line Co., LLC*, 157 FERC ¶ 61,095, at P 5 (2016); *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 39 (2016); *Paiute Pipeline Co.*, 151 FERC ¶ 61,132, at P 33 (2015).

[53] *Minisink Residents for Envtl. Pres. and Safety v. FERC*, 762 F.3d 97, 112 n.10 (D.C. Cir. 2014); *see also Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1311 (D.C. Cir. 2015) (rejecting argument that precedent agreements are inadequate to demonstrate market need).

[54] *See* February 3 Order, 158 FERC ¶ 61,125 at P 23.

service.[55] While the parties assert that the Commission should not accept these "self-serving statements from a prime beneficiary of the project,"[56] it would seem that as a pipeline project is intended to serve need for transportation services, statements from those entities actually experiencing the need for such services would be precisely the kind of evidence the Commission should look to. And where, as here, the shippers have backed their words with subscriptions for all of the proposed project's capacity, we generally decline to look beyond the evidence of need demonstrated by those contracts to make an independent determination of the quality of the subscribing shippers' business judgment. Nonetheless, the Commission also analyzed a study by the Institute for Energy Economics and Financial Analysis (IEEFA) submitted by Clean Air Council.[57] The Commission found that while the IEEFA study was general and not directly applicable to the project's proposed market, it did suggest that pipelines like the Atlantic Sunrise Project may serve to aid in the delivery of lower-priced natural

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[55] *See* February 3 Order, 158 FERC ¶ 61,125 at P 30 (citing evidence of demand provided by Southern Company Services, Inc., Seneca Resources Corporation, and Washington Gas Light Company).

[56] *See* Cappiello Rehearing Request at 11-12; Smith Rehearing Request at 13; Like Rehearing Request at 9 (citing *City of Pittsburgh v. FPC*, 237 F.2d 741 (D.C. Cir. 1956); Hoffman and Erb Landowners Rehearing Request at 2, 11 (arguing that FERC failed to "exercise a degree of skepticism in dealing with self-serving statements from a prime beneficiary of the project") (citing *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997); *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 209 (D.C. Cir. 1991) (Buckley, J., dissenting)).

[57] February 3 Order, 158 FERC ¶ 61,125 at PP 26, 28.

gas to higher-priced markets.[58] The Commission further noted that, to the extent that the study showed underutilization of existing capacity in Virginia and North Carolina, Transco proposes to make use of underutilized capacity instead of constructing new pipeline facilities in these states.[59]

29. With respect to arguments premised on the potential export of project gas, our policy does not require shippers to be end-use consumers of natural gas to establish demand for the project, and a project is not deemed speculative simply because it is driven primarily by marketers and producers.[60] The Commission determined that Transco designed its project to meet the growing demand for natural gas in the Mid-Atlantic and southeastern markets and executed precedent agreements for 100 percent of the project's capacity.[61]

b. Constitutional Takings

30. Several landowners assert that the "public interest" referenced in the NGA is distinguishable from finding that the project serves a "public use" sufficient to justify a taking,[62] but that, in any event,

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[58] *Id*. P 28.

[59] *Id*. P 30.

[60] *Id.* P 29 (citing *Maritimes & Northeast Pipeline, L.L.C.*, 87 FERC ¶ 61,061, at 61,241 (1999)).

[61] *Id*.

[62] Hoffman and Erb Landowners Rehearing Request at 2-3, 12-13 (noting that Cabot Oil & Gas Corporation, one the project's major subscribers, has stated that its anticipated pricing for gas transported on the pipeline will be based on the D.C. market area and the Gulf Coast market area and stating that "[t]he fact that 87% of the Project's capacity is subscribed to by four gas production companies that, upon completion of the Project, will have direct access to export facilities, raises serious concerns that the main driver behind the Project is to provide these companies

the project meets neither standard because most of the natural gas to be transported by the project will be exported and not ultimately distributed to the public.[63]

31. As we recently have explained,[64] the Commission itself does not confer eminent domain powers. Under NGA section 7, the Commission has jurisdiction to determine if the construction and operation of proposed interstate pipeline facilities are in the public convenience and necessity. Once the Commission makes that determination and issues a natural gas company a certificate of public convenience and necessity, it is NGA section 7(h) that authorizes that certificate holder to acquire the necessary land or property to construct the approved facilities by exercising the right of eminent domain if it cannot acquire the easement by an agreement with the landowner.[65]

32. As noted above, Congress provided in NGA section 7(h) that a certificate holder was entitled to use

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with access to higher priced markets overseas"); Cappiello Rehearing Request at 11-12 ("[T]he record shows that a 350,000 Dth/day of gas carried along the CPL Line will be exported to Japan, while the remainder will be sold [at] WGL Midstream potentially for export or spot market sales."); Smith Rehearing Request at 12-13; Like Rehearing Request at 8-9. Similarly, Allegheny argues that the precedent agreements fail to establish demand for the project because most of the natural gas to be transported is destined for export. *See* Allegheny Rehearing Request at 37-38.

[63] Cappiello Rehearing Request at 10-11; Smith Rehearing Request at 12-13; Like Rehearing Request at 8.

[64] *Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at P 77 (2017); *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 61 (2017).

[65] 15 U.S.C. § 717f(h) (2012).

eminent domain. Congress did not suggest that there was a further test, beyond the Commission's determination under NGA section 7(c)(e),[66] that a proposed pipeline was required by the public convenience and necessity, such that certain certificated pipelines furthered a public use, and thus were entitled to use eminent domain, while others did not. The Commission has interpreted the section 7(c)(e) public convenience and necessity determination as requiring the Commission to weigh the public benefit of the proposed project against the project's adverse effects.[67] We undertake this balancing through our application of the Certificate Policy Statement criteria, under which we balance the public benefits of a project against the residual adverse effects.[68] Thus, through this balancing process we make findings that support our ultimate conclusion that the public interest is served by the construction of the proposed project.[69]

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[66] 15 U.S.C. § 717f(e) (2012).

[67] As the agency that administers the NGA, and in particular as the agency with expertise in addressing the public convenience and necessity standard in the Act, the Commission's interpretation and implementation of that standard is accorded deference. *See Chevron, USA, Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984); *Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 392 (D.C. Cir. 2017); *Office of Consumers Counsel v. FERC*, 655 F.2d 1132, 1141 (D.C. Cir. 1980); *Total Gas & Power N. Am., Inc. v. FERC*, No. 4:16-1250, 2016 WL 3855865, at *21 (S.D. Tex. July 15, 2016), *aff'd*, 859 F.3d 325 (5th Cir. 2017); *see also MetroPCS Cal., LLC v. FCC*, 644 F.3d 410, 412 (D.C. Cir. 2011) (under Chevron, the Court "giv[es] effect to clear statutory text and defer[s] to an agency's reasonable interpretation of any ambiguity").

[68] Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,747-61,749.

[69] *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 973 (D.C. Cir. 2000) (because the Commission declared that

Accordingly, once a natural gas company obtains a certificate of public convenience and necessity, it may exercise the right of eminent domain in a U.S. District Court or a state court.

33. The Commission, having determined that the Atlantic Sunrise Project is in the public convenience and necessity, was not required to make separate finding that the project serves a "public use" to allow the certificate holder to exercise eminent domain.[70] In short, the Commission's public convenience and necessity finding is equivalent to a "public use" determination.[71] In enacting the NGA, Congress clearly articulated that the transportation and sales of natural gas in interstate commerce for ultimate distribution to the public is in the public interest.[72]

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the subject pipeline would serve the public convenience and necessity, the takings complained of did serve a public purpose); *see also Guardian Pipeline, L.L.C. v. 529.42 Acres of Land*, 210 F. Supp. 2d 971, 974 (N.D. Ill. 2002) (no evidence of public necessity other than the Commission's determination is required).

[70] *See Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042 at P 79; *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 at P 61.

[71] *See Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 973 (D.C. Cir. 2000); *see also*, *e.g.*, *Troy Ltd. v. Renna*, 727 F.2d 287, 301 (3rd Cir. 1984) ("authoriz[ing] an occupation of private property by a common carrier . . . engaged in a classic public utility function" is an "exemplar of a public use"); *E. Tenn. Natural Gas Co. v. Sage*, 361 F.3d 808 (4th Cir. 2004) ("Congress may, as it did in the NGA, grant condemnation power to 'private corporations . . . execut[ing] works in which the public is interested.'") (quoting *Miss. & Rum River Boom Co. v. Patterson*, 98 U.S. 403, 406 (1878)).

[72] 15 U.S.C. § 717(a) (2012) (declaring that the "business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest"). *See also Thatcher v. Tenn. Gas Transmission Co.*, 180 F.2d 644, 647 (5th Cir. 1950), *cert. denied*, 340 U.S. 829 (1950) (explaining that Congress, in

This congressional recognition that natural gas transportation furthers the public interest is consistent with the Supreme Court's emphasis on legislative declarations of public purpose in upholding the power of eminent domain.[73]

34. Through the transportation of natural gas from the project, the public at large will benefit from increased reliability of natural gas supplies. To the extent that natural gas transported by the project is exported, we note that the Department of Energy (DOE) first would need to find that such exportation is not inconsistent with the public interest.[74] Furthermore, upstream natural gas producers will benefit from the project by being able to access additional markets for their product. Therefore, we continue to find that the proposed project is required by the public convenience and necessity.

35. Finally, we dismiss as beyond the scope of this proceeding the Cappiellos' argument that, even if the use of eminent domain is not found to be unconstitutional for the project in general, it should be disallowed

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enacting the NGA, recognized that "vast reserves of natural gas are located in States of our nation distant from other States which have no similar supply, but do have a vital need of the product; and that the only way this natural can be feasibly transported from one State to another is by means of a pipe line.").

[73] *Kelo v. City of New London, Conn.*, 545 U.S. 469, 479-80 (2005) (upholding a state statute that authorized the use of eminent domain to promote economic development); *see also id.* at 480 (noting that without exception the Court has defined the concept of "public purpose" broadly, reflecting the Court's longstanding policy of deference to the legislative judgments in this field).

[74] *See* 15 U.S.C. § 717b(a) (2012); 10 C.F.R. § 590.201 (2017).

for their property because the current route may not be built.[75] The Cappiellos note that approval of a site-specific plan for minimizing construction impacts on the Cappiellos' barn, and amending a restrictive covenant to permit construction must be met before the pipeline can go forward.[76] In the February 3 Order, the Commission found under section 7(c) of the NGA that the public convenience and necessity requires approval of Transco's proposal. Once the Commission has authorized pipeline construction, the Commission does not oversee the acquisition of necessary property rights. Issues related to the acquisition of property rights by a pipeline under the eminent domain provisions of section 7(h) of the NGA are matters for the applicable state or federal court.[77]

c. Due Process

36. On March 13, 2017, consistent with its standard practice, the Commission issued an order in this proceeding granting rehearing for further consideration. Absent this tolling order, the timely rehearing requests in this proceeding would have been deemed denied by operation of law after 30 days.[78] Nevertheless, the Hoffman and Erb Landowners argue that issuance

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[75] Cappiello Rehearing Request at 8-9, 12.

[76] *Id*. at 8, 12. The Cappiellos further represent that they do not intend to sign a letter authorizing Williams to apply for a permit from the Pennsylvania Department of Transportation to use an access road on their property. *Id*. at 8-9.

[77] *Rover Pipeline LLC*, 158 FERC ¶ 61,109 at PP 68, 70 (2017) (explaining that "[t]he Commission does not oversee the acquisition of property rights through eminent domain proceedings").

[78] 18 C.F.R. § 385.713(f) (2017) ("Unless the Commission acts upon a request for rehearing within 30 days after the request is filed, the request is denied.").

of a tolling order in this proceeding, absent a concurrent stay of the effectiveness of the February 3 Order, deprives landowners of a meaningful opportunity for judicial review of the Commission's decision regarding public use and taking of their property.[79]

37. We disagree. The Commission's use of tolling orders has been found to be valid by the courts,[80] and it is well settled that, "[i]n the absence of a stay, the [Commission's] orders are entitled to have administrative operation and effect during the disposition of the proceedings."[81]

38. The Hoffman and Erb Landowners fail to establish that issuance of a tolling order followed by a substantive rehearing order will deprive them of

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[79] Hoffman and Erb Landowners Rehearing Request at 3, 14. Specifically, the Hoffman and Erb Landowners state that the pipeline company may exercise the power of eminent domain once it has obtained a certificate of public convenient and necessity, while landowners cannot seek judicial review of the Commission's determination that the project serves a public purpose until they have filed for rehearing with the Commission, which does not stay the effectiveness of the grant of certificate. *Id*. at 14.

[80] *Del. Riverkeeper Network v. FERC*, 243 F.Supp.3d 141, 146 (D.D.C. 2017) ("Tolling orders have no explicit statutory basis, but have been upheld by the First and Fifth Circuits, as well as by the D.C. Circuit in several unpublished orders."); *Kokajko v. FERC*, 837 F.2d 524, 525 (1st Cir. 1988); *California Co. v. FPC*, 411 F.2d 720 (D.C. Cir. 1969). *See also*, *City of Glendale v. FERC*, No. 03-1261, 2004 WL 180270, at *1 (D.C. Cir. Jan. 22, 2004) ("Nor is there merit to petitioner's contention that this court should treat FERC's orders tolling the period for resolving petitioner's requests for agency rehearing as effectively denying rehearing; the tolling orders do not resolve the rehearing requests but simply extend the time to consider them.").

[81] *Ecee, Inc. v. FPC*, 526 F.2d 1270, 1274 (5th Cir. 1974), *cert. denied,* 429 U.S. 867 (1976) (citing *Jupiter Corp. v. FPC*, 424 F.2d 783, 791 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 937 (1970)).

the chance to be heard "at a meaningful time and in a meaningful manner."[82] The Hoffman and Erb Landowners had notice of, and participated in, the certificate proceeding before the Commission. Thus, their reliance on *Brody v. Vill. Of Port Chester*[83] is misplaced, as that case focused on whether the landowner had received sufficient notice of the commencement of the 30-day period to challenge the public use determination.[84] The Hoffman and Erb Landowners do not argue that they have been deprived of the opportunity to seek review of the February 3 Order. Rather, they assert that the potential *delay* in receiving a substantive order on rehearing will deprive them of their right to judicial review of the public use determination.[85]

39. As the Supreme Court has recognized, "due process is flexible and calls for such procedural protections as the particular situation demands."[86] The courts have recognized the importance of permitting the Commission "to give complete and deliberate consideration" to matters before it, and have rejected arguments that delays in rendering final decisions,

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[82] *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

[83] 434 F.3d 121 (2d Cir. 2005).

[84] *See id*. at 126-27.

[85] *See* Hoffman and Erb Landowners Rehearing Request at 16 (asserting that "the due process rights that the Landowners are guaranteed by the Constitution here require that FERC timely decide the request for rehearing, without issuing a tolling order, or they require FERC to issue a stay while any such tolling order is pending").

[86] *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

within reason, raise due process concerns.[87] Here, the Hoffman and Erb Landowners do not argue that they will not be able to seek review of the February 3 Order, but only that such review must await the Commission's consideration of their requests for rehearing. But "[w]here only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate."[88] In sum, the Hoffman and Erb Landowners fail to show that they have been substantially prejudiced by the Commission following its longstanding procedure of issuing a tolling order while affording the multiple rehearing requests in this proceeding the careful consideration they are due.[89]

d. Uniform Relocation Act

40. The Cappiellos and Lynda Like argue, for the first time on rehearing, that the February 3 Order violates the Uniform Relocation Assistance and Real

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[87] *See Kokajko v. FERC*, 837 F.2d 524 (1st Cir. 1988) (rejecting claim that due process was violated when a final rehearing order had not been issued by the Commission five years after the filing of a complaint).

[88] *Phillips v. Internal Revenue Comm'r*, 283 U.S. 589, 596-97 (1931). *See also Council of & for the Blind of Delaware Cty. Valley, Inc. v. Regan*, 709 F.2d 1521, 1533-34 (D.C. Cir. 1983) ("In order to state a legally cognizable constitutional claim, appellants must allege more than the deprivation of the *expectation* that the agency will carry out its duties.") (emphasis in original); *see also Polk v. Kramarsky*, 711 F.2d 505, 508-09 (2d Cir. 1983) (plaintiff's property right, while delayed, was not extinguished, and that no deprivation of property interest occurred).

[89] *Arthur Murray Studio of Washington, Inc. v. F.T.C.*, 458 F.2d 622 (5th Cir. 1972) (showing of substantial prejudice is required to make a case of denial of procedural due process in administrative proceedings).

Property Acquisitions Policies for Federal and Federally Assisted Programs Act (Uniform Relocation Act)[90] because the Commission did not direct Transco's parent company, Williams, to provide for payments to tenants on the Cappiello and Like properties who may be displaced by construction of the pipeline.[91] As a rule, we reject requests for rehearing that raise a novel issue, unless we find that the issue could not have been previously presented.[92]

41. Even if we were to consider the merits of this argument, we would reject it. Section 4622(a) of the Uniform Relocation Act provides for the payment to "displaced persons" of reasonable expenses for moving and reestablishing a business or farm.[93] There is no

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[90] 42 U.S.C. §§ 4601 *et seq*. (2012).

[91] Cappiello Rehearing Request at 7-8; Like Rehearing Request at 6-7.

[92] *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 250 (2016) (explaining that novel issues raised on rehearing are rejected "because our regulations preclude other parties from responding to a request for rehearing and such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision") (internal quotations omitted); *Baltimore Gas & Electric Co*., 91 FERC ¶ 61,270, at 61,922 (2000) ("we look with disfavor on parties raising issues that should have been raised earlier. Such behavior is disruptive to the administrative process because it has the effect of a moving target for parties seeking a final administrative decision.").

[93] "Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of--

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

directive relating to the Uniform Relocation Act in the February 3 Order because the Act does not apply at this point in NGA section 7(c) proceedings. To the extent the use of eminent domain proves necessary, it would be the natural gas company, not the Commission, that would be the "displacing agency" for the purposes of the Uniform Relocation Act.[94] And, the compensation requirements generally do not apply until the party has been "displaced," i.e., moved from the property and filed a claim for reimbursement.[95] Accordingly, the Cappiellos and Ms. Like fail to establish that the Commission should have included

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(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;

(3) actual reasonable expenses in searching for a replacement business or farm; and

(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed $25,000, as adjusted by regulation, in accordance with section 4633(d) of this title."

42 U.S.C. § 4622(a) (2012).

[94] Section 4601(11) defines "displacing agency" as "any Federal agency carrying out a program or project . . . which causes a person to be a displaced person." As defined in section 4601(1), "Federal agency" includes "any person who has the authority to acquire property by eminent domain under Federal law." *See Tenn. Gas Pipeline Co. v. New England Power, C.T.L., Inc*., 6 F.Supp.2d 102, 105 (D. Mass. 1998) (noting that pipeline in possession of a certificate of public convenience and necessity under the NGA would be the "federal agency" for purposes of the Uniform Relocation Assistance Act.).

[95] *Tenn. Gas Pipeline Co.*, 6 F.Supp.2d at 105 (finding that a party who had not yet left the premises was not entitled to prepayment of relocation expenses).

any directives regarding the Uniform Relocation Act in the February 3 Order.

C. Environmental Analysis

1. Certificate Environmental Conditions

a. Rehearing Requests

42. Allegheny, Accokeek, the Hoffman and Erb Landowners, and Follin Smith assert that the February 3 Order granting a conditional certificate violates NEPA and Commission regulations. Citing Commission regulations requiring all federal agencies to issue final permits within 90 days after issuing a final Environmental Impact Statement (EIS), Follin Smith claims that the Commission acted too "hasty" in issuing a certificate conditioned on the Army Corps' Clean Water Act section 404 permit before that period elapsed.[96] Accokeek and the Hoffman and Erb Landowners join Allegheny's request by arguing that the February 3 Order's environmental conditions violated the Council on Environmental Quality's (CEQ) regulations requiring that environmental information be publicly available before decisions are made and actions taken.[97] Allegheny contends that the Commission should have supplemented the EIS because the mitigation plans required by these conditions constitute substantial changes from the original environmental analysis.

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[96] Smith Rehearing Request at 10 (citing 18 C.F.R. § 157.22) (2017).

[97] Allegheny Rehearing Request at 7 (citing 40 C.F.R. § 1500.1(b), 18 C.F.R. 380.11(a) (2017)).

b. Commission Determination

i. Coordination of Federal Authorizations

43. We reject the claim that the Commission violated its own regulations by issuing a certificate conditioned on the Army Corps' section 404 permit. The regulation cited by Follin Smith establishes a 90-day time limit, not a 90-day waiting period, for federal approvals.[98] Nor is there any requirement that the Commission not act until that time period has lapsed. The courts have consistently affirmed the Commission's practice of issuing conditional certificates.[99]

ii. Conditional Authorization

44. The Commission also complied with NEPA when it conditioned its approval on compliance with environmental conditions. Of the 56 environmental conditions included in the certificate order, Allegheny alleges that 35 conditions will require additional

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[98] 18 C.F.R. § 157.22 ("a final decision on a request for a Federal authorization is due no later than 90 days after the Commission issues its final environmental document, unless a schedule is otherwise established by Federal law").

[99] *See Del. Riverkeeper Network v. FERC*, 857 F.3d at 399 (upholding Commission's approval of a natural gas project conditioned on securing state certification under section 401 of the Clean Water Act); *see also Myersville*, 783 F.3d at 1320-21 (upholding FERC's conditional approval of a natural gas facility construction project where FERC conditioned its approval on the applicant securing a required federal Clean Air Act air quality permit from the state); *Del. Dep't. of Nat. Res. & Envtl. Control v. FERC*, 558 F.3d 575, 578-79 (D.C. Cir. 2009) (holding Delaware suffered no concrete injury from FERC's conditional approval of a natural gas terminal construction despite statutes requiring states' prior approval because FERC conditioned its approval of construction on the states' prior approval).

information and therefore additional NEPA analysis. In particular, Allegheny focuses on environmental conditions 21 and 23, which together direct Transco to submit a final *Abandoned Mine Investigation and Mitigation Plan* (Mine Fire Plan) to protect the pipeline from potential underground mine fire migration during operations. According to Allegheny, this alleged new information should have been subjected to additional NEPA analysis.

45. When a federal agency determines that a licensee must mitigate potential impacts, NEPA does not require a "complete mitigation plan" that is "actually formulated and adopted" when the EIS is issued.[100]

46. The Commission properly analyzed in the final EIS the potential environmental impacts associated with environmental conditions and then went beyond NEPA's mandate by conditioning the certificate on this additional mitigation. For example, the final EIS analyzed Transco's submitted Mine Fire Plan, which showed that the project would not cross an active mine fire, but would be within three miles of three active fires.[101] Although nothing suggested that these fires would migrate, the final EIS recommended that Transco update its Mine Fire Plan to include mitigation measures to guard against any migration in the future.[102] We disagree that a supplemental EIS is necessary to review the plan. Such supplemental analysis is only required if "there remains 'major Federal actio[n]' to occur, and if the new information will affect the quality

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[100] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 333 (1989).

[101] December 2016 Final Environmental Impact Statement for the Atlantic Sunrise Project (Final EIS) at 4-25.

[102] *Id.* at 4-30.

of the human environment in a significant manner or to a significant extent not already considered."[103] That is not the case here.

47. The other environmental conditions of concern to Allegheny were also proper. These conditions – environmental mitigation, ensuring other federal approvals have been met, and finalizing workspace plans once property has been acquired – must be completed before the Commission will authorize construction.[104] All environmental impacts associated with these conditions were analyzed in the final EIS. We see no evidence suggesting that these environmental conditions, once fulfilled, demanded additional analysis pursuant to NEPA.

2. Project Scope and Alternatives

a. Rehearing Requests

48. Accokeek and the Hoffman and Erb Landowners join Allegheny's claim that the Commission failed to properly identify or evaluate the project's purpose and need, and therefore, failed to evaluate a reasonable range of alternatives. Allegheny claims the final EIS failed to even identify the project's purpose and need, pointing to a statement in the EIS that the Commission "will not determine whether the need for

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[103] *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 361 (1989).

[104] For example, these conditions include requirements that Transco: perform post-construction noise surveys to ensure that operation noise levels at the compressor stations meet the Commission's noise criterion (condition numbers 53 - 56); finalize and file alignment and workspace requirements (conditions 4, 5); finalize and file an implementation plan for workspace monitoring; and show that all other necessary federal authorizations have been obtained (condition 6). February 3 Order, 158 FERC ¶ 61,125.

the Project exists" as part of the NEPA process, noting that "this will later be determined by the Commission [under section 7 of the NGA]."[105] Allegheny also claims that the Commission unreasonably narrowed its alternatives analysis by excluding generation of electricity from renewable energy sources and conservation. Allegheny alleges that the Commission excluded these alternatives because other agencies and states regulate these resources. We disagree.

b. Commission Determination

i. Purpose and Need

49. Contrary to Allegheny's claim, the final EIS explains that the purpose of the project was to provide enhanced access to Marcellus Shale gas supplies and incremental, firm natural gas transportation capacity between Marcellus Shale producing areas and Transco's existing markets.[106] The statement relied upon by Allegheny was intended to advise that the determination of a project's purpose under NEPA differs from the Commission's determination of need under the public convenience and necessity standard of section 7(c) of the NGA. As discussed above, when determining whether a project is in the public convenience and necessity, the Commission examines several different

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[105] Allegheny Rehearing at 9 (citing Final EIS at 1-2).

[106] To the extent Allegheny argues that the project purpose and need statement should be broader, we note that when an agency is tasked to decide whether to adopt a private applicant's proposal, and if so, to what degree, a reasonable range of alternatives to the proposal includes rejecting the proposal to adopting it to varying degrees or with modification. *See Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 72-74 (D.C. Cir. 2011).

factors when analyzing a project's market need before balancing public benefits against project impacts.

ii. Alternatives

50. Under NEPA, alternatives are reasonable if they can feasibly achieve the project's aims.[107] The final EIS properly considered and rejected commenters' requests for renewable energy and energy conservation alternatives because neither would meet project objectives.[108] Although the EIS noted that renewable energy and energy conservation could potentially provide equivalent amounts of energy, neither were transportation alternatives and thus would not meet the project's objectives. Moreover, renewable energy and energy conservation measures could not provide additional natural gas supplies for residential and commercial uses, including heating and cooking, without extensive conversion of existing systems to electric-based systems. As the final EIS explained, "because the purpose of the Project is to transport natural gas, and the generation of electricity from renewable energy sources or the gains realized from increased energy efficiency and conservation are not

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[107] *See, e.g., Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1066-67 (9th Cir. 1998) (stating that while agencies are afforded "considerable discretion to define the purpose and need of a project," agencies' definitions will be evaluated under the rule of reason.). *See also City of Alexandria v. Slater*, 198 F.3d 862, 867 (D.C. Cir. 1999); 43 C.F.R. § 46.420(b) (2017) (defining "reasonable alternatives" as those alternatives "that are technically and economically practical or feasible and meet the purpose and need of the proposed action").

[108] Final EIS at 3-2.

transportation alternatives, they are not considered or evaluated further in this analysis."[109]

51. Allegheny cites the final EIS for the Constitution Pipeline Project as an example of where the Commission did consider these renewable energy and energy conservation alternatives. But, as is the case here, those alternatives were rejected in the Constitution proceeding because they would not meet project objectives.[110]

3. Segmentation

a. Rehearing Requests

52. Allegheny, the Hoffman and Erb Landowners, and Accokeek claim that the Commission impermissibly segmented the environmental analysis for the Atlantic Sunrise Project from four other purportedly interdependent pipeline projects: Transco's Hillabee Expansion Project (CP15-16-000); American Midstream's Magnolia Extension Project; Transco's Rock Springs Expansion Project (CP14-504-000); and Transco's Northeast Supply Enhancement Project (CP17-101-000).

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[109] *Id*.

[110] Final EIS for the Constitution Pipeline and Wright Interconnect Projects, Docket Nos. CP13-499-000, CP13-502-000 (Oct. 2014) (Constitution EIS), at 3-4 to 3-5, 3-7 to 3-13. The Constitution EIS explained that gains in energy efficiency would only occur on a much longer time-line than the shippers' contracted service and would not be expected to eliminate the increasing demand for energy or natural gas in New England. The Constitution EIS also concluded that renewable resources would not meet overall anticipated consumer needs and would not be completely interchangeable with natural gas.

b. Commission Determination

53. Segmentation refers to the requirement that an agency must consider other connected and cumulative actions, and may consider similar actions, in a single environmental document to "prevent agencies from dividing one project into multiple individual actions" with less significant environmental effects.[111] Connected actions include actions that: (1) automatically trigger other actions, which may require an EIS; (2) cannot or will not proceed without previous or simultaneous actions; (3) are interdependent parts of a larger action and depend on the larger action for their justification.[112] Such actions must be proposed or pending at the same time.[113] The Commission is not required to consider in its NEPA analysis other potential projects for which the project proponent has not yet filed an application, or where construction of a project is not underway.[114]

54. In evaluating whether connected actions are improperly segmented, courts apply a "substantial independent utility" test. The test asks "whether one project will serve a significant purpose even if a second related project is not built."[115] For proposals that

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[111] *Myersville*, 783 F.3d at 1326 (Court approved FERC's determination that, although a Dominion-owned pipeline project's excess capacity may be used to move gas to the Cove Point terminal for export, the projects are "unrelated" for purposes of NEPA).

[112] 40 C.F.R. § 1508.25(a)(1)(i)-(iii) (2017).

[113] 40 C.F.R. §1508.25 (a)(1) - (2) (2017) (defining connected and cumulative actions).

[114] *See Minisink*, 762 F.3d at 113, n.11.

[115] *Coal. 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

connect to or build upon an existing infrastructure network, this standard distinguishes between those proposals that are separately useful and those that are not. 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."[116]

55. Allegheny's concerns about the Hillabee Expansion Project and the Magnolia Extension Project were raised well outside the EIS scoping and comment periods.[117] Commenters should raise concerns about the scope of the project during these periods. In any event, as discussed below, the Commission did not segment from its environmental analysis either project.

56. Allegheny claims that the Hillabee Expansion, which is a component of the Southeast Market Expansion Project, relies on the Atlantic Sunrise Project to deliver Marcellus shale gas because both projects use Transco's Station 85 hub in Alabama. Although Atlantic Sunrise Project delivers to, and the Hillabee Expansion can receive natural gas from, the Station 85 hub, the projects are not interdependent. Transco's Station 85 hub consists of the zone 4a and zone 4 pooling points connecting several interstate pipelines—including Transco's mainline, Sabal Trail's

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whether one project "can stand alone without requiring construction of the other [projects] either in terms of the facilities required or profitability").

[116] *Coal. on Sensible Transp., Inc. v Dole*, 826 F.2d at 69.

[117] *See Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 764 (2004) ("Persons challenging an agency's compliance with NEPA must 'structure their participation so that it . . . alerts the agency to the [parties'] position and contentions,' in order to allow the agency to give the issue meaningful consideration.").

leased Hillabee Expansion, Midcontinent Express Pipeline, LLC, and Gulf South Pipeline Co., LP—as well as intrastate pipelines. The existing Station 85 hub already has capacity to deliver more gas than the Hillabee Expansion could accept. This is unlike the circumstances in *Delaware Riverkeeper Network v. FERC*, where 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.[118] Such factors are absent here when the Hillabee Expansion will be able to receive natural gas from a number of sources and does not rely on the Atlantic Sunrise Project to move forward.

57. Because no pipeline has filed an application with the Commission for the Magnolia Extension Project, the Commission had no basis to evaluate the Magnolia Extension in the context of this proceeding.

58. We also dismiss Allegheny's claims relating to the Rock Springs Expansion Project, as they were raised for the first time on rehearing. The Commission looks with disfavor on parties raising issues for the first time on rehearing that should have been raised earlier, particularly during NEPA scoping[119] in part,

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[118] *Del. Riverkeeper Network v. FERC,* 753 F.3d 1304, 1316 (D.C. Cir. 2014).

[119] *Baltimore Gas & Elec. Co.*, 91 FERC ¶ 61,270, at 61,922 (2000) ("We look with disfavor on parties raising issues that should have been raised earlier. Such behavior is disruptive to the administrative process because it has the effect of a moving target for parties seeking a final administrative decision.").

because other parties are not permitted to respond to requests for rehearing.[120]

59. But, again, even if we were to consider the merits of Allegheny's request, we would reject it. The Rock Springs Expansion Project was placed into service on August 1, 2016, and provides service from Transco's system in Lancaster County, Pennsylvania, to Old Dominion Electric Cooperative's generating facility in Cecil County, Maryland. Because both projects have facilities in Lancaster County, the Commission considered the Rock Springs Expansion Project throughout its analysis of cumulative impacts in the final EIS. But there was no indication that either project relied on the other and no project facilities overlapped.

60. As for Transco's Northeast Supply Enhancement Project, the project is not "connected" for purposes of NEPA to the Atlantic Sunrise Project The Northeast Supply Enhancement Project was proposed on March 27, 2017, well after the Atlantic Sunrise

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[120] *See, e.g., Nw. Pipeline, LLC, 157 FERC* ¶ 61,093, at P 27 (2016) (dismissing argument raised for the first time on rehearing and noting that the "Commission looks with disfavor on parties raising issues for the first time on rehearing that should have been raised earlier, particularly during NEPA scoping, in part, because other parties are not permitted to respond to requests for rehearing"); *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 and n.10 (2009) ("The Commission has held that raising issues for the first time on rehearing is disruptive to the administrative process and denies parties the opportunity to respond."); *Allegheny Energy Supply Co., L.L.C.*, 122 FERC ¶ 61,104, at P 6 (2008) (same); 18 C.F.R. § 385.713(d) ("The Commission will not permit answers to requests for rehearing.").

Project was approved.[121] As discussed, if a project is not yet proposed, it is not subject to NEPA review.

61. Moreover, the Atlantic Sunrise Project in no way depends on the Northeast Supply Enhancement Project, a much smaller, regional project that will transport natural gas north to New York City, in the opposite direction as the Atlantic Sunrise Project. And although the natural gas made available by the Atlantic Sunrise Project could, theoretically, serve Northeast Supply Enhancement Project customers, this service does not depend on the Atlantic Sunrise Project. Without the Atlantic Sunrise Project, natural gas could be sourced from other areas on Transco's system for the Northeast Supply Enhancement Project customers.[122]

4. Local Siting Concerns

a. Rehearing Requests

62. The Cappiellos and Follin Smith claim the Commission failed to consider and avoid project impacts to their properties. The Cappiellos argue that Commission erred by failing to recognize that, in the short term, pipeline construction will cause noise and disrupt the use of their farm and, in the long term, future building and farm equipment operations will

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[121] Transco Application for Certificate of Public Convenience and Necessity for the Northeast Supply Enhancement Project, filed in Docket No. CP17-101-000 (Mar. 26, 2017) (Northeast Supply Enhancement Project Application).

[122] Based on an engineering review by Commission staff, the Northeast Supply Enhancement project could receive gas from the Gulf or north from its Leidy Line. *See id.* at Exhibit G, Transco Application for Certificate of Public Convenience and Necessity for the Atlantic Sunrise Project, at Exhibit G (Mar. 15, 2015).

not be permitted on the pipeline right of way. Follin Smith claims that a portion of the project known as the Central Penn Line will impact her neighbor's organic farm, preclude future organic farming on her land, and adversely impact cultural and archaeological resources. Ms. Smith argues that the Commission failed to consider alternatives to prevent such impacts. We disagree.

b. Commission Determination

63. The Cappiellos had previously expressed concern that pipeline construction noise would adversely impact an Amish family residing on their property. The February 3 Order explained that the project is not expected to exceed target noise levels. Nonetheless, the Commission required Environmental Condition 53, directing Transco to file in its weekly construction status reports the noise measurements and any necessary mitigation near the Cappiellos' property.

64. With respect to cultural and archeological resources on Follin Smith's land, the EIS explained that Transco would complete a cultural resource report once it gained access to the project area. The project area on Ms. Smith's property was subsequently reviewed for cultural resources and although historic period artifacts were recovered, no archaeological sites or historic properties were identified. Regarding Ms. Smith's land, the Pennsylvania State Historic Preservation Officer and Commission staff agreed that there would be no effects to historic properties.

65. We dismiss the Cappiellos' and Follin Smith's remaining concerns relating to post-construction impacts because these arguments are raised for the first time on rehearing, without any explanation for their delay.[123]

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[123] *See supra* at n.119 & 120.

66. Nonetheless, the Commission fully considered post-construction surface impacts from the project easement. The EIS explained that most preconstruction land use, such as farming, would resume on the surface of the project easement following construction.[124] We also note that, although the existence of the easements would prevent landowners from altering the easement land by constructing structures or improvements on the land, property owners can request specific routing adjustments and mitigation, including compensation for lost development potential, during the right-of-way acquisition process. Minor route modifications may be made after surveys are conducted to resolve landowner concerns. Finally, with regard to organic farming, the Commission also required an organic certification mitigation plan as Environmental Condition 40. This includes measures to maintain organic certification of agricultural land by limiting the use of materials, such as fertilizer or composted matter that contains a prohibited synthetic substance, which would mitigate the effect of the project on the certification of organic farms.[125]

67. In any event, we note that the Commission nonetheless fully considered several alternatives to the route crossing her property.[126] But none of these routes offered overall environmental advantages. Ultimately, crossing Ms. Smith's property was necessary to minimize impacts on natural resources and proximity to nearby homes.

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[124] Final EIS at 4-311.

[125] *Id.* at 3-42.

[126] *Id.* at 3-8 to 3-55.

5. Direct and Indirect Impacts on Water Resources

a. Rehearing Requests

68. Allegheny, the Hoffman and Erb Landowners, and Accokeek claim that the Commission violated NEPA by failing to take a hard look at the direct and indirect effects of the Atlantic Sunrise Project on water resources, including high-quality and exceptional value streams and wetlands. Allegheny argues that required mitigation was not supported by substantial evidence and will be insufficient to ensure adequate mitigation of project impacts on waterbodies. Allegheny cites to violations by Tennessee Gas Pipeline Corporation (Tennessee Gas) of Pennsylvania's Clean Streams Law[127] during construction of the 300 Line Project as evidence that mitigation is not sufficient to ensure that pipeline projects' impacts on water resources will be adequately mitigated.[128]

b. Commission Determination

69. That Tennessee Gas was found to have violated Pennsylvania's Clean Streams Law during construction of a different pipeline project provides no support for Allegheny's allegation that Commission requirements are inadequate to prevent or sufficiently minimize the environmental impact of the Atlantic Sunrise Project. The issue raised is one of compliance, rather than adequacy of the required mitigation. One instance

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[127] Pennsylvania's Clean Streams Law was enacted on June 22, 1937, and subsequently amended to align its requirements with the Clean Water Act. 35 PA. Cons. Stat. § 691.1, *et seq*.

[128] Allegheny Rehearing Request at 15-16. Tennessee Gas's 300 Line Project included, *inter alia*, the construction of 127.4 miles of pipeline loop. *Tenn. Gas Pipeline Co., L.L.C.*, 131 FERC ¶ 61,140 (2010).

of non-compliance does not support a conclusion that there are pervasive flaws in the required mitigation measures. To that point, in the course of this proceeding Allegheny has not identified any parts of the required plans that it believes to have been deficient. Neither has Allegheny identified any project impacts that may not be adequately mitigated by Transco's compliance with its required plans.

70. We note that the Commission required that Transco implement several mitigation plans to protect water resources, including: a Horizontal Directional Drilling Contingency Plan; an Abandoned Mine Investigation and Mitigation Plan; a Karst Investigation and Mitigation Plan; Spill Plan for Oil and Hazardous Materials; and mitigation based on the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan (Erosion Control Plan or Plan) and Wetland and Waterbody Construction and Mitigation Procedures (Wetland and Waterbody Mitigation Procedures or Procedures).[129]

71. The Commission also required on-site monitoring of these plans' requirements. Project-specific environmental inspectors, along with pipeline reporting must be in place before, during, and after facility construction. Prior to construction, Transco must have

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[129] Final EIS at ES-4. The Erosion Control Plan and Wetland and Waterbody Mitigation Procedures identify mitigation measures that are required, as applicable, to minimize erosion, enhance revegetation, and minimize the extent and duration of disturbance on wetlands and waterbodies during and following project construction. *Notice of Availability of Final Revisions to the Plan and Procedures*, 78 Fed. Reg. 34,374 (June 7, 2013). The current versions of the Plan and Procedures are available on the Commission's website at http://www.ferc.gov/industries/gas/enviro/guidelines.asp.

in place a construction Implementation Plan to ensure that construction activities will fully comply with all required mitigation measures and have an onsite Environmental Inspector.[130] During construction, Transco must file weekly status reports, which would notify staff of any problem areas, noncompliance events, and any corrective actions taken.[131] After construction, the February 3 Order conditioned receipt of authorization to begin service on a showing that Transco was satisfactorily restoring areas affected by the project.[132] The February 3 Order required an additional affirmation statement confirming compliance with all conditions within thirty days of placing the authorized facilities into service.[133] The EIS thus properly relied on these mitigation measures to reduce any minor adverse impacts on water quality to well below a level of significance.

6. Indirect Effects on Gas Production

a. Rehearing Requests

72. In the February 3 Order, the Commission declined commenters' requests to consider the greenhouse gas (GHG) emissions associated with the upstream production of the natural gas to be transported by the project in the final EIS.[134] Consistent with prior natural gas infrastructure proceedings, the Commission found that the record in this proceeding did not demonstrate a reasonably close causal relationship between

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[130] February 3 Order, 158 FERC ¶ 61,125, Condition Nos. 3, 6, and 7.

[131] *Id.* at Condition No. 8.

[132] *Id.* at Condition No. 11.

[133] *Id.* at Condition No. 12.

[134] February 3 Order, 158 FERC ¶ 61,125 at PP 124-146.

the project and the impacts of future natural gas production warranting their review under NEPA.[135] The Commission further held that, even if a causal relationship were presumed to exist between approval of the project and additional natural gas production, the scope of impacts from any such induced production was not reasonably foreseeable.[136]

Nevertheless, Commission staff provided upper-bound estimates of upstream and downstream effects based on DOE and Environmental Protection Agency (EPA) methodologies.[137]

73. On rehearing, Allegheny argues that the Commission violated NEPA by failing to consider the indirect effects of induced gas production, and should therefore rescind the February 3 Order to prepare a revised EIS.[138] According to Allegheny, the Commission should have taken a "hard look" at the indirect effects of induced shale gas development in the Marcellus and Utica shale formations, which Allegheny alleges are both causally related to,[139] and reasonably foreseeable as a result of,[140] the project.

74. We deny rehearing for the reasons discussed below.

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[135] *Id*. PP 133-136.

[136] *Id*. PP 137-139.

[137] *Id*. PP 139-143.

[138] Allegheny Rehearing Request at 3, 16-26. Accokeek and the Hoffman and Erb Landowners support this argument. *See* Accokeek Rehearing Request at 2, 4 (incorporating by reference the arguments in Allegheny's request for rehearing); Hoffman and Erb Landowners Rehearing Request at 7-8, 10 (same).

[139] Allegheny Rehearing Request at 17-23.

[140] *Id*. at 23-26.

b. Commission Determination

75. CEQ regulations direct federal agencies to examine the "indirect impacts" of their proposed actions, i.e. effects that are later in time or farther removed in distance, but are still (1) caused by the proposed action and (2) reasonably foreseeable.[141] The Commission has previously found that the environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline (or other natural gas infrastructure) project nor are they reasonably foreseeable consequences of our approval of an infrastructure project.[142]

76. With respect to causation, "NEPA requires a 'reasonably close causal relationship' between the environmental effect and the alleged cause"[143] in order "to make an agency responsible for a particular effect under NEPA."[144] In the February 3 Order, the Commission explained that such a relationship could

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[141] 40 C.F.R. § 1508.25(c) (2017); 40 C.F.R. § 1508.8(b) (2017).

[142] *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 (2012) (unpublished opinion); *Columbia Gas Transmission, LLC*, 153 FERC ¶ 61,064, at PP 26-29 (2015) (finding that Commission approval of a pipeline project will not induce further gas production, nor is the scope of any increased production reasonably foreseeable); *Texas Gas Transmission, LLC*, 153 FERC ¶ 61,323, at P 62 (2015); *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161, at P 39 (2015); *Sabine Pass Liquefaction Expansion, LLC*, 151 FERC ¶ 61,253, at P 21 (2015).

[143] *Pub. Citizen*, 541 U.S. at 767 (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (*Metropolitan Edison*)).

[144] *Id.*

exist if the project would transport new production from a specified production area and such production would not occur absent the project (i.e., there would be no other way to move the gas).[145] In this case, the Commission did not find any evidence that the proposed project was predicated on future gas development; the Commission concluded that the project was not creating the need for transportation, but responding to it.[146] Despite its determination that study of the impacts of natural gas production is not mandated as part of the Commission's NEPA review, Commission staff nonetheless prepared an analysis regarding the potential impacts associated with natural gas production.[147] Allegheny is thus mistaken in asserting that the public has been left to make these assessments.[148]

77. Allegheny attempts to distinguish the precedent cited in the February 3 Order, but ultimately fails to show that the Commission erred in finding no reasonably close causal relationship between the Atlantic Sunrise Project and further shale gas extraction in the Marcellus and Utica shale formations. For example, Allegheny does not dispute the applicability of *Central N.Y. Oil and Gas Co.*,[149] but instead points out that the

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[145] February 3 Order, 158 FERC ¶ 61,125 at P 130 (citing *Sylvester v. U.S. Army Corps of Eng'rs*, 884 F.2d 394, 400 (9th Cir. 1989); *Morongo Band of Mission Indians v. FAA*, 161 F.3d 569, 580 (9th Cir. 1998); *City of Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1162 (9th Cir. 1997)).

[146] *Id*. PP 133-135.

[147] February 3 Order, 158 FERC ¶ 61,125 at PP 139-143.

[148] Allegheny Rehearing Request at 25.

[149] *Id*. P 134 (citing *Central N.Y. Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at P 91; *order on reh'g*, 138 FERC ¶ 61,104; *pet. for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 Fed. App'x 472, 474 (2d Cir. 2012) (finding that

order by the Second Circuit Court of Appeals (Second Circuit) affirming the Commission's finding, *Coalition for Responsible Growth v. FERC*, was a summary order that does not have precedential effect under the Second Circuit's rules of civil procedure.[150] Allegheny further alleges that, despite expressly affirming that the Commission reasonably concluded that the impacts of shale gas development were not sufficiently causally-related to the project to warrant a more in-depth analysis, the Second Circuit offered no "independent analysis, but merely accepted FERC's rationale for the specific case at issue."[151] Allegheny fails to explain why the fact that the Second Circuit affirmed the Commission via a summary order calls the Commission's reasoning in that proceeding into question, or why the Commission could not draw the same conclusion in this proceeding.

78. Allegheny distinguishes the details of several other cases, without showing that the precedent established in these cases is not sound or cannot be applied in this proceeding.[152] According to Allegheny, *Metropolitan Edison* is not on point because, unlike the psychological effects alleged in that proceeding, environmental effects are within the zone of interests NEPA was intended to address. Allegheny's reasoning

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Marcellus shale development activities were not sufficiently causally-related to a pipeline project to warrant in-depth consideration of the gas production impacts)).

[150] Allegheny Rehearing Request at 17 (citing 2nd Cir. L.R. 32.1.1). The rules note that summary orders may be cited, as long as they are so designated.

[151] Allegheny Rehearing Request at 17.

[152] *Id*. at 17-19; February 3 Order, 158 FERC ¶ 61,125 at P 127 (citing *Pub. Citizen*, 541 U.S. at 767; *Metropolitan Edison*, 460 U.S. at 774).

seems to read out the requirement for a "reasonably close causal relationship" in *Metropolitan Edison*, suggesting that, because the impacts alleged are environmental in nature, they are automatically reasonably foreseeable.[153]

79. Allegheny then attempts to distinguish *Public Citizen* based on the fact that, in that case, the Federal Motor Carrier and Safety Administration had no discretion to deny registration of motor carriers meeting certain requirements and the Court therefore found no causal relationship between increased emissions and its lifting a presidential moratorium on cross-border operation of Mexican motor carriers.[154] Allegheny claims that *Public Citizen*'s limitation on NEPA[155] does not apply in this case, because the Commission has the discretion to attach conditions to a certificate, and to deny a certificate that is not required by the public convenience and necessity.[156] Similarly, Allegheny attempts to distinguish two cases in which the D.C. Circuit found that the Commission need not consider the environmental consequences of the export of natural gas in authorizing the construc-

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[153] *See* Allegheny Rehearing Request at 18 ("Unlike the psychological harm resulting from the risk of a nuclear accident in *Metropolitan Edison*, the impacts related to reasonably foreseeable Marcellus and Utica shale gas drilling involve harms to the environment.").

[154] *Id*. at 18-19.

[155] *See Pub. Citizen*, 541 U.S. at 770 (stating that "where an agency has no ability to prevent a certain effect to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect").

[156] Allegheny Rehearing Request at 19 (citing *Or. Natural Res. Council Fund v. Brong,* 492 F.3d 1120, 1134 n.20 (9th Cir. 2007)).

tion of natural gas export facilities[157] on the grounds that DOE has statutory authority over the export of natural gas, whereas the Commission has sole discretion to approve construction of the Atlantic Sunrise Project.[158]

80. First, although the Commission explained in the February 3 Order that it has no jurisdiction over natural gas production,[159] the Commission did not rely solely on its lack of statutory authority, but instead reviewed the record in this proceeding and found no evidence that approval of the project would cause or induce additional shale gas production.[160] Moreover, the D.C. Circuit recently has clarified that DOE, which has statutory authority over gas exports, acted reasonably in declining to consider the indirect effects of the proposed Freeport export facility on natural gas production. The court found that DOE "was not required to 'foresee the unforeseeable,'" and acted reasonably in concluding that any attempts to estimate the location and magnitude of any resulting gas production would be too speculative to be useful.[161]

81. The Commission does not have jurisdiction over natural gas production.[162] This does not mean, however,

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[157] *Sierra Club v. FERC*, 827 F.3d 36, 46 (D.C. Cir. 2016) (*Freeport LNG*), and *Sierra Club v. FERC*, 827 F.3d 59, 68 (D.C. Cir. 2016).

[158] Allegheny Rehearing Request at 22-23.

[159] February 3 Order, 158 FERC ¶ 61,125 at P 129.

[160] *See id*. PP 133-136.

[161] *Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 199 (D.C. Cir. 2017) (*Sierra Club v. DOE*).

[162] February 3 Order, 158 FERC ¶ 61,125 at P 129 (explaining that natural gas production is regulated at the local and regional level and, as to GHG emissions and deep underground injection

that the environmental impacts of any future production will remain unevaluated.[163] The potential impacts of natural gas production, with the exception of GHG emissions and climate change, would be localized. Each locale includes unique conditions and environmental resources. Production activities are thus regulated at a state and local level.[164] In addition, deep underground injection and disposal of wastewaters and liquids are subject to regulation by the EPA under the Safe Drinking Water Act, as well as air emissions under the Clean Air Act. On public lands, federal agencies are responsible for the enforcement of regulations that apply to natural gas wells.

82. Contrary to Allegheny's assertions, the Atlantic Sunrise Project and gas extraction in the Marcellus and Utica shale formations are not "two links of a single chain."[165] Allegheny focuses on the fact that, once produced, natural gas is transported to consumers via pipeline.[166] But, as the Supreme Court has explained, "a 'but for' causal relationship is insufficient" to trigger a hard look under NEPA.[167] Additional

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and disposal of wastewaters and liquids, the EPA); *id.* P 136 (noting that any potential new production would be driven by a number of factors and "would take place pursuant to the regulatory authority of state and local governments").

[163] *See* Allegheny Rehearing Request at 23.

[164] *See* February 3 Order, 158 FERC ¶ 61,125 at P 129.

[165] *Id*. at 19-23 (citing *Sylvester v. U.S. Army Corps of Eng'rs*, 884 F.2d 394, 400 (9th Cir. 1989)).

[166] *Id*. at 19-20.

[167] *Pub. Citizen*, 541 U.S. at 767. Allegheny asserts that *Morongo Band of Mission Indians v. FAA*, 161 F.3d 569 (9th Cir. 1998) is not on point because the Atlantic Sunrise Project is not simple "rearranging" existing gas production, but represents "a direct stepping stone to further gas development." Allegheny

production might not be possible without additional transportation capacity– whether provided by the current project or alternate pipelines – to convey the product to consumers. However, the Commission reviewed the record in this proceeding and found that the project was not being constructed to induce future gas development, but rather to respond to the current need for transportation.[168] That the Surface Transportation Board considered induced coal production in reviewing a railroad proposal has no bearing on this determination.[169] Neither does the fact that four of the subscribed shippers are production companies.[170] The Commission does not require that shippers be end-use consumers of natural gas,[171] and the fact that production companies have subscribed to the project does not, in itself, imply that those companies will produce additional gas that would not reach intended markets through other means if the project were not approved.[172]

Rehearing Request at 21-22. The Commission cited *Morongo* in one footnote in the section of the February 3 Order explaining the type of sufficiently close causal relationship the Commission looks for in determination whether indirect effects should be considered under NEPA. February 3 Order, 158 FERC ¶ 61,125 at P 130 n.188. In any event, as explained later in the February 3 Order, the Commission found that a number of factors drive new natural gas production and that it would be reasonable to assume that any new production spurred by such factors would reach the market through alternate routes were the project not approved. *Id*. P 136.

[168] February 3 Order, 158 FERC ¶ 61,125 at PP 133-136.

[169] Allegheny Rehearing Request at 20-21.

[170] *Id*. at 21

[171] February 3 Order, 158 FERC ¶ 61,125 at P 29.

[172] *See id*. P 136 ("If the proposed project were not constructed, it is reasonable to assume that any new production spurred by such factors [i.e., domestic natural gas prices and production

While Allegheny maintains that "[t]he fact that other factors may influence drilling does not mean that additional pipeline capacity does not drive additional shale gas development,"[173] Allegheny fails to point to record evidence demonstrating the requisite close causal between the proposed project and the environmental effects from natural gas production area have a close causal relation to the proposed project. We continue to find no evidence that the project will transport new production from a specified production area that would not occur in the absence of this project.[174]

83. We further affirm that, even if a causal relationship between our action in the February 3 Order and additional production were presumed, the scope of impacts from any such induced production in this case is not reasonably foreseeable.[175] Allegheny insists that "a person of ordinary prudence would take Marcellus and Utica shale gas drilling into account before reaching a decision about whether to approve the Atlantic Sunrise Project," and asserts that the Commission must consider these impacts even if it does not know the precise location and timing of future development.[176] However, while NEPA requires "reasonable forecasting," agencies are not required "to engage in speculative analysis" or "to the do the impractical,

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costs] would reach intended markets through alternate pipelines or other modes of transportation.") (citing *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161, at P 39 (2015)).

[173] Allegheny Rehearing Request at 23 (citing Energy Information Administration data showing a connection between pipeline capacity and natural gas prices).

[174] February 3 Order, 158 FERC ¶ 61,125 at PP 130, 133-136.

[175] *Id*. PP 137-138.

[176] Allegheny Rehearing Request at 23-25.

if not enough information is available to permit meaningful consideration."[177] Given the immense size of the Marcellus and Utica shale formations, the inability to determine the number and precise locations of any additional wells, the highly localized nature of any impacts from future production, and the myriad factors that drive new drilling, the Commission concluded that the impacts of natural gas production were not reasonably foreseeable.[178] We find that this conclusion was reasonable. Finally, while Allegheny cites to former Commissioner Bay's separate statement from *National Fuel Gas Supply Corp.* in support of its argument that the Commission should have considered the impacts of potential additional gas production, as Commissioner Bay acknowledged in his statement "there is no legal requirement for the Commission to do such a review of gas production from shale formations."[179]

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[177] *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011) (citing *Envtl. Prot. Info. Ctr. v. U.S. Forest Serv*., 451 F.3d 1005, 1014 (9th Cir. 2006)).

[178] February 3 Order, 158 FERC ¶ 61,125 at P 137. *See also Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 120; *see also Sierra Club v. DOE,* 867 F.3d at 198-200 (increased gas production not reasonably foreseeable when agency cannot predict the incremental quantity of natural gas that might be produced in response to an incremental increase in LNG exports).

[179] *National Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145 (2017) (Commissioner Norman C. Bay, Separate Statement). *See also Cent. N.Y. Oil & Gas Co.*, 137 FERC ¶ 61,121, at PP 99-101 (2011) (holding that the extent and location of future Marcellus Shale wells and the associated development were not reasonably foreseeable with respect to a proposed 39-mile long pipeline located in Pennsylvania, in the heart of Marcellus Shale development), *on reh'g*, 138 FERC ¶ 61,104 (2012), *aff'd*, *Coal. for Responsible Growth & Res. Conservation v. FERC*, 485 F. App'x 472, 474 (2d Cir. 2012). *See also Sierra Club v. DOE*, 867 F.3d at 202 (holding

7. Cumulative Impacts

a. Rehearing Request

84. On rehearing, Allegheny argues that the Commission's public interest analysis was insufficient in that it: (1) failed to address cumulative impacts on water resources, vegetation and wildlife, fisheries, land use, or air quality; (2) improperly limited the analysis to areas directly affected by the project and surrounding areas; (3) understated the cumulative impacts on wildlife and interior forests; (4) failed to consider the impacts associated with shale gas development in the Marcellus and Utica shale formations; and (5) failed to adequately address the project's downstream impacts on GHG emissions and climate change.[180]

85. We affirm the February 3 Order, and find that the Commission appropriately analyzed the project's cumulative impacts under NEPA, consistent with CEQ guidance.

b. Commission Determination

86. NEPA requires federal agencies to take a "hard look" at "their proposed actions' environmental

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that DOE's generalized discussion of the impacts associated with non-conventional natural gas production fulfill its obligations under NEPA; DOE need not make specific projections about environmental impacts stemming from specific levels of export-induced gas production).

[180] Allegheny Rehearing Request at 3, 26-34. *See also* Accokeek Rehearing Request at 3, 4 (incorporating by reference the arguments in Allegheny's request for rehearing); Hoffman and Erb Landowners Rehearing Request at 8, 10 (same). Geraldine Nesbitt also raised similar issues in her joint request for rehearing, which has been dismissed as discussed above. *See* Nesbitt Rehearing Request at 8-10, 43-48.

consequences" –including the cumulative effects in light of other past, present and future actions – before deciding whether and how to proceed.[181] Allegheny alleges that the Commission failed to take a hard look at the cumulative impacts of the Atlantic Sunrise Project because it did not address the potential cumulative impacts of the project on water resources, vegetation and wildlife, fisheries, land use, or air quality in the February 3 Order.[182] In fact, these issues were discussed at length in the final EIS.[183] Allegheny suggests that the Commission should have reiterated the analysis in the final EIS in the certificate order itself.[184] We fail to see why doing so would be necessary to render a "fully informed and well-considered" decision.[185]

87. Neither has Allegheny shown that the Commission improperly limited the cumulative impacts analysis

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[181] *See Sierra Club v. DOE*, 867 F.3d at 196 (citing *Sierra Club v. U.S. Army Corps of Eng'rs*, 803 F.3d 31, 37 (D.C. Cir. 2015); 40 C.F.R. § 1508.7 (2017).

[182] Allegheny Rehearing Request at 26-27.

[183] Final EIS at 4-292 – 4-299 (water resources); *id*. at 4-299 – 4-302 (vegetation and wildlife); *id*. at 4-302 (fisheries and other aquatic resources); *id*. at 4-303 – 4-308 (land use, recreation, special interest areas, and visual resources); *id*. at 4-311 – 4-316 (air quality at noise).

[184] Allegheny Rehearing Request at 27 ("In the Certificate Order, FERC addressed cumulative impacts in just two paragraphs about climate change and safety.").

[185] *Sierra Club v. DOE*, 867 F.3d at 196 (citing *Del. Riverkeeper Network v. FERC*, 753 F.3d at 1309-10 (D.C. Cir. 2014) (quoting *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978)) (the purpose of NEPA "is to insure a fully informed and well-considered decision, not necessarily a decision the judges of the Court of Appeals or of this Court would have reached had they been members of the decisionmaking unit of the agency")).

area to the area directly affected by the project and surrounding areas.[186] Allegheny hinges its argument on 1997 guidance from CEQ and 1999 guidance from EPA suggesting that the geographic boundaries for cumulative impacts analyses usually should be expanded beyond the immediate project area.[187] However, 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."[188] CEQ has explained that "it is not practical to analyze the cumulative effects of an action on the universe;"[189] rather, the analysis should be proportional to the magnitude of the environmental impacts of a proposed action. CEQ has explained that actions that will have no significant direct and indirect impacts usually require only a limited cumulative

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[186] Allegheny Rehearing Request at 27-30.

[187] *Id*. at 28-29 (citing CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act*, at 12 (January 1997) (1997 CEQ Guidance), https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf; EPA, *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*, at 8 (May 1999), https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-EPA-cumulative_impacts.pdf).

[188] *Kleppe v. Sierra Club*, 427 U.S. 390, 413 (1976). *See also Freeport LNG*, 827 F.3d at 49-50 (rejecting argument that the Commission should have undertaken a nationwide cumulative impacts analysis for a proposed liquefied natural gas terminal); *WildEarth Guardians v. Jewell*, 738 F.3d 298, 312 (D.C. Cir. 2013) (because the NEPA process "involves an almost endless series of judgment calls . . . [t]he line-drawing decisions . . . are vested in the agencies, not the courts") (quoting *Duncan's Point Lot Owners Ass'n, Inc. v. FERC*, 522 F.3d 371, 376 (D.C. Cir. 2008)).

[189] 1997 CEQ Guidance at 8.

impacts analysis.[190] Consistent with this guidance, the final EIS determined that the impacts of most actions would affect only the project and surrounding areas. The final EIS nevertheless considered cumulative impacts for certain resources on a "broader, more regional basis," explaining that "[t]he potential cumulative impact area for certain resources, such as air quality, watersheds, and visual impacts encompasses a larger geographic area."[191]

88. The Commission did not narrow the geographic scope of its cumulative impacts analysis of natural gas well permitting and development projects following the issuance of the draft EIS, as Allegheny contends.[192] As was the case in the draft EIS, the final EIS analyzed projects within 10 miles of the Atlantic Sunrise Project, as reflected in Appendix Q.[193] Allegheny's argument is largely based upon Appendix I to the final EIS, which provides more detailed information regarding a subset of these projects, mineral resources within 0.25 mile of the project. Allegheny also points to a map set forth in the final EIS (Figure 4.13.1-1), which was intended to provide perspective on the location of the planned developments discussed in Commission staff's geographic analysis of cumulative impacts. The fact

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[190] *See* CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis*, at 2-3 (June 24, 2005), https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf.

[191] Final EIS at 4-274.

[192] Allegheny Rehearing Request at 29, 33.

[193] *See* Final EIS at 4-276; Appendix Q at Q-33 (noting that the table shows "the projects that have the most potential to contribute to the cumulative impacts within the vicinity of the proposed Atlantic Sunrise Project," but may not reflect all projects in the region).

that this map does not identify gas wells or all associated access roads does not, as Allegheny implies,[194] mean that the potential cumulative impacts of these items were not considered.[195]

89. Allegheny asserts that the Commission understated the cumulative impacts of the project and gas development on wildlife and interior forests.[196] While Commission staff was not aware of other major recently constructed or future projects within the geographic scope of the cumulative impact assessment that would affect the same interior forest habitats as the project, the final EIS explained that Transco had reduced the potential for cumulative impacts associated with the project by collocating the pipeline and aboveground facilities where possible with existing rights-of-way and aboveground facilities.[197] We continue to agree with the conclusion in the final EIS that cumulative impacts on vegetation and general wildlife resulting from the project, Marcellus Shale development, and other Commission-regulated and non-jurisdictional actions would be moderate. With respect to migratory birds, while Allegheny asserts that issuance of the certificate was premature because Transco had not yet obtained a Migratory Bird Treaty Act permit from the U.S. Fish & Wildlife Service

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[194] Allegheny Rehearing Request at 30.

[195] *See*, *e.g.*, Final EIS at 4-276 (noting that the area to the west of the Atlantic Sunrise Project in Susquehanna County has been affected by past and ongoing development of natural gas wells and associated facilities); *id*. at Appendix Q, Q-3 (line item noting production well permits issued in Susquehanna and other counties).

[196] Allegheny Rehearing Request at 31.

[197] Final EIS at 4-301.

(USFWS),[198] we note that USFWS filed a letter in this proceeding on February 16, 2017, and does not indicate that such a permit is required.[199]

90. We confirm that the level of detail in the final EIS was appropriate to ensure that the Commission was able to make a fully-informed decision regarding the cumulative environmental impacts of the Atlantic Sunrise Project. Allegheny does not identify any particular information that was overlooked in the Commission's analysis of cumulative impacts on land use, recreation, special interest areas, and visual resources. Instead, Allegheny contends that the final EIS was faulty because it discusses these impacts "in just four paragraphs."[200] First, Allegheny is factually incorrect.[201] Second, NEPA does not prescribe a certain level of detail, and certainly does not dictate a minimum number of paragraphs. While "[i]t is of course always possible to explore a subject more deeply and to discuss it more thoroughly," agencies must make

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[198] Allegheny Rehearing Request at 31.

[199] Letter from Lora Z. Lattanzi, Field Office Supervisor, USFWS, to Alisa M. Lykens, Chief, Division of Gas-Environment and Engineering, FERC, at 2, filed in Docket No. CP15-138-000 (Feb. 16, 2017) ("The Migratory Bird Treaty Act prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. While the MBTA has no provision for allowing unauthorized take, the FWS recognizes that some birds may be taken during activities such as pipeline construction even if all reasonable measures to avoid take are implemented.").

[200] Allegheny Rehearing Request at 33.

[201] Allegheny points to the discussion on pages 4-303 and 4-304 of the Final EIS. However, consideration of recreation, special interest areas, and visual resources continues on pages 4-305 through 4-309.

"[t]he line-drawing decisions necessitated by this fact of life."[202]

91. According to Allegheny, the Commission relied on "outdated and incomplete data" because the final EIS refers to a 2013 U.S. Forest Service report regarding the condition of interior forests that uses data from 2004 to 2009.[203] Allegheny does not point to other sources with relevant information that Commission could have used in its analysis. And the 2013 Forest Service report was the most recent inventory at the time Commission staff prepared the final EIS. We note, however, that the Forest Service recently published a new inventory of Pennsylvania forests, using data from 2009 to 2014.[204] These updated findings remain consistent with the final EIS, which acknowledged that the project, combined with the effects of nearby projects, would contribute to the cumulative long-term permanent loss of forest, including interior forest habitat, and noted the trend that some parts of the state are gaining forest cover, while others are losing it, with the amount of forested acreage generally remaining stable at around 16.7 million acres.[205]

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[202] *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d at 66. *See also*, *Sierra Club v. DOE*, 867 F.3d at 196; *Freeport LNG*, 827 F.3d at 46 (explaining that "our task is not to 'flyspeck' the Commission's environmental analysis for 'any deficiency no matter how minor'") (quoting *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 75 (D.C. Cir. 2011)).

[203] Allegheny Rehearing Request at 32-33 (citing Final EIS at 4-85).

[204] U.S. Dep't of Agriculture, Forest Service, *Pennsylvania Forests 2014* (May 2017) (2014 Inventory), https://www.nrs.fs.fed.us/pubs/54420.

[205] *See id.* at 12 ("Forest land area in Pennsylvania remained relatively stable between 2009 and 2014; however, some areas of the State experienced forest loss, while others saw increased in

Indeed, while noting loss of forest land converted to developed uses, including activities associated with Marcellus shale gas development, the 2014 Inventory determines that "[o]verall, there was a small net gain in forest land in Pennsylvania from 2009 to 2014."[206]

92. Finally, we find that the Commission adequately considered the project's downstream impacts on GHG emissions and climate change.[207] While determining that downstream combustion impacts did not meet the definition of indirect impacts, the Commission nevertheless considered and quantified an upperbound estimate of downstream GHG emissions in the February 3 Order. We note that, subsequently, the D.C. Circuit has held that the Commission should have provided a quantitative estimate of the downstream greenhouse emissions that will result from burning the natural gas that the Southeast Market Pipelines Project will transport.[208] In this case, the Commission estimated the GHG emissions associated with burning the gas to be transported by the project, consistent with the quantification that the *Sabal Trail*

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forest land."); *id.* (estimating forest land at 16.9 million acres and 58 percent of the total area of the State); Final EIS at 4-300 – 4-301.

[206] 2014 Inventory at 16-17.

[207] Final EIS at 4-316 – 4-319; February 3 Order, 158 FERC ¶ 61,125 at PP 143-147.

[208] *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*) ("We conclude that the EIS for the Southeast Market Pipelines Project should have either given a quantitative estimate of the downstream greenhouse emissions that will result from burning the natural gas that the pipelines will transport or explained more specifically why it could not have done so.").

court required.[209] In the final EIS and February 3 Order we estimated that, if all 1.7 million Dth per day of natural gas were transported to combustion end uses, this would result in about 32.9 million metric tpy of CO_{2e}.[210] Commission staff used an EPA-developed methodology to arrive at this estimate.[211]

93. This estimate represents an upper bound of GHG emissions because it assumes the total maximum capacity is transported 365 days per year. As such, it is unlikely that this total amount of GHG emissions would occur. Additionally, were the demand for natural gas instead met by coal or oil, the GHG emissions would be greater. Obviously, if any portion of that demand could be met by renewables (solar, wind), the GHG emissions would be substantially less.

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[209] Further, *Sabal Trail* and this case are factually distinct, in that the record in *Sabal Trail* showed that the natural gas to be transported on the new project would be delivered to specific destinations – power plants in Florida – such that the court concluded that the burning of the gas in those plants was reasonably foreseeable and the impacts of that activity warranted environmental examination. In contrast, the gas to be transported by the Atlantic Sunrise Project will be delivered to markets along Transco's pipeline system in seven states, as well as to interconnects with existing pipelines serving Florida markets, and its end use is not predictable.

[210] Final EIS at 4-318; February 3 Order, 158 FERC ¶ 61,125 at P 143.

[211] February 3 Order, 158 FERC ¶ 61,125 at P 143. The D.C. Circuit outlined a similar strategy (i.e., estimating the amount of gas carried by a pipeline daily and using DOE emissions estimates per unit of energy generated for various plants) in explaining that it should be feasible for the Commission to provide such an estimate for the Southeast Market Pipelines Project. *Sabal Trail*, 867 F.3d at 1374.

94. To give this estimate context, we suggested that the best way to provide perspective on the magnitude of a project's GHG emissions is by comparison to regional GHG emissions (313 million metric tons of CO_{2e} in Pennsylvania per a 2005 inventory in the final EIS).[212] Transco has indicated that the project has not been designed to provide natural gas service to any particular end user or market.[213] Rather, the gas supplies provided by the Atlantic Sunrise Project would be delivered into the Transco and Dominion pipeline systems that can deliver gas to 16 states.[214] Therefore, we reevaluated the GHG emissions in context of the *Sabal Trail* decision, looked at the inventory of those 16 states, and compared the potential increase in GHG emissions from the Atlantic Sunrise Project to the total 2015 GHG fossil fuel combustion inventory from the states, as well as the National GHG Inventory. The estimated 32.9 million metric tons of GHG emissions would result in no more than a 1.4 percent increase in GHG emissions from fossil fuel combustion to the

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[212] Final EIS at 4-317. *See* Allegheny Rehearing Request at 34 (asserting that the Commission failed to explain how it arrived at this number or analyze how potential emissions would impact climate change).

[213] Final EIS at 1-2.

[214] The 16 states are: Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, North Carolina, South Carolina, Virginia, West Virginia, Ohio, Maryland, Delaware, Pennsylvania, New Jersey, and New York.

states in which the gas would be delivered,[215] and a 0.6 percent increase in national emissions.[216]

95. Allegheny is correct that the final EIS did not quantify the amount by which this upper limit of the project's potential emissions might be reduced by the project displacing some use of higher carbon-emitting fuels;[217] indeed, any estimate provided for this offset would be too uncertain, given the many variables involved (i.e., which fuels would be displaced, to what extent, for how long, etc.). While it is possible that gas transported on the project could offset renewable energy production, as Allegheny suggests, this effect likewise cannot be quantified.[218] In considering the downstream effects of a liquefied natural gas export facility, the D.C. Circuit recently rejected as "flyspecking" the argument that DOE should have considered the potential for natural gas to compete with renewables in import markets.[219] As we noted in the February 3 Order, natural gas transported by the project may also displace gas that otherwise be transported via different means, resulting in no change in emissions, and the project likely will not transport maximum capacity

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[215] Based upon Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, North Carolina, South Carolina, Virginia, West Virginia, Ohio, Maryland, Delaware, Pennsylvania, New Jersey, and New York GHG emissions of 2,590 million metric tons for 2015, per year according to U.S. Energy Information Administration (October, 2017), https://www.eia.gov/environment/emissions/state/.

[216] Based on 5,411 million metric tons of CO2 in 2015 as presented by the EPA at https://www.epa.gov/sites/production/files/2017-02/documents/2017_complete_report.pdf.

[217] Allegheny Rehearing Request at 34.

[218] *Id*.

[219] *Sierra Club v. DOE*, 867 F.3d at 202.

every day of the year, reducing the estimated emissions.[220]

D. Intervenors' Request For Rehearing Of The Stay Order

1. Rehearing Request

96. In the Stay Order, the Commission determined that justice did not require a stay of the Atlantic Sunrise project. The Commission found, among other things, that Allegheny and Accokeek had failed to establish that they would suffer irreparable harm in the absence of a stay of the project.[221] On rehearing, Intervenors argue that the Commission erred in concluding that they would not likely suffer irreparable harm. Intervenors further assert that, because of the Commission's determination regarding the lack of irreparable injury, the "FERC consequently failed to examine the other relevant factors" pertinent to the question of whether justice requires a stay.[222] For the reasons discussed below, we deny rehearing.

2. Commission Determination

97. In the Stay Order, the Commission found that Allegheny and Accokeek had failed to "provide[] specific information regarding the alleged injury inflicted upon their members by the Atlantic Sunrise Project."[223] On rehearing, Intervenors attempt to remedy this shortcoming by citing declarations submitted to the Commission in September 2017 – nearly seven months after Intervenors moved for a stay – in connec-

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[220] February 3 Order, 158 FERC ¶ 61,125 at P 143.

[221] Stay Order, 160 FERC ¶ 61,042 at PP 7-19.

[222] Intervenors' Request for Rehearing of Stay Order at 3-8.

[223] Stay Order, 160 FERC ¶ 61,042 at P 7.

tion with Intervenors' challenge to the Commission's issuance of a notice to proceed with construction.[224] The purpose of the rehearing requirement, however, is identify alleged errors in the Commission's initial decision,[225] not to raise new issues or introduce new evidence.

98. The Commission has a long-standing policy of rejecting arguments raised, and evidence introduced, for the first time on rehearing, absent a compelling showing of good cause.[226] Because Rule 713(d)(1) of the Commission's Rules of Practice and Procedure[227] prohibit answers to requests for rehearing, "allowing parties to introduce new evidence at the rehearing stage would raise concerns of fairness and due process for other parties to the proceeding."[228] Intervenors offer no explanation for why these declarations could not have been submitted with their motions for stay. Accordingly, we reject Intervenors' efforts to introduce supplemental evidence and new issues at the rehearing stage of the proceeding.

99. Intervenors' request for rehearing also reiterates their previous contention that the project would have adverse land use and air quality impacts, but makes no effort address the Commission's analysis of

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[224] Intervenors' Request for Rehearing of Stay Order at 3.

[225] *See Ecee, Inc. v. FERC*, 611 F2d 554, 565 (5th Cir. 1980) ("The purpose of a rehearing requirement is not give the administrative agency an initial opportunity to correct its errors").

[226] *See, e.g.*, *Kinetica Deepwater Express, LLC*, 155 FERC ¶ 61,183, at P 20 (2016); *Aguirre Offshore GasPort, LLC*, 155 FERC ¶ 61,139, at P 14 (2016).

[227] 18 C.F.R. § 385.713(d) (2017).

[228] *Kinetica Deepwater Express*, 155 FERC ¶ 61,183 at P 20.

these issues in the Stay Order.[229] Accordingly, we deny rehearing on this issue.

100. Where, as here, a party requesting a stay is unable to establish that it will suffer irreparable harm absent a stay, the Commission need not examine other factors.[230] Intervenors contend that, in light of our decision regarding the lack of irreparable harm, the Commission failed to examine whether a stay would harm other parties or serve the public interest.[231] But that is incorrect. The Commission found that a stay could jeopardize compliance with the limited tree clearing window recommended by the Fish and Wildlife Service in order to mitigate impacts on threatened and endangered species in the project area.[232] The Commission also found that "any delay in construction could delay completion of a project that the Commission has found to be required by the public interest."[233] Intervenors fail to address these findings. Instead, Intervenors suggest that permitting construction to continue pending a final decision could foreclose alternatives.[234] But as we explained in the Stay Order, "[t]o the extent that Transco elects to proceed with construction, it bears the risk that . . . our orders will be overturned on appeal. If this were to occur, Transco might not be able to utilize any new facilities, and

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[229] Intervenors' Request for Rehearing of Stay Order at 3.

[230] *Tennessee Gas Pipeline, L.L.C.*, 160 FERC ¶ 61,062, at P 4 (2017).

[231] Intervenors' Request for Rehearing of Stay Order at 4-6.

[232] Stay Order, 160 FERC ¶ 61,042 at P 17.

[233] *Id.*

[234] Intervenors' Request for Rehearing of Stay Order at 5.

could be required to remove them or to undertake further remediation."[235]

101. Intervenors also argue that justice requires a stay because they are likely to succeed on the merits. In this regard, Intervenors contend that the EIS fails to comply with the D.C. Circuit's directives in *Sabal Trail*.[236] But "the factors we examine when considering whether to grant a stay . . . do not include the likelihood of success on the merits."[237] In any event, we have addressed Intervenors contention in this regard above and do not believe it to be meritorious.

102. Finally, Intervenors contend that a stay is appropriate because there are questions regarding the finality of the February 3 Order in light of ongoing appellate litigation regarding the validity of the tolling order issued in this case.[238] With the issuance of this order on rehearing, we believe that any such dispute is now moot and does not support rehearing of the Stay Order.

The Commission orders:

The requests for rehearing are denied, rejected, or dismissed as discussed above. By the Commission. Commissioner Glick is not participating.

(SEAL)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[235] Stay Order, 160 FERC ¶ 61,042 at P 18.

[236] Intervenors' Request for Rehearing of Stay Order at 6-7.

[237] *Florida Southeast Connection, LLC*, 154 FERC ¶ 61,264, at P 4 (2017).

[238] Intervenors' Request for Rehearing of Stay Order at 7-8.

APPENDIX H

15 USCS § 717a

Current through PL 116-19, approved May 31, 2019

United States Code Service - Titles 1 through 54
TITLE 15. COMMERCE AND TRADE
CHAPTER 15B. NATURAL GAS

§ 717a. Definitions

When used in this Act [15 USCS §§ 717 et seq.], unless the context otherwise requires–

(1) "Person" includes an individual or a corporation.

(2) "Corporation" includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the foregoing, but shall not include municipalities as hereinafter defined.

(3) "Municipality" means a city, county, or other political subdivision or agency of a State.

(4) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

(5) "Natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

(6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any

place outside thereof, but only insofar as such commerce takes place within the United States.

(8) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality.

(9) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively.

(10) "Vehicular natural gas" means natural gas that is ultimately used as a fuel in a self-propelled vehicle.

(11) "LNG terminal" includes all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel, but does not include–

(A) waterborne vessels used to deliver natural gas to or from any such facility; or

(B) any pipeline or storage facility subject to the jurisdiction of the Commission under section 7 [15 USCS § 7171.

APPENDIX I

15 USCS § 717r

Current through PL 116-19, approved May 31, 2019

United States Code Service - Titles 1 through 54
TITLE 15. COMMERCE AND TRADE
CHAPTER 15B. NATURAL GAS

§ 717r. Rehearing and review

(a) Application for rehearing; time. Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this Act [15 USCS §§ 717 et seq.] to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act [15 USCS §§ 717 et seq.].

(b) Review of Commission order. Any party to a proceeding under this Act [15 USCS §§ 717 et seq.] aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the [circuit] court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code [28 USCS § 2112]. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon

such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendations, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended [28 USCS § 1254].

(c) Stay of Commission order. The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Judicial review.

(1) In general. The United States Court of Appeals for the circuit in which a facility subject to section 3 or section 7 [15 USCS § 717b or 7171 is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit, license, concurrence, or approval (hereinafter collectively referred to as "permit") required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(2) Agency delay. The United States Court of Appeals for the District of Columbia shall have original and exclusive jurisdiction over any civil action for the review of an alleged failure to act by a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), for a facility subject to section 3 or section 7 [15 USCS § 717b or 7171. The failure of an agency to take action on a permit required under Federal law, other than the Coastal Zone Management Act of 1972, in accordance with the Commission schedule established pursuant to section 15(c) [16 USCS § 717n(c)] shall be considered inconsistent with Federal law for the purposes of paragraph (3).

(3) Court action. If the Court finds that such order or action is inconsistent with the Federal law governing such permit and would prevent the construction, expansion, or operation of the facility subject to section 3 or section 7 [15 USCS § 717b or 7171, the Court shall remand the proceeding to the agency to take appropriate action consistent with the order of the Court. If the Court remands the order or action to the Federal or State agency, the Court shall set a reasonable schedule and deadline for the agency to act on remand.

(4) Commission action. For any action described in this subsection, the Commission shall file with the Court the consolidated record of such order or action to which the appeal hereunder relates.

(5) Expedited review. The Court shall set any action brought under this subsection for expedited consideration.

APPENDIX J

N.C. Gen. Stat. § 62-2

Current through Session Laws 2018-145 of the 2018 Regular Session and the 1st, 2nd, and 3rd Extraordinary Sessions of the General Assembly, but not including Session Laws 2018-146 or corrections and changes made to Session Laws 2018-132 through 2018-145 by the Revisor of Statutes, and through Session Laws 2019-3 of the 2019 Regular Session of the General Assembly, but not including corrections and changes made to the 2019 legislation by the Revisor of Statutes.

NC - General Statutes of North Carolina Annotated
CHAPTER 62. PUBLIC UTILITIES
ARTICLE 1. GENERAL PROVISIONS

§ 62-2. Declaration of policy

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

(1) To provide fair regulation of public utilities in the interest of the public;

(2) To promote the inherent advantage of regulated public utilities;

(3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;

(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills;

(4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plants under construction;

(5) To encourage and promote harmony between public utilities, their users and the environment;

(6) To foster the continued service of public utilities on a well-planned and coordinated basis that is

consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development;

(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply;

(9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of expansion funds for natural gas local distribution companies or gas districts to be administered under the supervision of the North Carolina Utilities Commission; and

(10) To promote the development of renewable energy and energy efficiency through the implementation of a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) that will do all of the following:

a. Diversify the resources used to reliably meet the energy needs of consumers in the State.

b. Provide greater energy security through the use of indigenous energy resources available within the State.

c. Encourage private investment in renewable energy and energy efficiency.

d. Provide improved air quality and other benefits to energy consumers and citizens of the State.

(b) To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities Commission to allow competitive offerings of local exchange, exchange access, and long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-110, and the Commission is further authorized after notice to affected parties and hearing to deregulate or to exempt from regulation under any or all provisions of this Chapter: (i) a service provided by any public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is competitive and that such deregulation or exemption from regulation is in the public interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the business of such public utility, upon a finding that

the service or business of such public utility is competitive and that such deregulation or exemption from regulation is in the public interest.

Notwithstanding the provisions of G.S. 62-110(b) and G.S. 62-134(h), the following services provided by public utilities defined in G.S. 62-3(23)a.6. are sufficiently competitive and shall no longer be regulated by the Commission: (i) intraLATA long distance service; (ii) interLATA long distance service; and (iii) long distance operator services. A public utility providing such services shall be permitted, at its own election, to file and maintain tariffs for such services with the Commission up to and including September 1, 2003. Nothing in this subsection shall limit the Commission's authority regarding certification of providers of such services or its authority to hear and resolve complaints against providers of such services alleged to have made changes to the services of customers or imposed charges without appropriate authorization. For purposes of this subsection, and notwithstanding G.S. 62-110(b), "long distance services" shall not include existing or future extended area service, local measured service, or other local calling arrangements, and any future extended area service shall be implemented consistent with Commission rules governing extended area service existing as of May 1, 2003.

The North Carolina Utilities Commission may develop regulatory policies to govern the provision of telecommunications services to the public which promote efficiency, technological innovation, economic growth, and permit telecommunications utilities a reasonable opportunity to compete in an emerging competitive environment, giving due regard to consumers, stockholders, and maintenance of reasonably

affordable local exchange service and long distance service.

(b1) Broadband service provided by public utilities as defined in G.S. 62-3(23)a.6. is sufficiently competitive and shall not be regulated by the Commission.

(c) The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985.

APPENDIX K

N.C. Gen. Stat. § 62-32

Current through Session Laws 2018-145 of the 2018 Regular Session and the 1st, 2nd, and 3rd Extraordinary Sessions of the General Assembly, but not including Session Laws 2018-146 or corrections and changes made to Session Laws 2018-132 through 2018-145 by the Revisor of Statutes, and through Session Laws 2019-3 of the 2019 Regular Session of the General Assembly, but not including corrections and changes made to the 2019 legislation by the Revisor of Statutes.

NC - General Statutes of North Carolina Annotated
CHAPTER 62. PUBLIC UTILITIES
ARTICLE 3. POWERS AND DUTIES OF UTILITIES COMMISSION

§ 62-32. Supervisory powers; rates and service

(a) Under the rules herein prescribed and subject to the limitations hereinafter set forth, the Commission shall have general supervision over the rates charged and service rendered by all public utilities in this State.

(b) Except as provided in this Chapter for bus companies, the Commission is hereby vested with all power necessary to require and compel any public utility to provide and furnish to the citizens of this State reasonable service of the kind it undertakes to furnish and fix and regulate the reasonable rates and charges to be made for such service.

APPENDIX L

N.C. Gen. Stat. § 62-36.01

Current through Session Laws 2018-145 of the 2018 Regular Session and the 1st, 2nd, and 3rd Extraordinary Sessions of the General Assembly, but not including Session Laws 2018-146 or corrections and changes made to Session Laws 2018-132 through 2018-145 by the Revisor of Statutes, and through Session Laws 2019-3 of the 2019 Regular Session of the General Assembly, but not including corrections and changes made to the 2019 legislation by the Revisor of Statutes.

NC - General Statutes of North Carolina Annotated
CHAPTER 62. PUBLIC UTILITIES
ARTICLE 3. POWERS AND DUTIES OF UTILITIES COMMISSION

Notice

This section has more than one version with varying effective dates. To view a complete list of the versions of this section see Table of Contents.

§ 62-36.01. Regulation of natural gas service agreements

Whenever the Commission, after notice and hearing, finds that additional natural gas service agreements (including "backhaul" agreements) with interstate or intrastate pipelines will provide increased competition in North Carolina's natural gas industry and (i) will likely result in lower costs to consumers without substantially increasing the risks of service interruptions to customers, or (ii) will substantially reduce the risks of service interruptions without unduly increasing costs to consumers, the Commission may enter and serve an order directing the franchised natural gas

local distribution company to negotiate in good faith to enter into such service agreements within a reasonable time. In considering costs to consumers under this section, the Commission may consider both short-term and long-term costs.

APPENDIX M

N.C. Gen. Stat. § 62-48

Current through Session Laws 2018-145 of the 2018 Regular Session and the 1st, 2nd, and 3rd Extraordinary Sessions of the General Assembly, but not including Session Laws 2018-146 or corrections and changes made to Session Laws 2018-132 through 2018-145 by the Revisor of Statutes, and through Session Laws 2019-3 of the 2019 Regular Session of the General Assembly, but not including corrections and changes made to the 2019 legislation by the Revisor of Statutes.

NC - General Statutes of North Carolina Annotated
CHAPTER 62. PUBLIC UTILITIES
ARTICLE 3. POWERS AND DUTIES OF UTILITIES COMMISSION

§ 62-48. Appearance before courts and agencies

(a) The Commission is authorized and empowered to initiate or appear in such proceedings before federal and State courts and agencies as in its opinion may be necessary to secure for the users of public utility service in this State just and reasonable rates and service; provided, however, that the Commission shall not appear in any State appellate court in support of any order or decision of the Commission entered in a proceeding in which a public utility had the burden of proof.

(b) The Commission may, when appearing before federal courts and agencies on behalf of the using and consuming public in matters relating to the wholesale rates and supply of natural gas, employ, subject to the approval of the Governor, private legal counsel and be reimbursed for any resulting legal fees and costs from

past and future refunds received by the North Carolina natural gas distribution companies, and may establish procedures for those natural gas distribution companies to set aside reasonable amounts of those refunds for this purpose. The Commission is also authorized to establish procedures whereby the State may be reimbursed from past and future refunds received by the North Carolina natural gas distribution companies for travel expenses incurred by staff members of the Commission and Public Staff designated to provide assistance to the Commission's private legal counsel in natural gas matters before federal courts and agencies.

APPENDIX N

N.C. Gen. Stat. § 62-133.4

Current through Session Laws 2018-145 of the 2018 Regular Session and the 1st, 2nd, and 3rd Extraordinary Sessions of the General Assembly, but not including Session Laws 2018-146 or corrections and changes made to Session Laws 2018-132 through 2018-145 by the Revisor of Statutes, and through Session Laws 2019-3 of the 2019 Regular Session of the General Assembly, but not including corrections and changes made to the 2019 legislation by the Revisor of Statutes.

NC - General Statutes of North Carolina Annotated
CHAPTER 62. PUBLIC UTILITIES
ARTICLE 7. RATES OF PUBLIC UTILITIES

§ 62-133.4. Gas cost adjustment for natural gas local distribution companies

(a) Rate changes for natural gas local distribution companies occasioned by changes in the cost of natural gas supply and transportation may be determined under this section rather than under G.S. 62-133(b), (c), or (d).

(b) From time to time, as changes in the cost of natural gas require, each natural gas local distribution company may apply to the Commission for permission to change its rates to track changes in the cost of natural gas supply and transportation. The Commission may, without a hearing, issue an order allowing such rate changes to become effective simultaneously with the effective date of the change in the cost of natural gas or at any other time ordered by the Commission. If the Commission has not issued an order under this subsection within 120 days after the

application, the utility may place the requested rate adjustment into effect. If the rate adjustment is finally determined to be excessive or is denied, the utility shall make refund of any excess, plus interest as provided in G.S. 62-130(e), to its customers in a manner ordered by the Commission. Any rate adjustment under this subsection is subject to review under subsection (c) of this section.

(c) Each natural gas local distribution company shall submit to the Commission information and data for an historical 12-month test period concerning the utility's actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation volumes. This information and data shall be filed on an annual basis in the form and detail and at the time required by the Commission. The Commission, upon notice and hearing, shall compare the utility's prudently incurred costs with costs recovered from all the utility's customers that it served during the test period. If those prudently incurred costs are greater or less than the recovered costs, the Commission shall, subject to G.S. 62-158, require the utility to refund any overrecovery by credit to bill or through a decrement in its rates and shall permit the utility to recover any deficiency through an increment in its rates.

(d) Nothing in this section prohibits the Commission from investigating and changing unreasonable rates as authorized by this Chapter, nor does it prohibit the Commission from disallowing the recovery of any gas costs not prudently incurred by a utility.

(e) As used in this section, the word "cost" or "costs" shall be defined by Commission rule or order and may include all costs related to the purchase and transportation of natural gas to the natural gas local distribution company's system.

APPENDIX O

18 CFR 385.214

This document is current through the
June 24, 2019 issue of the Federal Register.
Title 3 is current through June 7, 2019.

Code of Federal Regulations
TITLE 18 CONSERVATION OF
POWER AND WATER RESOURCES
CHAPTER I – FEDERAL ENERGY REGULATORY
COMMISSION, DEPARTMENT OF ENERGY
SUBCHAPTER X – PROCEDURAL RULES
PART 385 – RULES OF PRACTICE
AND PROCEDURE
SUBPART B – PLEADINGS, TARIFF AND RATE
FILINGS, NOTICES OF TARIFF OR RATE
EXAMINATION, ORDERS TO SHOW CAUSE,
INTERVENTION, AND SUMMARY DISPOSITION

§ 385.214 Intervention (Rule 214).

(a) Filing.

(1) The Secretary of Energy is a party to any proceeding upon filing a notice of intervention in that proceeding. If the Secretary's notice is not filed within the period prescribed under Rule 210(b), the notice must state the position of the Secretary on the issues in the proceeding.

(2) Any State Commission, the Advisory Council on Historic Preservation, the U.S. Departments of Agriculture, Commerce, and the Interior, any state fish and wildlife, water quality certification, or water rights agency; or Indian tribe with authority to issue a water quality certification is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the

period established under Rule 210(b). If the period for filing notice has expired, each entity identified in this paragraph must comply with the rules for motions to intervene applicable to any person under paragraph (a)(3) of this section including the content requirements of paragraph (b) of this section.

(3) Any person seeking to intervene to become a party, other than the entities specified in paragraphs (a)(1) and (a)(2) of this section, must file a motion to intervene.

(4) No person, including entities listed in paragraphs (a)(1) and (a)(2) of this section, may intervene as a matter of right in a proceeding arising from an investigation pursuant to Part 1 b of this chapter.

(b) Contents of motion.

(1) Any motion to intervene must state, to the extent known, the position taken by the movant and the basis in fact and law for that position.

(2) A motion to intervene must also state the movant's interest in sufficient factual detail to demonstrate that:

(i) The movant has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(ii) The movant has or represents an interest which may be directly affected by the outcome of the proceeeding, including any interest as a:

(A) Consumer,

(B) Customer,

(C) Competitor, or

(D) Security holder of a party; or

(iii) The movant's participation is in the public interest.

(3) If a motion to intervene is filed after the end of any time period established under Rule 210, such a motion must, in addition to complying with paragraph (b)(1) of this section, show good cause why the time limitation should be waived.

(c) Grant of party status.

(1) If no answer in opposition to a timely motion to intervene is filed within 15 days after the motion to intervene is filed, the movant becomes a party at the end of the 15 day period.

(2) If an answer in opposition to a timely motion to intervene is filed not later than 15 days after the motion to intervene is filed or, if the motion is not timely, the movant becomes a party only when the motion is expressly granted.

(d) Grant of late intervention. (1) In acting on any motion to intervene filed after the period prescribed under Rule 210, the decisional authority may consider whether:

(i) The movant had good cause for failing to file the motion within the time prescribed; (ii)Any disruption of the proceeding might result from permitting intervention;

(iii) The movant's interest is not adequately represented by other parties in the proceeding;

(iv) Any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention; and

(v) The motion conforms to the requirements of paragraph (b) of this section.

(2) Except as otherwise ordered, a grant of an untimely motion to intervene must not be a basis for delaying or deferring any procedural schedule established prior to the grant of that motion.

(3)

(i) The decisional authority may impose limitations on the participation of a late intervener to avoid delay and prejudice to the other participants.

(ii) Except as otherwise ordered, a late intervener must accept the record of the proceeding as the record was developed prior to the late intervention.

(4) If the presiding officer orally grants a motion for late intervention, the officer will promptly issue a written order confirming the oral order.