

179 FERC ¶ 61,041  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;  
James P. Danly, Allison Clements,  
Mark C. Christie, and Willie L. Phillips.

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP20-493-000

ORDER ISSUING CERTIFICATE

(Issued April 21, 2022)

1. On June 30, 2020, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> for authorization to construct, install, modify, operate, and maintain certain natural gas compression facilities for its East 300 Upgrade Project in Susquehanna County, Pennsylvania, and Sussex and Passaic Counties, New Jersey. The project is designed to provide 115,000 dekatherms (Dth) per day of firm transportation service on Tennessee's existing 300 Line system. As discussed below, we grant the requested authorization, subject to certain conditions.

**I. Background and Proposal**

2. Tennessee, a Delaware limited liability company, is a natural gas company as defined by section 2(6) of the NGA.<sup>3</sup> Tennessee's mainline transmission system extends from Texas, Louisiana, and the Gulf of Mexico area, through the states of Mississippi, Alabama, Arkansas, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, and New Hampshire.

3. The East 300 Upgrade Project will provide up 115,000 Dth per day of incremental firm transportation service from receipt points in Pennsylvania on Tennessee's 300 Line to its existing White Plains, Knollwood, and Rye Meter Stations in Westchester County, New York. Tennessee states that the project would help eliminate capacity constraints in the Westchester County region.

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<sup>1</sup> 15 U.S.C. § 717f(c).

<sup>2</sup> 18 C.F.R. pt. 157 (2021).

<sup>3</sup> 15 U.S.C. § 717a(6).

4. Specifically, Tennessee proposes to construct and operate a new compressor station, Compressor Station 327, consisting of a 19,000-horsepower (hp) electric motor-driven turbine compressor unit and auxiliary facilities in West Milford Township in Passaic County, New Jersey. Tennessee proposes to install 300 feet of 36-inch-diameter unit piping and 1,400 feet of 42-inch-diameter suction and discharge piping connecting the compressor station to Tennessee's 300 Line.

5. Tennessee also proposes to modify two existing compressor stations by installing:

- a 11,107-hp gas-fired, turbine-driven compressor unit and auxiliary and appurtenant facilities, including additional cooling equipment and filter separators, at its existing Compressor Station 321 in Susquehanna County, Pennsylvania; and
- a 20,500-hp gas-fired, turbine-driven compressor unit and auxiliary and appurtenant facilities, including additional cooling equipment and filter separators, at its existing Compressor Station 325 in Sussex County, New Jersey.

6. Prior to the open season, Tennessee executed a 20-year binding precedent agreement with Consolidated Edison Company of New York, Inc. (ConEd) for 110,000 Dth per day of firm transportation service on the project. Subsequently, ConEd amended the precedent agreement to add an additional 5,000 Dth per day of firm transportation service on the project, for a total of 115,000 Dth per day. ConEd is a utility company that delivers gas to customers in New York City and Westchester County and whose retail rates are regulated by the Public Service Commission of New York (NY PSC). ConEd explains that in recent years, revitalization projects, new construction, and conversions from #2 oil and propane to natural gas have increased demand for natural gas in its service area by 24 to 35 percent since 2013.<sup>4</sup> ConEd states it has taken steps to mitigate the increase by implementing both demand and supply-side controls, but they have been insufficient to meet the demand for new service.<sup>5</sup> ConEd states that on March 16, 2019, it further mitigated impacts of supply constraints by placing a temporary moratorium on connecting gas service for new customers in most of Westchester County, with the goal of being able to continue to provide service to its existing customers on the coldest winter

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<sup>4</sup> See ConEd's August 5, 2020 Comment at 3 (stating a 35% increase); ConEd's December 21, 2021 Comment at 6 (stating a 24 to 28% increase).

<sup>5</sup> ConEd's measures include a gas demand-response program, expansion of its energy efficiency program, and implementation of a statewide heat-pump plan. ConEd's August 5, 2020 Comment at 3-4.

days.<sup>6</sup> Since Tennessee filed its application, however, ConEd has informed the Commission that it has to contract for compressed natural gas (CNG) to be trucked to its service area to meet peak winter demand.<sup>7</sup> ConEd states the project capacity will allow it to lift the natural gas moratorium, supply gas to new customers requesting natural gas service, and cease trucked deliveries of CNG.<sup>8</sup>

7. Tennessee states it held an open season from May 8, 2019, to May 29, 2019, for firm transportation service on the project. Tennessee did not receive any additional qualifying bids. The open season also solicited offers from shippers to turn back capacity on Tennessee's existing system. Tennessee did not receive any offers to turn back capacity.

8. Tennessee estimates that the project will cost approximately \$246.3 million. ConEd has elected to pay a negotiated rate for firm transportation service on the project. Tennessee proposes to charge incremental recourse rates under its Rate Schedule FT-A and to offer interruptible transportation service under its general system Rate Schedule IT.

## II. Notice, Interventions, and Comments

9. Notice of Tennessee's application was published in the *Federal Register* on July 21, 2020, with interventions and comments due on August 5, 2020.<sup>9</sup> The parties listed in Appendix A of this order filed timely, unopposed interventions, which are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>10</sup> New

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<sup>6</sup> *Id.* at 4.

<sup>7</sup> *See* ConEd's December 21, 2021 Comment at 4.

<sup>8</sup> ConEd's August 5, 2020 Comment at 2-3, 6; ConEd's December 21, 2021 Comment at 4. *See also* Tennessee's August 23, 2021 Comments at 2-3 (noting that in ConEd's proceeding before the NY PSC regarding its moratorium on new gas service customer connections in most of Westchester County that the NY PSC stated that "moratoria on natural gas service can lead to customer hardships and increased emission impacts where the only available alternative to natural gas service is oil or propane.") (citing Case 20-G-0131, Proceeding on Motion of the Commission in Regard to Gas Planning Procedures, at 2-3 (NY PSC Mar. 19, 2020)).

<sup>9</sup> 85 Fed. Reg. 44,067 (July 21, 2020).

<sup>10</sup> 18 C.F.R. § 385.214(c)(1) (2021).

Jersey Department of Environmental Protection (NJ DEP), Sustainable West Milford, and 1.5C, LLC filed late motions to intervention, which were granted.<sup>11</sup>

10. Numerous commenters raised concerns regarding the project's environmental impacts. These comments are addressed in the Environmental Assessment (EA), Environmental Impact Statement (EIS),<sup>12</sup> and, as appropriate, below.

### **III. Discussion**

11. Because Tennessee's 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 NGA sections 7(c) and (e).<sup>13</sup>

#### **A. Certificate Policy Statement**

12. The 1999 Certificate Policy Statement<sup>14</sup> provides guidance for evaluating proposals to certificate new construction. The 1999 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 1999 Certificate Policy Statement explains that, in deciding whether to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the

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<sup>11</sup> See Secretary's February 2, 2021 and January 21, 2022 Notices Granting Late Interventions.

<sup>12</sup> References to the EIS in this order are to the final EIS unless otherwise stated.

<sup>13</sup> 15 U.S.C. §§ 717f(c) and (e).

<sup>14</sup> *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (1999 Certificate Policy Statement). To clarify, on March 24, 2022, the Commission suspended the effectiveness of the updated *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,107 (2022), and *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022), issued on February 18, 2022 to replace the 1999 Certificate Policy Statement. *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197 (2022) (Order on Draft Policy Statements).

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

13. Under this policy, the threshold requirement for applicants proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the route of the new pipeline facilities.<sup>15</sup> If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

### **1. No Subsidy Requirement and Project Need**

14. As discussed above, the threshold requirement for pipelines proposing new projects 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 to charge incremental rates for new construction that are higher than the pipeline's existing system rates, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.<sup>16</sup> Tennessee proposes to establish separate incremental recourse rates under Rate Schedule FT-A for service on the project that are designed to recover the full cost of the facilities and are higher than its existing applicable system rates. Therefore, we find that Tennessee's existing shippers will not subsidize the expansion project.

15. ConEd, the project shipper unaffiliated with Tennessee, states that demand for natural gas in the Westchester County service area has exceeded supply.<sup>17</sup> Since 2013, ConEd estimates that the county has experienced a 35% increase in firm customer peak

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<sup>15</sup> In 2021, the Commission established the Office of Public Participation (OPP) to support meaningful public engagement and participation in Commission proceedings. OPP provides members of the public, including environmental justice communities, with assistance in FERC proceedings, including navigating Commission processes and activities relating to projects.

<sup>16</sup> See, e.g., *Transcon. Gas Pipe Line Co.*, 158 FERC ¶ 61,125, at P 22 (2017).

<sup>17</sup> ConEd's August 5, 2020 Comment at 3.

demand.<sup>18</sup> ConEd has implemented alternative measures to reduce gas demand, such as gas efficiency programs, but the measures have not increased available capacity to serve new customers. As noted above, due to the supply constraint, ConEd placed a temporary moratorium on accepting new gas customers in most of the county in order to ensure that it can meet existing peak winter gas demand.<sup>19</sup> ConEd states that the additional 115,000 Dth per day of service on the project will enable it to lift the moratorium.

16. Commenters, such as Food and Water Watch, argue that additional natural gas infrastructure is unnecessary because the region should transition to alternative sources of energy, noting that New York State has enacted the Climate Leadership and Community Protection Act (NY Climate Act).<sup>20</sup> Commenters contend that that construction of a project to deliver additional volumes of natural gas is inconsistent with the goal of reducing GHG emissions. Commenters assert that the project would become a stranded asset and that the public would ultimately be responsible for removal of the facilities when they are no longer needed. In response, ConEd argues that the NY Climate Act does not alter its statutory obligation to provide gas service to meet rising gas demand in Westchester County.<sup>21</sup>

17. ConEd has shown that natural gas demand in its service territories is exceeding its available firm natural gas interstate pipeline capacity and that additional transportation capacity is needed to serve its existing and new customers.<sup>22</sup> To meet this demand, ConEd entered into a precedent agreement for firm transportation service on the project. The commenters' claim that the project is not needed because of NY Climate Act is misplaced. The NY Climate Act does not ban ConEd from providing natural gas to meet end-use demand. Instead, it establishes statewide GHG emissions reductions targets (e.g., reduce statewide GHG emissions by 85% from 1990 levels by 2050)<sup>23</sup> and prescribes goals for electricity generation from renewable energy sources (e.g., 9,000 megawatts of installed offshore wind generation by 2035).<sup>24</sup> The Climate Action Council, created by the NY Climate Act, is tasked to develop a scoping plan to assist

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 4.

<sup>20</sup> *See* N.Y. ENVTL. CONSERV. LAW §§ 75.0101-75.0119

<sup>21</sup> *See* ConEd's August 5, 2020 Comment at 2-5.

<sup>22</sup> *Id.* at 3-4.

<sup>23</sup> N.Y. ENVTL. CONSERV. LAW § 75-0107 (McKinney 2022).

<sup>24</sup> N.Y. PUB. SERV. LAW § 66-p (McKinney 2022).

New York with meeting the goals and is scheduled to issue the final scoping plan later this year.<sup>25</sup> The New York Department of Environmental Conservation is responsible for enforcing the prescribed emissions targets.<sup>26</sup> The commenters' claims that the project is not needed because of legislation in New York related to reducing GHG emissions are not sufficient to undermine our finding that Tennessee has demonstrated a need for the project through a precedent agreement for 100% of the project.

## **2. Impacts on Existing Customers, Existing Pipelines and Their Customers, and Landowners and Surrounding Communities**

18. We find that Tennessee's project will not adversely affect service to Tennessee's existing customers. The project will enable Tennessee to provide long-term, firm transportation service to ConEd through the proposed upgrades to Tennessee's system while maintaining existing service. We also find that there will be no adverse impact on other pipelines in the region or their captive customers because the project will not displace existing service on other pipelines. No pipelines or their captive customers have objected to Tennessee's proposal.

19. With respect to potential impacts on landowners, Tennessee owns the land on which all project construction at the two existing compressor stations, Compressor Station 321 and Compressor Station 325, including the associated workspace, will take place. The new Compressor Station 327 will be located on industrial and commercial land that is traversed by Tennessee's existing 300 Line pipeline right-of-way.<sup>27</sup> Moreover, the majority of the land impacted by the project has been previously disturbed.<sup>28</sup> We are satisfied that Tennessee has taken appropriate steps to minimize adverse impacts on landowners and surrounding communities affected by the project.

20. In sum, the proposed project will enable Tennessee to provide up to 115,000 Dth per day of firm transportation service, which constitutes 100% of the project's capacity, to ConEd. Accordingly, we find that Tennessee has demonstrated a need for the project. Further the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers and will have minimal impacts on the interests of landowners and surrounding communities. Therefore, we conclude that the project is

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<sup>25</sup> N.Y. ENVTL. CONSERV. LAW § 75-0103 (McKinney 2022). New York State, *Our Progress*, <https://climate.ny.gov/Our-Progress> (last visited March 15, 2022).

<sup>26</sup> N.Y. ENVTL. CONSERV. LAW § 75-0109 (McKinney 2022).

<sup>27</sup> Tennessee has an option to purchase the land on which the new Compressor Station 327 will be sited. Application at 6.

<sup>28</sup> EA at 42.

consistent with the criteria set forth in the 1999 Certificate Policy Statement and analyze the environmental impacts of the project below.<sup>29</sup>

## **B. Rates**

### **1. Initial Rates**

21. Tennessee proposes incremental recourse rates under Rate Schedule FT-A for firm transportation service on the project facilities. Tennessee used a straight fixed-variable rate design to calculate its rates. Tennessee proposes an initial incremental monthly recourse reservation charge of \$29.9082 per Dth and an incremental usage charge of \$0.0424 per Dth. The proposed firm recourse reservation charge is based on an annual cost of service of \$41.273 million and maximum design capacity of 115,000 Dth per day, while the usage charge reflects estimated firm throughput using an 85% load factor utilization based on historical load factor levels on Tennessee's system.<sup>30</sup> Tennessee's proposed incremental cost of service reflects the income tax rates, capital structure, and rate of return approved by the Commission in its rate settlement in Docket No. RP95-112-000, et al.<sup>31</sup> and reaffirmed in its last settlement in Docket No. RP19-351-002.<sup>32</sup> The proposed cost of service reflects Tennessee's straight-line depreciation rate of 2.05%, reflecting its currently effective depreciation and negative salvage rates applicable to its onshore transmission facilities.<sup>33</sup>

22. We have reviewed Tennessee's proposed cost of service and initial rates and find that they reasonably reflect current Commission policy. Under the Certificate Policy

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<sup>29</sup> See 1999 Certificate Policy Statement, 88 FERC at 61,745-46 (explaining that only when the project benefits outweigh the adverse effects on the economic interests will the Commission then complete the environmental analysis).

<sup>30</sup> Application, Ex. N at 1.

<sup>31</sup> See *Tenn. Gas Pipeline Co.*, 94 FERC ¶ 61,117 (2001), *order on reh'g*, 95 FERC ¶ 61,034 (2001); *Tenn. Gas Pipeline Co.*, 77 FERC ¶ 61,083 (1996), *reh'g denied*, 78 FERC ¶ 61,069 (1997), *pet. for review denied sub nom. NorAm Gas Transmission Co.*, 148 F.3d 1158 (D.C. Cir. 1998) (1995 Settlement).

<sup>32</sup> *Tenn. Gas Pipeline Co.*, 167 FERC ¶ 61,169 (2019) (2019 Settlement). Pursuant to the terms of the 2019 Settlement, for purposes of determining cost-of-service levels in certificate applications, the federal income tax rate in the 1995 Settlement was adjusted to reflect the reduction in federal corporate income tax rates to 21% as a result of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

<sup>33</sup> See Application, Ex. O at 3.

Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate exceeds the maximum system recourse rate.<sup>34</sup> To this end, the Commission permits pipelines to charge an incremental usage charge below the system usage charge when the project's overall rate (reservation plus usage) is greater than the system recourse rate.<sup>35</sup> Tennessee's proposed incremental monthly reservation charge of \$29.9082 per Dth plus the incremental usage charge of \$0.0424 per Dth is higher than Tennessee's currently effective maximum monthly recourse reservation charge of \$5.0274 per Dth plus the maximum recourse usage charge of \$0.0579 per Dth under Rate Schedule FT-A. Therefore, we approve Tennessee's proposal to charge an incremental rate for the proposed project.

23. Tennessee also proposes to offer interruptible transportation service on the project under its existing Rate Schedule IT. Commission policy requires a pipeline to charge its current system interruptible transportation rate for any interruptible service rendered on additional capacity made available as a result of an incremental expansion that is integrated with existing pipeline facilities.<sup>36</sup> We therefore approve Tennessee's proposal to use its existing interruptible rate for the project.

## **2. Fuel**

24. Tennessee proposes to charge its generally-applicable system-wide fuel and loss retention percentages and electric power cost rates under Rate Schedule FT-A for service on the project facilities. To support its proposal, Tennessee filed a fuel study demonstrating that rolling the fuel and electric power costs into its existing fuel and retention percentages and electric power cost rates would not negatively impact Tennessee's existing shippers.<sup>37</sup> Based on Tennessee's fuel study, we approve Tennessee's request to use its currently effective system fuel and loss retention percentages and electric power cost rates for new transportation capacity on the project.

## **3. Reporting Incremental Costs**

25. Section 154.309 of the Commission's regulations includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are

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<sup>34</sup> 1999 Certificate Policy Statement, 88 FERC at 61,745.

<sup>35</sup> *See, e.g., Tex. E. Transmission, LP*, 161 FERC ¶ 61,226 (2017).

<sup>36</sup> *Texas Gas Transmission, LLC*, 154 FERC ¶ 61,235, at P 20 (2016).

<sup>37</sup> *See* Application, Ex. Z-4.

charged.<sup>38</sup> The requirements ensure that costs are properly allocated between a pipeline's existing shippers and incremental expansion shippers. Therefore, Tennessee must keep separate books and accounting of costs and revenues attributable to the incremental services and capacity created by the project as required by section 154.309 of the Commission's regulations. The books should be maintained with applicable cross-references as required by section 154.309. This information must be provided consistent with Order No. 710<sup>39</sup> and 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.

#### **4. Negotiated Rates**

26. Tennessee proposes to provide service to the project shipper under a negotiated rate agreement. Tennessee must file either the negotiated rate agreement or tariff records setting forth the essential terms of the agreements in accordance with the Alternative Rate Policy Statement<sup>40</sup> and the Commission's negotiated rate policies.<sup>41</sup>

#### **5. Non-Conforming Provisions**

27. Tennessee filed an unexecuted Firm Transportation Agreement (FTA) for service on the project, stating that the FTA contains provisions that deviate from its *pro forma* Rate Schedule FT-A transportation service agreement.<sup>42</sup> Tennessee explains that the differences reflect the primary contractual benefits provided to the project shipper in

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<sup>38</sup> 18 C.F.R. § 154.309 (2021).

<sup>39</sup> *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at PP 23-25 (2008) (cross-referenced 122 FERC ¶ 61,262).

<sup>40</sup> *Alts. to Traditional Cost-of-Service Ratemaking for Nat. Gas Pipelines; Regulation of Negotiated Transp. Servs. of Nat. Gas Pipelines*, 74 FERC ¶ 61,076, clarification granted, 74 FERC ¶ 61,194, order on reh'g and clarification, 75 FERC ¶ 61,024, reh'g denied, 75 FERC ¶ 61,066, reh'g dismissed, 75 FERC ¶ 61,291 (1996), petition denied sub nom. *Burlington Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

<sup>41</sup> *Nat. Gas Pipelines Negotiated Rate Policies & Practices; Modification of Negotiated Rate Pol'y*, 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).

<sup>42</sup> Application, Ex. I.

exchange for agreeing to provide contractual support for the project.<sup>43</sup> Tennessee asserts that the differences do not constitute material deviations because they are not unduly discriminatory and requests the Commission approve the non-conforming provisions.<sup>44</sup>

28. Tennessee states that Exhibit A of the FTA reflects certain contractual right-of first refusal (ROFR) provisions in the fill-in-the-blank section for “other provisions” that are described in Article XXXVI of the General Terms and Conditions (GT&C) of Tennessee’s tariff. Specifically, ConEd has a contractual right to extend the Primary Term of the FTA up to 100% of the contract quantities for a term of one five-year period at the same rates and charges applicable during the Primary Term, subject to at least 24 months prior written notice prior to the end of the Primary Term.<sup>45</sup> The second non-conforming provision provides the in-service date for firm transportation service under the service agreement, which reflects the commencement date for the project.<sup>46</sup>

29. In *Columbia*, the Commission clarified that a material deviation is any provision in a service agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties.<sup>47</sup> However, not all material deviations are impermissible. As explained in *Columbia*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.<sup>48</sup>

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<sup>43</sup> *Id.* at 14.

<sup>44</sup> The redline version of the unexecuted FTA reflects several areas where Tennessee has “filled in the blanks,” and these sections of the agreement therefore do not constitute non-conforming provisions from Tennessee’s *pro forma* tariff. Also, the FTA contains Article XVI, Creditworthiness, which was also included in the precedent agreement, to reflect the creditworthiness provisions applicable to ConEd. Tennessee redacted these provisions from the public version of the FTA and is not seeking an upfront determination from the Commission.

<sup>45</sup> Application at 14-15.

<sup>46</sup> *Id.* at 15.

<sup>47</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,001-02 (2001) (*Columbia*); *ANR Pipeline Co.*, 97 FERC ¶ 61,224, at 62,022 (2001).

<sup>48</sup> *Columbia*, 97 FERC at 62,002.

30. We find that the non-conforming provisions in the project shipper's service agreement constitute material deviations from Tennessee's *pro forma* service agreement. However, we find they are permissible because they do not present a risk of undue discrimination, do not adversely affect the operational conditions of providing service, and do not result in any customer receiving a different quality of service.<sup>49</sup> As we have previously stated concerning similar non-conforming provisions proposed by Tennessee, the provisions reflect the unique circumstances involved with the construction of new infrastructure and provide the needed security to ensure the viability of a project.<sup>50</sup>

31. Before providing service to any project shipper under a non-conforming agreement, Tennessee must file an executed copy of the non-conforming service agreement and identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement. Consistent with section 154.112 of the Commission's regulations, Tennessee must also file a tariff record identifying the agreements as non-conforming agreements.<sup>51</sup> In addition, the Commission emphasizes that the above determination relates only to those items described by Tennessee in its application and not to the entirety of the precedent agreement or the language contained in the precedent agreement.<sup>52</sup>

### C. Environmental Impacts

32. On August 13, 2020, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed East 300 Upgrade Project and Request for

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<sup>49</sup> See, e.g., *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220, at PP 70-72 (2019) (finding permissible a non-conforming provision granting each of the existing shippers the one-time right to extend the initial ten-year primary term by one additional five-year period); *Tenn. Gas Pipeline Co., L.L.C.*, 161 FERC ¶ 61,265, at PP 41-43 (2017) (noting that the extension right provision was permissible). See *Tenn. Gas Pipeline Co., L.L.C.*, 169 FERC ¶ 61,230, at PP 42-46 (2019) (finding a non-conforming commencement date to be permissible).

<sup>50</sup> *Tennessee Gas*, 161 FERC ¶ 61,265 at P 43; *Tenn. Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 32 (2013).

<sup>51</sup> 18 C.F.R. § 154.112 (2021).

<sup>52</sup> A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreement(s) and a tariff record identifying the agreement(s) as non-conforming are filed with the Commission, consistent with section 154.112 of the Commission's regulations. See, e.g., *Tenn. Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160, at P 44 & n.33 (2015).

Comments on Environmental Issues (NOI). The NOI was published in the *Federal Register*<sup>53</sup> 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. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),<sup>54</sup> Commission staff initially prepared an EA for Tennessee's proposal.<sup>55</sup> The analysis in the EA addressed all substantive environmental comments received prior to issuance of the EA and, noting that Commission staff was unable to assess the project's contribution to climate change, concluded that the project would not constitute a major federal action significantly affecting the quality of human environment.<sup>56</sup> The EA was issued for a 30-day comment period and placed into the public record on February 19, 2021. In response to the EA, we received 176 written comments from federal and state agencies, non-governmental organizations, individuals, and the applicant.

33. Following issuance of the EA, on May 27, 2021, the Commission issued a Notice of Intent to Prepare an Environmental Impact Statement for the Proposed East 300 Upgrade Project and Schedule for Environmental Review.<sup>57</sup> On July 2, 2021, the Commission issued a draft EIS, which incorporated the EA's analysis and conclusions, with the exception of those related to the project's impacts on climate change, responded to comments received on the EA, and estimated downstream GHG emissions related to the project, providing information that might assist the Commission's consideration of the project's contribution to climate change. The draft EIS was filed with the EPA, and a formal notice of availability was published in the *Federal Register* on July 9, 2021, which established a 45-day comment period on the draft EIS that ended on August 23, 2021.<sup>58</sup> The Commission received comments on the draft EIS concerning climate change, water

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<sup>53</sup> 85 Fed. Reg. 51,023 (Aug. 19, 2020).

<sup>54</sup> 42 U.S.C. §§ 4321 *et seq.* See also 18 C.F.R. pt. 380 (2021) (Commission's regulations implementing NEPA).

<sup>55</sup> On July 16, 2020, Council on Environmental Quality (CEQ) issued a final rule, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, which became effective on September 14, 2020. *Federal Register*, 85 Fed. Reg. 43,304 (July 16, 2020). Because the NEPA review of the East 300 Upgrade Project was already in progress at the effective date, the environmental documents were prepared pursuant to CEQ's 1978 regulations. See EA at 1 n.2.

<sup>56</sup> EA at 12, tbl. 2, 100.

<sup>57</sup> *Federal Register*, 86 Fed. Reg. 29,759 (June 3, 2021).

<sup>58</sup> 86 Fed. Reg. 36,277 (July 9, 2021).

resources, migratory birds, land use, recreation, visual resources, cultural resources, socioeconomics, environmental justice, noise, public safety, and alternatives.

34. Commission staff issued the final EIS for the project on September 24, 2021, and published a notice of the availability of the final EIS in the *Federal Register* on November 18, 2021.<sup>59</sup> The final EIS addressed all substantive environmental comments received on the draft EIS<sup>60</sup> and concludes that construction of the project will result in adverse environmental impacts but that these impacts would be avoided or minimized through mitigation measures and would not be significant except for project's effect on climate change, the significance of which staff was unable to determine.<sup>61</sup>

35. The final EIS evaluated the potential impacts of construction and operation of the project on geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, socioeconomics, environmental justice, cultural resources, air quality, noise, safety, cumulative impacts, and identified alternatives. The Commission received comments on the final EIS from Tennessee; ConEd;<sup>62</sup> the U.S. Environmental Protection Agency (EPA);<sup>63</sup> 1.5C, LLC; and Kirkman Frost (Mr. Frost), which are addressed below, as are

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<sup>59</sup> 86 Fed. Reg. 54,178 (Sept. 30, 2021).

<sup>60</sup> Several comments stated a general opposition to fossil fuels and the approval of related infrastructure. As stated earlier, the Commission considers applications for a certificate of public convenience and necessity based on the framework described in the Commission's Certificate Policy Statement. To the extent these general comments request that the Commission ban the construction and operation of all jurisdictional infrastructure related to the transportation of natural gas, such action would be beyond the scope of this proceeding.

<sup>61</sup> EIS at ES-3, 55.

<sup>62</sup> Tennessee's and ConEd's comments were supportive of the project, reiterating the need for the project and requesting timely Commission action.

<sup>63</sup> In addition to specific arguments discussed below, EPA generally finds the EIS to be inadequate to meet the purposes of NEPA and asserts it lacks sufficient information to assess potentially significant environmental impacts. Reiterating its comments filed in response to the Commission's Notice of Inquiry for *Certification of New Interstate Natural Gas Facilities*, 174 FERC ¶ 61,125 (2021), EPA recommends that the Commission revise its certification policy to better scrutinize project need and consider carbon lock-in and potential stranded assets. Until the Commission updates the Certificate Policy Statement, EPA recommends delaying acting on Tennessee's application. See EPA's Nov. 1, 2021 Comment, Enclosure at 1. Once the policy statement has been issued, EPA recommends that the Commission review applications

environmental issues of concern, including climate change and impacts on environmental justice communities.

### 1. Water Resources

36. Construction activities such as trench dewatering, blasting, and spills or leaks of hazardous materials have the potential to affect groundwater in several different ways. Clearing, grading, trenching, and soil stockpiling activities within the right-of-way may cause minor fluctuations in local groundwater levels and/or increased turbidity due to erosion and sediment runoff, especially where shallow aquifers exist. Heavy construction equipment could compact soil, which could then reduce water infiltration rates. Construction of aboveground facilities may result in minor, permanent increases of impervious areas, but the project is unlikely to affect infiltration or groundwater recharge beyond the compressor stations' footprints. Further, if Tennessee uses existing or new groundwater wells as hydrostatic test water, the project may result in non-significant temporary and localized groundwater depletions. Test water would be hauled off and disposed of at an off-site disposal facility in accordance with New Jersey requirements. Last, an accidental spill of fuel or hazardous material during refueling or maintenance of construction equipment could affect groundwater if not cleaned up properly.

37. Regarding surface water, there are no waterbodies within any of the project workspaces. No surface water intakes are located within three miles of Compressor Station 321, but there is one surface water intake (Clove Brook) located within three miles of the construction workspace for Compressor Station 325 and five surface water intakes located within three miles of the construction workspace for Compressor Station 327. The Monksville Reservoir is approximately 1,200 feet east of Compressor Station 327, and the nearest water intake on the reservoir is 3.5 miles southeast of the compressor station. Stormwater from the Compressor Station 327 site would flow into Hewitt Brook, which flows into Monksville Reservoir. The environmental analyses conclude that there would be no direct impact on waterbodies.<sup>64</sup>

38. On September 30, 2020, Tennessee filed a request for Water Quality Certification with Pennsylvania Department of Environmental Protection (Pennsylvania DEP),

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under the guidelines of the new policy. Although the Commission issued its Updated Policy Statement, *Updated Policy Statement on Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,108, on February 18, 2022, we subsequently withdrew the effectiveness of the Updated Policy Statement in order to consider additional comments and explained that we would not apply the now-draft Updated Policy Statement to pending applications. Order on Draft Policy Statements, 178 FERC ¶ 61,197 at P 2.

<sup>64</sup> EA at 23; EIS at 6.

pursuant to section 401 of the Clean Water Act (CWA).<sup>65</sup> Accordingly, Environmental Condition 12 in Appendix B to this order requires Tennessee to file the water quality certification within 5 days of receipt.

39. Several comments on the EA and the EIS express concern about contamination of reservoirs due to the presence of benzene, chromium, and hydrocarbons at the project.<sup>66</sup> In comments on the EIS, Mr. Frost expresses concern with the potential of benzene contamination of Monksville Reservoir, located approximately 1,200 feet from Compressor Station 327. As stated in the EIS, any minimal amount of natural gas including VOCs that is emitted from fugitive leaks from Compressor Station 327 would tend to diffuse into the air and, unlike VOC liquids, would not likely run off into surface waters.<sup>67</sup> The EA notes that the nearest water intake on the reservoir is located approximately 3.5 miles from Compressor Station 327.<sup>68</sup> Further, Tennessee will not handle benzene or chromium at the project site.<sup>69</sup> However, hydrocarbons, such as gasoline, will be located on-site.<sup>70</sup> Tennessee will handle gasoline in accordance with the Spill Prevention and Response Procedures, Federal Spill Prevention Control and Countermeasure regulations,<sup>71</sup> and New Jersey's Discharge Prevention Program<sup>72</sup> to minimize any impacts.

40. To minimize and mitigate potential impacts, Tennessee will implement its Plan for Unanticipated Discovery of Contaminated Soils or Groundwater, Spill Prevention and Response Procedures, and our Plan and Procedures. In addition, Tennessee is prohibited from refueling or storing hazardous liquids within a 200-foot radius of the wells within the footprints of Compressor Stations 321 and 325. Tennessee would also install

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<sup>65</sup> 33 U.S.C. § 1341. *See also* Tennessee's December 1, 2020's Data Response No. 1 and tbl. 1.6-1 of attach. 1-1 (stating it filed the request for Water Quality Certification with the Pennsylvania DEP on September 30, 2020).

<sup>66</sup> *See, e.g.*, Mr. Frost's December 23, 2021 Comment at 1-4; Eberhard Dieterich's August 18, 2021 at 1; Barbara Cuthbert's March 22, 2021 Comment at 6.

<sup>67</sup> EIS at 46.

<sup>68</sup> EA at 21.

<sup>69</sup> EA at 23; EIS at 33.

<sup>70</sup> EA at 23; EIS at 33.

<sup>71</sup> *See* 40 C.F.R. § 112 (2021); EA at 23-24.

<sup>72</sup> *See* New Jersey Administrative Code Chapter 7:1E; EA at 23-24.

permanent stormwater BMPs, designed to conform to the NJ DEP's Stormwater Management Rules, to handle runoff that would be created from new impervious surfaces.<sup>73</sup> These permanent stormwater controls are designed to result in post-construction runoff and groundwater recharge that will be similar to pre-construction conditions. Therefore, with the implementation of these measures, we agree that the project would have only temporary, minor impacts on groundwater resources.<sup>74</sup>

## 2. Air Quality

41. Project construction would result in temporary, localized emissions that would last the duration of construction activities, which is estimated to be nine months. The use of heavy equipment and trucks powered by diesel or gasoline engines would generate exhaust emissions. Exhaust emissions would also be generated by delivery vehicles and construction workers commuting to and from work areas.

42. Construction activities, such as land clearing and grading, ground excavation, and driving on unpaved roads, would also temporarily generate fugitive dust (large particles as well as fine particulate matter (PM) PM<sub>10</sub> and PM<sub>2.5</sub>).<sup>75</sup> The amount of dust generated would be a function of construction activity, soil type, soil moisture content, wind speed, precipitation, vehicle traffic and types, and roadway characteristics. Emissions from construction would be greater during dry periods and in areas of fine-textured soils subject to surface activity. As mentioned above, Tennessee will apply water to construction work areas as needed to minimize fugitive dust emissions at project construction sites. Moreover, for construction at Compressor Stations 325 and 327 located in New Jersey, Tennessee will use ultra-low sulfur diesel fuel for all non-road diesel vehicles and will adhere to the three-minute idling limit pursuant to New Jersey state requirement for all on-road and non-road construction equipment.<sup>76</sup> This would minimize PM and sulfur dioxide emissions from construction equipment.

43. In general, emissions from project construction would occur over the duration of construction activity and would be emitted at different times throughout the project areas. Construction emissions would be relatively minor and would result in short-term, localized impacts in the immediate vicinity of construction work areas.

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<sup>73</sup> EA at 23; EIS at 34.

<sup>74</sup> EA at 20.

<sup>75</sup> PM<sub>10</sub> and PM<sub>2.5</sub> are defined as particulate matter having an aerodynamic diameter equal to or less than 10 and 2.5 micrometers, respectively.

<sup>76</sup> Administrative Code 7:27-14 and 7:27-15.

44. Regarding air quality impacts caused by project operations, air emissions associated with project operations (combustion of the gas and fugitive emissions from minor leaks) will come almost entirely from operation of the two new natural gas turbines to be installed at Compressor Stations 321 and 325 (compression at the new Compressor Station 327 will be electrically-driven).<sup>77</sup> To determine the impacts of emissions from operation of Compressor Stations 321 and 325, as modified by the proposed project, on regional air quality, air quality dispersion models were completed using the latest version of EPA's AERMOD (version 19191) and the methodology outlined in EPA guidance, and using meteorological datasets obtained from the NJDEP and PADEP. The models estimate the maximum predicted concentrations of criteria pollutants emitted from the modified compressor stations, assuming the stations would be running at maximum capacity (i.e., 8,760 hours per year) and maximum emission rates. Background concentrations of pollutants from the nearest air monitors were then added to the maximum predicted concentrations from the model and the total was compared to the National Ambient Air Quality Standards (NAAQS) that are set by the EPA to protect public health and welfare, including sensitive populations such as children, the elderly, and asthmatics. The model results demonstrate that emissions of criteria pollutants from the modified Compressor Stations 321 and 325, combined with existing ambient background concentrations, would remain well below the NAAQS thresholds. Thus, we conclude that the modifications to Compressor Stations 321 and 325 would not significantly cause or contribute to degradation of ambient air quality in the region.<sup>78</sup>

45. In his comment on the final EIS, Mr. Frost asserts that the Commission failed to publish an estimate of benzene and other emissions from natural gas from the project as a whole and including emissions from Compressor Station 327, and provides his own estimates of the yearly emissions of methane, as well as trace hazardous air pollutant (HAP) constituents in the natural gas potentially vented at the station and emitted by sources of fugitive emissions at the station. According to Mr. Frost, the emissions of "benzene and aggregate methane total emissions" across Tennessee's 300 Line, including

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<sup>77</sup> Electric-driven compressors do not have any emissions associated with operation of the compressors because there is no fuel to combust. However, as detailed in paragraphs 46-48 below, all compressor stations will have fugitive emissions (mostly methane, not hazardous air pollutants) associated with minor leaks at the piping components and valves as well as from venting of gas which must occur when compressor units are shut down. In addition, this would be reduced by the use of electric start-up in lieu of gas-driven.

<sup>78</sup> EA at 66-67, tbls. 15, 16.

the natural gas venting and fugitive emissions from Compressor Station 327, “pose significant threats to human population and environment.”<sup>79</sup>

46. The EA summarized estimated potential venting and fugitive emissions from Compressor Station 327 and other project sources, including total volatile organic compound, HAP, and carbon dioxide equivalent emissions.<sup>80</sup> Mr. Frost is correct that Tennessee’s own data indicate that the pipeline quality natural gas transported in Tennessee’s East 300 pipeline contains trace quantities of hydrocarbons classified by the EPA as HAPs, including: 2,2,4-trimethylpentane, benzene, ethylbenzene, n-hexane, toluene, and xylenes, totaling approximately 0.0482% by weight within the natural gas transported in the 300 Line.<sup>81</sup> Mr. Frost calculates that venting events and fugitive emissions at Compressor Station 327 could contain approximately 0.003 ton per year of benzene and approximately 0.07 ton per year of total HAP.<sup>82</sup> This is consistent with the total HAP estimate for venting and fugitive releases presented in the EA.<sup>83</sup> The estimates in the EA are based on assumptions regarding the number and frequency of venting (also referred to as blowdown) events that could potentially occur at each station on an annual basis. To reduce the venting and fugitive emissions from normal operations at the modified Compressor Stations 321 and 325 and new Compressor Station 327, including the potential HAP emissions from such releases, Tennessee will implement several mitigation measures at each station as part of its participation in EPA’s One Future Commitment Option under the Natural Gas STAR Methane Challenge Program. These measures include: reducing pressures at each station prior to the venting of piping (which serves to reduce the amount of methane and trace HAP constituents vented per unit volume of gas released); utilizing electric start in place of startup gas for the proposed turbines at Compressor Stations 321 and 325; equipping each of the project’s centrifugal compressors with a dry seal system and pressurized hold technology; and installing new pneumatic devices at each station that are either low-bleed or controlled by air instead of natural gas.<sup>84</sup>

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<sup>79</sup> Mr. Frost’s December 23, 2021 Comment at 1-3.

<sup>80</sup> EA at 63-65, tbls. 12-14 (identifying the following source emissions: venting releases, fugitive emissions, and fugitive releases).

<sup>81</sup> See Application, app. 9B.

<sup>82</sup> Mr. Frost’s December 23, 2021 Comment at 2.

<sup>83</sup> EA at 65, tbl. 14.

<sup>84</sup> EA at 60.

47. To provide context for the potential public health risks of the emissions associated with the described venting of pipeline gas (as opposed to the combustion of the gas), we reference a health risk assessment that the Commission prepared in relation to a proposed compressor station that had an estimated potential HAP (including benzene) emissions of 3.7 tons per year, well more than an order of magnitude greater than the emissions at issue here.<sup>85</sup> The assessment found that the maximum modeled concentrations of HAPs from normal operations were well below the levels that EPA and state agencies have determined to be safe for a sensitive individual.<sup>86</sup> The assessment included evaluation of the acute exposures to the highest predicted 1-hour natural gas emissions that would be associated with all gas at the studied compressor station (a full-station blowdown) and found these events would also result in exposure below a level of health concern based on EPA's acute inhalation exposure criteria.<sup>87</sup> Therefore, as the analysis in the above referenced assessment indicates, we conclude that the trace quantities of HAPs, including benzene (i.e., approximately 0.003 ton per year of benzene and approximately 0.07 ton per year of total HAP), vented during blowdown events and emitted by fugitive leaks at Compressor Station 327 and elsewhere along Tennessee's 300 Line would not present a health risk to the nearby public.

48. In sum, we agree with the EA's and EIS's conclusions that the air quality impacts caused by construction and operation of the project would not be significant.<sup>88</sup>

### **3. GHG Emissions and Climate Change**

49. CEQ defines effects or impacts as "changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives."<sup>89</sup> An impact is reasonably foreseeable if it is "sufficiently likely

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<sup>85</sup> See Dominion Transmission, New Market Project Environmental Assessment, Docket No. CP14-497-000, app. B (issued Oct. 20, 2015).

<sup>86</sup> *Id.* at 34.

<sup>87</sup> *Id.*

<sup>88</sup> EA at 67; EIS at 10.

<sup>89</sup> 40 C.F.R. § 1508.1(g) (2021) (definition of "effects" from CEQ's 2020 Regulations Implementing the Procedural Provisions of the National Environmental Policy Act). We note that the EA and EIS for the East 300 Project was prepared pursuant to CEQ's 1978 regulations because the environmental review of the project was in process prior to the effective date of the 2020 regulations. The definition of "effects"

to occur such that a person of ordinary prudence would take it into account in reaching a decision.”<sup>90</sup> For the proposed project, we find that the construction emissions, direct operational emissions, and the emissions from the downstream combustion of the gas transported by the project are reasonably foreseeable emissions. With respect to downstream emissions, the record in this proceeding demonstrates that the natural gas to be transported by the project will be combusted by end-use customers.<sup>91</sup> Specifically, the project will be used by ConEd to serve demand for natural gas service in Westchester County and to meet forecasted peak winter demand in Westchester County in lieu of relying on trucked supplies of compressed natural gas.<sup>92</sup> The Commission is not herein characterizing these emissions as significant or insignificant because we are conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going forward.<sup>93</sup>

50. The EIS estimates that construction of the project may result in emissions of up to 21,847 metric tons of CO<sub>2</sub>e over the duration of construction.<sup>94</sup> The EIS states that the project’s estimated operational GHG emissions are 127,073 metric tons per year (tpy) of CO<sub>2</sub>e, which was calculated based on 100% utilization; i.e., it is assumed that the

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from the 1978 CEQ regulations, 40 C.F.R. § 1508.8, similarly references reasonable foreseeability.

<sup>90</sup> 40 C.F.R. § 1508.1(aa).

<sup>91</sup> *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200, at P 49 (2022) (finding that the GHG emissions from the downstream combustion of transported gas is a reasonably foreseeable effect of the project where the project shippers were local distribution companies that intended to use the gas to serve demand within their service territories).

<sup>92</sup> *See supra* PP 6, 15. *See also* ConEd’s December 21, 2021 Comment at 1-2. We acknowledge that to the extent ConEd uses natural gas transported by the project to replace CNG, no new downstream GHG emissions would occur as a result of those volumes. However, neither Tennessee nor ConEd estimated the amount of CNG that would be replaced as a result of the project.

<sup>93</sup> Although we acknowledge that the Commission has previously assessed the “significance” of GHGs, *see N. Nat. Gas Co.*, 174 FERC ¶ 61,189 (2021), we do not do so here. The Commission is considering approaches for assessing significance in a pending proceeding. *See Order on Draft Policy Statements*, 178 FERC ¶ 61,197.

<sup>94</sup> EIS at 17.

facilities (except for the emergency generators, which are permitted to operate 100 hours per year) are operated at maximum capacity for 365 days per year, 24 hours per day.<sup>95</sup>

51. With respect to downstream emissions, the EIS calculates a full-burn of the project's design capacity would result in 2.22 million metric tpy of CO<sub>2</sub>e.<sup>96</sup> However, Tennessee urges the Commission to estimate the potential downstream GHG emissions using the "average utilization rate" in the relevant market area on Tennessee's system, Zone 5, which Tennessee states has a 77% utilization rate.<sup>97</sup> We decline to accept Tennessee's 77% average utilization rate without additional substantiation, especially in light of the contradictory 85% historical utilization rate provided in Tennessee's application used to support its proposed commodity charge.<sup>98</sup> Based on an assumed 85% utilization rate, the estimated GHG emissions related to the downstream use of the incremental capacity provided by the project is approximately 1,887,000 metric tpy.

52. Nonetheless, due to possible offsetting reductions associated with downstream consumption, Tennessee argues both that the use of the full burn is inappropriate and that it is unclear whether the project actually will result in reasonably foreseeable downstream emissions.<sup>99</sup> Tennessee asserts that the Commission should consider the steps ConEd is taking to reduce GHG emissions in its service area, such as by converting more than

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<sup>95</sup> EIS at 17, 25 (noting Tennessee's correction to the operational emissions to account for the shutdown of two existing emergency generators, which resulted in a reduction of approximately 201 metric tons of CO<sub>2</sub>e for the operational emissions estimated for the project). Additionally, the estimate includes blowdowns and fugitive emissions from compressor station equipment and piping, as well as fugitive emissions from the pipeline lateral, meter station, tie-in facility, valves, and ancillary facilities. *Id.* at 17.

<sup>96</sup> *Id.*

<sup>97</sup> Tennessee's August 23, 2021 Comment at 8 and attach. Assuming a 77% utilization rate, Tennessee estimates that the GHG emissions resulting from the downstream end-use of gas transported by this project would be approximately 1,725,313 metric tpy. *Id.*, attach. at 1.

<sup>98</sup> Application at 12 (stating "the commodity rate reflects estimated firm volumes using an 85 percent load factor utilization based on historical load factor levels on the Tennessee system"); Application, Ex. N at 3-4 (noting that the "[c]ommodity billing determinants [are] based on the incremental capacity created by the project at an 85% load factor utilization rate" and "[r]eflects firm commodity volumes at an 85% load factor utilization rate" (i.e., 97,750 Dth per day)).

<sup>99</sup> Tennessee's Aug. 23, 2021 Comment at 10.

7,600 large buildings in New York City from heating oil to natural gas.<sup>100</sup> Tennessee further claims that the East 300 Upgrade Project is “designed to support [ConEd’s] demand in accordance with New York’s clean energy goals” and the project will assist ConEd in meeting the needs of its customer while continuing its efforts to reduce current emissions levels.<sup>101</sup> Specifically, while Tennessee acknowledges that the project is needed for ConEd to lift the Westchester County moratorium,<sup>102</sup> due to ConEd’s demand and emissions reductions programs and the “potential for oil-to-gas switching once the moratorium is lifted, it is not clear the Project will result in additional downstream emissions.”<sup>103</sup>

53. While we will consider documented offsets of GHG emissions when determining the level of downstream GHG emissions associated with a project, neither ConEd nor Tennessee provided sufficient information to allow us to quantify the potential offsets for this project.<sup>104</sup> Without this evidence, we are unable to determine whether further reductions to the estimate discussed are warranted. We note that the possibility of such

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<sup>100</sup> Tennessee’s August 23, 2021 Comment at 9; *see also* ConEd’s December 21, 2021 Comment at 2 (stating that the East 300 Project is part of “a comprehensive set of solutions [it] is pursuing on its gas distribution system to meet its customer’s needs while also facilitating the transition to the clean energy future”).

<sup>101</sup> Tennessee’s August 23, 2021 Comment at 9; *see also* ConEd’s December 21, 2021 Comment at 7-8 (detailing its natural gas demand side management programs including its Smart Solutions Program and its commitment to the NY Climate Law).

<sup>102</sup> *See supra* PP 6, 15.

<sup>103</sup> Tennessee’s August 23, 2021 Comment at 10-11; *see also* ConEd’s December 21, 2021 Comment at 9-10 (describing its Heat Pump Implementation Plan which supports customers transitioning to energy-efficient electrified space heating and water heating technologies, and specifically commits ConEd to supporting customers affected by natural gas supply constraints, including customers in Westchester County and stating that to the extent “customers use the natural gas supplied by the [East 300 Upgrade] Project instead of heating oil, this Project will provide a more environmentally and economically responsible option for our customers”).

<sup>104</sup> For example, in *Iroquois Gas Transmission System LP*, the applicant submitted a study that quantified the GHG emissions of the incremental natural gas supply from the project compared to the GHG emissions of the fuels that the study assumes would otherwise be required to meet the energy demand. *Iroquois Gas Transmission System, L.P.*, 178 FERC ¶ 61,200 at PP 50, 56 (accepting applicant’s study which analyzed the degree to which GHG emissions associated with the project would be offset due to the use of more GHG-intensive fuels).

offsetting reductions does not absolve the Commission from estimating such reasonably foreseeable downstream emissions.<sup>105</sup>

54. As we have done in prior certificate orders, we compare GHG emissions to the total GHG emissions of the United States as a whole and at the state level. This comparison allows us to contextualize the project's projected emissions.<sup>106</sup> The annual GHGs from operation and downstream end use are 1.852 million metric tpy of CO<sub>2</sub>e. To provide context to the GHG estimate, 5,769.1 million metric tons of CO<sub>2</sub>e were emitted at a national level in 2019 (inclusive of CO<sub>2</sub>e sources and sinks).<sup>107</sup> This project could potentially increase CO<sub>2</sub>e emissions based on the 2019 levels by 0.032%.<sup>108</sup> At the state level, energy related CO<sub>2</sub>e emissions in New York were 175.9 million metric tons of CO<sub>2</sub>e in 2018. Accordingly, the project's operational and downstream GHG emissions could potentially increase CO<sub>2</sub>e emissions based on the New York 2018 levels by 1.1 percent. The EPA recommends that the Commission avoid expressing project-level emissions as a percentage of national or state emissions and instead should qualitatively discuss the increasing conflict between GHG emissions and GHG reduction policies and ways to mitigate that conflict. As stated in the final EIS, the project would increase the

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<sup>105</sup> See *Food & Water Watch v. FERC*, 28 F.4th 277, 289 (D.C. Cir. 2022) (explaining that the “mere possibility of offsetting reductions” does not excuse the Commission from assessing otherwise reasonably foreseeable downstream emissions).

<sup>106</sup> EPA comments that it recommends that the Commission desist from making such emissions comparisons and instead incorporate a “qualitative discussion disclosing the increasing conflict between GHG emissions and GHG reduction policies, and ways to mitigate that conflict.” To the extent the discussion satisfies the EPA's request, the EA discusses the forecasted climate change impacts to the Northeast region of the United States although not at a state-by-state level. EA at 90-91. How a state can mitigate the conflict between GHG emissions and its reduction targets, and the Commission's involvement in helping the state, are beyond the scope of this proceeding.

<sup>107</sup> EPA, *Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020* at ES-4 (Table ES-2) (Feb. 2022), <https://www.epa.gov/system/files/documents/2022-02/us-ghg-inventory-2022-main-text.pdf>.

<sup>108</sup> Although the EPA's Affordable Clean Energy Rule, which repealed the national emissions reduction targets expressed in the EPA's Clean Power Plan, was vacated in *Am. Lung Ass'n v. EPA*, 985 F.3d 914 (D.C. Cir. 2021), the EPA has not yet issued a new rule prescribing new national emissions reduction targets.

The EIS used the 2019 U.S. GHG inventory and calculated that operation and downstream combustion--at full-burn--would increase the national inventory by 0.041% based on 2019 levels. EIS at 18-19.

atmospheric concentration of GHGs, in combination with past and future emissions from all other sources, and would contribute cumulatively to climate change. Additionally, as done in the final EIS, when states have GHG emissions reduction targets, we will compare a project's GHG emissions to those state goals to provide additional context and aid the decision-making process.<sup>109</sup> However, the Commission is unable to determine how individual projects will affect international, national, or state-wide GHG emissions reduction targets or whether a project's GHG emissions comply with those goals or laws.

55. The EPA and other commenters argue that the EIS failed to consider reasonably foreseeable GHG emissions from increased natural gas production as a result of the proposed project.<sup>110</sup> EPA notes reasonable ranges of emissions forecasts can be produced for upstream emissions to give the public and the Commission the appropriate context for considering estimated climate damages associated with the proposal.<sup>111</sup>

56. NEPA requires agencies to consider indirect effects or impacts that “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”<sup>112</sup> With respect to causation, “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause”<sup>113</sup> in order “to

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<sup>109</sup> See EA at 92-93; EIS at 18-20 (using 127,274 metric tons per year). Using the corrected operational GHG emissions estimate of 127,073 metric tpy, based on the state of Pennsylvania's target to reduce net GHG emissions 26% by 2025 and 80% by 2050, compared to 2005 levels, the project's direct operational GHG emissions would represent 0.06% and 0.23% of Pennsylvania's 2025 and 2050 target GHG emission levels, respectively. Based on New Jersey's emissions reduction targets (to 80% below 2006 levels by 2050), the operational emissions would represent 0.52% of New Jersey's 2050 emissions reduction target. We further note that the downstream end-use emissions (1,887,000 metric tpy) would represent 2.3 and 6.0% of New York's 2030 and 2050 reduction target levels (reduce emissions by 60% below 1990 levels by 2030 and 15% by 2050).

<sup>110</sup> See, e.g., EPA's November 1, 2021 Comment at 1; Mr. Frost's December 23, 2021 Comment at 3-4; Mr. Frost's October 5, 2021 Comment at 1 (also suggesting we forecast 10 years of emissions and their impacts).

<sup>111</sup> EPA's November 1, 2021 Comment at 1.

<sup>112</sup> 40 C.F.R. § 1508.8(b) (1978 CEQ Regulations).

<sup>113</sup> *U.S. Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (*Pub. Citizen*) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (*Metro. Edison Co.*)).

make an agency responsible for a particular effect under NEPA.”<sup>114</sup> As the Supreme Court has explained, “a ‘but for’ causal relationship is insufficient [to establish cause for purposes of NEPA].”<sup>115</sup> 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.”<sup>116</sup> 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, the agency cannot be considered a legally relevant ‘cause’ of the effect.”<sup>117</sup> Regarding reasonable foreseeability, courts have found that an impact 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.”<sup>118</sup> Although courts have held that NEPA requires “reasonable forecasting,”<sup>119</sup> an agency “is not required to engage in speculative analysis”<sup>120</sup> or “to do the impractical, if not enough information is available to permit meaningful consideration.”<sup>121</sup>

57. The environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ regulations, where the supply source is unknown.<sup>122</sup> Here, the specific source of natural

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<sup>114</sup> *Pub. Citizen*, 541 U.S. at 767.

<sup>115</sup> *Id.*

<sup>116</sup> *Metro. Edison Co.*, 460 U.S. at 774.

<sup>117</sup> *Pub. Citizen*, 541 U.S. at 770.

<sup>118</sup> *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955 (D.C. Cir. 2016) (citations omitted); *see also Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

<sup>119</sup> *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1079 (9th Cir. 2011) (quoting *Selkirk Conservation All. v. Forsgren*, 336 F.3d 944, 962 (9th Cir. 2003)).

<sup>120</sup> *Id.* at 1078.

<sup>121</sup> *Id.* (quoting *Envtl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1014 (9th Cir. 2006)).

<sup>122</sup> *See, e.g., Cent. N.Y. Oil & 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 F. App’x. 472, 474-75 (2d Cir. 2012) (unpublished opinion); *see also Adelpia Gateway, LLC*,

gas to be transported via the East 300 Upgrade Project is currently unknown and may change throughout the project's operation. Accordingly, we affirm that the GHG emissions associated with upstream production of gas are not a reasonably foreseeable impact of this project.

58. Next, the EPA recommends that the Commission consider and incorporate practicable mitigation measures to reduce the proposed action's GHG emissions into the proposed terms and conditions required as part of certificate issuance.<sup>123</sup> As stated in the EA, Tennessee voluntarily participates in EPA's Methane Challenge Program and the ONE Future Coalition (voluntary program to get methane emissions across the lifecycle of natural gas down to one percent or less by 2025).<sup>124</sup>

59. The EPA, Food and Water Watch, and Institute for Policy Integrity request that the Commission estimate of the social cost of GHGs, which they claim reflects the best available science and methodologies to incorporate the value to society of net changes in direct and indirect GHG emissions from a proposed action.<sup>125</sup> In support of the Commission utilizing the social costs of GHGs, EPA urges the Commission to consider the D.C. Circuit's recent decision in *Vecinos*,<sup>126</sup> where the court remanded the certificate order without vacatur due to deficiencies under the Administrative Procedure Act in the Commission's analysis of environmental justice issues and its failure to respond to an argument regarding the consideration of greenhouse gas emissions.

60. The social cost of GHGs is an administrative tool intended to quantify, in dollars, estimates of long-term damage that may result from future emissions of carbon dioxide, nitrous oxide, and methane. In response to comments, we are disclosing Commission staff's estimate of the social cost of GHGs associated with the reasonably foreseeable emissions from the East 300 Upgrade Project using the calculations described below.<sup>127</sup> However, noting pending litigation challenging federal agencies' use of the Interagency Working Group on the Social Cost of Greenhouse Gas' (IWG) interim values for

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169 FERC ¶ 61,220, at P 243 (2019), *order on reh'g*, 171 FERC ¶ 61,049, at P 89 (2020).

<sup>123</sup> EPA's November 1, 2021 Comment, Enclosure at 2.

<sup>124</sup> EA at 60.

<sup>125</sup> EPA's November 1, 2021 Comment, Enclosure at 2; Food and Water Watch's March 22, 2021 Comment at 8-9; Institute for Policy Integrity at 1-3, 7-10.

<sup>126</sup> *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1325 (D.C. Cir. 2021) (*Vecinos*).

<sup>127</sup> See also *Vecinos*, 6 F.4th at 1329-30.

calculating the social cost of GHGs,<sup>128</sup> we are not relying on or using the social cost of GHGs estimates to make any finding or determination regarding either the impact of the project's GHG emissions or whether the project is in the public convenience and necessity.<sup>129</sup>

61. As both EPA and CEQ participate in the IWG, Commission staff used the methods and values contained in the IWG's current draft guidance but note that different values will result from the use of other methods.<sup>130</sup> Accordingly, Commission staff calculated the social cost of carbon dioxide, nitrous oxide, and methane. For the analysis, staff assumed discount rates of 5%, 3%, and 2.5%,<sup>131</sup> assumed the project will begin service in

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<sup>128</sup> *Missouri v. Biden*, 8th Cir. No. 21-3013; *Louisiana v. Biden*, No. 21-cv-1074-JDC-KK (W.D. La). On February 11, 2022, the U.S. District Court for the Western District of Louisiana issued a preliminary injunction limiting federal agencies' employment of estimates of the social costs of GHGs and use of the IWG's interim estimates. On March 16, 2022, the U.S. Court of Appeals for the Fifth Circuit issued a stay of the district court's preliminary injunction, finding among other things that the federal agency respondent's continued use of the interim estimates was lawful. *Louisiana v. Biden*, No. 22-30087 (5th Cir. Mar. 16, 2022).

<sup>129</sup> Furthermore, the Commission is not applying the social cost of carbon herein because it has not determined which, if any, modifications are needed to render that tool useful for project-level analyses. See CEQ's May 27, 2021 Comments filed in Docket No. PL18-1-000, at 2 (noting that it is working with representatives from the IWG to develop forthcoming additional guidance regarding the application of the social cost of GHGs tool in federal decision-making processes, including in NEPA analyses).

<sup>130</sup> *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990*, Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, February 2021 (IWG Interim Estimates Technical Support Document).

<sup>131</sup> IWG Interim Estimates Technical Support Document at 24. To quantify the potential damages associated with estimated emissions, the IWG methodology applies consumption discount rates to estimated emissions costs. The IWG's discount rates are a function of the rate of economic growth where higher growth scenarios lead to higher discount rates. For example, IWG's method includes the 2.5% discount rate to address the concern that interest rates are highly uncertain over time; the 3% value to be consistent with Office of Management and Budget Circular A-4 (2003) and the real rate of return on 10-year Treasury Securities from the prior 30 years (1973 through 2002); and the 5% discount rate to represent the possibility that climate-related damages may be positively correlated with market returns. Thus, higher discount rates further discount future impacts based on estimated economic growth. Values based on lower discount

2023 and that the project's emissions will be at a constant rate throughout the life of the 20-year contract. Noting these assumptions, the emissions from construction and operation of this project and the downstream emissions are calculated to result in a total social cost of GHGs equal to \$504,510,066, \$1,907,922,927, and \$2,887,443,498, respectively (all in 2020 dollars).<sup>132</sup> Using the 95th percentile of the social cost of GHGs using the 3% discount rate,<sup>133</sup> the total social cost of GHGs from the project is calculated to be \$5,790,928,380 (in 2020 dollars).

62. Finally, Mr. Frost comments that the EA and EIS should “model” the GHG emissions impact using both 20-year and 100-year Global Warming Potential (GWP) factors for methane, since, according to Mr. Frost, the 100-year GWP misrepresents the climate impact attributable to methane that may occur in the next 20 years.<sup>134</sup> The Commission relies on the United States' customary practice, which is to use the 100-year GWP as a measure of the relative impact of different GHGs.<sup>135</sup> We acknowledge that the 100-year GWP range (28 to 36 times the global warming potential of CO<sub>2</sub>) is considerably less than the 20-year GWP of 84 to 87, and use of the 100-year GWP would result in a higher estimate of CO<sub>2e</sub> for every ton of CO<sub>2</sub> emitted.

#### 4. Cumulative Effects<sup>136</sup>

63. Except for operational air quality impacts,<sup>137</sup> the EA identified only four projects that would have the potential to result in cumulative impacts when combined with

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rates are consistent with studies of discounting approaches relevant for intergenerational analysis. *Id.* at 18-19, 23-24.

<sup>132</sup> The IWG draft guidance identifies costs in 2020 dollars. *Id.* at 5 (Table ES-1).

<sup>133</sup> This value represents “higher-than-expected economic impacts from climate change further out in the tails of the [social cost of CO<sub>2</sub>] distribution.” *Id.* at 11. In other words, it represents a higher impact scenario with a lower probability of occurring.

<sup>134</sup> Mr. Frost's January 5, 2022 Comment at 2.

<sup>135</sup> EPA, Understanding Global Warming Potentials, <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials> (last accessed on March 4, 2022).

<sup>136</sup> As noted above, Commission staff prepared the environmental documents under the 1978 version of the NEPA regulations, which included the definition of “cumulative effects.”

<sup>137</sup> See EA at 87, tbl. 23 (identifying 12 projects that could have potential

potential impacts attributable to the project.<sup>138</sup> The EA found that these cumulative impacts were limited to the areas of geology and soils, groundwater, wetlands and waterbodies, fisheries, vegetation, wildlife, socioeconomics, and air quality and noise impacts from construction. In all cases, the EA concluded that the potential for cumulative impacts to result within each of these resource areas would not be significant, and in some cases would be minor or negligible.<sup>139</sup> In addition, the EA found that identified sources within the geographic scope for air quality impacts for Compressor Stations 321 and 325 would have negligible potential to result in any localized cumulative air impact. Regarding Compressor Station 327, due to the minor levels of operational emissions from the electric-driven compressor, operation of the station would have negligible potential to contribute to cumulative operational air quality impacts.

64. In its comments on the final EIS, EPA states that the EIS's cumulative effects analysis fails to identify other proposed projects that the Commission is concurrently reviewing that may be in the "same regional pipeline network."<sup>140</sup> The failure to identify and consider these other proposed projects could undervalue the cumulative effects on resources and, further, EPA questions whether the East 300 Upgrade Project is needed if other proposed projects could meet that need.<sup>141</sup>

65. CEQ defines "cumulative impact" as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."<sup>142</sup> 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

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cumulative air quality impacts within the geographic scope of the project).

<sup>138</sup> EA at 81, tbl. 22 (identifying New Enterprise Stone and Lime Co., Inc.'s Clifford Quarry and Blacktop Plant in Pennsylvania; Pennsylvania bridge preservation projects; non-jurisdictional power lines and fiber optic lines in New Jersey; and Tennessee's cooling equipment project within the fenced are of Compressor Station 321).

<sup>139</sup> EA at 82-88; *see also* EIS at 53 (noting that there were no comments on the draft EIS regarding cumulative impacts that would require staff to revise its analysis on cumulative impacts).

<sup>140</sup> EPA's November 1, 2021 Comment at 2.

<sup>141</sup> *Id.*

<sup>142</sup> 40 C.F.R. § 1508.7 (2019).

agencies.”<sup>143</sup> An agency’s analysis should be commensurate to the magnitude of the proposed action’s environmental impacts; proposed actions that will have no significant direct and indirect impacts usually call for only a limited cumulative effects analysis.<sup>144</sup> In considering cumulative impacts, CEQ advises agencies to: (1) identify the cumulative effects of a proposed action; (2) establish the geographic scope for analysis; (3) establish the time frame for analysis, equal to the timespan of a proposed project’s direct and indirect impacts; and finally, (4) identify other actions that potentially affect the same resources, ecosystems, and human communities affected by the proposed action.<sup>145</sup> The geographic and temporal scope of our cumulative impacts analyses vary by case and resource, based on the facts presented.<sup>146</sup>

66. Here, the EA and EIS considered impacts of past projects within the defined resource-specific geographic scope, actions that affect a resource that would potentially be affected by the proposed project, actions that cause an impact within the entire or part of the resource-specific geographic scope, and actions that cause an impact within the entire or part of the time span of the proposed project’s estimated impacts.<sup>147</sup> Tables 21, 22, and 23 identify the geographic scope of specific resources and recent past, current and reasonably foreseeable actions and resources that may have a cumulative effect. EPA’s use of term, “same regional pipeline network,” as the geographic scope is unclear. It would be unreasonable to define the geographic scope as Tennessee’s pipeline system because it extends from Texas to New Hampshire. Instead, Commission staff limited its cumulative analysis to resources where the proposed action would occur, namely Passaic and Sussex Counties, New Jersey, and Susquehanna County, Pennsylvania. EPA does not identify which proposed Commission-jurisdictional projects should have been included in the Commission’s cumulative impacts analysis. In light of the EPA’s comment, however, we have reviewed proposed and recently authorized projects in these counties and have not identified any missing projects that should have been included in the cumulative impact analysis.<sup>148</sup>

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<sup>143</sup> *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976).

<sup>144</sup> See CEQ, Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis at 3 (June 24, 2005).

<sup>145</sup> CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 11 (Jan. 1997).

<sup>146</sup> *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 34 (2018).

<sup>147</sup> EA at 79.

<sup>148</sup> A list of natural gas pipeline applications before the Commission is available on the Commission’s website at <https://www.ferc.gov/industries-data/natural-gas/major->

67. With the exception of the project's contribution to climate change, for which we cannot identify a methodology to determine significance, we agree with the conclusion in the EA and affirmed in the EIS, that the potential for cumulative impacts to result within each of these resource areas would not be significant, and in some cases would be minor or negligible.<sup>149</sup>

## 5. Environmental Justice

68. In conducting NEPA reviews of proposed natural gas projects, the Commission follows the instruction of Executive Order 12898, which directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority and low-income populations (i.e., environmental justice communities).<sup>150</sup> Executive Order 14008 also directs agencies to develop “programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”<sup>151</sup> Environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the

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pipeline-projects-pending and a list of approved projects are available at <https://www.ferc.gov/industries-data/natural-gas/approved-major-pipeline-projects-1997-present>.

<sup>149</sup> See EA at 79; EIS at 11, 53 (reaffirming the EA's analysis).

<sup>150</sup> Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). While the Commission is not one of the specified agencies in Executive Order 12898, the Commission nonetheless addresses environmental justice in its analysis, in accordance with our governing regulations and guidance, and statutory duties. 15 U.S.C. § 717f; see also 18 C.F.R. § 380.12(g) (requiring applicants to submit information about the socioeconomic impact area of a project for the Commission's consideration during NEPA review); FERC, *Guidance Manual for Environmental Report Preparation* at 4-76 to 4-80 (Feb. 2017), <https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf>.

<sup>151</sup> Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Feb. 1, 2021). The term “environmental justice community” includes disadvantaged communities that have been historically marginalized and overburdened by pollution. *Id.* § 219, 86 Fed. Reg. 7619, 7629. The term also includes, but may not be limited to, minority populations, low-income populations, or indigenous peoples. See EPA, *EJ 2020 Glossary* (Aug. 2, 2019), <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

development, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>152</sup>

69. Following issuance of the EA and EIS, and consistent with CEQ<sup>153</sup> and EPA<sup>154</sup> guidance, the Commission has updated its analysis of the East 300 Upgrade Project’s environmental justice impacts. The results of that analysis are described below. The Commission’s methodology for assessing environmental justice impacts considers: (1) whether environmental justice communities (e.g., minority or low-income populations)<sup>155</sup> exist in the project area; (2) whether impacts on environmental justice communities are disproportionately high and adverse; and (3) possible mitigation measures. Following the recommendations set forth in *Promising Practices*, the Commission uses the fifty-percent and the meaningfully greater analysis methods to identify minority populations.<sup>156</sup> Specifically, a minority population is present where either: (1) the aggregate minority population of the block groups in the affected area

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<sup>152</sup> EPA, *Learn About Environmental Justice*, [https://www.epa.gov/environmentaljustice/learn-about-environmental-justice#:~:text=Environmental%20justice%20\(EJ\)%20is%20the,environmental%20laws%20C%20regulations%20and%20policies](https://www.epa.gov/environmentaljustice/learn-about-environmental-justice#:~:text=Environmental%20justice%20(EJ)%20is%20the,environmental%20laws%20C%20regulations%20and%20policies) (last visited Mar. 4, 2022). Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. *Id.* Meaningful involvement of potentially affected environmental justice community residents means: (1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) the public’s contributions can influence the regulatory agency’s decision; (3) community concerns will be considered in the decision-making process; and (4) decision makers will seek out and facilitate the involvement of those potentially affected. *Id.*

<sup>153</sup> CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* 4 (Dec. 1997) (CEQ’s *Environmental Justice Guidance*), [https://www.energy.gov/sites/default/files/nepapub/nepa\\_documents/RedDont/G-CEQ-EJGuidance.pdf](https://www.energy.gov/sites/default/files/nepapub/nepa_documents/RedDont/G-CEQ-EJGuidance.pdf).

<sup>154</sup> See generally EPA, *Promising Practices for EJ Methodologies in NEPA Reviews* (Mar. 2016) (Promising Practices), [https://www.epa.gov/sites/default/files/2016-08/documents/nepa\\_promising\\_practices\\_document\\_2016.pdf](https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf).

<sup>155</sup> See generally Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). Minority populations are those groups that include: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic. CEQ’s *Environmental Justice Guidance* at 25.

<sup>156</sup> See *Promising Practices* at 21-25.

exceeds 50%; or (2) the aggregate minority population in the block group affected is 10% higher than the aggregate minority population percentage in the county.<sup>157</sup>

70. CEQ's *Environmental Justice Guidance* also directs low-income populations to be identified based on the annual statistical poverty thresholds from the U.S. Census Bureau. Using *Promising Practices*' low-income threshold criteria method, low-income populations are identified as block groups where the percent of low-income population in the identified block group is equal to or greater than that of the county.

71. To identify potential environmental justice communities for the updated analysis presented here, Commission staff used 2019 U.S. Census American Community Survey data<sup>158</sup> for the race, ethnicity, and poverty data at the block group level.<sup>159</sup> Additionally, in accordance with *Promising Practices*, staff used EJSCREEN, EPA's environmental justice mapping and screening tool, as an initial step to gather information regarding minority and low-income populations; potential environmental quality issues; environmental and demographic indicators; and other important factors. Staff also reviewed additional Census data.

72. Once staff collected the block group level data, as discussed in further detail below, staff conducted an impacts analysis for the identified environmental justice communities and evaluated relevant health or environmental hazards; the natural physical environment; and associated social, economic, and cultural factors to determine whether impacts to environmental justice communities are disproportionately high and adverse. For this project, Commission staff determined both whether impacts were

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<sup>157</sup> Here, Commission staff selected "county" as the comparable reference community to ensure that affected environmental justice communities are properly identified. A reference community may vary according to the characteristics of the particular project and the surrounding communities.

<sup>158</sup> U.S. Census Bureau, 2015-2019 American Community Survey 5-Year Estimates, Table B17017, Poverty Status in the Past 12 Months by Household Type by Age of Householder, <https://data.census.gov/cedsci/table?q=B17017>; Table B03002, Hispanic or Latino Origin By Race, <https://data.census.gov/cedsci/table?q=b03002>.

<sup>159</sup> For this project, we determined that a one-mile radius around the proposed aboveground facilities was the appropriate unit of geographic analysis for assessing project impacts on the environmental justice communities. A one-mile radius is sufficiently broad considering the likely concentration and range of construction emissions, noise, traffic impacts and visual impacts in proximity to the proposed facilities.

disproportionately high and adverse on environmental justice populations and also whether those impacts were significant.<sup>160</sup>

73. Staff identified two census block groups near the project facilities that exceed the defined thresholds for minority or low-income communities and are, therefore, environmental justice communities. Compressor Station 325 is located within Census Tract 3718, Block Group 1, which is an environmental justice community with a low-income population (5.6 percent). Compressor Station 321, while not located within an environmental justice community, is located within a mile of one environmental justice community with a minority population (8.3 percent) (Census Tract 324, Block Group 4).<sup>161</sup> No environmental justice communities are present within one mile of proposed Compressor Station 327 and therefore potential impacts related to this facility will not be discussed further here.<sup>162</sup>

74. Both Compressor Stations 321 and 325 are existing compressor stations that would be modified through the installation of additional natural gas-fired turbines, auxiliary buildings, and appurtenant facilities. Environmental justice communities in proximity to Compressor Station 321 (0.6 mile north of the compressor station) may be affected by air quality impacts. Impacts associated with traffic, noise, and visual would not be experienced by environmental justice communities near Compressor Station 321 as the closest communities are 0.6 mile away and impacts associated with these resources would be more localized. Environmental justice communities in proximity to Compressor Station 325 may be affected by traffic, noise, visual, and air quality impacts. Environmental justice concerns are not present for other resource areas, such as geology, groundwater (including private wells), wildlife, or cultural resources due to the minimal overall impact the project would have on these resources.

75. With respect to traffic impacts on environmental justice communities, traffic delays may occur during construction to modify Compressor Station 325, which is an existing facility. As discussed in the EA and EIS, no private property would be directly affected as all project construction at the compressor stations, including access, equipment storage, and use of workspaces, would take place on land owned by Tennessee. Additionally, access to the site during construction and operation would be through the existing facility driveways and existing paved roadways. The movement of

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<sup>160</sup> See *Promising Practices* at 33 (stating that “an agency may determine that impacts are disproportionately high and adverse, but not significant within the meaning of NEPA” and in other circumstances “an agency may determine that an impact is both disproportionately high and adverse and significant within the meaning of NEPA”).

<sup>161</sup> See app. C of the order.

<sup>162</sup> The table with the full population data is in Appendix C.

construction personnel, equipment, and materials would result in short term impacts on roadways, lasting the duration of construction (8 months). Tennessee has committed to employ traffic control measures and schedule deliveries to minimize impacts on local traffic. Therefore, traffic-related impacts on the population, including environmental justice communities, would be minor and short-term.<sup>163</sup>

76. With respect to visual impacts on environmental justice populations, as described in the EA and EIS, the landscape surrounding Compressor Station 325 is rural, dominated by a mix of agricultural and open space with low to medium-density, single-family detached dwellings. The closest residences are located about 850 feet west of Compressor Station 325. Impacts on visual and/or aesthetic resources are anticipated to be minor and temporary during construction as a result of the presence of construction equipment.<sup>164</sup> Some minor permanent impacts on the visual landscape would occur as a result of the expanded compression facility that will be consistent with the visual scope and scale of the existing compressor station.

77. With respect to air emissions, exhaust emissions and fugitive dust would result in short-term, localized impacts in the immediate vicinity of construction work areas. In order to minimize construction emissions, Tennessee would apply water to construction work areas and, as required in New Jersey, use ultra-low sulfur diesel fuel for non-road diesel vehicles. As described in more detail in the section on Air Quality above,<sup>165</sup> the combined total of existing background and maximum modeled concentrations for Compressor Stations 321 and 325 will be less than the applicable NAAQS for all pollutants. Although the Project would not contribute to exceedances of NAAQS, we acknowledge that NAAQS attainment alone may not assure there is no localized harm to such populations due to cumulative emissions of VOCs and HAPs, as well as issues such as the presence of non-project related pollution sources, local health risk factors, disease prevalence, and access (or lack thereof) to adequate care. Accordingly, we also reviewed emissions from fugitive leaks and blowdowns and determined that, based upon a previous risk analysis on compressor station blowdowns and leaks, there would be not significant risk to the public due to releases of VOCs and HAPs. Based on the modeling results and the mitigation measures proposed by Tennessee, as detailed in paragraph 46 above, the EIS concluded,<sup>166</sup> and we agree, that air quality impacts from construction and operation of project facilities at Compressor Stations 321 and 325 would not result in a significant

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<sup>163</sup> See EA at 52; EIS at 9-10.

<sup>164</sup> See EA at 44.

<sup>165</sup> See *supra* P 44.

<sup>166</sup> See EA at 62.

impact on local air quality, including air quality impacts on environmental justice communities.

78. The EIS also concluded that, because of the temporary nature of construction activities and the distance to nearby residences, the project would not result in significant noise impacts on noise-sensitive areas (NSA) during construction. During operations, Tennessee would incorporate noise control treatments such that noise levels attributable to the modified Compressor Station 325 would be below our 55 decibel on the A-weighted scale (dBA) day-night sound level ( $L_{dn}$ ) requirement at the nearest NSAs and would not result in any perceptible increase in existing noise levels at the closest NSAs (850 feet west).<sup>167</sup> Environmental Condition 15 in Appendix B to this order requires Tennessee to verify compliance with the Commission's noise standards by conducting a noise survey after the modified compressor facilities are placed into service.

79. As mentioned in the EIS, Brian Scanlan commented that "there is an environmental justice aspect" to the proposed siting of Compressor Station 327 because it would be adjacent to a Category 1 Exceptional Value Stream (Hewitt Brook) and less than 2,000 feet from the Monksville Reservoir, which flows into another reservoir, part of a system which provides drinking water for New Jersey's northern urban core, including the City of Newark.<sup>168</sup> With respect to project impacts on the Category 1 Exceptional Value Stream, consistent with the EIS and our response to concerns about water contamination,<sup>169</sup> we do not expect the project operation to result in any adverse impacts on water supplied for Northern New Jersey and Newark.<sup>170</sup>

80. As described above, the only disproportionately high and adverse environmental justice impacts are those caused by construction and operation of the new equipment and facilities at Compressor Station 325. Construction impacts associated with traffic, visual, air quality, and noise for this facility would be temporary and less than significant. Permanent impacts on environmental justice communities associated with noise, visual resources, and air quality from operation of Compressor Station 325 also would be less

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<sup>167</sup> See EA, tbls. 18, 19.

<sup>168</sup> EIS at 45-46.

<sup>169</sup> See EA, § B.3; EIS, § F.4.

<sup>170</sup> See EIS at 46. Specifically, the EIS notes that minor temporary impacts would occur within the previously disturbed riparian zone of Hewitt Brook through the use of an existing access road. Tennessee is not proposing to alter the topography of the existing access road or create an impervious surface within the riparian zone. Tennessee has stated that it would not clear, cut, or remove riparian zone vegetation, or allow storage of hazardous substances within the riparian zone.

than significant. Tennessee will implement EPA-recommended measures at each compressor station to reduce fugitive emissions and venting releases, including reducing pressure at each station prior to any venting, using electric start rather than gas for the proposed turbines, installing dry seal systems for the centrifugal compressors, and adding pneumatic devices at each station that use other sources instead of natural gas.<sup>171</sup> In addition, Tennessee will adhere to the FERC Plan and FERC Procedures, and must comply with the environmental conditions included in this order, including Environmental Condition 15 in Appendix B to this order. In conclusion, aside from the insignificant impacts associated with Compressor Station 325, the East 300 Upgrade Project would not have disproportionately high and adverse impacts on environmental justice communities.

## 6. Alternatives

81. The EA evaluated alternatives to the project to determine whether they would be reasonable and environmentally preferable to the proposed action.<sup>172</sup> The alternatives considered were a no-action alternative, system alternatives, and five site alternatives for the new Compressor Station 327. System alternatives included constructing a loop line along Tennessee's existing 300 Line to make all or part of the proposed project unnecessary, and the addition of compression at other points along Tennessee's 300 Line to avoid the need to construct new Compressor Station 327. Some identified site alternatives offered some relative advantages to the proposed site for Compressor Station 327 in terms of total parcel size, required suction/discharge pipeline length, distance to the nearest NSA, state lands within 0.5 mile, and required length of power line. However, these advantages were offset by greater impacts on forested and non-forested wetlands, upland forests, prime farmland, and total number of affected NSAs within 0.5 as well as 1 mile.

82. After the EIS was issued, 1.5C, LLC filed a late motion to intervene and comment, contending that the alternative analysis must be updated to consider 1.5C, LLC's late-filed proposal, which purportedly would require little-to-no construction, would result in less adverse environmental impacts (and no GHG emissions), and would fulfill the project need. 1.5C, LLC describes its alternative as the use of firm transportation capacity that it has "through a current business relationship" on Tennessee's system.<sup>173</sup> Because 1.5C, LLC has determined Tennessee's system near Mahwah, New Jersey, has approximately 300,000 Dth per day of unsubscribed capacity, 1.5 C, LLC argues that Tennessee could change the delivery points for the project from White Plains,

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<sup>171</sup> See *supra* P 46.

<sup>172</sup> EA at 94-99.

<sup>173</sup> 1.5C, LLC's Motion to Intervene at 2.

Knollwood, and Rye Meter Stations in Westchester County, New York to Mahwah and Rivervale, New Jersey and deliver 1.5C, LLC's business relationship's gas to meet ConEd's gas demand.<sup>174</sup>

83. CEQ regulations require agencies to evaluate "reasonable alternatives to the proposed action."<sup>175</sup> Agencies are not required to evaluate alternatives that are speculative or uncertain.<sup>176</sup> Here, 1.5C, LLC's late-filed alternative is too speculative to be considered. The supposed firm transportation capacity that is the basis of 1.5C, LLC's proposal is not owned by 1.5C, LLC. Rather, 1.5C, LLC contends to have an anonymous business relation with an existing shipper on Tennessee's system. Yet the record does not indicate this "business relation" offered to turn back capacity during Tennessee's reverse open season or sought to release capacity under Tennessee's tariff.<sup>177</sup> Moreover, 1.5C, LLC appears to be double counting the amount of unsubscribed capacity on Tennessee's system.<sup>178</sup> Some of the unsubscribed capacity that it identified on

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<sup>174</sup> *Id.* at 2-3. 1.5C, LLC identifies the following delivery points with unsubscribed capacity: White Plains (135,923 Dth per day), Pearl River (92,988 Dth per day), Rockland (9,097 Dth per day), Rye (64,635 Dth per day) and Knollwood (1,810 Dth per day).

<sup>175</sup> 40 C.F.R. §1502.14 (2021).

<sup>176</sup> *See Holy Cross Wilderness Fund v. Madigan*, 960 F.2d 1515, 1528 (10th Cir. 1992).

<sup>177</sup> Although 1.5C, LLC does not request Tennessee to hold another reverse open season, it criticizes the Commission for not requiring a binding reverse open season prior to submitting its application. We have previously explained that we do not require a pipeline to accept an existing shipper's turn-back offer unless the shipper is willing to pay the difference between the rate it agreed to pay for the existing capacity it seeks to turn back and the rate the expansion shipper has agreed to pay for capacity. *See, e.g., Tenn. Gas Pipeline Co., L.L.C.*, 157 FERC ¶ 61,254, at P 36 (2016). *See generally* 18 C.F.R. § 284.8 (2021) (setting forth the Commission's requirements for firm capacity releases); 1999 Certificate Policy Statement, 90 FERC at 61,392 (explaining that the first step in determining in determining whether the market finds a pipeline's proposed expansion economically viable is for the pipeline to conduct an open season in which existing customers are given an opportunity to permanently relinquish their capacity. If the proposed capacity can be filled by existing shippers relinquishing their capacity, then the project may not be correctly sized).

<sup>178</sup> *See* Application at 7, Ex. Z-3 (Tennessee issued notices to its customers that it was reserving approximately 181,000 Dth per day of capacity on its system in the project areas (i.e. Zones 4 and 5) for use for the project).

Tennessee's system overlaps with the capacity that Tennessee reserved to meet project demand.<sup>179</sup> Further, it is uncertain whether and to what extent 1.5C, LLC's proposal would require additional construction in order to deliver gas from Mahwah and Riverdale, New Jersey, where its business relation has subscribed delivery points, to ConEd's delivery points located 15 to 25 miles away.<sup>180</sup> Moreover, 1.5C, LLC has not shown that it has any rights to its business relation's capacity. Accordingly, 1.5C, LLC's comment lacks sufficient details for the Commission to adequately evaluate as a reasonable alternative.

## **7. Environmental Analysis Conclusion**

84. We have reviewed the information and analysis contained in the EIS regarding potential environmental effects of the East 300 Upgrade Project, as well as the other information in the record. We are accepting the environmental recommendations in the EA and EIS, as modified herein, and are including them as conditions in Appendix B to this order. Based on our consideration of this information and the discussion above, we agree with the conclusions presented in the EIS and find that the East 300 Upgrade Project, if implemented as described in the NEPA documents, is an environmentally acceptable action.

## **IV. Conclusion**

85. The proposed project will enable Tennessee to provide firm transportation service for ConEd. We find that Tennessee has demonstrated a need for the East 300 Upgrade Project, that the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers, and that the project's benefits will outweigh any adverse economic effects on landowners and surrounding communities. Based on the discussion above, we find under section 7 of the NGA that the public convenience and necessity requires approval of Tennessee's East 300 Upgrade Project, subject to the conditions in this order.

86. Compliance with the environmental conditions appended in our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when staff is satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take

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<sup>179</sup> Application at 7 (identifying path and delivery points with unsubscribed capacity reserved for the project).

<sup>180</sup> 1.5C, LLC's Motion to Intervene at 2 (contending that its idea would "at worst reduce[ ] construction significantly and at best require[ ] no construction at all.").

whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

87. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>181</sup>

88. At a hearing held on April 21, 2022, 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 Tennessee, authorizing it to construct and operate the proposed East 300 Upgrade Project, as described and conditioned herein, and as more fully described in the application and subsequent filings, including any commitments made therein.

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

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

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<sup>181</sup> 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).

regulations; and

- (3) compliance with the environmental conditions listed in Appendix B to this order.

(C) Tennessee shall file a written statement affirming that it has executed firm service agreements for capacity levels and terms of service represented in the signed precedent agreement prior to commencing construction.

(D) Tennessee's proposal to charge an incremental recourse reservation charge and an incremental recourse usage charge as initial recourse charges for the project is approved.

(E) Tennessee's proposal to charge its existing fuel and loss retention percentages and electric power cost rates is approved.

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

By the Commission. Chairman Glick is concurring with a separate statement attached.

Commissioner Danly is concurring in part with a separate statement attached.

Commissioner Clements is concurring with a separate statement attached.

Commissioner Phillips and Commissioner Christie are concurring with a joint separate statement attached.

( S E A L )

Debbie-Anne A. Reese,  
Deputy Secretary.

**Appendix A****Timely Intervenors**

- Athens Utilities
- Antero Resources Corporation
- Carole J. Balmer
- Chattanooga Gas Company
- City of Bolivar
- CenterPoint Energy Resources Corp.
- Chattanooga Gas Company
- City of Clarksville Gas and Water Department
- City of Clarksville
- Consolidated Edison Company of New York, Inc.
- City of Corinth Public Utilities Commission
- Barbara Cuthbert
- Delta Natural Gas Company, Inc.
- The Enbridge Gas Pipelines
- Food & Water Watch
- City of Florence, Alabama
- Kirkman Frost
- Greater Dickson Gas Authority
- Hardeman Fayette Utility District
- Hartselle Utilities
- Henderson Utility Department
- Holly Springs Utility Department
- Humphreys County Utility District
- City of Huntsville, Alabama
- Town of Linden
- Morehead Utility Plant Board
- Municipal Gas Authority of Mississippi
- National Grid Gas Delivery Companies
- New Jersey Natural Gas Company
- New York State Electric & Gas Corporation
- NJR Energy Services Company
- North Alabama Gas District
- Northern Illinois Gas Company
- Orange & Rockland Utilities, Inc.
- Portland Natural Gas System, City of Portland
- PSEG Energy Resources & Trade LLC
- Savannah Utilities

Docket No. CP20-493-000

- 44 -

- Sheffield Utilities
- Springfield Gas System, City of Springfield
- Township of Wantage, New Jersey
- City of Waynesboro
- Township of West Milford, New Jersey
- West Tennessee Public Utility District
- Tuscumbia Utilities

## Appendix B

### Environmental Conditions

As recommended in the EA and final EIS and otherwise amended herein, this authorization includes the following conditions:

1. Tennessee 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. Tennessee 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), or the Director's designee, **before using that modification.**
  
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the order;
  - b. stop-work authority; and
  - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.
  
3. **Prior to any construction**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
  
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of**

**construction**, Tennessee 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.

Tennessee'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. Tennessee'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. Tennessee 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, or the Director's designee, **before construction in or near that area**.

This requirement does not apply to extra workspace allowed by the FERC Plan and/or minor field realignments 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. facilities or realignments that affect other landowners or could affect sensitive environmental areas.
6. **At least 60 days before construction begins**, Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the Director's designee. Tennessee must file revisions to the

plan as schedules change. The plan shall identify:

- a. how Tennessee 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 Tennessee 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 facility site, 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 Tennessee 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 Tennessee's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Tennessee 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. Tennessee shall employ at least one EI per facility site. 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. 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, Tennessee shall file updated status reports with the Secretary on a **monthly 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 Tennessee's efforts to obtain the necessary federal authorizations;
    - b. the construction status of each facility site, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
    - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
    - d. a description of the corrective actions implemented in response to all instances of noncompliance;
    - e. the effectiveness of all corrective actions implemented;
    - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
    - g. copies of any correspondence received by Tennessee from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tennessee's response.
  9. Tennessee must receive written authorization from the Director of OEP, or the Director's designee, **before commencing construction of any project facilities**. To obtain such authorization, Tennessee must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
  10. Tennessee must receive written authorization from the Director of OEP, or the Director's designee, **before commencing construction of any project facilities**. To obtain such authorization, Tennessee must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
  11. **Prior to any vegetation clearing activities conducted during the migratory bird nesting season (April 1 through August 31)**, Tennessee shall file with the Secretary confirmation that it will employ a qualified surveyor (either based on recommendations by the FWS or by using FWS-approved survey protocols) to conduct any necessary migratory bird nest surveys.

12. Tennessee shall not engage in nighttime project construction (i.e., between the hours of 7:00 pm and 7:00 am) **except** for those activities that require completion without interruption, such as hydrostatic testing.
13. **Within 5 days of receipt of a water quality certification issued by Pennsylvania Department of Environmental Protection**, Tennessee shall file the complete certification, including all conditions, and all conditions attached to the water quality certification constitute mandatory conditions of this order. Prior to construction, Tennessee shall file, for review and written approval of the Director of OEP, or the Director's designee, any revisions to its project design necessary to comply with the water quality certification conditions.
14. Tennessee must receive written authorization from the Director of OEP, or the Director's designee, **before placing the new and modified compressor stations into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the facility site and other areas affected by the project are proceeding satisfactorily.
15. **Within 30 days of placing the authorized facilities in service**, Tennessee 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 Tennessee 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.
16. Tennessee shall file with Secretary noise surveys for the operation of the modified Compressor Stations 321 and 325 and new Compressor Station 327 **no later than 60 days after placing each respective station into service**. If a full power load condition noise survey is not possible, Tennessee should file an interim survey at the maximum possible power load **within 60 days** of placing each station into service and file the full power load survey **within 6 months**. If the noise attributable to operation of all equipment at any station under interim or full power load conditions exceeds a day-night sound level of 55 dBA at any nearby noise sensitive area, Tennessee shall:
  - a. file a report with the Secretary, for review and written approval by the

- Director of OEP, or the Director's designee, on what changes are needed;
- b. install 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 **no later than 60 days** after Tennessee installs the additional noise controls.

**Appendix C**

**Environmental Justice Population Table**

Minority Populations by Race and Ethnicity and Low-Income Populations in the East 300 Upgrade Project Area											
State/County Census Tract and Block Group <sup>a</sup>	Facility	RACE AND ETHNICITY COLUMNS									LOW-INCOME COLUMN
		White Alone Not Hispanic (percent)	African American (percent)	Native American/ Alaska Native (percent)	Asian (percent)	Native Hawaiian & Other Pacific Islander (percent)	Some Other Race (percent)	Two or More Races (percent)	Hispanic or Latino (percent)	Total Minority Population (percent) <sup>b</sup>	Below Poverty Level (percent) <sup>c</sup>
<b>Pennsylvania</b>		76.4	10.7	0.1	3.4	>0.1	0.2	1.9	7.3	23.6	12.1
Susquehanna County		96.2	0.6	>0.1	0.4	0	>0.1	0.9	1.7	3.8	11.6
<i>CT 329.01, BG 3</i>	CS 321	97.8	0	0	0	0	0	6	3	2.2	7.9
<i>CT 324, BG 4</i>	CS 321	91.7	2.2	0	2.0	0	0	>0.1	3.9	8.3	9.0
<b>New Jersey</b>		55.4	12.7	>0.1	9.4	>0.1	0.4	1.6	20.2	44.6	10.0
Sussex County		86.3	2.1	0	2.0	0	0.1	1.3	8.2	13.7	4.9
<i>CT 3718, BG 1</i>	CS 325	97.8	0	0	1.2	0	0	0.9	0	2.2	5.6
<i>CT 3718, BG 5</i>	CS 325	94.8	0	0	0	0	0	0	5.2	5.2	0.0 <sup>d</sup>
Passaic County		41.3	10.4	0.1	5.1	>0.1	0.3	1.2	41.5	58.7	15.0
<i>CT 2568.02, BG 2</i>	CS 327	98.6	0	0	0	0	0	0	1.4	1.4	7.1
<i>CT 2568.02 BG 4</i>	CS 327	93.1	0	0	0	0	0	3.1	3.8	6.9	2.8

Source: U.S. Census Bureau, 2015-2019 American Community Survey 5-Year Estimates, Tables B03002 and B17017

<sup>a</sup> Includes census block groups within 1-mile of the Project Facilities.

<sup>b</sup> Highlighted cells include block groups where the minority population percent is greater than 50 percent or is 10 percent higher than the minority population percent in the county.

<sup>c</sup> Highlighted cells include block groups where the low-income population percent is equal to or greater than the low-income population percent in the county.

<sup>d</sup> Table B17017 lists all persons in Block Group 5 as being above the poverty level.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP20-493-000

(Issued April 21, 2022)

GLICK, Chairman, *concurring*:

1. I believe that the record before us indicates that Tennessee Gas Pipeline Company, L.L.C.'s (Tennessee) East 300 Upgrade Project is needed and in the public interest.
2. On the question of need, the project is supported by a binding, 20-year precedent agreement for all 115,000 dekatherms per day of the project's capacity in order to serve an unaffiliated local distribution company, Consolidated Edison Company of New York, Inc. (ConEd).<sup>1</sup> In my view, a project sponsor's precedent agreements with nonaffiliates for the use of a substantial portion of the project's capacity, particularly when serving local distribution companies, constitutes significant evidence of need for the project, especially in this case when there is no record evidence to the contrary.
3. I also believe that, even though the project's reasonably foreseeable greenhouse gas (GHG) emissions are significant, the project's benefits outweigh its adverse impacts. As a result, I believe that the project is in the public interest and therefore required by the public convenience and necessity under section 7(c) of the Natural Gas Act (NGA).<sup>2</sup> I write separately, however, because today's order does not assess the significance of the project's GHG emissions on climate change.
4. In 2017, the U.S. Court of Appeals for the District of Columbia Circuit in *Sabal Trail*, concluded that the Commission is required to quantify and consider the reasonably foreseeable GHG emissions caused by its issuance of an NGA section 7 certificate.<sup>3</sup> Following *Sabal Trail*, the D.C. Circuit has repeatedly confirmed that the Commission must consider those GHG emissions and their impact on climate change in its review of new natural gas infrastructure, and that failing to do so puts the orders we issue at risk on judicial review.<sup>4</sup>

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<sup>1</sup> *Tenn. Gas Pipeline Co.*, 179 FERC ¶ 61,041, at PP 6, 15 (2022).

<sup>2</sup> 15 U.S.C. § 717f(c).

<sup>3</sup> *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) ("*Sabal Trail*").

<sup>4</sup> *See Food & Water Watch v. FERC*, 28 F.4th 277, 287-89 (D.C. Cir. 2022);

5. The Commission has raised concerns in the past that it is difficult to assess significance due to the absence of a universally accepted scientific methodology to do so<sup>5</sup> and that it is difficult to ascribe discrete physical impacts to the molecules of carbon dioxide caused by a particular project.<sup>6</sup> But “universal acceptance” is not the standard to consider the significance of climate change.<sup>7</sup> After all, the administration of NEPA is rife with judgment calls, and agencies necessarily must use the best tools and information at hand, caveating them as appropriate.<sup>8</sup> In addition, the Commission does not hold other environmental impacts associated with natural gas infrastructure to the same high standards for considering significance. For example, the Commission routinely assesses the significance of impacts on resources as idiosyncratic and diverse as permafrost,<sup>9</sup> “ephemeral and intermittent waterbodies,”<sup>10</sup> visual resources,<sup>11</sup> and old growth forests,<sup>12</sup>

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*Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1325, 1329 (D.C. Cir. 2021); *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019).

<sup>5</sup> See, e.g., Final Environmental Impact Statement for Alaska LNG Project, Docket No. CP17-178-000, at 4-1222 (Mar. 2020).

<sup>6</sup> See, e.g., *Alaska Gasline Dev. Corp.*, 171 FERC ¶ 61,134, at P 216 (2020) (“Without either the ability to determine discrete resource impacts or an established target to compare GHG emissions against, the final EIS concludes that it cannot determine the significance of the project's contribution to climate change.”).

<sup>7</sup> *Alaska Gasline Dev. Corp.*, 171 FERC ¶ 61,134 (Glick, Comm’r, dissenting at PP 19-20); *Tenn. Gas Pipeline Co., L.L.C.*, 170 FERC ¶ 61,142 (2020) (Glick, Comm’r, dissenting in part at P 5).

<sup>8</sup> See, e.g., *Sabal Trail*, 867 F.3d at 1374 (“[S]ome educated assumptions are inevitable in the NEPA process.”); *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014); *Spiller v. White*, 352 F.3d 235, 244 n.5 (5th Cir. 2003) (rejecting petitioner’s contention that the significance determination must be objective, factual, and quantitative and should not involve any qualitative judgment calls).

<sup>9</sup> Final Environmental Impact Statement for Alaska LNG Project, Docket No. CP17-178-000, at ES-4 (Mar. 2020) (finding that the Project would result in “significant longterm to permanent impacts on thaw sensitive permafrost (about 6,218 acres)” and to “thaw stable permafrost (about 3,499 acres)”).

<sup>10</sup> Environmental Assessment for Cheyenne Connector Pipeline Project, Docket No. CP18-102-000, at 26 (Dec. 2018).

<sup>11</sup> *Texas LNG Brownsville LLC*, 169 FERC ¶ 61,130, at P 56 (2019).

<sup>12</sup> Final Environmental Impact Statement for Atlantic Coast Pipeline Project,

without clearly articulated, “objective” standards, much less ones enjoying universal acceptance.

6. I concur because today’s order does not rehash those same arguments on the difficulty of assessing climate impacts. Instead, it explains that the Commission is not making a determination on significance because the Commission intends to assess how we will conduct significance determinations in the pending generic proceeding on our now-draft policy statement. Under these circumstances, I can support that conclusion.

7. But, in my view, deciding on the significance of GHG impacts in this proceeding should have been an easy call. The record reflects that this project would result in downstream emissions of over 1.7 million metric tons per year, based on Tennessee’s proposed 77% utilization rate; the downstream figure balloons to 2.2 million metric tons per year if we assume that all of the project’s capacity will be combusted.<sup>13</sup> Accordingly, I would have found this project’s GHG emissions to be significant. Even setting aside the volume of emissions of this particular project, there is nothing about GHG emissions or their contribution to climate change that prevents this agency from making determinations about their significance.<sup>14</sup>

8. As noted above, the courts have been crystal clear in explaining that the Commission must consider climate change in its siting decisions under NGA sections 3 and 7.<sup>15</sup> I continue to believe that the best approach for the Commission is to establish a transparent, predictable framework for considering climate impacts in order to give project developers the certainty they need to build new energy infrastructure. The significance determination is a bedrock element of that approach in that it constitutes perhaps the most important single step in informing federal decisionmakers and the public of the environmental consequences of the proposed action, which, after all, is the main purpose of NEPA.<sup>16</sup>

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Docket No. CP15-554-000, at ES-10, ES-12 (July 2017).

<sup>13</sup> *Tenn. Gas Pipeline Co.*, 179 FERC ¶ 61,041 at P 51.

<sup>14</sup> *N. Nat. Gas Co.*, 174 FERC ¶ 61,189, at P 32 (2021); *see also Texas LNG Brownsville LLC*, 169 FERC ¶ 61,130, at PP 5-7, 17-19 (2019) (Glick, Comm’r, dissenting); *Nat’l Fuel Gas Supply Corp.*, 172 FERC ¶ 61,039, at P 17 (2020) (Glick, Comm’r, dissenting).

<sup>15</sup> *Food & Water Watch*, 28 F.4th at 288-89; *Birckhead*, 925 F.3d at 519; *Sabal Trail*, 867 F.3d at 1373-74.

<sup>16</sup> *See, e.g., Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (explaining that one of NEPA’s purposes is to ensure that “relevant information

9. Still, I believe the record before us demonstrates a strong case that this project is needed and in the public interest. All of the project's capacity is intended to serve a local distribution company. The record also reflects that the county to be served by this project experienced a substantial increase in firm customer peak demand, which prompted ConEd to impose a temporary moratorium on accepting new gas customers.<sup>17</sup> The additional capacity provided by this project will, according to ConEd, enable it to lift that moratorium. This record demonstrates this project is required by the public convenience and necessity, notwithstanding the project's significant GHG impacts.

10. Finally, I emphasize that the Commission's obligation to consider impacts on environmental justice communities is firmly rooted in its statutory obligations under the Natural Gas Act to consider and uphold the public interest.<sup>18</sup>

For these reasons, I respectfully concur.

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Richard Glick  
Chairman

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will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision"); *Lemon v. Geren*, 514 F.3d 1312, 1315 (D.C. Cir. 2008) ("The idea behind NEPA is that if the agency's eyes are open to the environmental consequences of its actions and if it considers options that entail less environmental damage, it may be persuaded to alter what it proposed.").

<sup>17</sup> *Tenn. Gas Pipeline Co.*, 179 FERC ¶ 61,041 at PP 6, 52.

<sup>18</sup> See, e.g., *Atl. Refining Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959) (Section 7(e) of the Natural Gas Act "requires the Commission to evaluate all factors bearing on the public interest."); *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669 (1976) (finding that the Commission has authority under the Natural Gas Act "to consider conservation, environmental, and antitrust questions"); *Vecinos*, 6 F.4th at 1330-31 (holding that the Commission must revisit its public interest determinations under the Natural Gas Act in light of deficiencies in its evaluation of environmental justice impacts and climate change impacts); *Pub. Utils. Comm'n of Cal. v. FERC*, 900 F.2d 269, 281 (D.C. Cir. 1990) ("That Congress should have had environmental and conservation factors in mind in establishing the Commission seems entirely plausible, as the enterprises licensed by the Commission necessarily and typically have dramatic natural resource impacts.").

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP20-493-000

(Issued April 21, 2022)

DANLY, Commissioner, *concurring in the judgment*:

1. I concur with the decision to grant the Natural Gas Act (NGA) section 7(c)<sup>1</sup> authorization requested by Tennessee Gas Pipeline Company, L.L.C. (Tennessee).<sup>2</sup> I write separately to express a handful of points.

2. *First*, I disagree with the Commission’s determination that “the [greenhouse gas (GHG)] emissions from the downstream combustion of the gas transported by the project are reasonably foreseeable emissions.”<sup>3</sup> The facts here, like in *Food & Water Watch v. FERC*,<sup>4</sup> involve adding capacity to provide incremental transportation service to a local distribution company (LDC). And I recognize that the court “concluded that the end use of the transported gas is reasonably foreseeable.”<sup>5</sup> Nonetheless, the court also stated that “[o]n remand, *the Commission remains free to consider whether there is a reasonable end-use distinction based on additional evidence, but it has not carried its burden before us at this stage,*” and “remand[ed] to the agency to perform a supplemental environmental assessment in which it must either quantify and consider the project’s downstream carbon emissions *or explain in more detail why it cannot do so.*”<sup>6</sup> I am not convinced that the

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<sup>1</sup> 15 U.S.C. § 717f(c).

<sup>2</sup> *See Tenn. Gas Pipeline Co., L.L.C.*, 179 FERC ¶ 61,041 (2022) (*Tennessee*).

<sup>3</sup> *Id.* P 49.

<sup>4</sup> 28 F.4th 277 (D.C. Cir. 2022) (*Food & Water Watch*).

<sup>5</sup> *Id.* at 289.

<sup>6</sup> *Id.* (emphasis added); *see also* Brief of Respondent-Intervenors Tennessee Gas Pipeline Co., L.L.C. and Eversource Energy Service Company at 28, *Food & Water Watch*, 28 F.4th 277 (D.C. Cir. 2022) (No. 20-1132), 2020 WL 6696078, at 28 (“Columbia Gas explained it needs ‘the new capacity from the 261 Upgrade Projects to provide reliable service to its existing customers.’ As Columbia Gas further explained, it ‘needs the increased capacity and delivery pressure to be provided by these projects in order to provide reliable service to its existing customers.’ And, in approving Columbia Gas’ contract with Tennessee, the Massachusetts [Department of Public Utilities (DPU)]

LDCs involved here and the discrete, known generators at issue in *Sierra Club v. FERC (Sabal Trail)*<sup>7</sup> are similar enough that the *Sabal Trail* precedent directly applies. We have not yet acted on remand and, even according to the court, the question remains open. Additionally, as I have said before,<sup>8</sup> *Sabal Trail*, which *Food & Water Watch* applies, is inconsistent with the Supreme Court's holding in *Department of Transportation v. Public Citizen*.<sup>9</sup> My views are not idiosyncratic. Both the dissenting opinion in *Sabal Trail* and the Court of Appeals for the Eleventh Circuit agree.<sup>10</sup>

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agreed. The Massachusetts DPU found the capacity Columbia Gas was acquiring was 'replacement capacity, from which no additional greenhouse gas emissions will result.' To the extent the gas would support new customers, those customers were 'converting from oil heating to natural gas, and therefore, the [Massachusetts DPU] expects that the acquisition of the proposed capacity will further reduce greenhouse gas emissions.'") (internal citations omitted) (emphasis in original).

<sup>7</sup> 867 F.3d 1357 (D.C. Cir. 2017).

<sup>8</sup> See *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) (Danly, Comm'r, dissenting at P 29) (Interim GHG Policy Statement); see also *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197, at P 2 (2022) (converting the two policy statements issued on February 18, 2022, Interim GHG Policy Statement, 178 FERC ¶ 61,108 and *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Updated Certificate Policy Statement), to "draft" policy statements) (Order on Draft Policy Statements).

<sup>9</sup> 541 U.S. 752 (2004) (*Public Citizen*).

<sup>10</sup> See *Sabal Trail*, 867 F.3d at 1383 (Brown J., concurring in part and dissenting in part) ("Thus, just as FERC in the [Department of Energy] cases and the Federal Motor Carrier Safety Administration in *Public Citizen* did not have the legal power to prevent certain environmental effects, the Commission here has no authority to prevent the emission of greenhouse gases through newly-constructed or expanded power plants approved by the Board."); *Ctr. for Biological Diversity v. U.S. Army Corps of Eng'rs*, 941 F.3d 1288, 1300 (11th Cir. 2019) ("[T]he legal analysis in *Sabal Trail* is questionable at best. It fails to take seriously the rule of reason announced in *Public Citizen* or to account for the untenable consequences of its decision.").

3. *Second*, as I previously stated,<sup>11</sup> while not fatal to this order’s durability, I would have explicitly repudiated *Northern Natural Gas Company*<sup>12</sup> and reaffirmed the Commission’s prior position that “[w]ithout an accepted methodology, the Commission cannot make a finding whether a particular quantity of greenhouse gas [GHG] emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change.”<sup>13</sup> This is because, as the Commission has stated, it is unable to connect a particular project’s GHG emissions to discrete, physical effects on the environment.<sup>14</sup> The Council on Environmental Quality (CEQ) has found similarly.<sup>15</sup> Moreover, there is no standard by which the Commission could, consistent with our obligations under the law, ascribe significance to a particular rate or volume of GHG emissions.<sup>16</sup> And the Commission’s recent attempts to do so, absent the expertise to make such a determination and the

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<sup>11</sup> See, e.g., *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2022) (Danly, Comm’r, concurring in the judgment at PP 2-4) (*Columbia Gulf*).

<sup>12</sup> See *Tennessee*, 179 FERC ¶ 61,041 at P 49 n.93 (citing *N. Nat. Gas Co.*, 174 FERC ¶ 61,189 (2021) (Danly, Comm’r, concurring in part and dissenting in part) (*Northern*)). In *Northern*, a majority of my colleagues established what has been referred to (by some) as the “eyeball” test. See Catherine Morehouse, *Glick, Danly spar over gas pipeline reviews as FERC considers project’s climate impacts for first time*, UTIL. DIVE (Mar. 19, 2021), <https://www.utilitydive.com/news/glick-danly-spar-over-gas-pipeline-reviews-as-ferc-considers-projects-cli/597016/> (“We essentially used the eyeball test,” [Chairman Glick] said, adding that based on that analysis, ‘it didn’t seem significant in terms of the impact of those emissions on climate change.’”).

<sup>13</sup> *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 67 (2018) (citation omitted).

<sup>14</sup> See, e.g., *Nat’l Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145, at P 188 (2017).

<sup>15</sup> See CEQ, *Draft [National Environmental Policy Act (NEPA)] Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions*, at 3 (Feb. 18, 2010), <https://obamawhitehouse.archives.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf> (“it is not currently useful for the NEPA analysis to attempt to link specific climatological changes, or the environmental impacts thereof, to the particular project or emissions, as such direct linkage is difficult to isolate and to understand.”).

<sup>16</sup> See, e.g., *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197, at P 292 (2018).

statutory authority to impose it, have amounted to little more than picking arbitrary numbers.<sup>17</sup>

4. In now stating in certificate orders that “[t]he Commission is not herein characterizing these emissions as significant or insignificant because we are conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going forward,”<sup>18</sup> the Commission has effectively preserved its ability to expand its use of the flawed “eyeball” test, possibly with a new number picked as the threshold. Perhaps, the number picked will be 165,000 metric tons per year of GHG emissions.<sup>19</sup> Perhaps higher.<sup>20</sup> Or perhaps lower. There is no way of knowing.

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<sup>17</sup> See Interim GHG Policy Statement, 178 FERC ¶ 61,108 at PP 79-81 (establishing a significance threshold of 100,000 metric tons per year of CO<sub>2</sub>e); *id.* (Danly, Comm’r, dissenting at PP 32-36) (explaining why the majority’s presumptive significance threshold is illogical); see also *Northern*, 174 FERC ¶ 61,189 (Danly, Comm’r, concurring in part and dissenting in part at P 16) (comparing the Northern test to “like posting a speed limit sign with a question mark instead of a number, leaving it to the police officer to decide arbitrarily whether you were speeding”).

<sup>18</sup> *Tennessee*, 179 FERC ¶ 61,041 at P 49.

<sup>19</sup> See *Columbia Gulf*, 178 FERC ¶ 61,198 (Glick, Chairman, concurring at P 5) (“I would have preferred to apply *Northern Natural* here and would have concluded based on evidence in the record that the relevant 165,000 metric tons per year of GHG emissions are not significant.”) (citation omitted); *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022) (Glick, Chairman, concurring at P 5) (“I would have preferred to apply *Northern Natural* here and would have concluded based on evidence in the record that the relevant 145,000 metric tons per year of GHG emissions are not significant.”) (citation omitted) (*Tennessee Gas*).

<sup>20</sup> See *Columbia Gulf*, 178 FERC ¶ 61,198 (Glick, Chairman, concurring at P 5 n.14) (“I recognize the now-draft GHG policy statement proposes 100,000 metric tons as a threshold over which a project’s GHG emissions would be presumed significant. . . . In my view, *that is a deliberately conservative number* intended to ensure that the Commission did not lead projects developers down the path of an environmental assessment, only to subsequently change course and require an environmental impact statement *in the event that the Commission were to establish a lower threshold* in a final GHG policy statement than it did in the then-interim, now-draft policy statement. I remain open to reviewing the comments submitted in response to that draft statement, as well as guidance we may receive from other federal agencies, in considering what threshold would be appropriate in a final policy statement.”) (emphasis added) (citation omitted); *Tennessee Gas*, 178 FERC ¶ 61,199 (Glick, Chairman, concurring at P 5 n.13)

But we have learned that if a new number is to be picked to serve as a significance threshold for GHG emissions, that number will be based solely on the whim of a majority of commissioners. Regardless, such action is neither within our authority<sup>21</sup> nor can it be considered reasoned decision making.<sup>22</sup>

5. *Third*, regarding the inclusion of a calculation of the Social Cost of Carbon from the project's emissions,<sup>23</sup> the Commission has provided extensive discussion on why the use of the Social Cost of Carbon is not appropriate in project-level NEPA review, and why it cannot meaningfully inform the Commission's decisions on natural gas infrastructure projects under the NGA.<sup>24</sup> Nothing can be gleaned from the numbers

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(same).

<sup>21</sup> See *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C. Cir. 2002) (“As a federal agency, FERC is a ‘creature of statute,’ having ‘no constitutional or common law existence or authority, but *only* those authorities conferred upon it by Congress.”) (quoting *Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C. Cir. 2001)); see *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (“It is axiomatic that an administrative agency’s power to promulgate legislative regulations is limited to the authority delegated by Congress.”); see also Senate Energy & Nat. Res. Committee, *Full Committee Hearing To Review FERC’s Recent Guidance On Natural Gas Pipelines*, <https://www.energy.senate.gov/hearings/2022/3/full-committee-hearing-to-review-ferc-s-recent-guidance-on-natural-gas-pipelines>, at 00:58:30 (Mar. 3, 2022) (questioning by Chairman Manchin regarding the recent policy statements: “The Commission, you all acknowledge, that . . . no federal agency, including this Commission has established a threshold for determining what level of project-induced greenhouse gas emissions is significant. Why do you all think that FERC, whose primary purpose is to regulate efficient and reliable energy, should be the first agency, the first to set such a standard rather than the environmental agencies?”); see generally Interim GHG Policy Statement, 178 FERC ¶ 61,108 (Danly, Comm’r, dissenting).

<sup>22</sup> The Commission is authorized to make a “‘rational legislative-type judgment’” but may not “pluck a number out of thin air when it promulgates rules.” *WJG Tel. Co., Inc. v. FCC*, 675 F.2d 386, 388-89 (D.C. Cir. 1982) (quoting *FCC v. Nat’l Citizens Comm. for Broad.*, 436 U.S. 775, 814 (1978)); see also *LeMoyne-Owen Coll. v. NLRB*, 357 F.3d 55, 61 (D.C. Cir. 2004) (“In the absence of an explanation, the ‘totality of the circumstances’ can become simply a cloak for agency whim—or worse.”) (citation omitted).

<sup>23</sup> See *Tennessee*, 179 FERC ¶ 61,041 at P 61.

<sup>24</sup> See, e.g., *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 296 (2017), *order on reh’g*, 163 FERC ¶ 61,197, at PP 275-97 (2018), *aff’d sub nom. Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at \*2 (D.C. Cir. 2019) (“[The

calculated by Commission staff in today's order. Moreover, because the Social Cost of Carbon was not developed for project-level review, its use is not required for the evaluation of impacts under section 1502.21 of the CEQ's regulations.<sup>25</sup>

6. *Fourth*, although I agree that the Commission must act “in accordance with our . . . statutory duties,”<sup>26</sup> it is necessary to take a moment to explain the scope of the public convenience and necessity standard. The Supreme Court has found that NGA section “7(e) requires the Commission to evaluate all factors bearing on the public interest.”<sup>27</sup> This obligation, however, is not unlimited in scope and this requirement cannot be read in a vacuum. The Supreme Court has explained that the inclusion of the term “public interest” in our statute is not “a broad license to promote the general public welfare”—instead, it “take[s] meaning from the purposes of the regulatory legislation.”<sup>28</sup> We must then turn to the purpose of the NGA, which the Supreme Court has instructed us is “to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”<sup>29</sup> To the extent to which any of the Commission's recent or future

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Commission] gave several reasons why it believed petitioners' preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes.”).

<sup>25</sup> 40 C.F.R. § 1502.21(c). This reasoning is consistent with *Florida Southeast Connection, LLC* where the Commission stated, “[a]nd we do not dispute that [the Social Cost of Carbon] is generally accepted in the scientific community and can play an important role *in different contexts, such as rulemaking proceedings.*” 164 FERC ¶ 61,099, at P 35 (2018) (emphasis added) (citation omitted).

<sup>26</sup> *Tennessee*, 179 FERC ¶ 61,041 at P 68 n.150 (“[w]hile the Commission is not one of the specified agencies in Executive Order 12898, the Commission nonetheless addresses environmental justice in its analysis, in accordance with our governing regulations and guidance, and statutory duties.”) (citing 15 U.S.C. § 717f; 18 C.F.R. § 380.12(g) (requiring applicants to submit information about the socioeconomic impact area of a project for the Commission's consideration during NEPA review); FERC, *Guidance Manual for Environmental Report Preparation* at 4-76 to 4-80 (Feb. 2017), <https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf>).

<sup>27</sup> *Atl. Ref. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959).

<sup>28</sup> *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669 (1976) (*NAACP*).

<sup>29</sup> *Id.* at 669-70; accord *Myersville Citizens for a Rural Cmty.*, 783 F.3d 1301, 1307 (D.C. Cir. 2015) (quoting *NAACP*, 425 U.S. at 669-70). I note that the Supreme Court has also recognized the Commission has authority to consider “other subsidiary purposes,” such as “conservation, environmental, and antitrust questions.”

certificate issuances attempt to expand the subjects considered in the Commission's balancing under the public convenience and necessity standard, as contemplated in the now-draft Updated Certificate Policy Statement, I reiterate my view that any balancing regime the Commission employs must "take meaning" from the purpose of the NGA.

7. *Finally*, I wish to highlight the unnecessary delay of today's issuance. It has been over 21 months since Tennessee filed its application;<sup>30</sup> over 14 months since the Commission issued an Environmental Assessment (EA) for the project;<sup>31</sup> and over six months after the requested action date that Tennessee stated was necessary to obtain the "regulatory permits and to complete the acquisition of property for the new compressor station location, materials, procurement, and construction of the Project in a time frame compatible with the November 1, 2022 in-service date requested by the Project Shipper."<sup>32</sup> Tennessee and its project shipper, Consolidated Edison of New York (Con Ed), have filed comments requesting immediate Commission action.<sup>33</sup>

8. One cannot help but wonder about the purpose of the Commission's delay. There was no need for the Commission to issue supplemental draft and final Environmental

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*NAACP*, 425 U.S. at 670 & n.6 (citations omitted). But all subsidiary purposes are, necessarily, subordinate to the statute's primary purpose.

<sup>30</sup> *See* Tennessee Gas Pipeline Company, L.L.C., Abbreviated Application for a Certificate of Public Convenience and Necessity to Construct, Install, Modify, Operate, and Maintain Certain Compression Facilities, Docket No. CP20-493-000 (June 30, 2020) (Application).

<sup>31</sup> *See* Commission Staff, Environmental Assessment for East 300 Upgrade Project, Docket No. CP20-493-000. (Feb. 19, 2020).

<sup>32</sup> *See* Application at 1-2 (listing September 30, 2021 as the requested action by date).

<sup>33</sup> *See* Tennessee Gas Pipeline Co., L.L.C. December 23, 2021 Limited Reply Comments to Comments of U.S. Environmental Protection Agency on Final Environmental Impact Statement, Docket No. CP20-493-000, at 9 ("Commission action is needed now to ensure the Project can be completed and placed in service in a timely manner."); Consolidated Edison Co. of New York, Inc., December 21, 2021 Motion for Leave to Answer and Answer, Docket No. CP20-493-000, at 2 ("Con Edison respectfully requests that the Commission issue the requested certificate as soon as possible to avoid delays to the Project so that Con Edison may end its need to rely on trucked [compressed natural gas] for peak day needs, lift the moratorium, and provide gas service to its customers who request it.").

Impact Statements (EISs).<sup>34</sup> The D.C. Circuit has not stated that an EA is inadequate for the consideration of projects' GHG emissions.<sup>35</sup> The Commission could have quantified direct and downstream emissions and placed those emissions into context in an order.

9. There is no doubt that the Commission delayed action on this and other certificates in order to issue the Updated Certificate Policy Statement and Interim GHG Policy Statement first.<sup>36</sup> My colleagues have claimed that those policy statements were necessary to provide a legally durable framework for certificate orders going forward.<sup>37</sup> And yet those policy statements are now in draft form,<sup>38</sup> they are no longer in effect, but here we are acting on certificate orders.

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<sup>34</sup> See Commission Staff, Draft Environmental Impact Statement for the East 300 Upgrade Project, Docket No. CP20-493-000 (July 2, 2021); Commission Staff, Final Environmental Impact Statement for the East 300 Upgrade Project, Docket No. CP20-493-000 (Sept. 24, 2021).

<sup>35</sup> The D.C. Circuit recently upheld the Commission's assessment of direct GHG emissions in an Environmental Assessment. See *Food & Water Watch*, 28 F.4th at 289-90. Notably, the D.C. Circuit in *Food & Water Watch* does not require the preparation of an EIS, but instead, on remand requires that the Commission "perform a *supplemental environmental assessment* in which it must either quantify and consider the project's downstream carbon emissions or explain in more detail why it cannot do so." *Id.* at 289 (emphasis added).

<sup>36</sup> Commissioner Danly March 2, 2022 Letter in Response to Senator Barrasso's Letter Dated February 15, 2022, Docket Nos. PL18-1-000, et al., at 5-7, <https://www.ferc.gov/news-events/news/commissioner-james-danly-letter-senator-barrasso>.

<sup>37</sup> See, e.g., Written Testimony of Chairman Richard Glick for March 3, 2022 Senate Energy and Natural Resources Committee Hearing, at 9, <https://www.energy.senate.gov/services/files/270F8F6E-C554-43CF-B683-EB60583873D8> ("The principal purpose of the Interim Greenhouse Gas Policy Statement is to provide a framework for considering reasonably foreseeable greenhouse gas emissions in our analysis under NGA sections 3 and 7 that is consistent with binding court precedent."); *Transcript of the 1087th Meeting*, FERC, at 36-37 (Feb. 17, 2022), <https://www.ferc.gov/news-events/events/february-17-2022-virtual-open-meeting-02172022> (Commissioner Clements stated, "I think [the Updated Certificate Policy Statement] is an important step towards establishing a framework for making wise and legally durable decisions that account for the complexities of an energy system undergoing profound transformation.").

<sup>38</sup> See Order on Draft Policy Statements, 178 FERC ¶ 61,197 at P 2 ("Upon further consideration, we are making the Updated [Certificate] Policy Statement and the Interim

10. Of course, one cannot help but notice the Commission inserting elements of the now-draft policy statements. The order notes whether the project shipper is an affiliate of Tennessee in the project need discussion.<sup>39</sup> How to consider affiliate precedent agreements is a subject of the draft Updated Certificate Policy Statement.<sup>40</sup> In addition, the order calculates downstream emissions using a “85% historical utilization rate.”<sup>41</sup> Use of a projected utilization rate is a proposal in the now draft Interim GHG Policy Statement,<sup>42</sup> The Commission did not previously consider projected utilization rates.<sup>43</sup>

11. The order then goes on to explain that the Commission will “consider documented offsets of GHG emissions when determining the level of downstream GHG emissions associated with a project” when applicants provide “sufficient information”—i.e., a lifecycle study similar to that which Iroquois Gas Transmission System, L.P. provided.<sup>44</sup> Again, another element of the Interim GHG Policy Statement.<sup>45</sup> Then in response to the

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GHG Policy Statement draft policy statements. . . . The Commission will not apply the Updated Draft Policy Statement or the Draft GHG Policy Statement to pending applications or applications filed before the Commission issues any final guidance in these dockets.”) (citations omitted).

<sup>39</sup> *Tennessee*, 179 FERC ¶ 61,041 at P 15 (“ConEd, the project shipper *unaffiliated with Tennessee*”) (emphasis added).

<sup>40</sup> *See* Updated Certificate Policy Statement, 178 FERC ¶ 61,107 at P 60.

<sup>41</sup> *Tennessee*, 179 FERC ¶ 61,041 at P 51.

<sup>42</sup> *See* Interim GHG Policy Statement, 178 FERC ¶ 61,108 at PP 50-51 (“Because in most instances a 100% utilization rate estimate does not accurately capture the project’s climate impacts, estimated emissions that reflect a projected utilization rate will provide more useful information. . . . The project sponsor is encouraged to file its projected utilization rate, as well as its justification for the rate and any supporting evidence, in its application for authorization under NGA section 3 or 7.”).

<sup>43</sup> *Id.* P 49 (“In previous environmental documents and certificate orders, the Commission has disclosed a project’s operational emissions . . . by assuming a 100% utilization rate estimate of the project (e.g., the maximum capacity is transported 365 days per year, 24 hours a day and fully combusted downstream).”).

<sup>44</sup> *Tennessee*, 179 FERC ¶ 61,041 at P 53.

<sup>45</sup> *See* Interim GHG Policy Statement, 178 FERC ¶ 61,108 at P 29 (“The Commission will also consider evidence of factors expected to reduce or offset the estimated direct or reasonably foreseeable downstream emissions of the project.”); *see id.* P 129 (“A project sponsor for any new natural gas infrastructure project is encouraged to

Docket No. CP20-493-000

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U.S. Environmental Protection Agency's recommendation that the Commission require GHG mitigation, the order notes Tennessee's voluntary participation in emission reduction initiatives.<sup>46</sup> Notably absent from the order—a discussion on the Commission's authority to impose GHG mitigation measures.

12. Why bother with issuing policy statements that attract attention when you can just change the policy in serial adjudications with a limited number of parties and a now certificate holder that has no incentive to appeal?

For these reasons, I respectfully concur in the judgment.

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James P. Danly  
Commissioner

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include the following in its NGA section 3 or 7 application . . . evidence, if any, that impacts the quantification of the project's reasonably foreseeable GHG emissions.”).

<sup>46</sup> See *Tennessee*, 179 FERC ¶ 61,041 at P 58.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP20-493-000

(Issued April 21, 2022)

CLEMENTS, Commissioner, *concurring*:

1. As I have done in other recent certificate orders,<sup>1</sup> I concur with this order and write separately only to clarify why I agree with the decision not to characterize the significance of the greenhouse gas (GHG) emissions associated with the East 300 Upgrade Project.<sup>2</sup>
2. The Commission must consider environmental impacts, including climate change impacts, both under the National Environmental Policy Act (NEPA)<sup>3</sup> and as part of its Natural Gas Act (NGA) section 7(e)<sup>4</sup> determination of public convenience and necessity.<sup>5</sup> In *Sabal Trail*, the court said that the NEPA environmental impact statement (EIS) for a Commission-authorized project needed to include a discussion of the significance of GHG emissions.<sup>6</sup> As explained below, although we have not characterized the environmental impact of the East 300 Upgrade Project's GHG emissions as "significant," we have done under NEPA what is substantively required for GHG emissions that may

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<sup>1</sup> *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2022) (Clements, Comm'r, concurring); *Tennessee Gas Pipeline Co.*, 178 FERC ¶ 61,199 (2022) (Clements, Comm'r, concurring); *Iroquois Gas Transmission System, L.P.*, 178 FERC ¶ 61,200 (2022) (Clements, Comm'r, concurring); *Atlantic Coast Pipeline, LLC*, 178 FERC ¶ 61,201 (2022) (Clements, Comm'r, concurring).

<sup>2</sup> *Tenn. Gas Pipeline Co.*, 179 FERC ¶ 61,041, at P 49 (2022).

<sup>3</sup> 42 U.S.C. §§ 4331(a); 4332(2).

<sup>4</sup> 15 U.S.C. § 717f(e).

<sup>5</sup> See, e.g., *Vecinos Para El Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1328-29 (D.C. Cir. 2021); *Sierra Club v. FERC*, 867 F.3d 1357, 1373-75 (D.C. Cir. 2017) (*Sabal Trail*); *Food & Water Watch v. FERC*, No. 20-1132, 2022 WL 727037, at \*1 (D.C. Cir Mar. 11, 2022).

<sup>6</sup> *Sabal Trail*, 867 F.3d at 1374 (citing Council on Environmental Quality regulation implementing NEPA, 40 C.F.R. § 1502.16(b)).

have a significant environmental impact. Moreover, our decision to avoid labeling the GHG emissions here as significant or insignificant is a reasonable one under the special circumstances surrounding issuance of this decision.

3. Today's order declines to label the GHG emissions here as significant or insignificant because we do not have consensus among Commissioners on whether and how to determine significance. Consequently, the Commission is taking public comment in Docket No. PL21-3-000 on these and related issues.<sup>7</sup> I supported establishing a 100,000-ton per year CO<sub>2</sub>e threshold for determining significance in the Commission's *Draft GHG Policy Statement* because it would provide a workable framework for considering greenhouse gas emissions and give clarity to stakeholders about when the Commission will prepare an environmental impact statement (EIS).<sup>8</sup> But there may be other good approaches to determining significance. Now that the policy is converted to draft status and subject to public comment, I am open to considering all reasonable suggestions for alternative approaches. Declining to label the emissions here as either significant or insignificant makes clear that the Commission has not prejudged whether the threshold proposed in the draft policy is the best approach.

4. I will continue to strive for clarity in our approach to considering significance. In the meantime, we must meet our basic legal obligations in individual certificate cases. Whatever label might be applied to the GHG emissions associated with the East 300 Upgrade Project we have satisfied our obligations to describe them for the public and consider them under NEPA.<sup>9</sup> To begin with, NEPA requires us to prepare an EIS for a project with impacts that might significantly affect the quality of the human environment.<sup>10</sup> In this case, the Commission prepared an EIS that describes the climate

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<sup>7</sup> See Order on Draft Policy Statements, 178 FERC ¶ 61,197, P 2 (2022); *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) (*Draft GHG Policy Statement*).

<sup>8</sup> See *Draft GHG Policy Statement*, 178 FERC ¶ 61,108 at PP 3, 79.

<sup>9</sup> See *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (NEPA EIS requirement forces agencies to take "hard look" at the consequences of their actions); *WildEarth Guardians v. Jewell*, 738 F.3d 298, 302 (D.C. Cir. 2013) (another purpose of EIS is ensuring environmental consequences are disclosed to the public).

<sup>10</sup> See 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.3; *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 985 F.3d 1032, 1039 (D.C. Cir. 2021), *cert. denied*, 2022 WL 516382 (Feb. 22, 2022).

Docket No. CP20-493-000

- 2 -

impacts caused by GHG emissions,<sup>11</sup> as the courts have said agencies should do.<sup>12</sup> The courts have further determined that quantifying emissions and comparing them to national and state emissions levels is a “reasonable proxy” for assessing climate impacts from GHG emissions.<sup>13</sup> The Commission’s order does this as well.<sup>14</sup>

5. After carefully weighing the East 300 Upgrade Project’s benefits and its adverse impacts, including its potential effects on climate change, I have concluded that the project meets the public convenience and necessity standard under NGA section 7(e).<sup>15</sup>

For these reasons, I respectfully concur.

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Allison Clements  
Commissioner

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<sup>11</sup> See Final Environmental Impact Statement for the East 300 Upgrade Project, Docket No. CP20-493-000, at 14-25 (Sept. 2021).

<sup>12</sup> See, e.g., *WildEarth Guardians*, 738 F.3d at 308-09.

<sup>13</sup> *WildEarth Guardians*, 738 F.3d at 309; *Sabal Trail*, 867 F.3d at 1374-75.

<sup>14</sup> 179 FERC ¶ 61,041 at P 54.

<sup>15</sup> 15 U.S.C. § 717f(e).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP20-493-000

(Issued April 21, 2022)

PHILLIPS and CHRISTIE, Commissioners, *concurring*:

1. We concur in the issuance of today’s order granting authorizations under section 7 of the Natural Gas Act (NGA) and enter essentially the same concurrence in this case as in two other certificate cases that the Commission approves today.<sup>1</sup> We write separately to highlight our prior statements, where we stated that in the absence of any analytical tool or framework to estimate the extent of a project’s emission impacts’ on the environment, we are unable to assess whether project emissions are significant.<sup>2</sup> As we have explained, we should continue to provide as much detail as practically possible on an individual project’s greenhouse gas (GHG) emissions impacts in accordance with the National Environmental Policy Act (NEPA),<sup>3</sup> but to the extent we make a determination that such impacts are significant or not – and an undue focus on drawing a bright line between “significance” and “insignificance” would appear to elevate form over substance – we would like to identify the factors considered or otherwise explain our determination.

2. For these reasons, we respectfully concur.

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<sup>1</sup> *North Baja Pipeline, LLC*, 179 FERC ¶ 61,039 (2022); *ANR Pipeline Co.*, 179 FERC ¶ 61,040 (2022); *Tenn. Gas Pipeline Co., L.L.C.*, 179 FERC ¶ 61,041 (2022).

<sup>2</sup> *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022); *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2022); *Iroquois Gas Transmission System, L.P.*, 178 FERC ¶ 61,200 (2022).

<sup>3</sup> See *WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 (D.C. Cir. 2013) (“Because current science does not allow for the specificity demanded by Appellants, the [agency] was not required to identify specific effects on the climate in order to prepare an adequate EIS.”). See also *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at \*2 (D.C. Cir. Feb. 19, 2019) (“FERC must either quantify and consider the project’s downstream carbon emissions or explain in more detail why it cannot do so.”) (quoting *Sierra Club v FERC*, 867 F.3d 1357, at 1375 (2017); *Food & Water Watch v. FERC*, 28 F.4th 277, 290 (D.C. Cir. 2022) (upholding the Commission’s NEPA analysis when the petitioner has “‘identi[fied] no method’ that ‘the Commission could have used’” to assess the significance of GHG emissions.) (quoting *EarthReports, Inc. v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016).

Docket No. CP20-493-000

- 2 -

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Willie L. Phillips  
Commissioner

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Mark C. Christie  
Commissioner

Document Content (s)

CP20-493-000.docx.....1