

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF SOUTHERN INDIANA GAS AND ELECTRIC)
COMPANY d/b/a CENTERPOINT ENERGY INDIANA)
SOUTH (“CEI SOUTH”) FOR (1) ISSUANCE OF A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY PURSUANT TO IND. CODE CH. 8-1-8.5 FOR)
THE CONSTRUCTION OF TWO NATURAL GAS)
COMBUSTION TURBINES (“CTs”) PROVIDING)
APPROXIMATELY 460 MW OF BASELOAD CAPACITY)
(“CT PROJECT”); (2) APPROVAL OF ASSOCIATED)
RATEMAKING AND ACCOUNTING TREATMENT FOR)
THE CT PROJECT; (3) ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO) CAUSE NO. 45564
IND. CODE CH. 8-1-8.4 FOR COMPLIANCE PROJECTS TO)
MEET FEDERALLY MANDATED REQUIREMENTS)
(“COMPLIANCE PROJECTS”); (4) AUTHORITY TO)
TIMELY RECOVER 80% OF THE FEDERALLY)
MANDATED COSTS OF THE COMPLIANCE PROJECTS)
THROUGH CEI SOUTH’S ENVIRONMENTAL COST)
ADJUSTMENT MECHANISM (“ECA”); (5) AUTHORITY TO)
CREATE REGULATORY ASSETS TO RECORD (A) 20% OF)
THE FEDERALLY MANDATED COSTS OF THE)
COMPLIANCE PROJECTS AND (B) POST-IN-SERVICE)
CARRYING CHARGES, BOTH DEBT AND EQUITY, AND)
DEFERRED DEPRECIATION ASSOCIATED WITH THE CT)
PROJECT AND COMPLIANCE PROJECTS UNTIL SUCH)
COSTS ARE REFLECTED IN RETAIL ELECTRIC RATES;)
(6) IN THE EVENT THE CPCN IS NOT GRANTED OR THE)
CTs OTHERWISE ARE NOT PLACED IN SERVICE,)
AUTHORITY TO DEFER, AS A REGULATORY ASSET,)
COSTS INCURRED IN PLANNING PETITIONER’S)
2019/2020 IRP AND PRESENTING THIS CASE FOR)
CONSIDERATION FOR FUTURE RECOVERY THROUGH)
RETAIL ELECTRIC RATES; (7) ONGOING REVIEW OF)
THE CT PROJECT; AND (8) AUTHORITY TO ESTABLISH)
DEPRECIATION RATES FOR THE CT PROJECT AND)
COMPLIANCE PROJECTS ALL UNDER IND. CODE §§ 8-1-)
2-6.7, 8-1-2-23, 8-1-8.4-1 *ET SEQ.*, AND 8-1-8.5-1 *ET SEQ.*)

PETITIONER’S SUBMISSION OF FERC ORDER

Petitioner Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South (“CEI South”), by counsel, respectfully submits a copy of the October 20, 2022 Order from the Federal Energy Regulatory Commission (“FERC”) granting Texas Gas Transmission LLC (“Texas Gas”) a certificate to construct the Henderson County Expansion Project. A copy of FERC’s Order is attached hereto as Attachment 1 and the Order is also available electronically through FERC’s E-Library by searching in FERC docket CP21-467. CEI South is submitting FERC’s Order to comply with the requirements of the Indiana Utility Regulatory Commission’s June 28, 2022 Order to submit a copy of the FERC Order resolving the certificate.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served via electronic mail transmission this 21st day of October, 2022 to:

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181 FERC ¶ 61,049
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.

Texas Gas Transmission, LLC

Docket No. CP21-467-000

ORDER ISSUING CERTIFICATE AND GRANTING ABANDONMENT

(Issued October 20, 2022)

1. On June 25, 2021, Texas Gas Transmission, LLC (Texas Gas) filed an application pursuant to sections 7(b), 7(c), and 7(e) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to abandon, construct, operate, and maintain certain natural gas facilities in Henderson and Webster Counties, Kentucky, and Posey and Johnson Counties, Indiana (Henderson County Expansion Project). The project is designed to provide up to 220,000 MMBtu per day (MMBtu/d) of new firm transportation service to Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South's (CenterPoint) new natural gas-fired electric generation turbines at CenterPoint's existing A.B. Brown Generating Station (A.B. Brown Plant) in Posey County, Indiana. For the reasons discussed below, we will grant the requested authorizations, subject to certain conditions.

I. Background and Proposal

2. Texas Gas, a limited liability company organized under the laws of Delaware,³ is a natural gas company as defined by section 2(6) of the NGA.⁴ Texas Gas is authorized to do business in and has pipelines in the states of Texas, Louisiana, Arkansas, Mississippi, Tennessee, Kentucky, Indiana, Illinois, and Ohio. Texas Gas is an open-access pipeline company that provides transportation and storage services in those nine states.

¹ 15 U.S.C. § 717f(b), (c), (e).

² 18 C.F.R. pt. 157 (2021).

³ Texas Gas is a wholly owned subsidiary of Boardwalk Pipelines, LP, which is wholly owned by Boardwalk Pipeline Partners, LP.

⁴ 15 U.S.C. § 717a(6).

3. Texas Gas proposes to provide up to 220,000 MMBtu/d of new firm transportation service to CenterPoint's new natural gas-fired electric generation turbines at the A.B. Brown Plant in Posey County, Indiana.⁵ The Henderson County Expansion Project will consist of construction of a new lateral and upgrades to Texas Gas' mainline facilities, as well as abandonment of one compressor unit and the transition of two other units to standby. Texas Gas anticipates that construction of the project would commence as soon as the project is approved, subject to the receipt of necessary permits and regulatory approvals, and that construction would take about ten months. Based on this schedule, Texas Gas anticipates placing the facilities in service in May 2024.⁶

A. Lateral Facilities

4. The proposed Henderson County lateral facilities consist of: (i) approximately 24 miles of new 20-inch-diameter natural gas delivery lateral in Henderson County, Kentucky, and Posey County, Indiana and (ii) a new delivery meter and regulator (M&R) station with 0.08 miles of new 16-inch-diameter interconnecting pipe beginning at the M&R station and terminating at the interconnection with the A.B. Brown Plant and associated auxiliary facilities located in Posey County, Indiana. The 20-inch-diameter delivery lateral will extend from an interconnect tie-in with Texas Gas' existing Slaughters-Montezuma System⁷ at the Robards Junction to CenterPoint's A.B. Brown Plant site in Posey County, Indiana. The proposed delivery M&R station will be located on CenterPoint property at the A.B. Brown Plant site and will be the custody transfer point for measurement between Texas Gas and CenterPoint. Texas Gas estimates that the lateral facilities will cost approximately \$82,000,000.

B. Mainline Facilities

5. The proposed upgrades to Texas Gas' mainline facilities include: (i) upgrading an existing receipt M&R station (Franklin REX) located in Johnson County, Indiana, from 95,000 MMBtu/d to 160,000 MMBtu/d and (ii) installing a new 4,863-horsepower Solar Centaur 50 turbine compressor unit with piping modifications and other

⁵ Texas Gas states that CenterPoint is retiring two existing coal-fired electric generating units located at the A.B. Brown Plant, totaling 490-MW, and replacing that generation capacity by installing new natural gas turbines, to reduce the plant's greenhouse gas (GHG) emissions.

⁶ Final Environmental Impact Statement (EIS) at 2-24.

⁷ The Slaughters-Montezuma system extends north from the Slaughters Compressor Station, which lies on the mainline system. The Henderson County Lateral will extend northwest from its interconnection with the Slaughters-Montezuma system to the A.B. Brown Plant.

appurtenant facilities, at the existing Slaughters Compressor Station located in Webster County, Kentucky. The proposed compression will be located within the existing Slaughters Compressor Station and will increase the northbound capacity on Texas Gas' existing mainline Slaughters-Montezuma System by 140,000 MMBtu/d.⁸ Texas Gas estimates that the upgrades to these mainline facilities will cost approximately \$36,200,000.

C. Abandonment

6. At the Slaughters Compressor Station, Texas Gas requests authorization to: (i) abandon in place Unit 5, a 1,320 HP reciprocating compressor unit, and (ii) transition two other existing 1,320 HP units, Units 6 and 7, from primary operating units to standby units. According to Texas Gas, Unit 5 is inactive, unreliable, and no longer integral to the Texas Gas system or required to meet transportation obligations in this area. Due to the advanced age of Units 6 and 7, Texas Gas proposes placing the units on standby as operational spare units for use during maintenance or unplanned outages. Going forward, after installation of the new compressor unit, Units 6 and 7 would not be required to meet Texas Gas' firm transportation obligations in the area. Thus, the horsepower associated with Units 6 and 7 would not be included in the certificated horsepower for the Slaughters Compressor Station and will not be used in a manner that would result in the station exceeding its certificated capacity.⁹ Texas Gas further avers that the proposed modifications at the Slaughters Compressor Station will enhance the station's operational efficiency and reliability and will lower maintenance costs associated with the upkeep of the older units.

D. Precedent Agreement

7. Texas Gas held a binding open season from December 23 through December 31, 2020. CenterPoint, an unaffiliated entity, was the only shipper to submit a conforming binding bid. As a result of the open season, CenterPoint and Texas Gas executed a precedent agreement with a 20-year term for 100% of the new lateral capacity (220,000 MMBtu/d) and approximately 92.9% of the additional firm transportation capacity on the Slaughters-Montezuma system (130,000 MMBtu/d). Texas Gas explained that transportation of gas to the Henderson County Lateral will be provided using the incremental capacity to be created on the Slaughters-Montezuma system and

⁸ The amount of incremental capacity being added to the Slaughters-Montezuma System will vary seasonally with 140,000 MMBtu/d available in the winter and 134,000 MMBtu/d in the summer. Application at 20. *See also* Texas Gas Sept. 6, 2022 Data Response at 4.

⁹ The project will increase the total horsepower at the Slaughters Compressor Station from 42,448 hp to 43,351 hp.

reserved capacity on other parts of Texas Gas' mainline, in equal parts from the northern region (43,334 MMBtu/d Zone 3), from the southern region (43,333 MMBtu/d Zone SL), and storage (43,333 MMBtu/d Zone 3).¹⁰ The precedent agreement includes CenterPoint's and Texas Gas' executed conforming service agreements under the following rate schedules: (i) for the capacity on the Henderson County lateral, Firm Lateral Service – Firm Transportation Service (FLS-FT) for 220,000 MMBtu/d; and (ii) for capacity on the mainline and the Slaughters-Montezuma System, Zone 3-3 Winter No-Notice Service (3-3 WNS) for 43,334 MMBtu/d, Zone SL-3 Winter No-Notice Service (SL-3 WNS) for 43,333 MMBtu/d, Zone 3-3 Summer No-Notice Service (3-3 SNS) for 43,334 MMBtu/d, and Zone SL-3 Summer No-Notice Service (SL-3 SNS) for 43,333 MMBtu/d. According to Texas Gas, no new tariff provisions are required to facilitate the terms and conditions of service under Rate Schedules FLS-FT, WNS and SNS for the project. CenterPoint has elected to pay negotiated rates.

8. As further explained below, Texas Gas proposes to establish incremental rates for service on the Henderson County Lateral Facilities. Texas Gas proposes to use its existing, applicable mainline rates as the recourse rates for firm transportation service on the mainline facilities, which include the Slaughters-Montezuma system, because the illustrative incremental cost-based rates for the project's upgrades to the mainline facilities would be less than Texas Gas' existing approved maximum applicable transportation rates.

II. Notice, Interventions, and Request for Public Hearings

9. Notice of Texas Gas's application in Docket No. CP21-467-000 was published in the *Federal Register* on July 15, 2021,¹¹ with comments, interventions, and protests due July 30, 2021. CenterPoint, Citizens Action Coalition of Indiana (CAC), Chevron U.S.A. Inc., Natural Gas Supply Association, Center for Liquefied Natural Gas, The Western Tennessee Municipal Group,¹² Jackson Energy Authority, City of Jackson, Tennessee,

¹⁰ Application at 20. These three transportation amounts add up to 130,000 MMBtu/d. Texas Gas reserved the following existing mainline capacity for use by Texas Gas in addition to the mainline capacity being created by the project facilities: 43,333 MMBtu/d of Eunice to Slaughters mainline segment; 43,333 MMBtu/d of Hardinsburg to Slaughters mainline segment; 43,334 MMBtu/d of Indianapolis to Hardinsburg segment on the Hardinsburg-Indianapolis Market Lateral; 260,000 MMBtu of Cost-Based Seasonal storage; and 43,334 MMBtu/d of Cost-Based Storage Daily Deliverability. Application at 11.

¹¹ 86 Fed. Reg. 37,322 (July 15, 2021).

¹² The Western Tennessee Municipal Group consists of the following municipal distributor-customers of Texas Gas: City of Bells, Gas & Water, Bells, Tennessee;

The Kentucky Cities,¹³ Sierra Club, Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Duke Energy Indiana, LLC, and Atmos Energy Corporation, and American Gas Association filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹⁴

10. Shipper, CenterPoint, and the State of Indiana filed comments in support of the project. Eric N. Denton, Jean M. Webb, and Niles Rosenquist filed comments, citing concerns regarding safety, health, and environmental impacts. Elizabeth Toombs¹⁵ filed a comment indicating that the Cherokee Nation was interested in acting as a consulting party and that the Nation did not foresee the project impacting Cherokee cultural resources. The U.S. Fish and Wildlife Service (FWS) filed comments recommending best management practices to minimize environmental impacts and included a list of federally listed species that have the potential to occur within the project area. On July 30, 2021, CAC and Sierra Club filed separate protests raising arguments regarding project need and environmental concerns. Comments raising environmental issues were addressed in the final Environmental Impact Statement (EIS) prepared by Commission staff.

11. CAC also requests that the Commission schedule public hearings to hear from concerned residents. Commission staff hosted a public telephonic scoping meeting on May 18, 2022.¹⁶ In addition, stakeholders were provided multiple opportunities to submit

Brownsville Utility Department, City of Brownsville, Brownsville, Tennessee; City of Covington Natural Gas Department, Covington, Tennessee; Crockett Public Utility District, Alamo, Tennessee; City of Dyersburg, Dyersburg, Tennessee; First Utility District of Tipton County, Covington, Tennessee; City of Friendship, Friendship, Tennessee; Gibson County Utility District, Trenton, Tennessee; Town of Halls Gas System, Halls, Tennessee; Humboldt Gas Utility, Humboldt, Tennessee; Town of Maury City, Maury City, Tennessee; City of Munford, Munford, Tennessee; City of Ripley Natural Gas Department, Ripley, Tennessee.

¹³ The Kentucky Cities are the cities of Carrollton and Henderson, Kentucky. Both cities are municipal distributor customers of Texas Gas.

¹⁴ 18 C.F.R. § 385.214(c) (2021).

¹⁵ Elizabeth Toombs is the Tribal Historic Preservation Officer in the Cherokee Nation Tribal Historic Preservation Office.

¹⁶ The Commission conducted telephonic meetings in lieu of in-person meetings in response to the pandemic. The Commission uses this public scoping process to gather

written comments on the application, the draft EIS, and final EIS.¹⁷ We received 48 unique written comments, plus several form letters and petitions. While CAC requests public hearings, no commenter alleges that they were denied an opportunity to comment. Therefore, we conclude that the public was afforded an adequate opportunity to review and comment on the project.

12. To the extent commenters are requesting a trial-type hearing on whether the project is in the public convenience and necessity, we deny that request. An evidentiary, trial-type hearing is necessary only where there are material issues of fact in dispute that cannot be resolved based on the written record.¹⁸ As demonstrated by the discussion below, the existing written record provides a sufficient basis to resolve the issues relevant to this proceeding and the Commission has satisfied the hearing requirement by giving all interested parties a full opportunity to participate through evidentiary submission in written form.

13. On August 12, 2021, Texas Gas filed a joint motion for leave to answer and an answer to CAC and Sierra Club's protests. Texas Gas argues that Sierra Club's contention regarding project need is immaterial because it calls on the Commission to second-guess CenterPoint's determination to replace its retiring coal-fired facilities with gas-fired units and renewables. Texas Gas also addressed CAC and Sierra Club's environmental concerns which are discussed in greater detail in the final EIS.

14. On August 27, 2021, Sierra Club filed a response to Texas Gas' August 12, 2021 answer. Sierra Club reiterates that Texas Gas has not demonstrated a need for the proposed project, noting that Texas Gas has not identified a market study nor other potential customers for the capacity should CenterPoint's proposed generation facilities not materialize. Sierra Club highlights that the Indiana Utility Regulatory Commission (IURC) previously denied CenterPoint's prior petition for a certificate to construct gas-fired power units at the same proposed site.

input from the public to take into account concerns the public may have about proposals and the environmental impacts. This gathering of public input is referred to as "scoping."

¹⁷ 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 Commission proceedings—including navigating Commission processes and activities relating to the project.

¹⁸ See, e.g., *S. Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Dominion Transmission, Inc.*, 141 FERC ¶ 61,183, at P 15 (2012).

15. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers, we will accept Texas Gas and Sierra Club's answer and response because they provide information that will assist us in our decision-making.¹⁹

III. Discussion

16. Because the proposed project includes the abandonment of an existing compressor unit and the construction and operation of facilities that will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the proposal is subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.²⁰

A. Abandonment

17. Section 7(b) of the NGA provides that an interstate pipeline company may abandon jurisdictional facilities or services only if the Commission finds the abandonment is permitted by the present or future public convenience or necessity.²¹ When an applicant proposes to abandon jurisdictional facilities, the continuity and stability of existing services are the primary consideration in assessing whether the public convenience or necessity permit the abandonment.²² If the Commission finds that an applicant's proposed abandonment for particular facilities will not jeopardize continuity of existing gas transportation services, the Commission will defer to the applicant's business judgment.²³

18. Here, Texas Gas proposes to abandon in place Unit 5 because it is inactive, unreliable, and no longer integral to the Texas Gas system or required to meet transportation obligations in the area. Texas Gas also proposes to transition Units 6 and 7 from primary operating units to standby units due to their advanced age. After installation of a new compressor unit, Units 6 and 7 would not be required to meet Texas Gas' firm transportation obligations in the area. Texas Gas asserts that the proposed modifications will enhance the station's operational efficiency and reliability

¹⁹ 18 C.F.R. § 385.213(a)(2) (2021).

²⁰ 15 U.S.C. § 717f(b), (c), (e).

²¹ *Id.* § 717f(b).

²² See, e.g., *Tex. E. Transmission, LP*, 176 FERC ¶ 61,206, at P 11 (2021) (citing *El Paso Natural Gas Co., L.L.C.*, 148 FERC ¶ 61,226, at P 12 (2014)).

²³ See, e.g., *Tex. E. Transmission, LP*, 176 FERC ¶ 61,206, at P 11 (citing *Trunkline Gas Co.*, 145 FERC ¶ 61,108, at P 65 (2013)).

and will lower maintenance costs associated with the upkeep of the older units. Texas Gas has not proposed any changes that will adversely impact the operations of its system or continuity of service. Accordingly, we find Texas Gas' proposed abandonment is permitted by the public convenience or necessity.

B. Certificate Policy Statement

19. The 1999 Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.²⁴ 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 and under what terms 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 avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

20. Under this policy, 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 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 construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are addressed.

²⁴ *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 ¶ 61,128 (2022) and *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 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).

1. No Subsidy Requirement and Project Need

21. Texas Gas' proposal satisfies the threshold requirement that it financially support the project without subsidization from its existing customers. Texas Gas states that existing transportation customers on Texas Gas' system will not subsidize the costs of the project due to the proposed separate lateral rate design to recover the costs of the Henderson County lateral facilities that will apply only to service on the lateral, and Texas Gas' proposal to charge its existing system-wide rates for the expanded service on its mainline facilities.²⁵ Therefore, we find that Texas Gas' existing customers will not subsidize the Henderson County Expansion Project and that the threshold no-subsidy requirement is met.

22. The project is designed to provide firm transportation service to CenterPoint's two new natural gas-fired combustion turbines (CT) at its A.B. Brown Plant as part of CenterPoint's preferred electric generation portfolio plan. Texas Gas asserts that the natural gas turbines will support electric reliability when CenterPoint's intermittent renewable resources are unavailable²⁶ and will also allow CenterPoint to retire coal-fired generating facilities.²⁷ Texas Gas entered into a binding precedent agreement with CenterPoint, an unaffiliated shipper, for 100% of the new lateral capacity and approximately 92.9% of the additional firm transportation capacity on the Slaughters-Montezuma system. A precedent agreement for almost 100% of the project's capacity is significant evidence of the need for the proposed project.²⁸

²⁵ The cost-based rates of the new expansion service would be lower than the system-wide rates and the expected revenues exceed project costs, as discussed in more detail below.

²⁶ Application, Resource Report 1 at 1-1. *See also* CenterPoint July 30, 2021 Comments at 1-2.

²⁷ Application at 34. *See also* CenterPoint July 30, 2021 Comment at 1-2 ("Construction of these CTs are an integral part of CenterPoint's plans to transition its coal-fired generation facilities to a generation fleet composed of 700 to 1,000 megawatts (MWs) of new renewable resources and 460 MWs from the proposed new CTs. The CTs play a critical role in this transition by providing a dispatchable generation facility to support the renewables during period when renewable resources are unable to produce energy.")

²⁸ *See, e.g., Enable Gas Transmission, LLC*, 175 FERC ¶ 61,183, at P 30 (2021) (finding a long-term precedent agreement for approximately 67% of the project's capacity demonstrated a need for the proposed project); *Double E Pipeline, LLC*, 173 FERC ¶ 61,074, at P 35 (2020) (finding the 10-year, firm precedent agreements for

23. Sierra Club and CAC argue that Texas Gas has not identified any market studies to demonstrate market need or identified other potential customers should CenterPoint's proposed generation facilities not materialize.²⁹ Where, as here, the applicant has supported its application with evidence of capacity subscribed under precedent agreements, our policy is to condition the certificate on the applicant's executing contracts for the level of service and for the terms of service represented in the precedent agreements before commencing construction.³⁰ Because we ultimately balance a project's demonstrated benefits against its adverse impacts, the requirement that final service agreements be executed prior to the commencement of construction helps to ensure that the evidence of need relied upon in assessing the balance was not illusory. This requirement will safeguard against the scenario where the project is ultimately not needed because the shipper's intended project for which the shipper secured gas supply, is ultimately not built.

24. Sierra Club and CAC also assert additional claims arguing essentially that the Henderson County Expansion Project is not needed because there is not a need for CenterPoint's proposed gas-fired CTs.³¹ Similarly, CAC also argues that the enactment

approximately 74% of the project's capacity adequately demonstrated that the project was needed).

²⁹ CAC July 30, 2021 Comment at 4-5; *see also* Sierra Club Aug. 27, 2021 Comment at 1 (noting that the Indiana Utility Regulatory Commission (IURC) previously denied CenterPoint's permit application for the gas-fired power). On June 28, 2022, IURC issued an order authorizing CenterPoint's proposed natural gas CTs at the A.B. Brown Plant. Indiana Utility Regulatory Commission, Cause No. 45564 (June 28, 2022).

³⁰ *See Tenn. Gas Pipeline Co., L.L.C.*, 170 FERC ¶ 61,141, at P 9 (2020).

³¹ *See* CAC July 30, 2021 Comment at 6-11; Sierra Club Aug. 30, 2021 Comment at 10 (claim that the coal units at the A.B. Brown Plant will be retired regardless of whether the proposed project is built); Sierra Club Aug. 30, 2021 Comment at 10 (asserting that CenterPoint's proposed gas-fired units are not needed because the coal-burning units could instead be replaced with clean energy at equivalent cost); CAC Aug. 30, 2021 Comment at 19 (arguing that the region's energy needs could be met by increasing capacity purchases from the Midcontinent Independent System Operator (MISO) market, energy efficiency programs, demand response resources, and battery storage resources in lieu of CenterPoint's proposed gas-fired units); CAC Aug. 9, 2022 Comment at 1, 5 (claiming MISO's transmission upgrade initiative undermines the need for the project because the new transmission lines, by enabling the interconnection of numerous new renewable generators, may eliminate or significantly modify the need for CenterPoint's gas-fired units); *cf* MISO Oct. 21, 2021 Comment at 1 ("encourage[ing] the

of Public Law 117-169, the Inflation Reduction Act, which directs nearly \$400 billion in tax credits and spending to fund clean energy and transmission resilience investments, “shifts the landscape for utility resource planning” such that CenterPoint could pursue different resources in lieu of the two gas-fired CTs to help integrate CenterPoint’s planned renewables.³²

25. CenterPoint and its state regulatory agency, the Indiana Utility Regulatory Commission (IURC), are responsible for determining the portfolio of generation resources to replace CenterPoint’s retiring coal-fired units, not the Commission. As an Indiana public utility,³³ CenterPoint is subject to the regulation of the IURC³⁴ and received authorization from IURC to construct the two CTs on June 28, 2022.³⁵ CenterPoint expects the CTs will be available by the fourth quarter of 2024. Accordingly, CenterPoint entered into a precedent agreement with Texas Gas to secure capacity to supply the authorized CTs. Any concerns regarding the need for or authorization of the two CTs should be raised with the IURC.

Commission to consider the positive benefits to the electric grid that a reliable fuel delivery system can provide...[t]his is one element to ensure we collectively address and meet the electric reliability needs of customers within MISO’s and other regions.”).

³² CAC Sept. 26, 2022 Comment at 2. In response to CAC’s argument, Texas Gas states that the Inflation Reduction Act does not undercut the need for the project nor affect the Commission’s analysis of project alternatives. Texas Gas Oct. 4, 2022 Answer at 2.

³³ CenterPoint is a vertically integrated retail electric utility serving retail customers in Southwestern Indiana. CenterPoint July 30, 2021 Comment at 1.

³⁴ Prior to constructing new generation facilities, CenterPoint is required to obtain a certificate of public convenience and necessity (CPCN) from the IURC. CenterPoint July 30, 2021 Comments at 5 (citing Ind. Code § 8-1-8.5-2 (2020)).

³⁵ Indiana Utility Regulatory Commission, Cause No. 45564 (June 28, 2022) (issuing CenterPoint a certificate of public convenience and necessity); *see also* CenterPoint Oct. 5, 2022 Comment at 1 (stating that the state court challenges to IURC’s June 28 certificate have been dismissed and that the certificate is now final); State of Indiana Sept. 30, 2022 Comment at 1-2 (noting that CenterPoint’s gas-fired CTs were approved by the IURC and that the CTs are “necessary for CenterPoint to meet its goals contained within their most recent plan, which will also further promote the State’s policy of maintaining a diverse mix of resources to ensure safe and reliable service and further mitigate customer vulnerability to pricing volatility and overreliance of the market for both energy and capacity services”).

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

26. We find that the Henderson County Expansion Project will not adversely affect service to Texas Gas' existing customers. Texas Gas has designed the project to provide the new service without impacting services to existing customers. We also find that there will be no adverse impact on other pipelines in the region or their captive customers because the project will not displace existing service on other pipelines.

27. The proposed project will have minimal impacts on landowners and communities. The new lateral will parallel existing utility rights-of-way for approximately 10.7 miles, or approximately 47.5%, of the route and the siting of the new compressor unit will be entirely within the existing Slaughters Compressor Station. Construction of the project will impact 403.07 acres of land and project operations will permanently impact 154.39 acres of land.³⁶

28. Accordingly, we find that there are demonstrated benefits of the Henderson County Expansion Project, and further, that the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers and that the project's benefits will outweigh any adverse economic effects on landowners and surrounding communities. Therefore, we conclude that the project is consistent with the criteria set forth in the 1999 Certificate Policy Statement and analyze the environmental impacts of the project below.³⁷

C. Rates

1. Initial Rates

a. Henderson County Lateral Service

29. Texas Gas proposes to establish initial incremental firm recourse rates under Rate Schedule FLS (Firm Lateral Service) and an initial incremental interruptible rate under Rate Schedule ILS (Interruptible Lateral Service) using the incremental capacity created by the project on the Henderson County lateral facilities. Texas Gas' rate structure for the Henderson County lateral service is similar to the rate structure for its other existing

³⁶ See Updates for the Henderson County Expansion Project at 44 (Aug. 23, 2021).

³⁷ 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).

laterals such as the Southern Indiana and Western Kentucky laterals.³⁸ Under this proposed structure, access to the Henderson County lateral service requires a new firm or interruptible service agreement separate from an agreement to transport on Texas Gas' mainline. Texas Gas states that the Rate Schedule FLS recourse rates for transportation service on the Henderson County lateral facilities will be based solely on the specific lateral facilities' costs and only the customers using the lateral facilities will pay rates to recover the cost of service for those facilities.

30. Texas Gas proposes a recourse reservation charge under Rate Schedules FLS-FT and FLS-NNS of \$0.1512 per MMBtu, based on a design capacity of 220,000 MMBtu/d and a first-year fixed cost of service³⁹ of \$12,451,273.⁴⁰ Texas Gas proposes an FLS Winter Season reservation charge under Rate Schedule FLS-WNS of \$0.2262 per MMBtu and an FLS Summer Season reservation charge under Rate Schedule FLS-SNS of \$0.1512 per MMBtu. Texas Gas proposes an ILS Winter Season rate of \$0.2262 per MMBtu and an ILS Summer Season rate of \$0.0983 per MMBtu under Rate Schedule ILS.⁴¹ The ILS rates are based on the 100% load factor FLS rates, with a 35% reduction to the summer rate and a corresponding increase to the winter rate. Texas Gas' cost of service reflects a 35-year depreciation life as reflected in the proposed depreciation rate of 2.86%⁴² and reflects Texas Gas' last approved return on equity of 11.5% with a capital structure consisting of 41.03% debt and 58.97% common equity.⁴³

³⁸ See Texas Gas Transmission, LLC, Tariffs, § 4.20.1 (Currently Effective Rates- FLS- So IN Customer Lateral) (0.0.0) and § 4.20.2 (Currently Effective Rates- FLS- W KY Customer Lateral) (0.0.0).

³⁹ Texas Gas notes that because the Henderson County lateral does not have compression, there are no variable costs. All costs are allocated to the reservation charge. Application Ex. N at 1 (Henderson County Lateral).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Application at 22 (citing *Tex. Gas Transmission, LLC*, 123 FERC ¶ 61,118 (2008); *Tex. Gas Transmission, LLC*, 153 FERC ¶ 61,323 (2015); and *Tex. Gas Transmission, LLC*, 154 FERC ¶ 61,032 (2016)).

⁴³ The capital structure percentages were stipulated to in the settlement reached in Docket No. RP90-104 (*Tex. Gas Transmission, LLC*, 57 FERC ¶ 61,236 (1991)) and the ROE percentage was stipulated to in the settlement reached in Docket No. RP97-344 (*Tex. Gas Transmission, LLC*, 84 FERC ¶ 61,019 (1998)).

31. We have reviewed Texas Gas' proposed cost of service and rate design used to develop the initial incremental rates and find that they reasonably reflect current Commission policy. Therefore, we approve Texas Gas' proposed charges and rates as the initial recourse charges and rates for the Henderson County lateral facilities.

b. Mainline Facilities Service

32. Texas Gas proposes to charge its existing summer no-notice service rate under Rate Schedule SNS of \$0.4033 per MMBtu for Zone 3 and its existing winter no-notice service rate under Rate Schedule WNS of \$0.5790 per MMBtu for Zone 3 for the mainline facilities.⁴⁴ For comparison purposes, Texas Gas calculated illustrative incremental rates for Rate Schedule SNS of \$0.2158 per MMBtu and Rate Schedule WNS of \$0.3224 per MMBtu. Texas Gas states that in determining the cost of service for the mainline facilities, Texas Gas used its last approved capital structure consisting of 41.03% debt and 58.97% common equity and a return on equity of 11.5%, along with the existing mainline system depreciation rate of 1.80%, inclusive of a 0.20% negative salvage rate.

33. The Commission has generally held that the applicable system recourse rate is appropriate for a project if the estimated cost-based rate is less than the current system rate. Otherwise, the pipeline is required to establish an incremental rate to ensure that there is no subsidization from existing shippers.⁴⁵ We have reviewed Texas Gas' proposed cost of service and initial rates and find that they reasonably reflect current Commission policy. As shown above, Texas Gas' illustrative incremental rates are lower than the currently effective system recourse rates for comparable services. Because Texas Gas' rate analysis demonstrates that its maximum system recourse rates are greater than the illustrative incremental rates we will approve Texas Gas' request to use its existing system rates under Rate Schedules SNS and WNS as the initial recourse rates for the mainline facilities.

2. Mainline Fuel

34. Texas Gas proposes to use its existing Middle Zone fuel rate of 0.98% for service on the mainline facilities and requests a predetermination for rolled-in rate treatment for fuel and lost and unaccounted for gas.⁴⁶ Texas Gas states that based on operational expectations, Texas Gas has compared the projected Middle Zone fuel rate for the

⁴⁴ These existing mainline recourse rates include both the applicable reservation charge and usage charge associated with each rate schedule.

⁴⁵ 1999 Certificate Policy Statement, 88 FERC at 61,746.

⁴⁶ Application at 27.

mainline facilities of 0.65% against the existing Middle Zone fuel rate of 0.98% for service on the mainline facilities and demonstrates that the mainline facilities will effectively reduce the applicable Middle Zone fuel rate for the benefit of the applicable zone shippers.⁴⁷ Therefore, we approve Texas Gas' use of its existing fuel rate for the mainline facilities and grant a predetermination of rolled-in rate treatment, absent a significant change in circumstances.

3. Pre-Determination of Rolled-in Rates for Mainline Facilities

35. Texas Gas requests a pre-determination of rolled-in treatment of rates for the mainline facilities in accordance with the Commission's 1999 Certificate Policy Statement.⁴⁸ In support of its request, Texas Gas asserts that for the mainline facilities, incremental revenues will exceed incremental costs.

36. To support a request for a pre-determination that a pipeline may roll the costs of a project into its system-wide rates in its next NGA general section 4 rate proceeding, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must demonstrate that the revenues to be generated by an expansion project will exceed the costs of the project. For purposes of determining in a certificate proceeding whether it would be appropriate to roll the costs of a project into the pipeline's system rates in a future NGA section 4 proceeding, we compare the cost of the project to the revenues generated using actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the recourse rate).⁴⁹

37. Texas Gas states that for the mainline facilities, the incremental negotiated rate revenue of \$15,201,097 exceeds the incremental cost of service of \$5,385,132 by \$9,815,965 in the first year of operation.⁵⁰ In evaluating the project, we find that the incremental revenue from Texas Gas' mainline facilities exceeds the incremental cost of service. Therefore, we will approve a presumption of rolled-in rate treatment for the cost of the mainline facilities, absent a significant change in circumstances.

⁴⁷ *Id.*

⁴⁸ 1999 Certificate Policy Statement, 88 FERC at 61,746.

⁴⁹ *Tenn. Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

⁵⁰ See Application Ex. N (Mainline Facilities) at 2, 7.

4. Reporting Incremental Costs

38. We require Texas Gas to keep separate books and accounting of costs and revenues attributable to the Henderson County lateral facilities' capacity created by the project and internally for the mainline facilities' capacity created by the project in the same manner as required by section 154.309 of the Commission's regulations.⁵¹ The books should be maintained with applicable cross-reference and the information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.⁵²

5. Negotiated Rates

39. Texas Gas proposes to provide service to CenterPoint under negotiated rate agreements. Texas Gas must file either the negotiated rate agreements or tariff records setting forth the essential terms of the agreements in accordance with the Alternative Rate Policy Statement⁵³ and the Commission's negotiated rate policies.⁵⁴

⁵¹ 18 C.F.R. § 154.309 (2021). *See Gulf S. Pipeline Co., LLC*, 173 FERC ¶ 61,049, at P 6 (2020) (for projects that use existing system rates for the initial rates, the Commission's requirement for separate books and accounting applies only to internal books and records).

⁵² *See Revisions to Forms, Statements, & Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008). In *Gulf South*, the Commission clarified that a pipeline charging its existing system rates for a project is not required to provide books and accounting consistent with Order No. 710. However, a pipeline is required to maintain its internal books and accounting such that it would have the ability to include this information in a future FERC Form No. 2 if the rate treatment for the project is changed in a future rate proceeding.

⁵³ *Alts. to Traditional Cost-of-Service Ratemaking for Nat. Gas Pipelines; Regul. 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).

⁵⁴ *Nat. Gas Pipelines Negotiated Rate Policies & Practices; Modification of Negot. 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).

D. Environmental Analysis

40. On July 29, 2021, the Commission issued a Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Henderson County Expansion Project (NOS). The NOS was published in the *Federal Register*⁵⁵ on August 5, 2021 and opened a 30-day scoping period. The NOS was mailed to federal and state resource agencies; elected officials; environmental groups and non-governmental organizations; Native American Tribes; potentially affected landowners; local libraries and newspapers; and other stakeholders who had indicated an interest in the project (i.e., project stakeholders). The Commission received comments in response to the NOS from the FWS, U.S. Department of Agriculture – Natural Resources Conservation Service (NRCS), Indiana Department of Natural Resources, the Pokagon Band of Potawatomi Indians, CAC, Sierra Club, Consumer Energy Alliance, and three members of the public.

41. Following the NOS comment period, the Commission issued a Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Henderson County Expansion Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review (NOI) on October 7, 2021. The NOI was published in the *Federal Register*⁵⁶ on October 14, 2021 and mailed to the project stakeholders. The NOI opened an additional 30-day scoping period. The Commission received comments on the NOI from the U.S. Environmental Protection Agency (EPA), Kentucky Department of Environmental Protection – Energy and Environment Cabinet, MISO, Sierra Club, CAC, and two members of the public.

42. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),⁵⁷ Commission staff prepared a draft EIS, which was issued on April 14, 2022, with EPA participating as a cooperating agency. The draft EIS addressed all substantive environmental comments received during the scoping periods and otherwise prior to EIS issuance. It was filed with the EPA and the Commission issued a Notice of Availability (NOA) of the draft on April 14, 2022. The draft EIS was noticed in the *Federal Register*⁵⁸ on April 20, 2022, establishing a 45-day comment period that ended on June 6, 2022. The NOA was also mailed to the project stakeholders. In response to the draft EIS, the Commission received comments from Texas Gas, EPA, FWS, NRCS, Kentucky Department of Environmental Protection – Energy and Environment Cabinet,

⁵⁵ 86 Fed. Reg. 42,820 (Aug. 5, 2021).

⁵⁶ 86 Fed. Reg. 57,130 (Oct. 14, 2021).

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

⁵⁸ 87 Fed. Reg. 24,158 (Apr. 22, 2022).

Indiana Department of Natural Resources, the Posey County Board of Commissioners, CAC, Sierra Club, Teamsters National Pipeline Labor Management Cooperation Trust, and nine individuals, plus form letters and petitions signed by members of the public. Overall, comments concerned alternatives, soils, water resources (including groundwater protection, water use, and wetlands), aquatic resources, vegetation, wildlife, threatened and endangered species, cultural resources, environmental justice, air emissions, noise, and pipeline safety.

43. Commission staff issued the final EIS for the project on August 25, 2022, and a NOA was published in the *Federal Register* on August 31, 2022.⁵⁹ The final EIS addresses geology; soils; groundwater; surface water; wetlands; fisheries and aquatic resources; vegetation and wildlife (including threatened, endangered, and other special-status species); land use and visual resources; cultural resources; socioeconomics (including environmental justice); air quality and noise; GHG and climate change; reliability and safety; and alternatives. It addresses all substantive environmental comments received on the draft EIS and concludes that most adverse environmental impacts would be temporary or short-term during construction, but some long-term and permanent environmental impacts would occur on some forested lands, including forested wetlands. With the exception of potential impacts on climate change, the EIS concludes that impacts would be reduced to less than significant levels through implementation of Texas Gas' proposed avoidance, minimization, and mitigation measures and Commission staff recommendations, which we have adopted herein as conditions.⁶⁰ With regard to climate change impacts, the final EIS does not characterize the project's GHG emissions as significant or insignificant but we provide information about these emissions below, based on the information on file in the proceeding and as disclosed in the final EIS.⁶¹

44. In response to the final EIS, the Commission received comments from: U.S. Department of the Interior (Interior), on behalf of the FWS, regarding federally listed species and section 7 Endangered Species Act (ESA) consultation, and EPA regarding water use for hydrostatic testing, noise, environmental justice, and GHG and climate change. The Commission also received comments from CAC regarding the enactment of the Inflation Reduction Act. Interior's and EPA's environmental comments

⁵⁹ 87 Fed. Reg. 53,470 (Aug. 31, 2022).

⁶⁰ Final EIS at 5-1.

⁶¹ *Infra* PP 46-50.

are addressed below and CAC's comments regarding the Inflation Reduction Act are addressed in the "No Subsidy Requirement and Project Need" section above.⁶²

45. On October 7, 2022, the Kentucky Department for Environmental Protection filed comments noting certain permits and construction plans might be necessary for the project, e.g. stormwater and floodplain permits and certain construction plans such as groundwater protection plans. Table 1.4-1 in the final EIS lists all applicable permits, approvals, and consultations for the project, including those listed in the Kentucky Department's comments.⁶³ As stated in the final EIS, Texas Gas is responsible for obtaining all permits and approvals required to construct and operate the project.⁶⁴ The Kentucky Department of Environmental Protection also noted that the project is within the Morganfield Water Works designated Source Water Protection Areas and 17 miles upstream from the Morganfield Water Works intake, and asks that the applicant contact Morganfield Water Works in the case of any spill that may affect water quality.⁶⁵ Texas Gas has committed to do this and has updated its Horizontal Directional Drill Monitoring, Inadvertent Return Response, and Contingency Plan and the Spill Prevention and Response Procedures Plan to reflect that it will notify the Morganfield Waterworks and Alcan Ingot Source Water Protection Areas in the event of an inadvertent release of drilling fluids and fuels or any other construction or pipeline operation activities that may impact water quality within these areas.⁶⁶

1. Greenhouse Gas Emissions and Climate Change

46. The Council on Environmental Quality (CEQ) defines effects or impacts as "changes to the human environment from the proposed action or alternatives that are reasonably foreseeable," which include those effects "that occur at the same time and place" and those "that are later in time or farther removed in distance, but are still reasonably foreseeable."⁶⁷ An impact is reasonably foreseeable if it is "sufficiently likely

⁶² See *supra* PP 24-25.

⁶³ Final EIS at 1-9 – 1-10.

⁶⁴ *Id.* at 1-9; *c.f. supra* at P 74 and n.132.

⁶⁵ Kentucky Department for Environmental Protection October 7, 2022 Letter.

⁶⁶ Texas Gas July 7, 2022 Supplemental Data Responses at 12 and Attachment 2.

⁶⁷ 40 C.F.R. § 1508.1(g) (2022).

to occur such that a person of ordinary prudence would take it into account in reaching a decision.”⁶⁸

47. For the Henderson County Expansion 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.⁶⁹ With respect to downstream emissions, the record in this proceeding demonstrates that the natural gas to be transported by the project will be combusted at CenterPoint’s A.B. Brown Plant.⁷⁰ The final EIS explains that the project will result in a net reduction of downstream GHG emissions due to CenterPoint’s retirement of coal-fired generation at the A.B. Brown Plant.⁷¹ Specifically, CenterPoint plans to retire two coal-fired units and replace their generating capacity with a combination of solar and wind energy generation and the two new natural gas turbines.⁷² This will have a net effect of reducing GHG emissions associated with CenterPoint’s power generation portfolio. Assuming the natural gas-fired generation operates at a 100% load factor, replacing the two coal-fired units would result in a net reduction of 2,075,603 tons carbon dioxide equivalent (CO₂e) of GHG emissions per year.⁷³ This represents one potential estimate of the GHG emission offset from the replacement of the coal units with the gas-fired units and does

⁶⁸ *Id.* § 1508.1(aa).

⁶⁹ *See Food & Water Watch v. FERC*, 28 F.4th 277, 288 (D.C. Cir. 2022) (“Foreseeability depends on information about the ‘destination and end use of the gas in question.’”) (citation omitted); *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017) (*Sabal Trail*) (“FERC should have estimated the amount of power-plant carbon emissions that the pipelines will make possible.”).

⁷⁰ Application at 34. *See also* Final EIS at 4-117 (detailing that the natural gas delivered by the project to CenterPoint’s A.B. Brown Plant would provide fuel for two new natural gas turbines [460 MW] at the plant).

⁷¹ Final EIS at 4-117.

⁷² The planned gas-fired units’ natural gas-fired turbines are intended to operate as back-up power generation to support intermittent renewable generating resources and to provide a diversity of generation resources. Accordingly, the planned gas-fired units are projected to be operational between two and seven percent of available hours per year. *Id.* at 4-117 - 4-118; *see also id.* at 1-2 (detailing the role the gas-fired units play in CenterPoint’s 2020 Integrated Resource Plan (IRP), which plans to use flexible natural gas CTs to support CenterPoint’s new intermittent renewable resources, which would replace retiring coal-fired units).

⁷³ Final EIS at 4-118.

not reflect that in 2020 the actual emissions from operation of the two coal-fired generators were about 52% of the units' potential emissions,⁷⁴ nor does it reflect that, as noted in footnote 64, CenterPoint anticipates operating the planned gas-fired units only two to seven percent of available hours.⁷⁵ Accordingly, the actual emissions reductions during future operation of CenterPoint's modified A.B. Brown Plant would depend upon actual energy use and the frequency with which the natural gas turbines operate, but overall, would have a beneficial effect on GHG emissions and air quality.⁷⁶

48. CAC and Sierra Club argue that the coal units' retirement would have occurred regardless of whether the proposed gas units are built or not, and that the emissions reductions from the retirement of the coal plant should not be considered.⁷⁷ Thus, they ask that the Commission revise the EIS to assess the GHG impacts of the proposed project without assuming any emission reductions due to the retirement of the A.B. Brown coal-fired units.⁷⁸ We find that the record supports a finding that the coal units are being retired as part of CenterPoint's 2020 Integrated Resource Plan, which calls for the replacement of the coal units generating capacity with a combination of

⁷⁴ Accounting for a 52% load factor for the coal-fired units, the project would result in a net reduction of approximately 1,079,314 tons CO₂e. *Id.* at 4-118 (Table 4.9.4-2).

⁷⁵ *Id.* at 4-118. For example, Texas Gas purports that based on CenterPoint's 2020 IRP, the fuel switch from coal to natural gas and renewables planned across CenterPoint's system (not just at the A.B. Brown Plant) would result in a projected net GHG emissions reduction of 7.2 million tons (6.5 million metric tons) of CO₂e annually when compared against CenterPoint's pre-project emissions baseline. *Id.* at 4-119.

⁷⁶ *See id.*

⁷⁷ Sierra Club June 6, 2022 Comments at 10-11 (claiming that CenterPoint intends to retire the A.B. Brown coal units before the proposed gas CT units go into service and that the coal units could not operate economically).

⁷⁸ *Id.* at 13.

renewable resources and the two gas-fired CTs to be sited at the A.B. Brown plant.⁷⁹ Nonetheless, the EIS disclosed the information that Sierra Club and CAC requests.⁸⁰

49. The final EIS estimates that construction of the project may result in emissions of up to 9,385 metric tons of CO₂e.⁸¹ The project's estimated operational GHG emissions are 11,180 metric tons per year (tpy) CO₂e.⁸²

50. EPA recommends that the Commission avoid expressing project-level emissions as a percentage of national or state emissions because conveying that information “diminishes the significance of project-level greenhouse gas (GHG) emissions.”⁸³ As we have previously explained, we compare estimated project GHG emissions to the total GHG emissions of the United States as a whole and at the state level, which allows us to contextualize the project's projected emissions.⁸⁴ As discussed in the final EIS, 5,222.4 million metric tons of CO₂e were emitted at a national level in 2020 (inclusive of CO₂e sources and sinks).⁸⁵ At the state level, Kentucky's energy-related carbon dioxide emissions in 2019 were 115.4 million metric tons, while Indiana's emissions were

⁷⁹ CenterPoint states that construction of these gas-fired units is an integral part of its plan, detailed in its 2020 Integrated Resource Plan, to transition its coal-fired generation facilities to a generation fleet composed of 700 to 1,000 megawatts of new renewable resources and 460 MWs from the proposed new CTs. Center Point July 30, 2021 Comments at 1-2. CenterPoint explained that state approval of the CT units, as well as Commission approval of the Henderson County Expansion Project, were critical to allow it to retire the coal units by October 2023, which CenterPoint sought to do “to avoid making significant capital investments to bring the facility into compliance with environmental regulations—capital investments that CenterPoint's modeling indicates will be more costly to its retail customers than transitioning to renewables supported by quick start and fast ramping CTs.” *Id.* at 2. *See also supra* at n.27, P 25, n. 35 and n.73.

⁸⁰ *See* Final EIS at 4-125.

⁸¹ *Id.* at 4-111 (Table 4.9.3-1).

⁸² *Id.* at 4-115 - 4-116 (Table 4.9.4-1).

⁸³ EPA Oct. 3, 2022 Comments at Enclosure at 2.

⁸⁴ *See Tex. E. Transmission, LP*, 180 FERC ¶ 61,186, at P 28 (2022) and *Golden Pass Pipeline, LLC*, 180 FERC ¶ 61,058, at P 21 (2022).

⁸⁵ EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020* at ES-4 (Table ES-2) (April 2022), <https://www.epa.gov/system/files/documents/2022-04/us-ghg-inventory-2022-main-text.pdf>.

176.1 million metric tons. If all emissions from the project were to occur in Kentucky, construction could potentially increase CO₂e emissions based on the Kentucky 2019 levels by 0.008%; in subsequent years, project operations could increase emissions by 0.01%.⁸⁶ If all emissions from the project were to occur in Indiana, construction could potentially increase CO₂e emissions based on the Indiana 2019 levels by 0.005%; in subsequent years, project operations could increase emissions by 0.006%.⁸⁷ Finally, we note that when states have GHG emissions reduction targets, we will compare the project's GHG emissions to those state goals to provide additional context, however, neither Kentucky nor Indiana have set statewide goals for GHG emissions reduction targets.⁸⁸ Further, by adopting the climate impact analysis in the EIS, we recognize that the project's contributions to GHG emissions globally contributes incrementally to future climate change impacts,⁸⁹ and have identified climate change impacts in the region.⁹⁰ In light of this analysis, and because we are conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations for GHG emissions going forward, the Commission is not herein characterizing these emissions as significant or insignificant.⁹¹

2. Environmental Justice

51. In conducting NEPA reviews of proposed natural gas projects, the Commission follows Executive Order 12898, *Federal Actions to Address Environmental Justice in*

⁸⁶ Final EIS at 4-126.

⁸⁷ *Id.*

⁸⁸ *Id.* at 4-127.

⁸⁹ *Id.* at 4-125.

⁹⁰ *Id.* at 4-122 to 4-124.

⁹¹ On February 18, 2022, the Commission issued the Updated Certificate Policy Statement and an Interim GHG Policy Statement. *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,108 (2022). The Interim GHG Policy Statement established a NEPA significance threshold of 100,000 tons per year of carbon-dioxide-equivalent (CO₂e) as a matter of policy, which was meant to serve as interim guidance for project applicants and stakeholders and the Commission sought public comment on the statement. On March 24, 2022, the Commission, upon further consideration, made both statements draft and stated that it would not apply either statement to pending or new projects until the Commission issues any final guidance after public comment. Interim GHG Policy Statement, 178 FERC ¶ 61,197 at P 2.

Minority Populations and Low Income Populations, 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).⁹² In addition, Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, 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.”⁹³ Environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”⁹⁴

⁹² 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) (2021) (requiring applicants for projects involving significant aboveground facilities 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>.

⁹³ 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.* at 7,629. The term also includes, but may not be limited to minority populations, low-income populations, or indigenous peoples. *See* EPA, *EJ 2020 Glossary* (Aug. 18, 2022), <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

⁹⁴ EPA, *Learn About Environmental Justice*, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (Sept. 6, 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 appropriate opportunity to participate in decisions about a proposed activity 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.*

52. Consistent with the CEQ⁹⁵ and EPA⁹⁶ guidance, the Commission's methodology for assessing environmental justice impacts considers: (1) whether environmental justice communities (e.g., minority or low-income populations)⁹⁷ exist in the project area; (2) whether impacts on environmental justice communities are disproportionately high and adverse; and (3) possible mitigation measures. As recommended in the Interagency Work Group for Environmental Justice's *Promising Practices for Environmental Justice Methodologies in NEPA Reviews* (Mar. 2016) (*Promising Practices*), the Commission uses the fifty percent and the meaningfully greater analysis methods to identify minority populations.⁹⁸ Specifically, a minority population is present where either: (1) the aggregate minority population of the block groups in the affected area 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.⁹⁹ 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.

⁹⁵ CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* 4 (Dec. 1997) (CEQ's *Environmental Justice Guidance*), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>. CEQ offers recommendations on how federal agencies can provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices.

⁹⁶ See generally Interagency Working Group for Environmental Justice, *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.

⁹⁷ 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.

⁹⁸ See *Promising Practices* at 21-25.

⁹⁹ The final EIS used Johnson and Posey Counties, Indiana, and Henderson and Webster Counties, Kentucky, as the comparable reference communities to ensure that affected environmental justice communities were properly identified. A reference community may vary according to the characteristics of the particular project and the surrounding communities.

53. To identify potential environmental justice communities in the project area, the final EIS used 2019 U.S. Census American Community Survey data¹⁰⁰ for the race, ethnicity, and poverty data at the state, county, and block group level.¹⁰¹ Additionally, in accordance with *Promising Practices*, Commission 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.

54. Once Commission staff collected the block group level data,¹⁰² staff conducted an impacts analysis for the identified environmental justice communities and evaluated 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. The final EIS considered whether impacts were disproportionately high and adverse on environmental justice populations consistent with EPA's recommendations in *Promising Practices*¹⁰³ and also whether those impacts were significant.¹⁰⁴

55. Additionally, based on public scoping comments expressing concern for impacts on school age children, Commission staff collected and identified data for the total

¹⁰⁰ U.S. Census Bureau, American Community Survey 2019 ACS 5-Year Estimates Detailed Tables, File# B17017, Poverty Status in the Past 12 Months by Household Type by Age of Householder, <https://data.census.gov/cedsci/table?q=B17017;File#B03002HispanicorLatinoOriginByRace,https://data.census.gov/cedsci/table?q=b03002>.

¹⁰¹ See final EIS at 4-81.

¹⁰² See *id.* at 4-82, Table 4.7.2-1 (Minority Populations by Race and Ethnicity and Low-Income Populations in the Project Area).

¹⁰³ *Promising Practices* at 44-46 (explaining that there are a number of factors used to determine whether an action will cause a disproportionately high and adverse impact, and that one recommended approach is to consider whether an impact would be "predominantly borne by minority populations or low-income populations"). We recognize that EPA and CEQ are in the process of updating their guidance regarding environmental justice and we will review and incorporate that anticipated guidance in our future analysis, as appropriate.

¹⁰⁴ *Id.* 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").

percentage of population that are children 17 years of age or younger within the project's area of review.¹⁰⁵

56. Staff identified two block groups near the project facilities that exceed the defined thresholds for minority and low-income communities and are, therefore, environmental justice communities. Staff identified that the tie-in facility and 4.9 miles of the Henderson County Lateral are located in one environmental justice block group with a minority population in Henderson County, Kentucky (Census Tract 208, Block Group 1). For 1.1 miles of Henderson County Lateral, staff identified one environmental justice block group with a low-income population in Posey County, Indiana (Census Tract 404, Block Group 3).¹⁰⁶ The A.B. Brown M&R Station, Point of Demarcation, and A.B. Brown Interconnecting Pipe are also within Census Tract 404, Block Group 3, a low-income population. No other census block groups crossed by the remainder of the Henderson County Lateral (between MPs 4.9 and 22.3) or within 1 mile of the Slaughters Compressor Station, or the existing M&R Station, were identified as having minority or low-income populations. The final EIS determined that potential impacts on the identified environmental justice communities may include visual impacts, socioeconomic impacts, traffic impacts, increased demand for temporary housing and public services, and noise and air impacts from construction and operation of the project. Environmental justice concerns are not present for other resource areas such as geology, groundwater, surface water, wetlands, wildlife, or cultural impacts due to the minimal overall impact the project would have on these resources.

57. For visual impacts, the project area is predominately characterized as open and rural with much of the area in agricultural use for cultivated crops, hay, and pastureland. The area north of the Ohio River (in Indiana) is characterized as industrial with a variety of uses, including the A.B. Brown Plant and the Green Plains Mt. Vernon fuel supplier.

¹⁰⁵ Staff identified that five block groups out of seven total block groups crossed by the pipeline or within 1 mile of the aboveground facilities have populations with a larger percent of minors (17 years or younger) as compared to the county (Census Tract 208, Block Group 1; Census Tract 209, Block Group 1; Census Tract 209, Block Group 3; Census Tract 209, Block Group 5; and Census Tract 404, Block Group 3). See U.S. Census Bureau, American Community Survey 2019 ACS 5-Year Estimates Detailed Tables, File# S0101, Age and Sex, <https://data.census.gov/cedsci/table?q=S0101>.

¹⁰⁶ Census Tract 404, Block Group 3 was inadvertently missed as an identified block group crossed by the Henderson County Lateral pipeline segment in Table 4.7.2-1 in the final EIS, but was nevertheless identified and included as part of Commission staff's analysis and review of overall project impacts on environmental justice communities. See final EIS at 4-83, Table 4.7.2-1 (Minority Populations by Race and Ethnicity and Low-Income Populations in the Project Area).

The closest residences within the identified environmental justice communities are 0.1 mile north of the new tie-in facility, 0.3 mile southwest of the A.B. Brown M&R Station, and about 300 feet east of the Henderson County Lateral near milepost 22.4. The final EIS determined that visual impacts associated with construction and operation of these facilities would be predominately borne by environmental justice communities, as there would be limited visibility of the tie-in facility and partial visibility of the A.B. Brown M&R Station and Point of Demarcation, dependent on seasonal vegetation and tree foliage during winter months. However, these impacts would not be significant, given that the project facilities would be installed adjacent to existing industrial facilities, would be similar in size or substantially smaller than other components at these sites, and would not be readily visible from the nearby residences.¹⁰⁷

58. Regarding socioeconomic project impacts, the final EIS concludes that construction activities will result in a nominal and temporary non-local workforce. Additionally, the final EIS concludes that no new operational workforce would be required to operate the facilities and, thus, socioeconomic impacts on identified environmental justice communities would be minor and temporary.¹⁰⁸ For traffic impacts, the final EIS acknowledges that movement of construction personnel, equipment, and materials would result in short-term impacts on roadways. Environmental condition 1 in the appendix of this order requires Texas Gas to employ traffic control measures and work with local school districts to identify school routes and commute times with the goal of minimizing construction traffic along these routes during peak use periods. With these mitigation measures, the final EIS concludes that traffic would not be expected to significantly impact identified environmental justice communities.¹⁰⁹

59. The final EIS concludes that air quality impacts from construction and operation of the project facilities would not result in a significant impact on local or regional air quality for environmental justice communities.¹¹⁰ During construction, exhaust emissions and fugitive dust would result in short-term, localized impacts in the immediate vicinity of construction work areas. Environmental condition 1 in the appendix of this order requires Texas Gas to comply with applicable state fugitive dust requirements and generally limit the areas of ground disturbance. Texas Gas also commits to reduce vehicle and equipment speed in construction work areas and on access roads to account for adverse weather conditions (e.g., high wind velocities, dry soil

¹⁰⁷ *Id.* at 4-90.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 4-91.

¹¹⁰ *Id.*

conditions, etc.), use water for control of dust, cover open-bodied trucks, clean tracked soil from roads, and by limiting vehicle and equipment idling. During operation, emissions at the project facilities within environmental justice communities would be limited to fugitive releases from operation of a condensate storage tank at the A.B. Brown M&R Station, pigging activities, and new piping components and are not expected to cause or contribute to an exceedance of the National Ambient Air Quality Standards. Further, Texas Gas completed air quality dispersion modeling for the Slaughters Compressor Station (which is not within an environmental justice community) that demonstrated compliance with the National Ambient Air Quality Standards. Overall, the construction and operational emissions from the project would not have significant adverse air quality impacts on the environmental justice populations in the project area.¹¹¹

60. Regarding noise impacts, the closest defined noise sensitive areas are about 0.1 mile away from proposed aboveground project components within environmental justice communities. Texas Gas proposes horizontal directional drill (HDD) construction within about 300 feet of residences within an environmental justice community. Texas Gas states that HDD construction would typically occur from 7:00 a.m. to 10:00 p.m., but notes that conditions may require 24-hour HDD construction.¹¹² Texas Gas states that other construction activities would generally occur from 7:00 a.m. to 7:00 p.m.¹¹³ Texas Gas will also restrict equipment deliveries to daytime hours, and construction crews working at aboveground facility sites during nighttime hours would be restricted to specific activities and use handheld tools and pipe-lifting equipment (forklifts).

61. In its October 3, 2022 comments on the final EIS,¹¹⁴ EPA recommends avoiding 24-hour HDD construction near residential areas. Environmental condition 19 in the appendix of this order requires Texas Gas to file a noise mitigation plan prior to the installation of any portion of the Henderson County Lateral if noise attributable to HDD construction is projected to exceed a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any noise sensitive area to reduce noise to below those levels. Texas Gas is required to implement the approved plan, monitor noise levels, and document the noise levels in weekly status reports. Residential areas are considered noise sensitive areas and HDD construction near these areas is covered by the requirements of environmental condition 19. The final EIS explains that the day-night sound level, or L_{dn} takes into account the time of day or night the noise is encountered,

¹¹¹ *Id.* at 4-92.

¹¹² *Id.* at 4-136.

¹¹³ *Id.*

¹¹⁴ EPA Oct. 3, 2022 Comment at Enclosure at 1.

recognizing that people perceive noise levels differently depending on the time of day. Specifically, the L_{dn} adds a 10 dBA penalty to account for people's greater sensitivity to sound levels during the late night and earlier morning hours (10:00 p.m. to 7:00 a.m.).¹¹⁵ In EPA's 1974 publication, *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety*, EPA indicated that an L_{dn} of 55 dBA protects the public from indoor and outdoor activity interference, and the Commission has adopted this criterion to evaluate potential project-related noise impacts at noise sensitive areas.¹¹⁶ Based on the projected noise levels, and the requirements in environmental condition 19 in the appendix of this order, we conclude that the temporary HDD construction activities would not result in significant noise impacts on any NSA, including those in environmental justice communities.¹¹⁷

62. For operational noise impacts, noise levels associated with operation of the A.B. Brown M&R Station are estimated to increase by 0.1 decibel, which is less than a perceptible increase in existing noise levels (3 decibels) at the closest NSAs within the identified environmental justice community and the tie-in facility is not expected to affect ambient sound levels.¹¹⁸ Additionally, environmental condition 21 in the appendix of this order requires Texas Gas to file noise surveys with the Commission to verify the actual operational noise levels of the A.B. Brown M&R Station at full-load complies with Commission noise standards. Overall, the project would not cause a perceptible change in noise during operations in the vicinity of the identified environmental justice communities.

63. The final EIS concluded that impacts associated with the construction and operation of new tie-in facility, the A.B. Brown M&R Station, Point of Demarcation, and A.B. Brown Interconnecting Pipe on environmental justice communities would be disproportionately high and adverse as they would be predominately borne by an environmental justice community. The final EIS concludes that impacts associated with the construction and operation of all other proposed facilities would not be disproportionately high and adverse.¹¹⁹ We agree with respect to both conclusions. The final EIS concluded that all direct and cumulative impacts on environmental justice

¹¹⁵ Final EIS at 4-134.

¹¹⁶ *Id.*

¹¹⁷ Final EIS at 4-139.

¹¹⁸ *Id.* at 4-142.

¹¹⁹ *Id.* at 4-99.

communities from the construction and operation of the proposed facilities would be less than significant.¹²⁰ We agree.

64. EPA recommends that the Commission implement community engagement activities targeted to the potentially affected minority and low-income communities prior to construction and operation of the facilities.¹²¹ There were opportunities for public involvement for environmental justice communities during the Commission's environmental review processes, though the record does not demonstrate that these opportunities were specifically targeted at engaging environmental justice communities.¹²² Commission staff hosted a public telephonic scoping meeting for the project on May 18, 2022.¹²³ Texas Gas states that it held a virtual open house on June 3, 2021, that was publicized by mail to property owners and stakeholders directly impacted by the project.¹²⁴ Texas Gas states that the open house provided an overview of project construction and safety, the regulatory process, environmental protection, and community benefits. Additionally, Texas Gas states that it has created an informational project-specific website that includes a project email address and phone number for landowners and other stakeholders to submit questions or express concerns. Moreover, 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 Commission proceedings—including navigating Commission processes and activities relating to the project.

3. Federally Listed Species and Endangered Species Act Consultation

65. In response to the final EIS, the Commission received comments from Interior, on behalf of the FWS, regarding the Indiana bat, northern long-eared bat, and tricolored bat.¹²⁵ With respect to the tricolored bat, on September 14, 2022, after the issuance of the

¹²⁰ *Id.* at 4-97.

¹²¹ EPA Oct. 3, 2022 Comment at Enclosure at 2.

¹²² *See supra* P 9.

¹²³ The Commission conducted telephonic meetings in lieu of in-person meetings in response to the pandemic.

¹²⁴ Application at 38-39.

¹²⁵ Interior Sept. 26, 2022 Comments.

final EIS, FWS proposed to list the tricolored bat as endangered under the ESA.¹²⁶ FWS has up to 12 months from the date the proposal is published to make a final determination, either to list the tricolored bat under the ESA or to withdraw the proposal.¹²⁷ Species proposed for listing are not afforded protection under the ESA; however, if a final rule listing a species becomes effective, the prohibitions against jeopardizing its continued existence and “take” apply.¹²⁸ Accordingly, FWS recommends that the Commission review the September 14, 2022 proposal to list the tricolored bat as endangered and if the Henderson County Expansion Project has the potential to adversely affect tricolored bats, analyze potential project impacts on tricolored bats and their habitat.¹²⁹

66. Interior’s comment notes that since issuance of the final EIS, Texas Gas has completed their habitat assessment and determined there is suitable habitat for the Indiana bat and asks that the Commission confirm that, as stated in the final EIS, the Commission will initiate formal consultation on the Indiana bat.¹³⁰ The FWS also requests that because FWS anticipates reclassifying the northern long-eared bat from threatened to endangered prior to the proposed construction period for the project, that the Commission also reinitiate formal consultation for the northern long-eared bat.¹³¹

¹²⁶ *Id.* at 2.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*; *see also* final EIS at ES-6. As detailed in the final EIS, project construction will require clearing of forested habitat during the active period for the Indiana bat and northern long-eared bat, thus the project is likely to adversely affect the Indiana bat and northern long-eared bat. In correspondence dated June 13, 2022, FWS’s Kentucky Field Office confirmed that, with implementation of appropriate conservation measures, any incidental take of Indiana bats resulting from forested habitat removal is not prohibited and is not likely to jeopardize the continued existence of the Indiana bat in Kentucky but that coordination with the Indiana Field Office is ongoing for the clearing of suitable habitat in Indiana. *Id.*; *see also id.* at 4-53 – 4-56 (analysis of Indiana bat).

¹³¹ Interior Sept. 26, 2022 Comments at 3. *See also* final EIS at ES-6 (concluding that while the project is likely to adversely affect the northern long-eared bat, any incidental take would not be prohibited by the current 4(d) rule). As stated in the final EIS, because FWS anticipates reclassifying the northern long-eared bat as endangered consultation is ongoing for this species. *Id.*

67. As noted in the final EIS, Commission staff is continuing consultation under section 7 of the ESA for the Indiana and northern long-eared bats, and to that end, has requested initiation of formal consultation with FWS for the Henderson County Expansion Project.¹³² Staff is also analyzing any potential impacts of the project on the tricolored bat and has determined that tricolored bat may also be present in Henderson County, Kentucky, where trees could be cleared for construction during the active period for bats.¹³³ Staff has requested to initiate an informal conference with the FWS to confirm that the project is not likely to jeopardize the tricolored bat in the event that construction activities extend beyond the currently planned end date of August 2023.¹³⁴ Further, to ensure compliance with our responsibilities under ESA section 7(a)(2), FERC staff recommended in the final EIS that Texas Gas not begin construction of the project until consultation with the FWS is completed,¹³⁵ and this recommendation has been included as environmental condition 16 in the appendix of this order.

68. Last, Interior notes that Texas Gas has agreed to make a voluntary contribution to the Imperiled Bat Conservation Fund to address Indiana bat habitat loss and recommends additional coordination with FWS's Kentucky Field Office, the Commission, and Texas Gas to implement this measure.¹³⁶ The Commission does not require or facilitate voluntary mitigation funding for Commission-jurisdictional projects.¹³⁷

4. Water Usage

69. EPA, in its October 3, 2022 comments on the final EIS, reiterated its concerns over potential water withdrawals for hydrostatic testing, dust suppression and HDD operations from Pond Bayou due to this waterbody being a "regionally important natural resource."¹³⁸ The final EIS noted this concern and recommended that Texas Gas either

¹³² Commission Staff's October 3, 2022 Letter to FWS' Kentucky and Indiana Field Offices at 3 (initiating consultation based on staff's determination that the project is likely to adversely affect for the Indiana bat and the northern long-eared bat).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Final EIS at 4-54.

¹³⁶ Interior Sept. 26, 2022 Comment at 2; *see also* final EIS at 4-55.

¹³⁷ *Columbia Gas Transmission, LLC*, 158 FERC ¶ 61,046, at P 79 (2017).

¹³⁸ EPA Oct. 3, 2022 Comment at Enclosure at 1.

consult with the Kentucky Energy and Environment Cabinet, Division of Water (KDOW) regarding site-specific mitigation measures related to water withdrawals from Pond Bayou, or use an alternate water source. EPA acknowledges this recommendation and further recommends that Texas Gas provide an environmental evaluation of “other feasible options” for acquiring water.¹³⁹

70. Texas Gas has not yet indicated whether it still intends to withdraw water from Pond Bayou or if it has identified an alternate water source. We have revised staff’s proposed condition (included as environmental condition 14 in the appendix to this order), to require Texas Gas to file revised water use plans that exclude withdrawals from Pond Bayou. Alternatively, if Texas Gas obtains approval from the Kentucky Energy and Environment Cabinet, Division of Water (KDOW) to use water from Pond Bayou as a water source, the revised condition requires Texas Gas to file the results of the consultation with KDOW and any proposed mitigation for Commission review and approval.

5. Environmental Impacts Conclusion

71. We have reviewed the information and analysis contained in the final EIS regarding potential environmental effects of the project, as well as the other information in the record. We are accepting the environmental recommendations in the final EIS and are including them as conditions in the appendix to this order. Based on our consideration of this information and the discussion above, we agree with the conclusions presented in the final EIS and find that the project, if implemented as described in the final EIS, is an environmentally acceptable action.

IV. Conclusion

72. The proposed project will enable Texas Gas to provide up to 220,000 MMBtu/d of new firm transportation service to CenterPoint’s new natural gas-fired electric generation turbines at the A.B. Brown Plant. We find that Texas Gas has demonstrated a need for the Henderson County Expansion 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. We have analyzed the technical aspects of the project and conclude that it has been appropriately designed to achieve its intended purpose. Based on the discussion above, we find under section 7 of the NGA that the public convenience and necessity requires approval of Texas Gas’ Henderson County Expansion Project, subject to the conditions in this order.

¹³⁹ *Id.*

73. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analysis. 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 whatever steps are necessary to ensure the protection of environmental resources during abandonment, 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.

74. 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.¹⁴⁰

75. At a hearing held on October 20, 2022, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

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

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

¹⁴⁰ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

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

(C) Permission for and approval of Texas Gas' abandonment of the subject facilities, as described in this order and more fully in the application, is granted, subject to compliance with Part 154 of the Regulations.

(D) Texas Gas shall notify the Commission of the effective date of the abandonment authorized in Paragraph (C) within 10 days thereof.

(E) Texas Gas' proposed initial incremental recourse reservation charges and interruptible rates are approved as the initial recourse charges and rates for the Henderson County lateral facilities.

(F) Texas Gas' proposal to use its existing applicable mainline rates as the initial recourse rates for firm transportation service on the mainline facilities is approved.

(G) Texas Gas' proposal to use its existing Middle Zone fuel rate for service on the mainline facilities and request for a predetermination for rolled-in rate treatment for fuel and lost and unaccounted for gas for the mainline facilities are approved.

(H) Texas Gas shall keep separate books and accounting of costs attributable to the proposed service, as more fully described above.

(I) A pre-determination is granted for Texas Gas to roll the mainline facilities' costs into its system rates in a future NGA section 4 rate case, absent a significant change in circumstances.

(J) Texas Gas 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 Texas Gas. Texas Gas shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

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

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions

As recommended in the final environmental impact statement (EIS), this authorization includes the following conditions.

1. Texas Gas shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EIS, unless modified by the Order. Texas Gas must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of 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**, Texas Gas shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel would be informed of the EI's authority and have been or would 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 EIS. **As soon as they are available, and before the start of construction**, Texas Gas 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.

Texas Gas' exercise of eminent domain authority granted under Natural Gas Act Section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Texas Gas' right of eminent domain granted under Natural Gas Act 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. Texas Gas 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 Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;

- b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction begins**, Texas Gas shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the Director's designee. Texas Gas must file revisions to the plan as schedules change. The plan shall identify:
- a. how Texas Gas would implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EIS, and required by the Order;
 - b. how Texas Gas would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to on-site construction and inspection personnel;
 - c. the number of EIs assigned, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Texas Gas would give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - f. the company personnel (if known) and specific portion of Texas Gas' organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Texas Gas would follow if noncompliance occurs; and

- h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of on-site personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
- 7. Texas Gas shall employ at least one EI per construction spread. The EI shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
- 8. Beginning with the filing of its Implementation Plan, Texas Gas shall file updated status reports with the Secretary on a **weekly** basis until all construction and restoration activities are complete. On request, these status reports would also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Texas Gas' efforts to obtain the necessary federal authorizations;

- b. the construction status of the Project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Texas Gas from other federal, state, or local permitting agencies concerning instances of noncompliance, and Texas Gas' response.
9. Texas Gas shall develop and implement an environmental complaint resolution procedure, and file such procedure with the Secretary, for review and approval by the Director of OEP, or the Director's designee. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the Project and restoration of the right-of-way. **Prior to construction**, Texas Gas shall mail the complaint procedures to each landowner whose property would be crossed by the Project.

In its letter to affected landowners, Texas Gas shall:

- a. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
- b. instruct the landowners that if they are not satisfied with the response, they should call Texas Gas' Hotline; the letter should indicate how soon to expect a response; and

- c. instruct the landowners that if they are still not satisfied with the response from Texas Gas' Hotline, they should contact the Commission's Landowner Helpline at 877-337-2237 or at LandownerHelp@ferc.gov.

In addition, Texas Gas shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:

- a. the identity of the caller and date of the call;
 - b. the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
 - c. a description of the problem/concern; and
 - d. an explanation of how and when the problem was resolved, would be resolved, or why it has not been resolved.
10. Texas Gas 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, Texas Gas must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
 11. Texas Gas must receive written authorization from the Director of OEP, or the Director's designee, **before placing the Project into service**. Such authorization would only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the Project are proceeding satisfactorily.
 12. **Within 30 days of placing the authorized facilities in service**, Texas Gas 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 would be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Texas Gas has complied with or would comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

13. **Within 5 days of the final determination of the use of the Nationwide Permit 12 issued by the U.S. Army Corps of Engineers**, Texas Gas shall file the complete water quality certification issued categorically by the Kentucky Department of Environmental Protection – Energy and Environment Cabinet and Indiana Department of Environmental Management, including all conditions. All conditions attached to the water quality certification constitute mandatory conditions of this Certificate Order. Prior to construction, Texas Gas 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. **Prior to construction**, Texas Gas shall file with the Secretary for review and written approval by the Director of OEP or the Director’s designee, a revised water use plan for hydrostatic testing, dust suppression, and HDD operations to exclude withdrawals from Pond Bayou (wetland WP7012). Alternatively, if Texas Gas obtains approval from the Kentucky Energy and Environment Cabinet, Division of Water (KDOW) for water withdrawals from Pond Bayou, Texas Gas shall file with the Secretary, for review and written approval by the Director of OEP or the Director’s designee, documentation of its revised water use plans and the results of the consultation with KDOW and the mitigation measures it will adopt to minimize impacts on Pond Bayou.
15. **Prior to construction**, Texas Gas shall file with the Secretary records of updated consultation with the U.S. Fish and Wildlife Service (FWS) regarding its review of Texas Gas’ pedestrian survey protocols for nesting birds, including any FWS recommendations for modifications to the survey protocols for birds of conservation concern protected under the Migratory Bird Treaty Act. In addition, if construction clearing activities occur within the FWS’ recommended exclusion window, Texas Gas shall identify any FWS-recommended measures that it does or does not propose to implement based on the results of this consultation.
16. Texas Gas shall **not begin construction** of the Project **until**:
 - a. FERC staff completes Section 7 Endangered Species Act consultation with the FWS; and
 - b. Texas Gas has received written notification from the Director of OEP, or the Director’s designee, that construction and/or use of mitigation (including implementation of any conservation measures) may begin.
17. **Prior to construction**, Texas Gas shall file with the Secretary documentation that its proposed Imperiled Bat Conservation Fund conservation measures are complete for incidental take of the federally endangered Indiana bat in Kentucky.

18. **Prior to construction**, Texas Gas shall file documentation with the Secretary regarding Texas Gas' consultation with the U.S. Department of Agriculture – Natural Resources Conservation Service (NRCS) on any applicable restrictions or special mitigation measures required by the NRCS for the Conservation Reserve Project parcels crossed by the Project to maintain enrollment in the conservation easements. Texas Gas shall identify, for review and written approval by the Director of OEP or the Director's designee, the specific restrictions and measures it would implement when crossing the conservation easements.
19. **Prior to installation of any portion of the Henderson County Lateral via horizontal directional drill**, if noise attributable to the horizontal directional drill is projected to exceed a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any noise sensitive area (NSA) (either for daytime-only or 24-hour construction), Texas Gas shall file with the Secretary, for review and written approval by the Director of OEP or the Director's designee, a mitigation plan incorporating the final design of noise mitigation measures to reduce the projected noise levels to no more than an L_{dn} of 55 dBA at the NSAs. During drilling operations, Texas Gas shall implement the approved plan, monitor noise levels, and document the noise levels in the weekly status reports.
20. Texas Gas shall file a noise survey with the Secretary **no later than 60 days** after placing the authorized unit at the Slaughters Compressor Station in service. If a full-load condition noise survey is not possible, Texas Gas shall provide an interim survey at the maximum possible horsepower load and file the full-load survey **within 6 months**. The survey(s) shall demonstrate that noise from the modified compressor station under interim or full horsepower load conditions does not exceed the previously existing noise levels that are at or above an L_{dn} of 55 dBA at any nearby NSA. If any of these noise levels are exceeded, Texas Gas shall file a report with the Secretary on what changes are needed to reduce the operating noise level at the NSAs to or below the previously existing noise level and install additional noise controls to meet that level **within 1 year** of the in-service date. Texas Gas shall confirm compliance with this requirement by filing a second full power load noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
21. Texas Gas shall file noise surveys with the Secretary **no later than 60 days** after placing the new A.B. Brown Meter and Regulator Station and modified existing receipt meter and regulator station into service. If a full-load condition noise survey is not possible, Texas Gas shall provide an interim survey at the maximum possible power load and provide the full power load survey **within 6 months**. If the noise attributable to the operation of the meter stations at interim or full power load conditions exceeds 55 dBA L_{dn} at any nearby NSAs, Texas Gas shall file a

report with the Secretary on what changes are needed and install additional noise controls to meet that level **within 1 year** of the in-service date. Texas Gas shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Texas Gas Transmission, LLC

Docket No. CP21-467-000

(Issued October 20, 2022)

GLICK, Chairman, and CLEMENTS, Commissioner, *concurring*:

1. We concur with the decision to issue a certificate of public convenience and necessity to Texas Gas Transmission, LLC (Texas Gas) for its proposed Henderson City Expansion Project. We write separately because today's order does not assess the significance of the climate impacts from the project's greenhouse gas (GHG) emissions.¹ Both Commission precedent and common sense support the conclusion that the project's GHG emissions will not "significantly" affect the environment within the meaning of the National Environmental Policy Act (NEPA).² Indeed, the proposed project will result in a net *reduction* in GHG emissions when the reasonably foreseeable downstream emissions are factored in. Where, as here, it is obvious that climate impacts cannot be deemed significant under *any* framework for assessing significance that the Commission may ultimately adopt, the Commission should just say so.

2. In *Northern Natural Gas Co.*, the Commission found that it could determine the significance of GHG impacts for NEPA purposes using best available quantitative and qualitative evidence and applying its expertise and judgment.³ The courts have long

¹ See *Texas Gas Transmission, LLC*, 181 FERC ¶ 61,049, at P 43 (2022) (Order). We agree with one another that (1) the Commission is fully capable of determining the significance of GHG emissions, and (2) there is no reason to wait for a final GHG Policy Statement to find the emissions here insignificant when they would be deemed so under any reasonable framework for assessing significance. However, as reflected in our separate concurring statements in recent certificate orders, our approaches differ when emissions levels are potentially significant. See, e.g., *Tenn. Gas Pipeline Co., L.L.C.*, 179 FERC ¶ 61,041 (2022) (Glick, concurring, at P 7) ("I would have found this project's GHG emissions to be significant") (Clements, concurring, at P 3) (appropriate to decline to label emissions or significant or insignificant while Commission considers comments on Draft GHG Policy Statement).

² NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C).

³ See *N. Nat. Gas Co.*, 174 FERC ¶ 61,189, at PP 32, 33 (2021).

construed NEPA based on a “common sense” understanding of its terms.⁴ The Commission has appropriately decided it will not make significance findings in cases involving potentially significant GHG emissions while we are considering comments on the draft GHG Policy Statement. However, that does not compel us to abandon applicable Commission precedent – or our common sense – in determining whether the GHG emissions in this case would “significantly” affect the environment.

3. The Henderson City Expansion Project would result in a substantial net *decrease* in GHG emissions when reasonably foreseeable downstream emissions reductions are considered. The modifications authorized in the order would generate 9,385 metric tons of carbon dioxide equivalent (CO₂e) in construction-related GHG emissions and an increase of 11,180 metric tons per year in direct operational emissions.⁵ These direct project emissions will be dwarfed by the decrease in downstream emissions that will be made possible by CenterPoint Energy’s replacement of its coal-fired units with a combination of wind and solar generation, backed up by its new gas-fired units that will be supplied by the Henderson City Expansion Project.⁶ Accordingly, the Commission should apply our precedent, as well as our common sense, to find that the GHG emissions here are not significant.

⁴ See, e.g., *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 551 (1978) (“common sense” teaches NEPA requirement for “detailed statement of alternatives” does not include every conceivable alternative).

⁵ Order at P 49.

⁶ *Id.* at P 47 (net reduction of downstream GHG emissions would be up to 2,075,603 metric tons per year at 100% load factor, although actual amount will depend on frequency with which new natural gas units operate). We acknowledge Sierra Club’s contention that we should use a “no coal baseline” in calculating net downstream GHG emissions. Sierra Club argues that CenterPoint’s coal-fired units will have to close irrespective of whether the proposed new gas-fired units are built or gas is supplied to them by virtue of the Commission approving the Henderson City Expansion Project. *Id.* at P 48. Texas Gas disputes that the coal-fired units would be shut down, explaining that CenterPoint instead would enter into bilateral capacity arrangements in the MISO market, where approximately 70% of generation capacity is fossil-fired. Texas Gas Reply Comments on Draft EIS at p. 4, Docket No. CP21-467-000 (June 22, 2022). CenterPoint also states that it could invest in upgrades to the coal-fired units to meet air quality regulations if the Henderson City Expansion Project were not built and it therefore could not obtain fuel for the new gas-fired units. See Comments of CenterPoint Energy Indiana South at p. 7, Docket No. CP21-467-000 (July 30, 2021). On balance, the record evidence supports the conclusion that the Henderson City Expansion Project will result in a net reduction of downstream GHG emissions.

For these reasons, we respectfully concur.

Richard Glick
Chairman

Allison Clements
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Texas Gas Transmission, LLC

Docket No. CP21-467-000

(Issued October 20, 2022)

DANLY, Commissioner, *concurring in the judgment*:

1. I concur in the decision to grant Texas Gas Transmission, LLC's (Texas Gas) requested Natural Gas Act (NGA) section 7 authorizations.¹ I write separately to highlight several aspects of this order and the Commission's recent NGA sections 3 and 7² authorizations more broadly.

2. *First*, although I agree that the Commission must act "in accordance with our . . . statutory duties,"³ we must first examine the scope of our inquiry under 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."⁴ 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."⁵ The purpose of the NGA, as the Supreme Court has instructed us, is "to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices."⁶ To the extent

¹ 15 U.S.C. § 717f.

² *Id.* § 717b; *id.* § 717f,

³ *Tex. Gas Transmission, LLC*, 181 FERC ¶ 61,049, at P 49 n.92 (2022) (*Texas Gas*) ("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.") (citing 15 U.S.C. § 717f; 18 C.F.R. § 380.12(g) (2021); 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>).

⁴ *Atl. Ref. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959).

⁵ *NAACP v. FPC*, 425 U.S. 662, 669 (1976) (*NAACP*).

⁶ *Id.* at 669-70; *accord Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1307 (D.C. Cir. 2015) (*Myersville*) (quoting *NAACP*, 425 U.S. at 669-70). I

to which any Commission issuance attempts to expand the range of subjects we consider in our inquiry under the public convenience and necessity standard (as, for example, is contemplated by the now-draft Updated Certificate Policy Statement),⁷ I reiterate my view that any regime we institute must “take meaning” from the purpose of the NGA.

3. *Second*, I would like to take a moment to address the Commission’s assertion that “the emissions from the downstream combustion of the gas transported by the project are reasonably foreseeable emissions.”⁸ I recognize that the Commission’s determination is based on the U.S. Court of Appeals for the District of Columbia Circuit’s decision in *Sabal Trail*.⁹ And I also acknowledge that, recently, the D.C. Circuit recognized the court’s conclusion in *Sabal Trail*, stating that “[g]reenhouse gas emissions are reasonably foreseeable effects of a pipeline project when the project is known to transport natural gas to particular power plants.”¹⁰ I would be remiss, however, if I failed to point out that both the partial dissent in *Sabal Trail*,¹¹ and a case from the U.S. Court of Appeals for the

note that the Supreme Court has also recognized the Commission has authority to consider “other subsidiary purposes,” such as “conservation, environmental, and antitrust questions.” *NAACP*, 425 U.S. at 670 & n.6 (citations omitted). But all subsidiary purposes are, necessarily, subordinate to the statute’s primary purpose.

⁷ *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Updated Certificate Policy Statement); see *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197, at P 2 (2022) (Order on Draft Policy Statements) (converting the two policy statements issued on February 18, 2022, Updated Certificate Policy Statement, 178 FERC ¶ 61,107, and *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,108 (2022) (Interim GHG Policy Statement), to “draft” policy statements).

⁸ *Texas Gas*, 181 FERC ¶ 61,049 at P 47 (citing *Food & Water Watch v. FERC*, 28 F.4th 277, 288 (D.C. Cir. 2022) (“Foreseeability depends on information about the ‘destination and end use of the gas in question.’”) (citation omitted); *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017) (*Sabal Trail*) (“FERC should have estimated the amount of power-plant carbon emissions that the pipelines will make possible.”)).

⁹ 867 F.3d 1357.

¹⁰ *Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 109 (D.C. Cir. 2022) (citing *Sabal Trail*, 867 F.3d at 1371-74).

¹¹ See 867 F.3d at 1379-83 (Brown, J., concurring in part and dissenting in part).

Eleventh Circuit cast serious doubt on *Sabal Trail*'s holding.¹² *Sabal Trail* is also in obvious conflict with the Supreme Court's holding in *Public Citizen*.¹³

4. *Third*, as I have explained in recently-issued certificate orders,¹⁴ while not fatal to the durability of the order, I would have explicitly repudiated *Northern Natural Gas Company (Northern)*¹⁵ 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."¹⁶ 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.¹⁷ Instead, the Commission does not even acknowledge its *Northern* precedent in today's order. And while it has, in recent proceedings, acknowledged the precedent and stated that "the Commission has previously assessed the 'significance' of GHGs,"¹⁸ it neither acknowledges that precedent nor announces a departure in today's

¹² See *Ctr. for Biological Diversity v. U.S. Army Corps of Eng'rs*, 941 F.3d 1288, 1299-1300 (11th Cir. 2019) (referring to *Sabal Trail* as "questionable").

¹³ See *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) ("[The National Environmental Policy Act (NEPA)] requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause. The Court analogized this requirement to the 'familiar doctrine of proximate cause from tort law.'") (citation omitted) (*Public Citizen*).

¹⁴ 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*).

¹⁵ 174 FERC ¶ 61,189 (2021). 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.'").

¹⁶ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 67 (2018) (footnote omitted).

¹⁷ See, e.g., *Nat'l Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145, at P 188 (2017).

¹⁸ See, e.g., *Tex. E. Transmission, LP*, 180 FERC ¶ 61,186, at P 27 n.42 (2022) ("We acknowledge that the Commission has previously assessed the 'significance' of

order. There is, however, 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.¹⁹ The Commission's recent attempts to do so, absent the expertise to make such a determination and the statutory authority to impose it, have amounted to little more than picking arbitrary numbers.²⁰

5. Therefore, it is no surprise that the Commission asserts in today's order that "because we are conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations for GHG emissions going forward, the Commission is not herein characterizing these emissions as significant or insignificant."²¹ My colleagues are trying to preserve the option to employ a new version of their flawed "eyeball" test, perhaps with a new arbitrary threshold. We have no authority to establish arbitrary significance thresholds. We also have no expertise. How exactly would my colleagues propose to establish such a threshold and then support it with the substantial evidence and reasoned decision making required to survive judicial review?

6. As I have said before, we have a mess on our hands because of changing, inconsistent practice and because the Commission has been picking numbers out of thin air. Any process in which we declare arbitrary, unsupported thresholds will subject our issuances to significant—and wholly unnecessary—legal risk.²² Recently, Commission

GHGs, *see N. Nat. Gas Co.*, 174 FERC ¶ 61,189 (2021). However, we do not do so here because the Commission is considering approaches for assessing significance in a pending proceeding.") (citation omitted).

¹⁹ *See, e.g., Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197, at P 292 (2018).

²⁰ *See* Interim GHG Policy Statement, 178 FERC ¶ 61,108 at PP 79-81 (establishing a significance threshold of 100,000 metric tons per year (tpy) of CO₂e); *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").

²¹ *Texas Gas*, 181 FERC ¶ 61,049 at P 50.

²² 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

staff has made significance determinations in NEPA documents²³ published *after* the issuance of the Commission’s Interim GHG Policy Statement²⁴ but *before* the policy statement was changed into a draft policy statement.²⁵ In three of those cases, the Commission’s order neither acknowledged nor adopted staff’s significance determination.²⁶ In one order, the Commission acknowledged that staff had assessed

omitted).

²³ See, e.g., Commission Staff, Environmental Assessment for Golden Pass LNG Terminal LLC Variance Request No. 15, Docket No. CP14-517-001, at 25 (Mar. 22, 2022) (“In order to assess impacts on climate change associated with the Project, we applied the Commission’s Interim Policy Statement on ‘Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews’ issued on February 18, 2022 in Docket No. PL21-3-000 that established a significance threshold of 100,000 metric tpy of CO₂e. The Amendment’s construction emissions of 93,642 metric tpy of CO₂e would not exceed the Commission’s presumptive significance threshold.”) (citing Interim GHG Policy Statement, 178 FERC ¶ 61,108); Commission Staff, Environmental Assessment for Equitrans L.P. Truittsburg Well Conversion Project, Docket No. CP22-24-000, at 29 (Mar. 7, 2022) (finding that the “Project’s construction and operation emissions would fall below the Commission’s presumptive [100,000 metric tpy] significance threshold”); Commission Staff, Final Environmental Impact Statement for Kern River Transmission Company Delta Lateral Project, Docket No. CP21-197-000, at 4-75 (Feb. 25, 2022) (finding that “[t]he Project operations and downstream combustion of gas transported by the Project could potentially increase emissions by over 2.7 million metric tpy of CO₂e, which exceeds the Commission’s presumptive threshold of significance”).

²⁴ Interim GHG Policy Statement, 178 FERC ¶ 61,108.

²⁵ See Order on Draft Policy Statements, 178 FERC ¶ 61,197 at P 2.

²⁶ Compare *ANR Pipeline Co.*, 179 FERC ¶ 61,122, at P 35 (2022) (“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.”), and *id.* P 35 n.42 (“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.”) (citing Order on Draft Policy Statements, 178 FERC ¶ 61,197), with Commission Staff, Final Environmental Impact Statement for ANR Pipeline Co. Wisconsin Access Project, Docket No. CP21-78-000, at 53-54 (Mar. 18, 2022) (“In order to assess impacts on climate change associated with the Project, Commission staff applied the Commission’s Interim Policy Statement on ‘Consideration of Greenhouse

significance, and then declined to adopt staff's determination.²⁷ We should stop issuing confusing, inconsistent statements and we should no longer attempt to preserve our ability to set arbitrary thresholds. We should never have articulated the 100,000 metric tons per year significance threshold in the now-draft Interim GHG Policy Statement.²⁸ That was a mistake, and we should not repeat it.

7. Aside from the legal risk that would attend the establishment of any unsupported, arbitrary threshold, we have recently been reminded by the Supreme Court that caution is necessary when contemplating the regulation of subjects that have not been clearly placed within our jurisdiction by Congress, especially when our actions could have a profound effect on an industry that is critical to the wellbeing of all Americans. *West Virginia v.*

Gas Emissions in Natural Gas Infrastructure Project Reviews' issued on February 18, 2022 in Docket No. PL21-3-000 that established a significance threshold of 100,000 metric tpy of CO₂e. The Project's operational and downstream emissions would exceed the Commission's presumptive significance threshold based on 100 percent utilization.") (citing Interim GHG Policy Statement, 178 FERC ¶ 61,108). *See also Golden Pass LNG Terminal LLC*, 180 FERC ¶ 61,058, at P 20 (2022) (stating 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" even though staff previously applied a significance threshold in the Environmental Assessment); *Rover Pipeline LLC*, 179 FERC ¶ 61,043, at P 18 (2022) (same).

²⁷ *See Spire Storage W. LLC*, 179 FERC ¶ 61,123, at P 52 n.106 (2022) ("acknowledg[ing] that the Commission has previously assessed the 'significance' of GHGs, *see N. Nat. Gas Co.*, 174 FERC ¶ 61,189 (2021), and Commission staff assessed the significance of GHGs for the project in the final EIS by applying the Commission's February 17, 2022 Interim Policy Statement").

²⁸ *But see Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2022) (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).

*Environmental Protection Agency (West Virginia)*²⁹ perfectly reinforces Commissioner Christie’s dissent regarding the major questions doctrine in the Interim GHG Policy Statement proceeding.³⁰ The Commission is charged under the NGA with “encourag[ing] the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”³¹ The NGA’s purpose, established by Congress and articulated by the Supreme Court, is for the Commission to *promote* the development of natural gas infrastructure. It is not an environmental statute and to adopt mitigation policies or establish thresholds, the effect of which would be to frustrate the primary purpose of the statute, in order to pursue policy goals in an arena not delegated by Congress, invites challenges under *West Virginia*. “A decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body.”³² In light of the Supreme Court’s reinvigoration of the major questions doctrine, we should abandon a project that clearly exceeds the boundaries of our delegated authority and proceed by simply terminating Docket No. PL21-3-000 (Consideration of GHG Emissions in Natural Gas Infrastructure Project Reviews).

8. *Fourth*, I object to staff’s inclusion of a Social Cost of GHGs calculation based on the estimated emissions from the project’s construction and operation in this proceeding’s Final Environmental Impact Statement (Final EIS).³³ The Commission has often—and extensively—discussed why the Social Cost of Carbon is ill-suited to project-level NEPA review, and why the Social Cost of Carbon cannot meaningfully inform the Commission’s decision to approve or disapprove natural gas infrastructure projects under the NGA.³⁴ No valuable information can be gleaned from the numbers included in

²⁹ *West Virginia v. EPA*, 142 S. Ct. 2587 (2022) (*West Virginia*).

³⁰ See Interim GHG Policy Statement, 178 FERC ¶ 61,108 (Christie, Comm’r, dissenting at PP 3, 22-28); Updated Certificate Policy Statement, 178 FERC ¶ 61,107 (2022) (Christie, Comm’r, dissenting at PP 3, 22-28).

³¹ *NAACP*, 425 U.S. at 669-70 (citation omitted); *accord Myersville*, 783 F.3d at 1307 (quoting *NAACP*, 425 U.S. at 669-70).

³² *West Virginia*, 142 S. Ct. at 2616.

³³ See Commission Staff, Final Environmental Impact Statement for the Henderson County Expansion Project, Docket No. CP21-467-000, at 4-129, 4-130 (Aug. 25, 2022).

³⁴ 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 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

Commission staff's Final EIS and they serve merely to confuse the matter—they should be omitted from future issuances.³⁵

9. *Fifth*, I disagree with the part of the Commission's Environmental Condition 14 that requires that "Texas Gas . . . file with the Secretary, for review and written approval by the Director of OEP or the Director's designee, documentation of its revised water use plans and the results of the consultation with [Kentucky Energy and Environment Cabinet, Division of Water (KDOW)] and the mitigation measures it will adopt to minimize impacts on Pond Bayou."³⁶ This condition suggests, that "if Texas Gas obtains approval from the . . . [KDOW] for water withdrawals from Pond Bayou," that the Commission is reserving authority to determine whether additional mitigation measures are needed.³⁷ Texas Gas will need to adhere to the requirements of the authorization from KDOW for any water withdrawals from the Pond Bayou. I do not see the need for the Commission to weigh in on the adequacy of any mitigation measures that may be part of that authorization and disagree to the extent to which the condition suggests that Texas Gas should propose mitigation measures for the Commission's approval. NEPA "not only does not require agencies to discuss any particular mitigation plans that they might put in place, it does not require agencies—or third parties—to effect any."³⁸

10. *Finally*, I would like to end this statement on a positive note. I am pleased that the timing of the issuance of this order is much improved compared to many other recent

impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes.").

³⁵ 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. 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) (footnote omitted).

³⁶ *Texas Gas*, 181 FERC ¶ 61,049 at Environmental Condition 14.

³⁷ *Id.*

³⁸ *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 206 (D.C. Cir. 1991) (citation omitted).

NGA authorizations.³⁹ Consistent with our regulations,⁴⁰ the Commission issued the notice of intent to prepare an environmental impact statement (EIS) on October 7, 2021,⁴¹ *i.e.*, 90 days after the July 9, 2021 issuance of the notice for this application. In my view, an Environmental Assessment would have sufficed for this proceeding and perhaps would have even allowed the Commission to have met the applicant's requested action date, *i.e.*, September 16, 2022.⁴² The Commission is acting on this application a little more than a month after the date requested by Texas Gas.⁴³ It is my hope that the remaining NGA authorizations pending before the Commission are similarly spared what have unfortunately become common delays.

For these reasons, I respectfully concur in the judgment.

James P. Danly
Commissioner

³⁹ See, e.g., *LA Storage, LLC*, 180 FERC ¶ 61,188 (2022) (Danly, Comm'r, concurring at PP 9-11) (disagreeing with the delay in the issuance of the authorization for a proposed project that went through the Commission's pre-filing process and explaining the costs that may attend delay in Commission action).

⁴⁰ See 18 C.F.R. § 157.9(b) ("For each application that will require an environmental assessment or an environmental impact statement, notice of a schedule for the environmental review will be issued within 90 days of the notice of the application, and subsequently will be published in the *Federal Register*.").

⁴¹ See Commission October 7, 2021 Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Henderson County Expansion Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review re Texas Gas Transmission, LLC under CP21-467.

⁴² I pause to note that my colleagues can point to no court decision finding that the Commission should have determined the significance of the GHG emissions or that the Commission should have prepared an EIS due to its inability to determine the significance of GHG emissions. No such judicial decision exists. We therefore have no such obligation. Nor has there *ever* been a remand or vacatur of a certificate order on that basis.

⁴³ Application at 5 ("Texas Gas requests that the Commission complete its review of the Application and grant the requested authorizations in this Application on or before September 16, 2022.").