

163 FERC ¶ 61,128  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc.

Docket No. CP14-497-001

ORDER DENYING REHEARING

(Issued May 18, 2018)

1. On April 28, 2016, the Commission issued Dominion Transmission, Inc. (Dominion) a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> to construct and operate certain compression and related facilities in Chemung, Herkimer, Madison, Montgomery, Schenectady, and Tompkins Counties, New York (New Market Project).<sup>3</sup> On May 31, 2016, Otsego 2000, Inc. (Otsego) filed a timely request for rehearing. This order denies Otsego's request for rehearing.

**I. Background**

2. The April 28 Order authorized the New Market Project, consisting of: (1) the construction and operation of two new compressor stations (Horseheads Compressor Station in Chemung County, and Sheds Compressor Station in Madison County); (2) upgrading of and modifications to three existing compressor stations (Brookman Corners Compressor Station in Montgomery County, Borger Compressor Station in Tompkins County, and Utica Compressor Station in Herkimer County); and (3) upgrading of and modifications to one meter and regulating station (West Schenectady Meter and Regulating Station in Schenectady County).<sup>4</sup> The New Market Project will provide for 112,000 dekatherms per day of firm transportation service for The Brooklyn Union Gas Company d/b/a National

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<sup>1</sup> 15 U.S.C. § 717f(c) (2012).

<sup>2</sup> 18 C.F.R. pt. 157 (2017).

<sup>3</sup> *Dominion Transmission, Inc.*, 155 FERC ¶ 61,106 (2016) (April 28 Order).

<sup>4</sup> A more detailed Project description appears in the April 28 Order, 155 FERC ¶ 61,106 at P 3.

Grid NY (Brooklyn Union) and Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk). Dominion will receive the gas at its existing Leidy interconnections with Texas Eastern Transmission, LP (Texas Eastern) or Transcontinental Gas Pipe Line Company, LLC (Transco) in Clinton County, Pennsylvania, and transport the gas to Brooklyn Union at its existing Brookman Corners Interconnection in Montgomery County, New York, and to Niagara Mohawk at its West Schenectady Interconnection near Schenectady, New York.

3. The Commission found that the benefits the Project will provide to the market outweigh any adverse effects on existing shippers, on other pipelines and their captive customers, and on landowners and surrounding communities.<sup>5</sup> In addition, Commission staff prepared an Environmental Assessment (EA). Based on Commission staff's EA, the Commission found that, if constructed and operated in accordance with Dominion's application and supplements and the conditions imposed by the April 28 Order, the Project will not have a significant impact on the environment.<sup>6</sup>

4. In its May 31 request for rehearing, Otsego argues that the Commission erred by: (1) failing to prepare an environmental impact statement (EIS); (2) failing to require Dominion to obtain local siting review; (3) treating modifications to the Brookman Corner's Compression Station as an expansion proposal and not a new facility; (4) not evaluating the upstream and downstream impacts of the New Market Project; and (5) adopting findings in the EA that were not supported by substantial evidence (May 31 Request for Rehearing).

5. On June 2, 2016, Otsego, Mohawk Valley Keeper, and John and Maryann Valentine filed a request to amend Otsego's May 31 Request for Rehearing (Amended Request for Rehearing). The parties state that they inadvertently filed the May 31 Request for Rehearing in a draft form and assert that the June 2 filing should be treated as timely because "the amendment to the filing are not extensive."<sup>7</sup>

6. On June 14, 2016, Dominion filed an answer opposing the Amended Request for Rehearing and asks the Commission to reject Otsego's Amended Request for Rehearing as untimely and statutorily barred by section 19 of the NGA.<sup>8</sup> Dominion states that the Amended Request for Rehearing contains significant substantive changes, including the addition of two additional parties (Mohawk Valley Keeper and John and Maryann

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<sup>5</sup> *Id.* P 18.

<sup>6</sup> *Id.* P 142.

<sup>7</sup> *See* June 2, 2016 Letter from C. Elefant at 1.

<sup>8</sup> Dominion's June 14, 2016 Answer at 3 (citing 15 U.S.C. § 717r(a) (2012)).

Valentine), the addition of two new arguments regarding “Socioeconomics and Environmental Justice” and “Historic Assets,” a more expansive discussion of alternatives, and additional references to commitments regarding local siting approvals.<sup>9</sup>

7. On June 23, 2016, Otsego, Mohawk Valley Keeper, and John and Maryann Valentine filed an answer to Dominion’s answer stating that the Amended Request for Rehearing does not add new parties because the May 31 Request for Rehearing states that it was filed on behalf of Otsego, Mohawk Valley Keeper, and John and Maryann Valentine in compliance with Rule 203 of the Commission Rules of Practice and Procedure.<sup>10</sup>

## II. Procedural Issues

### A. Answers to Answers and Requests for Rehearing

8. Rule 213(a)(2) of our regulations prohibits answers to answers and requests for rehearings unless otherwise ordered by a decisional authority.<sup>11</sup> Thus, we reject Otsego’s, Mohawk Valley Keeper’s, and John and Maryann Valentine’s answer. However, the Commission finds good cause to waive Rule 213(a)(2) and admit Dominion’s answer because the answer provides procedural information regarding Otsego’s motion to amend its rehearing that has assisted in our decision-making process and admitting this answer will not cause undue delay.

### B. Otsego’s Motion to Amend Its May 31 Request for Rehearing

9. Section 19 of the NGA<sup>12</sup> and Rule 713(b) of the Commission’s Rules of Practice and Procedure<sup>13</sup> require parties to file a request for rehearing within 30 days after issuance date of any final decision or other final order in a proceeding. In this case, that date was no later than May 31, 2016. Both the Commission and the courts have consistently held that the 30-day requirement in section 19(a) is a jurisdictional requirement that the Commission

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<sup>9</sup> *Id.* at 3.

<sup>10</sup> Otsego’s June 23, 2016 Answer at 1 (citing 18 C.F.R. § 385.203 (2017)).

<sup>11</sup> 18 C.F.R. § 385.213(a)(2) (2017).

<sup>12</sup> 15 U.S.C. § 717r(a) (2012).

<sup>13</sup> 18 C.F.R. § 385.713(b) (2017).

does not have the discretion of waiving, even for good cause.<sup>14</sup> Further, the Commission has interpreted this jurisdictional limitation as precluding it from considering a late-filed supplement or amendment to a timely filed request for rehearing.<sup>15</sup> Thus, we reject Otsego's motion to amend its request for rehearing and will base our decision solely on the arguments advanced in Otsego's May 31 Request for Rehearing.

10. Additionally, we agree with Dominion that Otsego is the only party to the May 31 Request for Rehearing. Rule 2002 of the Commission's Rules of Practice and Procedure require a filing's caption to include, among other things, the names of the participants for whom the filing is made.<sup>16</sup> Otsego was the only party identified in the caption of the

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<sup>14</sup> See, e.g., *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1005 (D.C. Cir. 1987) (stating that "the Commission cannot waive the jurisdictional bar of [section] 19" of the Natural Gas Act.); *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) (holding that an identical 30-day time requirement to file a request for rehearing in the Federal Power Act (FPA) "is as much a part of the jurisdictional threshold as the mandate to file for a rehearing."); *Boston Gas Co. v. FERC*, 575 F.2d 975, 979 (1st Cir. 1978) (holding that the rehearing provision of the NGA is "a tightly structured and formal provision. Neither the Commission nor the courts are given any form of jurisdictional discretion."); *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,160, at P 3 (2012); *Louisiana Energy and Power Authority*, 117 FERC ¶ 61,258, at 62,301 (2006); *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,211, at P 10 (2005); *Texas-New Mexico Power Company v. El Paso Electric Company*, 107 FERC ¶ 61,316, at P 22 (2004); *California Independent System Operator Corporation*, 105 FERC ¶ 61,322, at P 9 (2003); *Tennessee Gas Pipeline Company*, 95 FERC ¶ 61,169, at 61,546-47 (2001); *Columbia Gas Transmission Corp.*, 40 FERC ¶ 61,195, at 61,655 (1987). Although some of these cases were decided under the Federal Power Act, the rehearing provisions in the FPA and the NGA are identical and read in *pari materia*. See *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *United Gas Pipe Line Co. v. Mobil Gas Service Corp.*, 350 U.S. 332 (1956).

<sup>15</sup> See *Old Dominion Electric Cooperative*, 154 FERC ¶ 61,155, at P 8 (2016) (citing *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at 61,623 (1991) ("any subsequent filing supplementing or revising the request for rehearing is in essence a new request for rehearing and thereby precluded under section 313(a) of the [Federal Power] Act."); *Pub. Serv. Co. of New Hampshire*, 56 FERC ¶ 61,105, at 61,403 (1991) ("Commission precedent is clear that supplements to timely filed requests for rehearing, when filed after the expiration of the statutory [30]-day period, will be rejected.")).

<sup>16</sup> 18 C.F.R. § 385.2002(e) (2017).

May 31 Request for Rehearing.<sup>17</sup> Otsego was the only party discussed in the introductory section of the May 31 Request for Rehearing.<sup>18</sup> The body of the May 31 Request for Rehearing makes no reference to Mohawk Valley Keeper or John and Mary Valentine, nor does it identify any specifications of error as to them. And in the document's signature block, counsel only identified herself as "FERC Counsel to Otsego 2000."<sup>19</sup>

11. To the extent Mohawk Valley Keeper and/or John and Mary Valentine intended to participate in the May 31 Request for Rehearing, the filing fails to comply with the dictates of Rule 203, which requires "[t]he name of each participant for whom the filing is made or, if the filing is made for a group of participants, the name of the group, provided that the name of each member of the group is set forth in a previously filed document which is identified in the filing being made."<sup>20</sup> Indeed, this conclusion is illustrated by the fact that the Amended Request for Rehearing lists both Mohawk Valley Keeper and John and Mary Valentine in the caption, throughout the amendment, and is signed on their behalf. The only reference to Mohawk Valley Keeper or John and Mary Valentine in the May 31 filing appears in the filing's concluding sentence, where they are identified as a joint petitioners with Otsego. Accordingly, we find that the Amended Request for Rehearing improperly sought to add Mohawk Valley Keeper and John and Mary Valentine to Otsego's May 31 Request for Rehearing.

12. We also decline the parties' alternative request that the Amended Rehearing Request be treated as a request for reconsideration. Granting such a request would in effect treat the Amended Rehearing Request as if it had been timely filed.<sup>21</sup>

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<sup>17</sup> May 31 Request for Rehearing at 1.

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

<sup>19</sup> *Id.* at 33.

<sup>20</sup> 18 C.F.R. § 385.203(a)(2) (2017).

<sup>21</sup> *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,211, P 10 (2005) (declining to treat a late-filed rehearing request as a request for reconsideration); *Houston Lighting & Power Co.*, 84 FERC ¶ 61,183 (1998) (rejecting a request for reconsideration as an untimely request for rehearing).

### III. Discussion

#### A. Need for an EIS

13. Under the National Environmental Policy Act (NEPA), agencies must prepare an EIS for major federal actions that may significantly impact the environment.<sup>22</sup> However, if an agency determines that a federal action is not likely to have significant adverse effects, it may rely on an EA for compliance with NEPA.<sup>23</sup> The April 28 Order rejected Otsego's contention that Commission staff should have prepared an EIS rather than an EA for the New Market Project.<sup>24</sup>

14. On rehearing, Otsego contends that expansion of the Brookman Corners Compressor Station (Brookman Corners Station) would result in significant environmental impacts; therefore, the Commission should have prepared an EIS for the Project rather than an EA. In support, Otsego cites the factors that the Council on Environmental Quality (CEQ) provided in section 1508.27 of its regulations for considering whether an effect is significant.<sup>25</sup> Otsego maintains that three of these factors preclude the Commission from making a finding of no significant impact; specifically, the Commission should have considered: (1) the unique characteristics of the geographic scope of the Project such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas;<sup>26</sup> (2) the degree to which the effects on the quality of the human environment are likely to be highly controversial;<sup>27</sup> and (3) whether the action threatens a violation of state or local law.<sup>28</sup>

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<sup>22</sup> 42 U.S.C. § 4332(2)(C) (2012); 40 C.F.R. § 1502.4 (2017).

<sup>23</sup> 40 C.F.R. § 1501.3-1501.4 (2017). An EA is meant to be a "concise public document . . . that serves to . . . [b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or finding of no significant impact." 40 C.F.R. § 1508.9(a) (2017). Pursuant to the Commission's regulations, if an EA is prepared first, "[d]epending on the outcome of the environmental assessment, an [EIS] may or may not be prepared." 18 C.F.R. § 380.6(b) (2017).

<sup>24</sup> April 28 Order, 155 FERC ¶ 61,106 at PP 34-37.

<sup>25</sup> 40 C.F.R. § 1508.27 (2017).

<sup>26</sup> *Id.* § 1508.27(b)(3).

<sup>27</sup> *Id.* § 1508.27(b)(4).

<sup>28</sup> *Id.* § 1508.27(b)(10).

### 1. The Project is Not Located in a Unique Geographic Area

15. Otsego argues that the expansion of the Brookman Corners Station alone required the preparation of an EIS for the New Market Project because the compressor station is located in an area with unique geographic characteristics.<sup>29</sup> In particular, Otsego states that the compressor station's location: (1) in Otsquago Valley in Central New York State will limit the dispersion of emissions and increase the Project's impacts on air quality; (2) next to Otsego Creek will cause emissions to settle in the valley due to air stabilization above the creek's cooler waters; and (3) near Amish and Mennonite families will expose children to environmental contaminants.<sup>30</sup>

16. We disagree. The EA found that modeled hazardous air pollutant emissions from normal operations and blowdown events at the Brookman Corners Station are below a level of health concern.<sup>31</sup> In addition, the air quality model took into consideration the site-specific topography of the area near the Brookman Corners Station. Although Otsego may be correct that context is important in determining the severity of an impact, the EA provides a comprehensive analysis of the potential impacts on each resource, and appropriately concludes that the expansion of the Brookman Corners Station and the construction and operation of the New Market Project as a whole, with the environmental conditions set forth in the certificate, will not have a significant impact on the environment.

17. In any event, we do not find it reasonable to conclude that the mere fact that a proposed action occurs in a unique geographic area is dispositive of "significance" as contemplated by NEPA and CEQ's regulations, nor do we find that preparing an EIS here would have provided any additional meaningful information to assist in our decision-making process.

### 2. The Project's Potential Impacts on Environment are Not Highly Controversial

18. Otsego disagrees with the Commission's finding that the New Market Project is not "highly controversial."<sup>32</sup> Otsego asserts that the Commission should have found the Project highly controversial due to its impacts on emissions, noise, lighting, climate change, and

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<sup>29</sup> May 31 Request for Rehearing at 7.

<sup>30</sup> *Id.* at 7-8.

<sup>31</sup> EA at 89.

<sup>32</sup> *See* April 28 Order, 155 FERC ¶ 61,106 at P 37.

safety.<sup>33</sup> Otsego contends that unspecified emerging research regarding the project's impacts upon climate change and health and safety of residents are particularly controversial and require the preparation of an EIS.<sup>34</sup>

19. For an action to qualify as highly controversial for NEPA purposes, there must be a "dispute over the size, nature, or effect of the action, rather than the existence of opposition to it."<sup>35</sup> A "controversy does not exist merely because individuals or groups vigorously oppose, or have raised questions about, an action."<sup>36</sup> Although the April 28 Order acknowledges that parties and commenters have concerns about the Project, those concerns have been addressed through scoping meetings, extensive comments, and other filings from all parties. The fact that Otsego may disagree with the Commission's findings regarding these issues does not constitute a "controversy" as contemplated by CEQ's regulations.<sup>37</sup>

### 3. The Project Does Not Threaten Violation of State and Local Law

20. The CEQ regulations provide that an EIS may be warranted where "the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment."<sup>38</sup> Otsego states that the project may violate the Code of the Town of Minden (where the Brookman Corners Station is located) and the New York Department of Environmental Conservation's policy, which call for the mitigation of noise impacts at a property line. By contrast, the April 28 Order requires Dominion to mitigate noise impacts at the nearest residence.<sup>39</sup>

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<sup>33</sup> May 31 Request for Rehearing at 8.

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

<sup>35</sup> April 28 Order, 155 FERC ¶ 61,106 at P 37.

<sup>36</sup> *Elba Liquefaction Co., LLC*, 157 FERC ¶ 61,195, at P 29 (2016) (citing *Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1557 (2d Cir. 1992); *Dominion Cove Point LNG, LP*, 151 ¶ 61,095, at P 82 (2015); *Cheniere Creole Trail Pipeline, L.P.*, 145 FERC ¶ 61,074, at P 23 (2013)).

<sup>37</sup> Otsego's specific disagreements with the Commission's analysis of air quality, greenhouse gases, noise, lighting and safety are addressed in Part E below.

<sup>38</sup> 40 C.F.R. § 1508.27(b)(10) (2017).

<sup>39</sup> May 31 Request for Rehearing at 8-9.

21. We disagree. As discussed below, the April 28 Order requires Dominion to ensure that its predicted noise levels are not exceeded at nearby noise-sensitive areas.<sup>40</sup> Further, although the Commission encourages cooperation between interstate pipelines and local authorities, this does not mean that state and local agencies, through application of state and local laws, may prohibit or unreasonably delay the construction of facilities approved by the Commission.<sup>41</sup>

4. **Conclusion: The Project's Impacts Do Not Meet the Threshold Test of Significance**

22. Based on our review, we conclude that the potential environmental impacts of the New Market Project do not rise to a level of significance that would require preparation of an EIS. Accordingly, we affirm that preparation of a thorough, detailed EA was appropriate in this case and deny Otsego's request for rehearing on this issue. We note further that Otsego makes no effort to explain how an EIS would provide any additional information beyond that already provided by our comprehensive, 190-page EA.

B. **The NGA Preempts Local Law**

23. On rehearing, Otsego argues that the April 28 Order should have required Dominion to obtain local siting review from the Town of Minden.<sup>42</sup> Otsego recognizes that the April 28 Order encouraged cooperation between Dominion and state and local agencies, so long as the local authorities do not unreasonably delay construction of the facilities.<sup>43</sup> On rehearing, Otsego contends that the Commission should have expressly required Dominion to honor what it characterizes as the company's commitment to comply with and receive approval from the Town of Minden's Planning Board before constructing the Project.<sup>44</sup> In

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<sup>40</sup> April 28 Order, 155 FERC ¶ 61,106 at Environmental Condition No. 16. *See also infra* PP 71-76.

<sup>41</sup> *Id.* P 141. As discussed in more detail below, Otsego did not provide the Commission with a copy of the Town of Minden's Code or the New York Department of Environmental Conservation's policy concerning noise mitigation. *See infra* P 72. The EA cited only the Town of Dryden (near the Borger Compressor Station) as having a noise ordinance limits and evaluated the Project's compliance with this ordinance. EA at 90.

<sup>42</sup> May 31 Request for Rehearing at 9.

<sup>43</sup> *Id.* at 10.

<sup>44</sup> *Id.* at 9-10.

particular, Otsego is concerned with ensuring that Dominion adopt the lighting plan it submitted to the Town of Minden during the local siting review process.<sup>45</sup>

24. We reiterate here our expectation that Dominion will cooperate with the Town of Minden and other state and local authorities to receive input on the New Market Project. We decline, however, to amend the April 28 Order to affirmatively require Dominion to comply with whatever conditions may be imposed by local authorities to the maximum extent possible. Again, any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of Dominion's certificate.<sup>46</sup> The Commission's authority under the NGA preempts county zoning ordinances.<sup>47</sup>

25. Moreover, we find, that the certificate, as conditioned, adequately addresses any lighting impacts on visual resources caused by the expansion of the Brookman Corners Station. The EA found that the expansion would not result in any additional lighting impacts on visual resources.<sup>48</sup> Further, the April 28 Order encouraged Dominion to explore additional lighting options at the Brookman Corners Station, as recommended by Otsego, at which point Otsego may provide Dominion with feedback.<sup>49</sup> Due to our findings that there will be no additional visual impacts from the Brookman Corners Station, we find no cause to require additional mitigation.

**C. Existing Facilities at the Brookman Corners Station Are Outside of Our Scope of Review**

26. Otsego argues that the Commission arbitrarily disregarded certain impacts and failed to consider additional mitigation measures for the Brookman Corners Station's existing facilities. Otsego explains that the Commission required more stringent mitigation at the

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<sup>45</sup> *Id.* 10-11.

<sup>46</sup> April 28 Order, 155 FERC ¶ 61,106 at P 141.

<sup>47</sup> *Id.* n.215 (citing *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990), *order on reh'g*, and 59 FERC ¶ 61,094 (1992)).

<sup>48</sup> EA at 48.

<sup>49</sup> *See* April 28 Order, 155 FERC ¶ 61,106 at P 129.

new greenfield Horseheads and Sheds Compressor Stations but failed to impose the same measures at the Brookman Corners Station because the Commission claimed that requiring additional mitigation “would go beyond the scope of the proposal.”<sup>50</sup>

27. In evaluating expansions of existing facilities, the Commission does not reopen the record in past proceedings<sup>51</sup> to further evaluate matters no longer before the Commission.<sup>52</sup> Thus, we affirm our finding that Dominion’s existing compression facilities at the Brookman Corners Station are beyond the scope of the instant proceeding.<sup>53</sup>

28. Further, we disagree with Otsego’s contention that because the Brookman Corners Station modifications will work in unison with the existing facilities, the Commission must reevaluate the environmental impacts of the existing facilities. Under Otsego’s logic, every modification to a transmission facility would open the entire facility to the Commission’s review (e.g., a company’s proposal to provide looping would open the entire mainline to environmental review). This is not the Commission’s or NEPA’s intention. The Commission’s review is limited to the company’s proposal<sup>54</sup> and does not impose measures beyond the proposed facilities. However, as discussed below, the Commission must, and did, evaluate the cumulative impacts of the new compression facilities and the existing facilities at the Brookman Corners Station.<sup>55</sup>

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<sup>50</sup> Otsego Request for Rehearing at 11 (citing April 28 Order, 155 FERC ¶ 61,106 at n.197).

<sup>51</sup> The Commission conducted an environmental review and conditioned the approval of the existing Brookman Corners Station facilities (among other proposed looping and compression facilities) subject to nine environmental conditions. *Dominion Transmission, Inc.*, 93 FERC ¶ 61,095 (2000).

<sup>52</sup> See *ANR Pipeline Company*, 86 FERC ¶ 61,039, at 61,152 (1999) (“ANR’s existing pipelines are beyond the scope of the instant proceeding. In evaluating proposals for new facilities, the Commission does not reopen the record in past proceedings to further evaluate matters which are no longer before the Commission.”).

<sup>53</sup> April 28 Order, 155 FERC ¶ 61,106 at n.197 (“The Brookman Corners Compressor Station is an existing station and requiring the modification of existing lighting would go beyond the scope of the project proposal.”).

<sup>54</sup> See 42 U.S.C. § 4332 (C)(i) (2012) (agencies must analyze the environmental impact of the *proposed* action) (emphasis added).

<sup>55</sup> EA at 104-08.

29. To the extent that Otsego is seeking to call into question the Commission's action in approving the existing Brookman Corners Station facilities, Otsego's argument constitutes an impermissible collateral attack on a closed proceeding, to which no parties sought rehearing.

**D. The EA Appropriately Excluded an Analysis of Upstream and Downstream Impacts**

30. On rehearing, Otsego reiterates its comments on the EA and claims that the cumulative impacts analysis failed to properly evaluate the impacts of upstream and downstream activities in combination with the impacts of the New Market Project.<sup>56</sup> Specifically, Otsego states that we arbitrarily limited our review of upstream (increased gas extraction and hydraulic fracturing) and downstream (development of additional infrastructure, e.g., power plants, storage facilities, and distribution networks) impacts by limiting the Project's geographic scope. Otsego also contends that the Commission erroneously relies on the assertion that these upstream and downstream activities are not "reasonably foreseeable."<sup>57</sup>

31. We disagree. CEQ defines cumulative impacts as "the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."<sup>58</sup> The requirement that an impact must be "reasonably foreseeable" to be considered in a NEPA analysis applies to both indirect and cumulative impacts. Courts have found that an impact is reasonably foreseeable if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision."<sup>59</sup> While courts have held that NEPA requires "reasonable forecasting," an agency is not required "to engage in speculative analysis" or "to do the impractical, if not enough information is available to permit meaningful consideration."<sup>60</sup>

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<sup>56</sup> May 31 Request for Rehearing at 13-14; Otsego's Comments on the EA at 17-18.

<sup>57</sup> May 31 Request for Rehearing at 14.

<sup>58</sup> 40 C.F.R. § 1508.7 (2017).

<sup>59</sup> *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955 (D.C. Cir. 2016) (citations omitted); see also *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

<sup>60</sup> *N. Plains Res. Council v. Surface Transp. Board*, 668 F.3d 1067, 1078 (9th Cir. 2011).

32. The “determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies.”<sup>61</sup> CEQ has explained that “it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.”<sup>62</sup> Further, a cumulative impact analysis need only include “such information as appears to be reasonably necessary under the circumstances for evaluation of the Project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well-nigh impossible.”<sup>63</sup> An agency’s analysis should be proportional to the magnitude of the environmental impacts of a proposed action; actions that will have no significant direct and indirect impacts usually require only a limited cumulative effects analysis.<sup>64</sup>

33. In considering cumulative impacts, CEQ advises that an agency first identify the cumulative effects issues associated with a proposed action.<sup>65</sup> The agency should then establish the geographic scope for analysis.<sup>66</sup> Next, the agency should establish the time frame for analysis, equal to the timespan of a proposed project’s direct and indirect impacts.<sup>67</sup> Finally, the agency should identify other actions that potentially affect the same resources, ecosystems, and human communities that are affected by the proposed action.<sup>68</sup>

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<sup>61</sup> *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976) (*Kleppe*).

<sup>62</sup> CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act*, at 8 (January 1997), [https://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf](https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf), (1997 CEQ Guidance).

<sup>63</sup> *Natural Res. Def. Council, Inc. v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975).

<sup>64</sup> See CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis*, at 2-3 (June 24, 2005), [http://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf](http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf), (2005 CEQ Guidance).

<sup>65</sup> 1997 CEQ Guidance at 11.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

As noted above, CEQ advises that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action.<sup>69</sup>

34. The geographic scope of our cumulative impacts analysis varies from case to case, and resource to resource, depending on the facts presented. Further, where the Commission lacks meaningful information about potential future natural gas production within the geographic scope of a project-affected resource, then production-related impacts are not reasonably foreseeable so as to be included in a cumulative impacts analysis.<sup>70</sup> As we have explained, the record before the Commission generally does not reflect sufficient information to determine the origin of the gas that will be transported on a pipeline, and that is the case here.<sup>71</sup> This same reasoning applies to potential future downstream impacts – if the Commission does not have meaningful information about future power plants, storage facilities, or distribution networks, within the geographic scope of a project-affected

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<sup>69</sup> See 2005 CEQ Guidance at 2-3, n.89.

<sup>70</sup> See, e.g., *Columbia Gas Transmission, LLC*, 149 FERC 61,255, at P 120 (2014).

<sup>71</sup> *Habitat Education Center v. U.S. Forest Service*, 609 F.3d 897, 902 (7th Cir. 2010) (finding that impacts that cannot be described with enough specificity to make their consideration meaningful need not be included in the environmental analysis). See also *Sierra Club v. DOE*, 867 F.3d 189, 200 (D.C. Cir. 2017) (accepting DOE’s “reasoned explanation” as to why the indirect effects pertaining to induced natural gas production were not reasonably foreseeable where DOE noted the difficulty of predicting both the incremental quantity of natural gas that might be produced and where at the local level such production might occur, and that an economic model estimating localized impacts would be far too speculative to be useful). Although not useful to the Commission in its project-specific review, we note that for parties who are interested, there is publically available information that identifies, on a generic, high-level basis, potential environmental impacts associated with unconventional natural gas production and natural gas power generation. See Dep’t. of Energy and Nat’l Energy Tech. Laboratory, *Life Cycle Analysis of Natural Gas Extraction and Power Generation*, DOE/NETL-2015/1714 (August 30, 2016), [https://www.netl.doe.gov/energy-analyses/temp/LifeCycleAnalysisofNaturalGasExtractionandPowerGeneration\\_083016.pdf](https://www.netl.doe.gov/energy-analyses/temp/LifeCycleAnalysisofNaturalGasExtractionandPowerGeneration_083016.pdf); U.S. Dep’t of Energy, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States*, 79 Fed. Reg. 48,132 (Aug. 15, 2014) (DOE Addendum), <http://energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf>; and Dep’t of Energy and Nat’l Energy Tech. Laboratory, *Environmental Impacts of Unconventional Natural Gas Development and Production*, DOE/NETL-2014/1651, (May 29, 2014), [https://www.netl.doe.gov/File%20Library/Research/Oil-Gas/publications/NG\\_Literature\\_Review3\\_Post.pdf](https://www.netl.doe.gov/File%20Library/Research/Oil-Gas/publications/NG_Literature_Review3_Post.pdf).

resource, then these impacts are not reasonably foreseeable for inclusion in the cumulative impacts analysis.

35. CEQ notes that agencies have substantial discretion in determining the appropriate level of their cumulative impact assessments and that agencies should relate the scope of their analyses to the magnitude of the environmental impacts of the proposed action.<sup>72</sup> Otsego attempts to argue that the Commission should determine the magnitude of the project based on the amount of gas that will be transported through interstate commerce as a result of the project, rather than the specific project effects. We disagree. The EA appropriately established various regions of influence depending on the resource area that might be cumulatively impacted, because the nature, magnitude, and duration of these impacts vary.<sup>73</sup>

36. As described in the EA, because the project consists entirely of construction and modification of compressor stations – not construction of linear pipeline – the project impacts will be confined to discrete areas.<sup>74</sup> The EA identified projects that might cumulatively impact resource areas, but found that many of these fell outside the defined geographic scope,<sup>75</sup> with the exception of cumulative air quality impacts.<sup>76</sup> The geographic scope of the cumulative impact analysis was appropriately reflective of the magnitude of the proposed Project’s direct and indirect environmental impacts.<sup>77</sup> We affirm the April 28 Order’s and the EA’s chosen geographic scopes for each affected resource.<sup>78</sup> The EA

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<sup>72</sup> *Id.*

<sup>73</sup> April 28 Order, 155 FERC ¶ 61,106 at P 90. For example, the New Market EA establishes a geographic scope for most resource areas of 0.5 mile, but for air quality and noise impacts associated with the construction of the Project the EA uses a 0.25 mile geographic scope. For noise impacts and air impacts associated with the operation of the Project, the EA uses a 1-mile geographic scope and a 31-mile geographic scope, respectively.

<sup>74</sup> EA at 108.

<sup>75</sup> The EA refers to the geographic scope of the cumulative impacts analysis as the “region of influence.”

<sup>76</sup> EA at 104-08.

<sup>77</sup> *Kleppe*, 427 U.S. at 413 (The “determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies.”).

<sup>78</sup> April 28 Order, 155 FERC ¶ 61,106 at PP 90-91; EA at 103-08.

appropriately quantified the potential for cumulative impacts to the extent practicable, and otherwise describes it qualitatively.<sup>79</sup> The EA appropriately explained that actions outside the chosen geographic scope of analysis are in most cases not assessed because their impacts would tend to be localized and not contribute significantly to the impacts of the proposed Project.<sup>80</sup> The EA's analysis is consistent with the CEQ Guidance and case law.<sup>81</sup>

37. The impacts from natural gas development and from natural gas consumption on a broader scale are appropriately omitted from the EA. With respect to upstream gas development activities, given the large geographic scope of the Marcellus and Utica Shale natural gas production areas,<sup>82</sup> the magnitude of analysis requested by Otsego bears no relationship to the limited magnitude of the New Market Project's 65.4 acres for operation of the facilities. Moreover, the project is located entirely within the state of New York, which has banned hydraulic fracturing. As the EA notes, the nearest land eligible for natural gas drilling is at least 20 miles south of the project area.<sup>83</sup>

38. Even if the Commission were to vastly expand the geographic scope of the cumulative effects analysis, which would be inappropriate, the impacts from such development are not reasonably foreseeable. As we stated above, although NEPA requires "reasonable forecasting," an agency is not required "to engage in speculative analysis" or "to do the impractical, if not enough information is available to permit meaningful consideration."<sup>84</sup> The Commission does not have information on the general supply area for the gas that will be transported on the project. Dominion states that the project will transport gas from Dominion's existing interconnections with Texas Eastern's or Transco's pipeline transmission systems; both of these systems traverse several states and have supply interconnections in multiple natural gas basins.<sup>85</sup> Furthermore, the Commission does not

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<sup>79</sup> EA at 106-08.

<sup>80</sup> *Id.* at 104-05.

<sup>81</sup> 1997 CEQ Guidance at 15; *Kleppe*, 427 U.S. at 414-15.

<sup>82</sup> Natural gas is extracted from the Marcellus and Utica Shale formation through hydraulic fracturing.

<sup>83</sup> EA at 108.

<sup>84</sup> *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

<sup>85</sup> Texas Eastern's system extends from Texas, Louisiana, and the offshore Gulf of Mexico area, through Alabama, Arkansas, Delaware, Indiana, Illinois, Kentucky, Mississippi, Missouri, Maryland, New Jersey, Ohio, Pennsylvania, Tennessee, West  
(continued ...)

have more detailed information regarding the number, location, and timing of wells, roads, gathering lines, and other appurtenant facilities, as well as details about production methods. Thus, there are no forecasts in the record that would enable the Commission to meaningfully predict production-related impacts, many of which are highly localized.

39. Similarly with respect to downstream activities, e.g. the potential for induced development of power plants, storage facilities, and distribution networks, there is nothing in the record that identifies any specific end use or new incremental load downstream of the New Market Project, much less an end use or new incremental load within the geographic area of where the impacts from the New Market Project will be felt. Contrary to Otsego's contentions, knowledge of these and other facts would indeed be necessary in order for the Commission to fully analyze the effects related to the production and consumption of natural gas.

40. In short, the incremental upstream and downstream activities that are the subject of Otsego's rehearing request do not meet the definition of cumulative impacts. Accordingly, the April 28 Order and the EA appropriately excluded potential upstream and downstream activities related to the production and consumption of natural gas.<sup>86</sup>

41. NEPA also requires agencies to consider indirect impacts that are "caused by the action and are later in time or farther removed in distance, but still are reasonably foreseeable."<sup>87</sup> No party in this proceeding has argued that either the upstream or downstream activities are sufficiently casually connected to the New Market Project to be indirect impacts of the project. Nevertheless, in examining the issue, we are unable to find based on the record that the potential increase in greenhouse gas emissions associated with production, non-project transport, and non-project combustion are causally related to our action in approving this Project. Production and end-use consumption of natural gas will

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Virginia, to its principal terminus in the New York City area. Transco's system extends from Texas, Louisiana, and the offshore Gulf of Mexico area, through Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the New York City metropolitan area.

<sup>86</sup> Nonetheless, the April 28 Order identified studies and reports developed by other federal agencies that discuss potential environmental impacts associated with unconventional natural gas production activities, including hydraulic fracturing. *See* April 28 Order, 155 FERC ¶ 61,106, at P 73 (citing, in part, DOE Addendum, 79 Fed. Reg. 48,132 (analyzing air quality, water resource, greenhouse gas emissions, induced seismicity, and land use impacts from unconventional natural gas production activities in the lower 48 states)).

<sup>87</sup> 40 C.F.R. § 1508.8 (2017).

likely occur regardless of the Commission's approval of the New Market Project. For a short time, the Commission went beyond that which is required by NEPA, providing the public with information regarding the potential impacts associated with unconventional natural gas production and downstream combustion of natural gas, even where such production and downstream use was not reasonably foreseeable nor causally related to the proposals at issue.<sup>88</sup> That information was generic in nature and inherently speculative, providing upper-bound estimates of upstream and downstream effects using general shale gas well information and worst-case scenarios of peak use.<sup>89</sup>

42. However, providing a broad analysis based on generalized assumptions rather than reasonably specific information does not meaningfully inform the Commission's project-specific review.<sup>90</sup> Nor is it helpful to the public if the Commission provides such broad and imprecise information. Rather, doing so muddles the scope of our obligations under NEPA and the factors that we find should be considered under NGA section 7(c). It is the Commission's policy to analyze upstream and downstream environmental effects when those effects are indirect or cumulative impacts as contemplated by CEQs regulations. When those effects are not indirect or cumulative effects, and thus are not environmental effects of the proposed action, the Commission is not required to consider them under NEPA.<sup>91</sup>

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<sup>88</sup> See, e.g., *PennEast Pipeline Co., LLC*, 160 FERC ¶ 61,053, at PP 193-210 (2018); *Millennium Pipeline Co., LLC*, 161 FERC ¶ 61,229 at PP 151-165 (2017).

<sup>89</sup> More specific information was not available because the Commission generally lacks information about the specific upstream production or downstream uses of the gas, as gas production and consumption activities fall outside of the Commission's jurisdiction.

<sup>90</sup> See, e.g., *DTE Midstream Appalachia*, 162 FERC ¶ 61,238, at P 54 (2018) ("A broad analysis, based on generalized assumptions rather than reasonably specific information, will not provide meaningful assistance to the Commission in its decision making, e.g., evaluating potential alternatives to a specific proposal."). See also *Sierra Club v. U.S. Department of Energy*, 867 F.3d 189, 198 (D.C. Cir. 2017) (holding that the dividing line between what is reasonable forecasting and speculation is the "usefulness of any new potential information to the decision-making process").

<sup>91</sup> NEPA requires agencies to "include in every . . . major Federal action[] significantly affecting the quality of the human environment, a detailed statement . . . on (i) the environmental impact of the proposed action . . ." 42 U.S.C. § 4332(2)(C)(i) (2012). Under NEPA, agencies are only required to disclose environmental effects when those effects "bear on decisions to take particular actions that significantly affect the environment." *Baltimore Gas & Elec. Co. v. Natural Resources Def. Council, Inc.*, 462 U.S. 87, 96 (1983). Arguably, including information extraneous to the Commission's decision would be contrary to CEQ regulations, which require the agencies to "implement (continued ...)

43. We are not aware of any basis that indicates the Commission is required to consider environmental effects that are outside of our NEPA analysis of the proposed action in our determination of whether a project is in the public convenience and necessity under section 7(c). Although the Commission has the authority to consider all factors bearing on the public interest,<sup>92</sup> the Supreme Court has stated the presence of the words “‘public interest’ in a regulatory statute is not a broad license to promote the general public welfare.”<sup>93</sup> In *NAACP v. FERC*, the Supreme Court stated,

in order to give content and meaning to the words ‘public interest’ as used in the Power and Gas Acts, it is necessary to look to the purposes for which the Acts were adopted. In the case of the Power and Gas Acts it is clear that the principal purpose of those Acts was to encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.<sup>94</sup>

Though the Court stated that there are “undoubtedly other subsidiary purposes contained in those Acts,”<sup>95</sup> the Commission is not aware of any court precedent, statutory provision, or legislative history that indicates the Commission is required to consider environmental effects beyond those which are required by NEPA.<sup>96</sup> Moreover, the Commission does not control the production or consumption of natural gas.<sup>97</sup> Producers, consumers, and their

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procedures to make the NEPA process more useful to decision makers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives.” 40 C.F.R. § 1500.2 (2017).

<sup>92</sup> *Atlantic Refining Co. v. Public Service Commission*, 360 U.S. 378, 391 (1959).

<sup>93</sup> *NAACP v. FERC*, 425 U.S. 662, 669-70 (1976).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> In *Sierra Club v. FERC*, the court found that because the pipeline project delivered gas to identifiable gas-fired electric generating plants, the downstream use of the gas was foreseeable and so the Commission should consider and quantify the greenhouse gas emissions of that downstream use in its NEPA analysis. *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017). Nothing in *Sierra Club v. FERC* requires the Commission to consider environmental effects beyond that which is required by NEPA.

<sup>97</sup> NGA section 1(b) states that, “the provisions of this Act . . . shall not apply . . . to the local distribution of natural gas or to the facilities used for such distribution or the  
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intermediaries respond freely to market signals about location-specific supply and location-specific demand. The Commission certifies proposals by private entities to transport natural gas between those locations. Environmental effects that are not effects of the proposed project are extraneous to our consideration of whether a “*proposed . . . operation, construction, [or] extension, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity.*”<sup>98</sup>

44. Accordingly, to avoid confusion as to the scope of our obligations under NEPA and the factors that we find should be considered under NGA section 7(c), we will no longer prepare upper-bound estimates described *supra* at P 42, where, as here, the upstream production and downstream use of natural gas are not cumulative or indirect impacts of the proposed pipeline project, and consequently are outside the scope of our NEPA analysis. The dissent mischaracterizes this decision as changing the Commission’s public interest and environmental review. Our decision does not in any way indicate that the Commission does

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production . . . of natural gas.” 15 U.S.C. § 717(b) (2012). Further, section 201 of the Federal Power Act states, “[t]he Commission . . . shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy.” 16 U.S.C. § 824 (2012). *See also Fla. Gas Transmission Co. v. FERC*, 604 F.3d 636, 646-47 (D.C. Cir. 2010) (the Commission’s pipeline certificate authority does not provide it with jurisdiction to control non-jurisdictional parties including “electric generators and local distribution companies.”).

<sup>98</sup> 16 U.S.C. § 717f(e) (2012).

not consider, or is not cognizant of the potentially severe consequences of climate change.<sup>99</sup> In fact, as stated below, the EA considered direct greenhouse gas emissions from the construction and operation of the project and recommended mitigation measures to reduce greenhouse gas emissions.<sup>100</sup> We will continue to analyze upstream and downstream environmental effects when those effects are sufficiently causally connected to and are reasonably foreseeable effects of the proposed action, as contemplated by CEQ's regulations.

**E. The EA's Findings Were Supported by Substantial Evidence**

45. On rehearing, Otsego asserts that the Commission adopted certain findings in the EA and ignored contrary perspectives that would have yielded different results pertaining to the Commission's Human Health Risk Assessment and air quality, greenhouse gases, noise, lighting, pipeline safety, and alternatives. We disagree.

46. In considering applications for new projects, the Commission must conduct an environmental review under NEPA.<sup>101</sup> NEPA imposes "a set of action-forcing procedures that require that agencies take a hard look at environmental consequences, and that provide for broad [public] dissemination of relevant environmental information."<sup>102</sup> The statute does not, however, mandate particular results, but rather "simply prescribes the necessary

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<sup>99</sup> Nor does this order prejudice or preclude the Commission's from considering the questions on greenhouse gas emissions posed in the Notice of Inquiry (NOI) on the Certification of New Interstate Natural Gas Facilities in Docket No. PL18-1-000. The Commission stated in the NOI that, "[d]uring the pendency of [the NOI] proceeding, the Commission intends to continue to process natural gas facility matters before it consistent with the Policy Statement, and to make determinations on the issues raised in those proceedings on a case-by-case basis." *Certification of New Interstate Natural Gas Facilities*, 163 FERC ¶ 61,042 (2018).

<sup>100</sup> EA at 64-86, 108.

<sup>101</sup> 42 U.S.C. § 4321, *et seq.* (2012).

<sup>102</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (*Robertson*) (internal quotation marks and citation omitted).

process.”<sup>103</sup> NEPA ensures that federal agencies make informed decisions as to the potential environmental impacts of federal actions; it prohibits uninformed, “rather than unwise,” agency decisions.<sup>104</sup>

47. Otsego disagrees with the Commission’s EA, both as to its conclusions and its analysis of the environmental impacts. However, those disagreements do not show that the Commission’s decision-making process here was uninformed, much less arbitrary and capricious. “The Commission’s factual findings are conclusive if supported by substantial evidence.”<sup>105</sup> “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires more than a scintilla but less than a preponderance of evidence.”<sup>106</sup> When considering the Commission’s “evaluation of scientific data within its expertise,” the courts afford the Commission “an extreme degree of deference.”<sup>107</sup> As more fully discussed below, we find that the EA’s conclusions were supported by substantial evidence and affirm the Commission’s findings in the April 28 Order.

### 1. Human Health Risk Assessment and Air Quality

48. In response to concerns expressed by agencies and stakeholders, Commission staff included a Human Health Risk Assessment within the EA to estimate the nature and probability of adverse health effects in humans who may be exposed to chemicals in contaminated environmental media. Staff estimated the inhalation risks from airborne exposure to hazardous air pollutant emissions from operation of the proposed new and

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<sup>103</sup> *Id.* See also *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (*Myersville*) (“NEPA does not require any particular substantive result.”).

<sup>104</sup> *Robertson*, 490 U.S. at 351.

<sup>105</sup> *S. Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 54 (D.C. Cir. 2014) (citing 16 U.S.C. § 825l(b) (2012)).

<sup>106</sup> *Id.* (internal quotation and citation omitted).

<sup>107</sup> *Myersville*, 783 F.3d at 1308 (internal quotation marks omitted); see also *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 377 (1989) (“Because analysis of the relevant documents requires a high level of technical expertise, we must defer to the informed discretion of the responsible federal agencies.”) (internal quotation marks omitted).

modified compressor stations and found that such operations would not cause significant impacts on health from inhalation of emissions in the Project areas.<sup>108</sup>

49. Otsego argues that the EA inappropriately limited its analysis of compressor station pollutants to those stations located in gas production areas, rather than analyzing compressor stations located on transmission lines.<sup>109</sup> Otsego misreads the EA. As explained in the April 28 Order, the EA did not analyze pollutants of compressor stations located in gas production areas. Rather, as the EA and the Order make clear, the EA analyzed the effects of pollutants from compressor stations located along transmission lines, because as the April 28 Order states, hazardous air pollutant concentrations documented in communities located close to natural gas production areas “are not comparable to gas handled by transmission pipeline compressor stations ....”<sup>110</sup> During gas processing, most of the hazardous air pollutants and other air toxics (such as benzene, toluene, ethylbenzene, and xylene) are stripped from the natural gas. Thus, pre-processed natural gas will have higher levels of these air contaminants (both from fugitive gas emissions and stack emissions) than transmission-quality post-processed gas, like the gas compressed at the New Market Compressor Station. It is primarily for this reason that we conclude that compressor stations located in gas production areas transporting pre-processed gas, and compressor stations along transmission lines transporting post-processed gas are not comparable.<sup>111</sup>

50. Otsego states that “elevated levels of hazardous pollutants” and “health problems” have been documented around Millennium Pipeline Company, L.L.C.’s Minisink Compressor Station, in Orange County, New York,<sup>112</sup> which, like the compressor stations proposed in this proceeding, is located along a transmission line and not in a gas-production area. However, in its rehearing request, Otsego does not cite to any specific health problem

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<sup>108</sup> See April 28 Order, 155 FERC ¶ 61,106 at P 31 and n.31; EA Appendix B.

<sup>109</sup> May 31 Request for Rehearing at 16-17.

<sup>110</sup> April 28 Order, 155 FERC ¶ 61,106 at P 108. See also EA Appendix B at 1 (declining to apply studies from production facilities/compressor stations to the proposed transmission compressor station).

<sup>111</sup> See EA Appendix B at 6 (citing Evan Branosky et al., *Defining the Shale Gas Life Cycle: A Framework for Identifying and Mitigating Environmental Impacts* (World Resources Institute, 2012); Christopher W. Moore, *Air Impacts of Increased Natural Gas Acquisition, Processing, and Use: A Critical Review*, 48 *Envtl. Sci. Tech.* 8349–8359 (2014)).

<sup>112</sup> *Millennium Pipeline Company, L.L.C.*, 140 FERC ¶ 61,045, *reh’g denied*, 141 FERC ¶ 61,198 (2012), *reh’g denied*, 142 FERC ¶ 61,077 (2013).

around the Minisink Compressor Station. Further, Otsego fails to identify any areas of specific concern or evidence of how the New Market Compressor Stations' emissions levels could cause the same unspecified effects as those alleged to occur around the Minisink Compressor Station. Commission staff's Human Health Risk Assessment found that hazardous air pollutants from normal operations and events at the proposed compressor stations are below a level of human health concern.<sup>113</sup>

51. Otsego also contends that the Commission should have required Dominion to install an oxidation catalyst on the Brookman Corners Station's existing Taurus 60 turbine in order to further protect air quality.<sup>114</sup> Otsego explains that oxidation catalysts are standard for newly constructed compressor stations and will be installed on the compressor units at the new Horseheads and Sheds Stations.<sup>115</sup> As we previously stated, the Brookman Corners Station's existing Taurus 60 combustion turbines are beyond the scope of this proceeding.<sup>116</sup> Moreover, Otsego's concerns were adequately addressed in the underlying order, and we affirm the April 28 Order's analysis that additional mitigation measures are not required to reduce air quality impacts.<sup>117</sup> In addition, Otsego's concerns are now moot because the New York Department of Environmental Conservation issued Dominion an air quality permit that requires Dominion to install an oxidation catalyst on its existing Taurus 60 unit at the Brookman Corners Station.<sup>118</sup>

52. Otsego states that the EA erred by using wind data from a weather station located over 40 miles away from the Brookman Corners Station to evaluate air dispersion at the site of the station.<sup>119</sup> Otsego states that the Commission's conclusion that the local weather station is in the same climatological region as the Brookman Corners Station does not account for the impacts of the local topography and a nearby creek on air dispersion at the

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<sup>113</sup> EA Appendix B at 33-34.

<sup>114</sup> May 31 Request for Rehearing at 17.

<sup>115</sup> *Id.* at 17-18.

<sup>116</sup> *See supra* P 27.

<sup>117</sup> April 28 Order, 155 FERC ¶ 61,106 at P 101.

<sup>118</sup> *See* New York Department of Environmental Conservation Air Quality Permit issued on January 1, 2017, for the Brookman Corners Station at 39-40, [http://www.dec.ny.gov/dardata/boss/afs/permits/427300003800001\\_r1.pdf](http://www.dec.ny.gov/dardata/boss/afs/permits/427300003800001_r1.pdf).

<sup>119</sup> May 31 Request for Rehearing at 18.

Brookman Corners Station.<sup>120</sup> We disagree. The EA disputed a similar assertion that air dispersion modeling is only accurate in flat terrain, under consistent conditions, and that as Otsego requests, complex terrain (like Otsego explains exists around the Brookman Corners Station) requires on-site measurements, complex computer modeling, and empirical cross-referencing. We affirm the EA's conclusion that Commission staff's use of the EPA-recommended AERMOD model is suitable for both simple and complex terrain to predict the peak ground-level concentrations for compliance with air quality regulations.<sup>121</sup>

53. Otsego asserts that the EA erred when it determined that the stack heights at the Brookman Corners Station would not affect air quality. Otsego states that the EA ignored the fact that the Brookman Corners Station is located at the base of a valley when it found that the Brookman Corners Station's stacks are taller than nearby structures.<sup>122</sup> We disagree. The EA evaluated whether the proposed stack heights on the new compressor stations, including the Brookman Corners Station, would provide sufficient plume for gas to rise and mix in higher levels of the atmosphere. The EA found that the new 15-meter-high stacks are taller than nearby structures and would provide sufficient plume rising and mixing.<sup>123</sup> Additionally, as identified, AERMOD uses terrain data for the modeling impacts that accounts for elevation differences. As stated in the EA, AERMOD results for the Brookman Corners Station demonstrate that modeled concentrations of pollutants resulting from operation of the Station plus background concentrations fall under the applicable National Ambient Air Quality Standards outside of the Station's fence-line boundary.<sup>124</sup>

54. Otsego disagrees with the Commission's findings that vapor recovery systems were not necessary for the proposed compressor stations.<sup>125</sup> Otsego states that the Commission ignored its comments that up to 29 percent of emissions from reciprocating engines (like those proposed at the Brookman Corners Station) are not the product of combustion, but of fugitive emissions from unburned gas; these fugitive emissions are not properly vented into the atmosphere, like the combusted gas, so they could increase the potential for public exposure.<sup>126</sup> We disagree. The Commission addressed general leak emissions (or fugitive

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

<sup>121</sup> EA at 86.

<sup>122</sup> May 31 Request for Rehearing at 19.

<sup>123</sup> EA at 86.

<sup>124</sup> EA at 83.

<sup>125</sup> May 31 Request for Rehearing at 20.

<sup>126</sup> *Id.*

emissions) of methane and other components of natural gas and determined that these emissions from valves, flanges, etc. may be possible.<sup>127</sup> However, the EA found that, under normal operations, impacts of fugitive emissions and venting from the compressor stations would be below a level of health concern.<sup>128</sup> We agree and affirm the Commission's finding that vapor recovery systems are not required.

55. The EA considered blowdown and venting emissions from an acute perspective, rather than considering chronic effects because "full station blowdowns will likely occur no more frequently than once every five years."<sup>129</sup> Otsego takes issue with this analysis, contending that emergency or maintenance blowdowns occur much more frequently.<sup>130</sup> We disagree. Otsego's argument in this regard is unsupported by any evidence or specific studies supporting the notion that full station blowdown events occur more frequently than once a year. The EA explained that the U.S. Department of Transportation's (DOT) regulations require companies to test their emergency shutdown systems each year. The full station must be blown down to atmosphere once every five years. In other years, a capped test (full activation of the emergency shutdown systems with the blowdown vent capped to prevent the release of natural gas into the atmosphere) may be conducted in lieu of a full station blowdown.<sup>131</sup> As Otsego suggests, a company may perform a full station blowdown in emergency situations, but Otsego did not present any evidence that Dominion has performed these events at its existing systems with such regularity to require a chronic health analysis or field studies. In any event, as the Commission already explained, the Human Health Risk Assessment averaged out routine venting and includes these emissions as part of the chronic risk assessment.<sup>132</sup>

56. Finally, Otsego states that the EA's comparison of compressor station emissions to everyday combustion sources makes a compelling argument that better emissions controls are needed at Dominion's compressor stations. Table 16 and 17 of the EA compare emissions from the compressor stations to common everyday combustion sources.<sup>133</sup> The

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<sup>127</sup> April 28 Order, 155 FERC ¶ 61,106 at P 103.

<sup>128</sup> EA Appendix B at 34.

<sup>129</sup> April 28 Order, 155 FERC ¶ 61,106 at P 105 (citing EA at 88 and Appendix B at section 2.2).

<sup>130</sup> May 31 Request for Rehearing at 21.

<sup>131</sup> EA Appendix B at 4.

<sup>132</sup> April 28 Order, 155 FERC ¶ 61,106 at P 105 and EA Appendix B at section 2.2.

<sup>133</sup> EA Appendix B at Tables 16 and 17.

EA found that, in some cases, potential emissions from the compressor stations would be considerably higher than the common everyday combustion sources. The New York Department of Environmental Conservation has authority under the Clean Air Act to impose additional emission controls through its Title V permit program. We acknowledge that the magnitude of the emissions from these sources would be some of the largest point sources in the area. However, the concentrations of these criteria pollutants will be below the National Ambient Air Quality Standards, based on air modeling, and therefore not considered a significant impact on human health and the environment.

## 2. Climate Change

57. Otsego disputes our finding that “neither the no-action alternative nor any system alternative was found to have significant environmental advantage over the Project while meeting Dominion’s stated purpose and need for the Project.”<sup>134</sup> It states that the Commission’s finding places climate change on equal footing with Dominion’s desire to build the Project, in violation of the Commission’s statutory obligation under NEPA to evaluate the environmental impacts of climate change. Otsego asks the Commission to provide a comprehensive analysis of lifecycle emissions, including production, processing, distribution, and consumption of gas.<sup>135</sup>

58. With respect to impacts from greenhouse gases, the EA discusses the direct greenhouse gas emissions from construction and operation of the Project<sup>136</sup> and quantified the greenhouse gas emissions from New Market Project construction (8,085 metric tons per year, CO<sub>2</sub>-equivalent [metric tpy CO<sub>2</sub>e]) and operation (185,920 metric tpy CO<sub>2</sub>e).<sup>137</sup> The EA also includes a discussion of climate change impacts in the region and the regulatory structure for greenhouse gases under the Clean Air Act.<sup>138</sup>

59. Otsego baldly asserts that “a comprehensive analysis of lifecycle emissions, including emissions relating to the production, processing, distribution, and consumption of

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<sup>134</sup> May 31 Request for Rehearing at 22 (citing April 28 Order, 155 FERC ¶ 61,106 at P 123).

<sup>135</sup> *Id.* at 23.

<sup>136</sup> *See* EA at 71-79.

<sup>137</sup> *See* EA at 64-86, 108. These estimates include new project components, as well as existing jurisdictional pipelines.

<sup>138</sup> *See* EA at 66, 71, and 108.

gas associated with Dominion’s New Market Project, should be performed.”<sup>139</sup> However, Otsego fails to show that greenhouse gas emissions from upstream production activities or downstream use of natural gas are an indirect impact of the New Market Project. As we have previously concluded in natural gas infrastructure proceedings, the environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ regulations.<sup>140</sup> A causal relationship sufficient to warrant Commission analysis of the non-pipeline activity as an indirect impact would only exist if the proposed pipeline would transport new production from a specified production area and that production would not occur in the absence of the proposed pipeline (i.e., there will be no other way to move the gas).<sup>141</sup>

60. Nothing in the record supports the dissent’s assertion that approval of transportation projects spurs the production of natural gas. The fact that natural gas production and transportation are both components of the general supply chain required to bring natural gas to market is not in dispute. However, this does not mean that the Commission’s action of approving a particular pipeline project will cause or induce the effect of additional shale gas production. Rather, a number of factors, such as domestic natural gas prices and production costs, drive new drilling.<sup>142</sup>

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<sup>139</sup> May 31 Request for Rehearing at 23.

<sup>140</sup> See, e.g., *Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh’g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (2012) (unpublished opinion).

<sup>141</sup> See *cf. Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394, 400 (9th Cir. 1989) (upholding the environmental review of a golf course that excluded the impacts of an adjoining resort complex project). See also *City of Carmel-by-the-Sea v. U.S. Dep’t of Transportation.*, 123 F.3d 1142, 1162 (9th Cir. 1997) (acknowledging that existing development led to planned freeway, rather than the reverse, notwithstanding the proposed freeway’s potential to induce additional development); *Laguna Greenbelt, Inc. v. USDOT*, 42 F.3d 517, 525 (9th Cir. 1994) (upholding the EIS’s determination that the proposed highway would not result in further growth because the surrounding land was already developed or otherwise committed to uses not contingent on highway construction).

<sup>142</sup> See, e.g., *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161, at P 39 (2015) (*Rockies Express*). See also *Sierra Club v. Clinton*, 746 F. Supp. 2d 1025, 1045 (D. Minn. 2010) (holding that the U.S. Department of State, in its environmental analysis for an oil pipeline permit, properly decided not to assess the transboundary impacts associated with oil production because, among other things, oil production is driven by oil prices, concerns (*continued ...*))

61. Even if a causal relationship between the proposed action here and upstream production was presumed, the scope of the impacts from any such production is too speculative and thus not reasonably foreseeable.<sup>143</sup> As we have explained,<sup>144</sup> neither the Commission nor the applicant generally has sufficient information to determine the origin of the gas that will be transported onto a pipeline. We disagree with the dissent's assertion that we lack information about specific upstream production or downstream uses simply because we "did not ask for it." To be clear, the Commission only has jurisdiction over the pipeline applicant, whose sole function is to transport gas from and to the contracted for delivery and receipt points. While the shippers might contract with a specific producer<sup>145</sup> for their gas supply, the shipper would not know the source of the producer's gas, and, for that matter, producers are not required to dedicate supplies to a particular shipper and thus likely will not know in advance the exact source of production. In short, "just ask[ing] for it" would be an exercise in futility.<sup>146</sup> Moreover, there are no forecasts in the record which would enable the Commission to meaningfully predict production-related impacts, many of which are highly localized.<sup>147</sup> In a proceeding such as this one, where the shippers are local

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surrounding the global supply of oil, market potential, and cost of production); *Florida Wildlife Fed'n v. Goldschmidt*, 506 F. Supp. 350, 375 (S.D. Fla. 1981) (ruling that an agency properly considered indirect impacts when market demand, not a highway, would induce development).

<sup>143</sup> "Reasonable foreseeability" does not include "highly speculative harms" that "distort[] the decisionmaking process" by emphasizing consequences beyond those of "greatest concern to the public and of greatest relevance to the agency's decision." *Robertson*, 490 U.S. at 355-56, 109 S.Ct. 1835 (internal quotation marks and citations omitted).

<sup>144</sup> *See supra*. P 38.

<sup>145</sup> Conversely the shippers may purchase gas from marketers at a hub.

<sup>146</sup> Not even the states, which have jurisdiction over the production of natural gas, would have information regarding where (other than in a general region) gas that will be delivered into a particular new pipeline will be produced, or whether the gas will come from existing or new wells. *See generally Sierra Club v. U.S. Department of Energy*, 867 F.3d 189, 200 (D.C. Cir. 2017) (DOE's obligation under NEPA to "drill down into increasingly speculative projections about regional environmental impacts [of induced natural gas production] is also limited by the fact that it lacks any authority to control the locale or amount of export-induced gas production, much less any of its harmful effects") (citing *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (*Pub. Citizen*)).

<sup>147</sup> The dissent cites to *Del. Riverkeeper Network v. FERC*, 753 F.3d at 1310 (D.C. (continued ...))

distribution companies, contrary to the dissent's assertion, it would be nearly impossible for the applicant or even the shipper to construct such forecasts. Here, Dominion holds contracts with two downstream local distribution companies for transportation capacity, neither of which control production. The specific source of natural gas to be transported via the Project is currently unknown and will likely change throughout the Project's operation. Furthermore, where the project adds compression to an existing mainline, like this one, and there is not even an identified general supply area for the gas that will be transported on the project, any analysis of production impacts would be so generalized it would be meaningless.<sup>148</sup> NEPA does not require the impractical.<sup>149</sup> Accordingly, even assuming that natural gas production is induced by the New Market Project, the impacts of that production are not reasonably foreseeable because they are "so nebulous" that we "cannot forecast [their] likely effects."<sup>150</sup>

62. Furthermore, we do not find that approval of the New Market Project will spur additional identifiable gas consumption. The D.C. Circuit Court of Appeals in *Sierra Club v. FERC*,<sup>151</sup> held that where it is known that the natural gas transported by a project will be used for end-use combustion, the Commission should "estimate[] the amount of power-plant carbon emissions that the pipelines will make possible."<sup>152</sup> However, we

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Cir. 2014), to support its argument that where a developer cannot provide the specific source of natural gas or the ultimate end use, the Commission must evaluate reasonable forecasts of greenhouse gas emissions from production and consumption. This would be true only if the impacts from greenhouse gas emissions would be a reasonably foreseeable result of our action in approving the New Market Project, which we have explained is not the case. We find the connection between our approval of this project and the impacts resulting from production or consumption to be too tenuous to warrant consideration of comparative information.

<sup>148</sup> Even where there is a general source area, the Commission would still need more detailed information regarding the number, location, and timing of wells, roads, gathering lines, and other appurtenant facilities, as well as details about production methods, which can vary per producer and depending on the applicable regulations in the various states, to develop a meaningful impacts analysis.

<sup>149</sup> *Kleppe*, 427 U.S. at 414 (noting that "practical considerations of feasibility might well necessitate restricting the scope of comprehensive statements").

<sup>150</sup> *See supra* n.71.

<sup>151</sup> 867 F.3d 1357 (D.C. Cir. 2017).

<sup>152</sup> *Id.* at 1371.

note that the SMP Projects at issue in *Sierra Club v. FERC* are factually distinct from the New Market Project. The record in the SMP Projects indicated that the natural gas would be delivered to specific customers – power plants in Florida – such that the court concluded that the consuming of gas by those power plants was reasonably foreseeable and the impacts of that activity warranted environmental examination.<sup>153</sup> Here, although the gas to be transported by the New Market Project will be received by two local distribution companies, no party – including Otsego, Dominion, or the shippers – has identified what the specific end use of the transported natural gas will be. Presuming the local distribution company shippers do not resell the gas into the market and instead use the gas to serve their industrial and residential customers, the range of possibilities include substitution for higher-emitting fuels, industrial feedstock for existing or potentially new customers, or other combustion. Moreover, the consumed volume is also unknown because the project’s transportation capacity is designed for intermittent peak use. Thus, the Commission does not know where the gas will ultimately be consumed or what fuels it will displace.

63. The record in this case does not support a finding that the potential increase of greenhouse gas emissions associated with the production, processing, distribution, or consumption of gas are causally related to our action approving this Project, as required by CEQ regulations, despite the dissent’s claim otherwise.<sup>154</sup> Companies will continue to negotiate for and find natural gas supplies; end use consumption of natural gas will occur regardless of whether the project before us is approved. With respect to climate change

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<sup>153</sup> *Id.*

<sup>154</sup> Although the dissent asserts that we generally could obtain more information, it does not explain how any particular information would alter our conclusion regarding causation, as opposed to simply providing more detail on environmental impacts of upstream production and downstream greenhouse gas emissions, which we have determined, consistent with CEQ regulations and case law, are not caused by the New Market Project. Further, contrary to the dissent’s suggestion, the “reasonably close causal relationship” required under NEPA is analogous but not identical to proximate causation from tort law. As courts have noted: “We ‘look to the underlying policies or legislative intent in order to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not.’” *Sierra Club v. DOE*, 867 F.3d 189, 198 (D.C. Cir. 2017) (quoting *Pub. Citizen*, 541 U.S. at 767 (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774, 103 S.Ct. 1556, 75 L.Ed.2d 534 (1983))). See also *New Jersey Dep’t of Env’tl. Prot. v. U.S. Nuclear Regulatory Comm’n*, 561 F.3d 132, 141 (3d Cir. 2009) (quoting *Metropolitan Edison* for the proposition that the agency must “draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not,” and observing that “this line appears to approximate the limits of an agency’s area of control”).

impacts of upstream production and downstream use, we are again unable to predict the nature and extent of the climate change impacts associated with upstream production and downstream use.<sup>155</sup>

64. The dissent relies on *Mid States Coalition for Progress v. Surface Transportation Board*<sup>156</sup> and *Barnes v. Department of Transportation*<sup>157</sup> to argue that “[t]he fact that the pipeline’s exact effect on the demand for gas may be unknown is no reason not to consider the type of effect it is likely to have” on downstream gas emissions. *Mid States* and *Barnes* are distinguishable from the circumstances here.

65. In *Mid States*, petitioners argued that the projected availability of 100 million tons of low-sulfur coal per year at reduced rates would increase the consumption by existing power plants of low-sulfur coal vis-à-vis other fuels (e.g., natural gas).<sup>158</sup> The court found that the likely increased consumption of low-sulfur coal by power plants would be an indirect impact of construction of a shorter, more direct rail line to transport the low-sulfur coal from the mining area to existing coal-burning power plants.<sup>159</sup> Thus, the Surface Transportation Board was required to consider the effects on air quality of such consumption.<sup>160</sup> As we explained in the April 28 Order,<sup>161</sup> in *Mid States* it was undisputed that the proposed project would increase the use of coal for power generation. Here, it is unknown where and how

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<sup>155</sup> See *supra* P 37.

<sup>156</sup> 345 F.3d 520, 549 (8th Cir. 2003) (*Mid States*).

<sup>157</sup> 655 F.3d 1124, 1138 (9th Cir. 2011) (*Barnes*).

<sup>158</sup> *Mid States*, 345 F.3d at 548.

<sup>159</sup> *Id.* at 550 (finding compelling the fact that while the Board’s draft EIS had stated that it would consider potential air quality impacts associated with the anticipated increased use of the transported coal, the final EIS failed to do so).

<sup>160</sup> However, the court did not require the Board to consider the impacts that would be associated with potential construction of any new power plants that might be “induced” as the result of the availability of inexpensive coal, because those impacts were speculative and not reasonably foreseeable. *Id.* at 549 (noting that where and what size additional

power plants may be built is speculative and “hardly the reasonably foreseeable significant impacts that must be analyzed under NEPA”).

<sup>161</sup> April 28 Order, 155 FERC ¶ 61,106 at P 79.

the transported gas will be used and there is no identifiable end-use as there was in *Mid States* or in *Sierra Club v. FERC*.<sup>162</sup> Further, unlike the case here, the Surface Transportation Board had stated that approval of the rail line would lead to increased coal production.<sup>163</sup> It is primarily for this reason that the dissent's reliance on *Mid States* is "misplaced since the agency in *Mid States* stated that a particular outcome was reasonably foreseeable and that it would consider its impact, but then failed to do so," and the Commission did neither of those things.<sup>164</sup> In *Barnes*, the agencies argued that the proposal to add a third runway to a two-runway airport would not have growth-inducing effects on aviation activity as they anticipated that aviation activity at the airport was expected to increase at the same rate regardless of whether a new runway was built.<sup>165</sup> The court disagreed, finding that the case involved a major ground capacity expansion project with unique potential to create demand. The court therefore concluded that the EA was insufficient for failing to (i) to conduct a demand forecast based on three, rather than two runways, and (ii) discuss the impact of a third runway on aviation demand.<sup>166</sup> In contrast, here, the New Market Project is adding a small amount of incremental capacity on Dominion's existing 7,700 mile interstate pipeline system, compared to the addition of a runway at an airport that has only two runways, and there is no basis in the record for a conclusion that the project will increase demand.

66. As we have explained, the link here between the pipeline and the local distribution company shippers on one hand, and between the pipeline and the producer on the other, is much more attenuated than the links in *Mid States* and *Barnes*.<sup>167</sup> The Commission has found that downstream local distribution companies will continue to negotiate for and find natural gas supplies. The dissent emphasizes the warning in *Mid States* that "if the *nature* of the effect is reasonably foreseeable but its *extent* is not . . . the agency may not simply ignore the effect."<sup>168</sup> The Commission has not ignored the impacts of end use greenhouse gas emissions. We have explained the lack of causation and reasonable foreseeability of

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<sup>162</sup> 867 F.3d 1357.

<sup>163</sup> *Mid States*, 345 F.3d at 549.

<sup>164</sup> *See Ark. Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 431 F.3d 1096, 1102 (8th Cir. 2005).

<sup>165</sup> *Barnes*, 655 F.3d at 1136.

<sup>166</sup> *Id.* at 1136, 1138-39.

<sup>167</sup> April 28 Order, 155 FERC ¶ 61,106 at P 79 (distinguishing *Mid States*).

<sup>168</sup> *Mid States*, 345 F.3d at 549 (emphasis in original).

effects related to the production and consumption of natural gas. The EA's discussion of climate change impacts in the region and the regulatory structure for greenhouse gases under the Clean Air Act<sup>169</sup> satisfy the directive to analyze the nature of an impact whose extent cannot be known. NEPA's hard look and the NGA's public interest standards require no more.

67. Otsego objects to the Commission's statement in the April 28 Order that no standard methodology exists to determine how a project's contribution to greenhouse gas emissions would translate into physical effects on the environment for the purposes of evaluating the Project's impacts on climate change.<sup>170</sup> But Otsego does not offer any such methodology and we continue to find that the EA correctly concluded that no standard methodology exists.<sup>171</sup> Without an accepted methodology, the Commission cannot make a finding whether a particular quantity of greenhouse gas emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change.<sup>172</sup>

68. Further, we cannot find a suitable method to attribute discrete environmental effects to greenhouse gas emissions. Integrated assessment models were developed to estimate certain global and regional physical climate change impacts due to incremental greenhouse gas emissions under specific socioeconomic scenarios. It would be inappropriate to run the integrated assessment models to estimate global and broad regional physical climate change impacts from the project-related greenhouse gas emissions. This is because we would have to arbitrarily determine whether the models' outputs of the potential increase in atmospheric greenhouse gas concentration, rise in sea level, rise in sea water temperatures, or other calculated physical impacts would be significant for that particular pipeline project. We are not aware of a widely accepted standard – which was established by international or federal

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<sup>169</sup> See EA at 66, 71, and 108.

<sup>170</sup> May 31 Request for Rehearing at 14.

<sup>171</sup> EA at 108. See also *DTE Midstream Appalachia, LLC*, 162 FERC ¶ 61,238, at P 79 (2018) (explaining that “[t]he Commission’s policy on the use of the Social Cost of Carbon has been to recognize the availability of this tool, while concluding that it is not appropriate for use in project-level NEPA reviews”); *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233, at PP 30-51 (2018) (discussing determination not to employ the Social Cost of Carbon in FERC proceedings); *Western Organization of Resource Councils v. U.S. Bureau of Land Management*, CV 16-21-GF-BMM, slip op. at 36 (D. Mon. Mar. 23, 2018) (“Plaintiffs identify no case, and the Court has discovered none, that supports the assertion that NEPA requires the agency to use the global carbon budget analysis.”).

<sup>172</sup> See *National Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145, at P 187 (2017).

policy, or by a recognized scientific body – to ascribe significance to a given rate or volume of greenhouse gas emissions.

69. Other models, such as atmospheric modeling used by the Intergovernmental Panel on Climate Change, Environmental Protection Agency, National Aeronautics and Space Administration, and others are not reasonable for project-level analysis. The ability to determine localized impacts from greenhouse gases by use of these models is not possible at this time. Contrary to Otsego’s suggestions, appropriate scientific methodologies are necessary in order for the Commission to analyze the related climate change effects.

70. Our decision not to use integrated assessment models or other atmospheric modeling methods does not in any way indicate that the Commission is not cognizant of the potentially severe consequences of climate change, undermine our hard look at the effects of the New Market Project and our disclosure of these effects to the public, or undermine informed public comment or informed decision making. The Commission is committed to monitoring climate science, state and national targets, and climate models that may inform our decision making.<sup>173</sup>

### 3. Noise

71. Otsego questions the Commission’s use of a day-night sound level ( $L_{dn}$ ) threshold of 55 decibels on an A-weighted scale (dBA)<sup>174</sup> to determine whether a company must mitigate noise impacts from a compressor station. Otsego states that EPA developed the 55 dBA standard as a maximum threshold for urban areas, not for rural areas where the noise thresholds are much lower.<sup>175</sup> As explained in the EA,<sup>176</sup> our selected noise criterion is based on a 1974 EPA study that identified an  $L_{dn}$  of 55 dBA as protecting the public from indoor and outdoor activity interference.<sup>177</sup> The projected noise levels at all of the

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<sup>173</sup> See *WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 (D.C. Cir. 2013) (“Because current science does not allow for the specificity demanded . . . , the BLM was not required to identify specific effects on the climate in order to prepare an adequate EIS.”).

<sup>174</sup> The A-weighted scale is an expression on the relative loudness of sounds perceived by the human ear. The A-weighted system reduces the decibel values of sounds at low frequencies because the human ear is less sensitive to low and high frequencies and more sensitive to mid-range frequencies.

<sup>175</sup> May 31 Request for Rehearing at 25.

<sup>176</sup> EA at 90.

<sup>177</sup> EPA, *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety* (1974) (identifying an Ldn of (continued ...)

New Market Project's compressor stations will be well below this level at all noise sensitive areas. We recognize that when the expanded Brookman Corners Station is operating, it will increase the ambient noise levels. However, the potential increase in ambient noise due to the expansion of the Brookman Corners Station is projected to be between 0.7 and 1.1 decibels (dB) at the nearest noise sensitive areas.<sup>178</sup> The noticeable noise increase threshold for humans is about 3 dB; thus, the increase associated with the proposed expansion will be barely, if at all, noticeable.

72. On rehearing, Otsego contends that Dominion must mitigate any noise impacts at the existing property line, as required by the Town of Minden's Code (where the Brookman Corners Station is located), not at the nearest noise-sensitive area, as required by Environmental Condition No. 16. The EA summarized the applicable local noise ordinances where Dominion proposed to locate each of its proposed and modified compressor stations for the New Market Project.<sup>179</sup> The EA specified that the Town of Dryden (near the Borger Compressor Station) was the only locality in the immediate Project area with an applicable noise ordinance and found that our criterion of 55 dBA as an  $L_{dn}$  was more restrictive than the Town of Dryden's limits. Otsego did not previously dispute this analysis, nor did Otsego provide us with a copy of the Town of Minden's Code. In the absence of evidence to the contrary, we find that our  $L_{dn}$  of 55 dBA criterion at the existing noise-sensitive area is sufficient to mitigate against adverse noise impacts.

73. We disagree with Otsego's assertions that the April 28 Order failed to respond to comments Otsego submitted from a noise consultant who found flaws with Dominion's noise analysis. As the Commission stated, Otsego's comments, which did not include a cover letter, appeared to be from a noise consultant who asked questions and received answers from Dominion. However, the Commission could not ascertain how Otsego's consultant asked and received the questions and answers from Dominion.<sup>180</sup> On rehearing, Otsego does not provide any clarity regarding this matter. In any event, the April 28 Order responded to the concerns raised by Otsego's consultant<sup>181</sup> and we will address those issues in this order as well.

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55 dBA as necessary to protect against speech interference and sleep disturbance for residential, educational, and healthcare activities). The 1974 EPA study did not distinguish between rural and urban areas.

<sup>178</sup> EA at 92-93, Tables 16 and 17.

<sup>179</sup> EA at 90.

<sup>180</sup> April 28 Order, 155 FERC ¶ 61,106 at n.194.

<sup>181</sup> *Id.* PP 127-28.

74. We affirm the April 28 Order's findings that the noise analysis prepared for the Brookman Corners Station is sound.<sup>182</sup> We reject Otsego's contention that conclusions in the EA regarding anticipated noise levels at noise-sensitive areas near the Brookman Corners Compressor Station are invalid because the existing Brookman Corners Compressor Station was operational when ambient noise levels were recorded.<sup>183</sup> Otsego presents no evidence to change our finding that the noise analysis provided in the Project's application utilized proper engineering practice and followed American National Standards Institute standards applicable to a study of this type. As discussed in the April 28 Order and the EA, the Commission requires that noise levels generated by a proposed compressor station or, if existing, noise from the existing station and expansion combined, may not exceed an  $L_{dn}$  of 55 dBA at any pre-existing noise-sensitive areas.<sup>184</sup> The analysis conducted demonstrates that the proposed expansion Project would meet this requirement.

75. Historically, it is rare that an applicant is unable to demonstrate compliance with our  $L_{dn}$  of 55 dBA requirement upon commercial operation and would need to take additional mitigation measures. However, in such cases, depending on the cause of the excess noise, it may take up to a year to identify and install additional mitigation or rectify compressor station noise levels, even when applicants begin working to resolve the issue immediately. It is for this reason that the Commission included Environmental Condition No. 16, requiring Dominion to conduct noise surveys within 60 days at its new and modified compressor stations and to mitigate any exceedance of an  $L_{dn}$  of 55 dBA levels within one year of the compressor stations' in-service dates.<sup>185</sup>

76. Finally, we disagree with Otsego's contention that Dominion did not conduct a low frequency noise analysis. The EA discussed the impacts of low frequency noise generated by the Project on noise-sensitive areas.<sup>186</sup> Section 380.12 of the Commission's regulations requires that the operation of compressor stations not result in any perceptible increase in vibration at noise-sensitive areas. The EA explained that, generally, low frequency octave bands should be below 70 dB to prevent low frequency induced noise vibrations in residential structures. An analysis of all of the noise-sensitive areas at Dominion's New Market Project compressor stations found that all of the stations will operate below

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<sup>182</sup> *Id.* P 127.

<sup>183</sup> May 31 Request for Rehearing at 24-25.

<sup>184</sup> April 28 Order, 155 FERC ¶ 61,106 at P 127; EA at 91-95.

<sup>185</sup> April 28 Order, 155 FERC ¶ 61,106 at Environmental Condition No. 16.

<sup>186</sup> EA at 93-94.

70 dB at all noise-sensitive areas.<sup>187</sup> Otsego did not submit evidence to dispute this finding. Therefore, we affirm the April 28 Order’s finding that operation of the New Market Project, including the expansion of the Brookman Corners Station, will not result in significant noise impacts.<sup>188</sup>

#### 4. Lighting

77. In response to Otsego’s comments, the April 28 Order encouraged Dominion to investigate ways to minimize the Brookman Corners Station’s lighting impacts, particularly to minimize impacts on nighttime skies.<sup>189</sup> On rehearing, Otsego reiterates these concerns. Specifically, Otsego asks that the Commission require Dominion to commit to “full-cutoff”<sup>190</sup> and “dark sky” lighting at the Brookman Corners Station to protect wildlife and ensure no light intrusion for wildlife protection and surrounding property owners.

78. To the extent that Otsego seeks to require additional lighting measures at the existing light sources at the Brookman Corners Station, as we previously explained, requiring the modification of existing lighting would go beyond the scope of the Project proposal.<sup>191</sup> The EA found that the indirect impacts on wildlife from Dominion’s proposed nighttime security lighting at the new and modified compressor stations would be minimal.<sup>192</sup> The EA also found that the modified Brookman Corners Station will not result in a significant impact on visual resources, as there is active agriculture on station property and few visual receptors in view of the existing station.<sup>193</sup> Thus, we see no need to require further measures here. However, we continue to encourage Dominion to look at opportunities to reduce any lighting impacts from the modified Brookman Corners Station.

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<sup>187</sup> *Id.* at 94, Table 18.

<sup>188</sup> April 28 Order, 155 FERC ¶ 61,106 at P 128.

<sup>189</sup> *Id.* P 129.

<sup>190</sup> Otsego explains that “full-cutoff” lighting directs light downward and shields the light source from direct view. May 31 Request for Rehearing at 27.

<sup>191</sup> *See supra* P 27; April 28 Order, 155 FERC ¶ 61,106 at n.197.

<sup>192</sup> EA at 38 and 40.

<sup>193</sup> *Id.* at 48.

## 5. Pipeline Safety

79. On rehearing, Otsego asks that the Commission require Dominion to conduct a thorough inspection of its existing facilities to identify any safety risks and determine an appropriate maximum allowable operating pressure.<sup>194</sup> Further, Otsego asserts that the Commission disregarded its concerns over pipeline safety.<sup>195</sup> We disagree. As the Commission explained, pipeline safety standards are mandated by regulations adopted by DOT's Pipeline and Hazardous Material Safety Administration.<sup>196</sup> DOT has the exclusive authority to promulgate federal safety standards used in the transportation of natural gas.<sup>197</sup> These regulations are protective of public safety. As detailed in the EA, Dominion has designed and will construct, operate, and maintain the Project in accordance with DOT's pipeline safety regulations.<sup>198</sup> DOT also prescribes the minimum standards for operating and maintaining pipeline facilities, including the requirement to establish emergency plans, maintain liaison with appropriate fire, police and public officials, and establish a continuing education program.<sup>199</sup> Otsego does not provide any explanation regarding how Dominion's New Market Project will not comply with these mandatory standards.

## 6. Alternatives

80. Otsego contends that the Commission should not have dismissed the use of electric compressors as a viable alternative to the proposed gas-fired units at the Brookman Corners Station. Otsego states that a 230-kilovolt powerline crosses the Brookman Corners Station's property; thus, the EA should not have dismissed electric compressors as a viable alternative because adequate high voltage powerlines are not available at the compressor station's site.<sup>200</sup>

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<sup>194</sup> May 31 Request for Rehearing at 29.

<sup>195</sup> *Id.* at 28-29.

<sup>196</sup> April 28 Order, 155 FERC ¶ 61,106 at P 133 (citing 49 C.F.R. pt. 192 (2017)).

<sup>197</sup> *See Memorandum of Understanding Between the Department of Transportation and FERC Regarding Natural Gas Transportation Facilities* (Jan. 15, 1993), <http://www.ferc.gov/legal/mou/mou-9.pdf>.

<sup>198</sup> April 28 Order, 155 FERC ¶ 61,106 at P 133; EA at 16-17, 32, and 96-102.

<sup>199</sup> *See* 49 C.F.R. § 192.615 (2017) (requiring emergency plans).

<sup>200</sup> Otsego Request for Rehearing at 30-31.

81. The EA did not dismiss electric compressors as a viable alternative to gas-fired compressors for the sole reason that there are not adequate powerlines at the compressor station sites; rather, the EA and the April 28 Order dismissed this alternative because, in addition to the lack of electric units at some sites, the increase in air pollutant emissions at the point of electric generation did not make electric compressors a viable alternative. As the EA explained “a transfer of air pollutants from one geographical location to another ... would not necessarily result in any net benefit for regional air quality.”<sup>201</sup> Otsego presents no evidence to dispute this finding; thus, we affirm the Commission’s finding that the use of electric motor-driven compressor units would not offer a significant environmental advantage over Dominion’s proposal.<sup>202</sup>

The Commission orders:

- (A) Otsego’s June 2, 2016 request to amend its rehearing request is rejected.
- (B) Otsego’s request that its June 2, 2016 amended rehearing request be treated as a request for reconsideration is denied.
- (C) Dominion’s June 14, 2016 answer is granted.
- (D) Otsego’s, Mohawk Valley Keeper’s, and John and Maryann Valentine’s June 23, 2016 answer is rejected.

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<sup>201</sup> EA at 110. *See* April 28 Order, 155 FERC ¶ 61,106 at P 116.

<sup>202</sup> April 28 Order, 155 FERC ¶ 61,106 at P 120.

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(E) Otsego's May 31 Request for Rehearing is denied.

By the Commission. Commissioners LaFleur and Glick are dissenting in part with separate statements attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Dominion Transmission, Inc.

Docket No. CP14-497-001

(Issued May 18, 2018)

LaFLEUR, Commissioner, *dissenting in part*:

Today's order denies rehearing of the order on Dominion's New Market Project. I supported our original authorization of this project because I believed that the project was in the public interest. I write separately to comment on the policy change announced in this order limiting the Commission's review and disclosure of upstream and downstream greenhouse gas (GHG) impacts as part of our responsibilities under the National Environmental Policy Act (NEPA) and the Natural Gas Act (NGA). I am particularly troubled that this policy shift is occurring a few weeks after we initiated a generic proceeding to look broadly at the Commission's pipeline review, and more specifically at the Commission's current policy regarding consideration of upstream and downstream impacts.<sup>1</sup> If not for this policy shift that has little bearing on the record developed in this case, I would support today's order as I continue to believe that this project is in the public interest. However, for the reasons set forth below, I am dissenting in part.

As I have said repeatedly, deciding whether a project is in the public interest requires a careful balancing of the economic need for the project and all of its environmental impacts.<sup>2</sup> Climate change impacts of GHG emissions are environmental effects of a project and are part of my public interest determination.

Since late 2016, the Commission has included increasing amounts of information on upstream and downstream GHG emissions in our pipeline orders. Initially, the Commission estimated downstream GHG emissions by assuming the full combustion of

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<sup>1</sup> *Certification of New Interstate Natural Gas Facilities*, Notice of Inquiry, 163 FERC ¶ 61,042 (2018).

<sup>2</sup> *See, e.g., Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042 (2017) (LaFleur, Comm'r, *dissenting*).

the total volume of gas being transported by the project. This downstream information was included in certificate orders in instances when a project's environmental impact statement (EIS) or environmental assessment (EA) was already finalized without that information, and in later cases was both detailed in NEPA documents and discussed in orders.<sup>3</sup> The Commission placed caveats on the information and analysis, stating generally that the downstream impacts do not meet the definition of an indirect impact and are not mandated as part of the Commission's NEPA review.<sup>4</sup> The Commission nonetheless made a full-burn calculation to determine an upper-bound GHG emissions amount, unless it had specific information to calculate net and gross GHG emissions.

With respect to upstream impacts, the Commission has relied on recent DOE studies<sup>5</sup> to provide generic estimates of impacts associated with upstream natural gas production, including production related GHG emissions.<sup>6</sup> Commission orders that

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<sup>3</sup> Recent Commission orders include the full-burn calculation. *E.g.*, *Columbia Gas Transmission, LLC*, 158 FERC ¶ 61,046, at P 120 (2017); *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061, at P 121 (2017); *Rover Pipeline LLC*, 158 FERC ¶ 61,109, at P 274 (2017); *Tennessee Gas Pipeline Co., L.L.C.*, 158 FERC ¶ 61,110, at P 104 (2017); *Nat'l Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145, at P 189 (2017); *Dominion Carolina Gas Transmission, LLC*, 158 FERC ¶ 61,126, at P 81 (2017); *Nexus Gas Transmission, LLC*, 160 FERC ¶ 61,022, at P 173 (2017); *Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at P 298 (2017); *Millennium Pipeline Co., L.L.C.*, 161 FERC ¶ 61,229, at P 164 (2017); *Penneast Pipeline Co., LLC*, 162 FERC ¶ 61,053, at P 208 (2018); *Florida Southeast. Connection, LLC*, 162 FERC ¶ 61,233, at P 22 (2018); and *DTE Midstream Appalachia, LLC*, 162 FERC ¶ 61,238, at P 56 (2018).

<sup>4</sup> *See, e.g.*, *Columbia Gas Transmission, LLC*, 158 FERC ¶ 61,046, at P 116 (2017).

<sup>5</sup> Dep't of Energy and Nat'l Energy Tech. Laboratory, *Life Cycle Analysis of Natural Gas Extraction and Power Generation*, DOE/NETL-2015/1714 (Aug. 30, 2016) (2016 DOE/NETL Study); U.S. Energy Info. Admin., *The Growth of U.S. Natural Gas: An Uncertain Outlook for U.S. and World Supply* (June 15, 2015), <http://www.eia.gov/conference/2015/pdf/presentations/staub.pdf>; Dep't of Energy and Nat'l Energy Tech. Laboratory, *Environmental Impacts of Unconventional Natural Gas Development and Production*, DOE/NETL-2014/1651, (May 29, 2014) (2014 DOE/NETL Study).

<sup>6</sup> Recent Commission orders used the DOE studies to identify potential environmental impacts associated with unconventional natural gas production related to the proposed project. *E.g.*, *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022 (2017); *National Fuel Gas Supply Corporation*, 158 FERC ¶ 61,145 (2017); *Tennessee Gas* (continued ...)

contained this generic upstream information acknowledged the limitations of providing such data since we did not have more detailed information like the number, location, and timing of the wells, roads, and gathering lines as well as details about production methods.

The landscape changed in 2017 when the United States Court of Appeals for the District of Columbia Circuit in *Sabal Trail* found that the downstream GHG emissions that result from burning the natural gas transported by the Commission authorized SMP Project are an indirect impact of the project.<sup>7</sup> This decision clearly signaled that the Commission should be doing more as part of its environmental reviews.

Today, however, the majority has changed the Commission's approach for environmental reviews to do the exact opposite. Rather than taking a broader look at upstream and downstream impacts, the majority has decided as a matter of policy to remove, in most instances, any consideration of upstream or downstream impacts associated with a proposed project. The majority's reasoning for excluding the information and calculations is generally that it is inherently speculative and does not meaningfully inform the Commission's project-specific review. I disagree.

Prior to *Sabal Trail*, I strongly supported the Commission's efforts to disclose upstream and downstream information in response to increased concerns cited in our dockets regarding the climate change impacts associated with pipeline infrastructure. As I said in my dissent from the *Sabal Trail* remand order, I believe that, given *Sabal Trail's* finding that downstream GHGs in that case were indirect impacts, the Commission must now quantify and consider those impacts as part of its NEPA review.<sup>8</sup>

More broadly, pipelines are driving the throughput of natural gas, connecting increased upstream resources to downstream consumption. With respect to downstream impacts, I believe it is reasonably foreseeable, in the vast majority of cases, that the gas being transported by pipelines we authorize will be burned for electric generation or residential, commercial, or industrial end uses. In those circumstances, there is a reasonably close causal relationship between the Commission's action to authorize a

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*Pipeline Company, LLC*, 158 FERC ¶ 61,110 (2017); *Rover Pipeline LLC*, 158 FERC ¶ 61,109 (2017); *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 (2017); and *Columbia Gas Transmission, LLC*, 158 FERC ¶ 61,046 (2017).

<sup>7</sup> *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*).

<sup>8</sup> *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233 (2018) (LaFleur, Comm'r, *dissenting in part*).

pipeline project that will transport gas and the downstream GHG emissions that result from burning the transported gas. We simply cannot ignore the environmental impacts associated with those downstream emissions. Yet, that is precisely what the majority is choosing to do with its new policy regarding downstream impacts.

I agree that an identified end-use would enable the Commission to more accurately assess downstream GHG emissions by calculating gross and net GHG emissions as we did in *Sabal Trail*.<sup>9</sup> However, I reject the view that if a specified end-use is not discernible, we should simply ignore such environmental impacts.<sup>10</sup> In that case, we should disclose what we can, such as a full-burn calculation of GHG emissions.

While the majority attempts to distinguish *Mid States Coalition for Progress v. Surface Transportation Board*<sup>11</sup> to justify its new approach regarding consideration of upstream and downstream impacts, I believe that the majority misapplies *Mid States*, which in fact supports my view. In *Mid States*, the Court considered whether the Surface Transportation Board performed a sufficient environmental review associated with the construction of rail lines intended to transport coal. The Court concluded that the Surface Transportation Board erred by failing to consider the downstream impacts of the burning of transported coal. Even though the record lacked specificity regarding the extent to which transported coal would be burned, the Court concluded that the nature of the impact was clear. Similarly, I believe we simply cannot ignore the downstream GHG emissions associated with the burning of natural gas, even in those circumstances where the record is incomplete regarding a specific end-use.<sup>12</sup>

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<sup>9</sup> See *Sabal Trail* Supplemental Environmental Impact Statement (SEIS) at 4-5. Commission staff quantified the gross, net, and full burn of downstream GHG emissions. The gross total represents the expected use of the downstream power plant facilities. The net total includes the gross total minus the offset from coal-fired generating facility retirements. The full burn estimate is the calculation of the complete combustion of the total pipeline capacity.

<sup>10</sup> 40 C.F.R. § 1502.22 (2017) (explaining what an agency shall include in an EIS when there is incomplete or unavailable information relevant to reasonably foreseeable significant adverse impacts).

<sup>11</sup> 345 F.3d 520, 549 (8th Cir. 2003) (*Mid States*). I recognize that I have voted for past orders that distinguish *Mid States* in order to justify limiting the Commission's NEPA responsibilities. Upon further reflection, and after *Sabal Trail*, I believe my views articulated above are a better reading of *Mid States*.

<sup>12</sup> *Id.*

As the majority correctly notes, in *Mid States* the Court's primary basis for requiring the Surface Transportation Board to consider downstream emissions associated with the rail lines was that the Surface Transportation Board had concluded that the rail lines would increase coal production and usage. While the Commission has historically not found that new pipeline infrastructure increases production and/or consumption, if the facts present themselves, there is nothing preventing the Commission from doing so. The majority's reasoning becomes somewhat circular here, as they are essentially arguing that we are not obligated to consider upstream and downstream impacts because there is a lack of causation and reasonable foreseeability of the effects. However, a key reason the Commission lacks the specificity of information to determine causation and reasonable foreseeability is because we have not asked applicants to provide this sort of detail in their pipeline applications.<sup>13</sup>

The majority states that if upstream and downstream effects are not indirect or cumulative as contemplated by CEQ's regulations, then they are not environmental effects of the proposed project, and thus the Commission is not required to consider them under NEPA's hard look or the NGA's public interest standard. I disagree. I consider the downstream information relevant to our public interest determination under the NGA.<sup>14</sup> NEPA does not circumscribe the public interest standard under the NGA. Even assuming that the majority is correctly interpreting the Commission's NEPA responsibilities, I believe the Commission has broad discretion in considering factors bearing on our public interest determination.

As for the majority's announcement of a change in policy on upstream impacts, I also do not support the decision to simply exclude all generic upstream information by deeming this information as irrelevant. While it is less clear that upstream effects are caused by the pipeline, I would respond to upstream GHG comments by disclosing whatever data we have using the best available information, such as the DOE studies cited in past orders.

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<sup>13</sup> I note that some of the questions in the notice of inquiry on pipeline review ask commenters to weigh in on the types of information the Commission should seek as part of its pipeline review process. I am hopeful we will have more information included in the record to consider when reviewing a project proposal.

<sup>14</sup> See *NAACP v. FPC*, 425 U.S. 662, 670 & n.6 (1976) (noting that, in addition to "encourag[ing] the orderly development of plentiful supplies of electricity and natural gas at reasonable prices," the Commission has the authority to consider "conservation, environmental, and antitrust" concerns as relevant to the Commission's statutory authority").

At a time when we are grappling with increasing concern regarding the climate impacts of pipeline infrastructure projects, the Commission should not change its policy on upstream and downstream impacts to provide less information and be less responsive. Rather, I believe the Commission should proactively seek and disclose in pipeline proceedings more information regarding both upstream production and downstream end-use. I hope that the ongoing generic inquiry on the Certificate Policy Statement will provide an opportunity for additional consideration of what information the Commission should require in its pipeline applications and how it should factor into our analysis. In this way, we can work to ensure that our environmental reviews and public interest determinations, including consideration of climate change impacts, are robust and complete.

For all of these reasons, I respectfully dissent in part.

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Cheryl A. LaFleur  
Commissioner

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Dominion Transmission, Inc.

Docket No. CP14-497-001

(Issued May 18, 2018)

GLICK, Commissioner, *dissenting in part*:

Today, the Commission adopts a new policy regarding its consideration of how pipeline permitting decisions under section 7<sup>1</sup> of the Natural Gas Act (NGA) contribute to climate change. In particular, the Commission now concludes that the NGA and the National Environmental Policy Act<sup>2</sup> (NEPA) do not require that the Commission consider greenhouse gas emissions from the production or consumption of natural gas that may be the reasonably foreseeable result of the Commission's certification decisions.<sup>3</sup> Because I disagree with the Commission's interpretation of our obligations under the NGA and NEPA, I dissent in part from today's order, which I might otherwise join were it not for this new policy.<sup>4</sup> I find it particularly disappointing that the Commission is adopting this new policy just as it embarks on a broad review of the Commission's process for certifying new natural gas pipelines, which will include how greenhouse gas emissions are assessed.<sup>5</sup>

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<sup>1</sup> 15 U.S.C. 717f (2012).

<sup>2</sup> National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852.

<sup>3</sup> *Dominion Transmission, Inc.* 163 FERC ¶ 61,128 (2018) (*New Market*).

<sup>4</sup> I agree that the record in this particular proceeding does not contain "meaningful information," *New Market*, 163 FERC ¶ 61,128 at P 34, sufficient to identify the reasonably foreseeable effects of the New Market Project on greenhouse gas emissions associated with the production and consumption of natural gas. I disagree, however, with other conclusions that the Commission reaches and, therefore, cannot join today's order.

<sup>5</sup> *Certification of New Interstate Natural Gas Facilities*, Notice of Inquiry, 163 FERC ¶ 61,042 (2018).

Climate change poses an existential threat to our security, economy, environment, and, ultimately, the health of individual citizens.<sup>6</sup> Unlike many of the challenges that our society faces, we know with certainty what causes climate change: It is the result of greenhouse gas emissions, including carbon dioxide and methane—which can be released in large quantities through the production and the consumption of natural gas. Accordingly, it is critical that, as an agency of the federal government, the Commission comply with its statutory responsibility to document and consider how its authorization of a natural gas pipeline facility will lead to the emission of greenhouse gases, contributing to climate change.

In today's order on rehearing, the Commission argues that it cannot consider the New Market Project's effect on climate change because the record does not include information regarding the specific nature and extent of the impact that authorizing the new pipeline facilities will have on the production and consumption of natural gas.<sup>7</sup> The Commission contends that whatever effect the New Market Project has on the production and consumption of natural gas will not be reasonably foreseeable and, therefore, not something that the Commission must address in its NEPA analysis.<sup>8</sup> In so doing, the Commission is adopting a remarkably narrow view of its responsibilities under NEPA and the NGA's public interest standard. Under this view, even if the Commission knows that new pipeline facilities would have an environmental impact—in this case, causing greenhouse gas emissions by facilitating additional production and consumption of natural gas—the Commission is not obligated to consider those impacts unless the Commission knows definitively that the production and consumption would not occur absent the pipeline.<sup>9</sup>

That approach violates NEPA's requirement that federal agencies take “a hard look at [the] environmental consequences” of their decisions.<sup>10</sup> As an initial matter, the principal reason that the Commission does not have this “meaningful information” is that the Commission does not *ask* for it. But NEPA does not permit agencies to so easily

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<sup>6</sup> *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233, at 2 & n.9 (2018) (Glick, Comm'r, dissenting).

<sup>7</sup> *New Market*, 163 FERC ¶ 61,128 at PP 38–42, 59–63.

<sup>8</sup> *Id.*

<sup>9</sup> *See id.* PP 38, 59.

<sup>10</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (internal quotation marks omitted).

shirk their responsibilities to consider environmental consequences. Rather, NEPA requires that an agency “must use its best efforts to find out all that it reasonably can.”<sup>11</sup> The Commission has several opportunities throughout the pre-filing and formal application processes to issue a data request to the pipeline developer seeking information about the source of the gas to be transported as well as its ultimate end use.<sup>12</sup> A simple data request would seem to fall easily within what constitutes the Commission’s “best efforts.” In the absence of any such efforts, the Commission should not be able to rely on the lack of “meaningful information” to satisfy its obligations under NEPA and the NGA to identify the reasonably foreseeable consequences of its actions.<sup>13</sup>

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<sup>11</sup> *Barnes v. Dep’t of Transp.*, 655 F.3d 1124, 1136 (9th Cir. 2011) (internal quotation marks omitted).

<sup>12</sup> The Commission asserts that it is excused from asking these questions because there is no indication that the pipeline applicant will have that information and, in any case, it is the states that have jurisdiction over the production of natural gas. *New Market*, 163 FERC ¶ 61,128 at P 61; *see id.* P 41 n.89. Regarding the first point, there may be cases in which the upstream consequences of the Commission’s permitting decisions will not be reasonably foreseeable. But it does not follow that the Commission must conclude, generically, that the environmental effects of upstream production will never be reasonably foreseeable because information about the exact source of natural gas is not specified. Rather, as discussed below, the question of what is reasonably foreseeable under NEPA is one that should be answered following a record-by-record inquiry. Regarding the second point, the natural gas sector is replete with overlapping state and federal authority and there is nothing surprising or uncommon about a state action affecting matters subject to federal authority and vice-a-versa. *See infra* n.24 and accompanying text. What NEPA requires is that the Commission consider the reasonably foreseeable environmental consequences of its permitting decisions and that it make its best efforts to gather the information needed to do so. The mere fact that other aspects of the causal chain are subject to state regulation, does not vitiate the Commission’s obligation to consider those consequences. *See Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (*Sabal Trail*).

<sup>13</sup> Contrary to the suggestion in the Commission order, in concluding that there may be circumstances in which the upstream and downstream impacts of a pipeline facility are reasonably foreseeable results of the constructing and operating the proposed facility, I am relying on precisely the sort of “reasonably close causal relationship” that Supreme Court has required in the NEPA context and analogized to proximate cause. *See Federal Motor Carrier Safety Admin. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (“NEPA requires a ‘reasonably close causal relationship’ between the environmental effect and the alleged cause. The Court [has] analogized this requirement to the ‘familiar (*continued* ...)”

The Commission responds that this information will rarely be relevant because upstream and downstream emissions generally are not reasonably foreseeable consequences of building the proposed project.<sup>14</sup> In reality, that depends on the record that the Commission compiles. There will undoubtedly be some cases where those emissions are, in fact, too speculative to be considered “reasonably foreseeable.” But there may also be others, such as *Sabal Trail*, where an adequate record would provide sufficient information to make those emissions reasonably foreseeable.<sup>15</sup> Consistent with *Sabal Trail*, the determination of what environmental effects must be considered under NEPA should turn on a record-by-record inquiry of what effects are reasonably foreseeable, not on generic pronouncements divorced from the facts of any specific case. And unless the Commission makes its “best efforts” and asks the necessary questions, that record is unlikely to exist and Congress’ purposes in enacting NEPA will be undermined.

In addition, even where exact information regarding the source of the gas to be transported and the ultimate end use is not available to the pipeline developer, the Commission will often be able to produce comparably useful information based on reasonable forecasts of the greenhouse gas emissions associated with production and

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

<sup>14</sup> See *New Market*, 163 FERC ¶ 61,128 at PP 41 n.89, 63; *id.* P 43 (suggesting that greenhouse gas emissions from the production and consumption of natural gas are “extraneous” to the Commission’s public interest determination because the Commission does not control the production or consumption of natural gas).

<sup>15</sup> In response to this point, the Commission contends that NEPA does not require the consideration of “speculative harms” or “consequences beyond those of greatest concern to the public and of greatest relevance to the agency’s decision.” *Id.* P 61 & n.143 (internal quotation marks omitted). I am not aware of any harm more “concerning” or “relevant” than the threat posed by climate change.

consumption.<sup>16</sup> Forecasting environmental impacts is a regular component of NEPA reviews and a reasonable estimate may inform the federal decisionmaking process even where the agency is not completely confident in the results of its forecast.<sup>17</sup> For instance, in *Sabal Trail*, the United States Court of Appeals for the District of Columbia Circuit interpreted NEPA to require that the Commission attempt to quantify the greenhouse gas emissions associated with the Sabal Trail pipeline, even though the Commission could not know the actual greenhouse gas impact before the project entered operation.<sup>18</sup> Similar forecasts can play a useful role in the Commission’s evaluation of the public interest, even in those instances when the Commission must make a number of assumptions in its forecasting process.<sup>19</sup>

It is particularly important for the Commission to use its “best efforts” to identify and quantify the full scope of the environmental impacts of its pipeline certification decisions given that these pipelines are expanding the nation’s capacity to carry natural gas from the wellhead to end-use consumers. Adding capacity has the potential to “spur demand” and, for that reason, an agency conducting a NEPA review must, at the very least, examine the effects that an expansion of pipeline capacity might have on production and consumption.<sup>20</sup> Indeed, if a proposed pipeline neither increases the

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<sup>16</sup> *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (2014) (quoting *Scientists’ Inst. for Pub. Info., Inc. v. Atomic Energy Comm’n*, 481 F.2d 1079, 1092 (D.C. Cir. 1973)); see *Sierra Club v. Dep’t of Energy*, 867 F.3d 189, 198 (D.C. Cir. 2017) (“In determining what effects are ‘reasonably foreseeable,’ an agency must engage in ‘reasonable forecasting and speculation.’” (quoting *Del. Riverkeeper*, 753 F.3d at 1310)).

<sup>17</sup> In determining what constitutes reasonable forecasting, it is relevant to consider the “usefulness of any new potential information to the decisionmaking process.” *Sierra Club*, 867 F.3d at 198 (citing *Pub. Citizen*, 541 U.S. at 767).

<sup>18</sup> *Sabal Trail*, 867 F.3d at 1373–74.

<sup>19</sup> As Commission LaFleur aptly explains in her separate statement, prior to the policy change announced today, the Commission previously determined that forecasts of GHG emissions from production and consumption are both available and useful to affected parties, including the public.

<sup>20</sup> See *Barnes*, 655 F.3d at 1138; *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2003) (*Mid States*) (“[T]he proposition that the demand . . . will be unaffected by an increase in availability and a decrease in price . . . is illogical at best.”). The Commission attempts to distinguish these cases chiefly by contending that “a number of factors, such as domestic natural gas prices and production costs, drive new (continued . . .)

supply of natural gas available to consumers nor decreases the price that those consumers would pay, it is hard to imagine why that pipeline would be “needed” in the first place.

The fact that the pipeline’s exact effect on the demand for natural gas may be unknown is no reason not to consider the type of effect it is likely to have.<sup>21</sup> As the United States Court of Appeals for the Eighth Circuit explained in *Mid States*—a case that also involved the downstream emissions from new infrastructure to transport fossil fuels—“if the *nature* of the effect” (i.e., increased emissions) is clear, the fact that “the *extent* of the effect is speculative” does not excuse an agency from considering that effect in its NEPA analysis.<sup>22</sup> And while natural gas pipelines can benefit the nation—including by, in some cases, providing natural gas supplies that can displace older, more greenhouse gas-intensive methods of electricity generation—any “hard look” at incremental pipeline capacity should also consider the environmental consequences associated with that additional capacity.

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drilling.” *New Market*, 163 FERC ¶ 61,128 at P 60. Although sales price and production costs are, undoubtedly, factors that influence natural gas production, that is no answer to the argument that the Commission must at least consider the demand-inducing effects of new capacity. After all, surely the sales prices and production costs associated with air travel and coal mining affected demand in *Barnes* and *Mid States*, respectively.

<sup>21</sup> In the Commission’s 1999 Policy Statement it provided the following illustrative list of the “public benefits”: “meeting unserved demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, providing new interconnects that improve the interstate grid, providing competitive alternatives, increasing electric reliability, or advancing clean air objectives.” *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, 61,748 (1999). All of those examples, with the exception of the last two, are benefits that could “spur demand” for natural gas. *Cf. Mid States*, 345 F.3d at 549.

<sup>22</sup> *Id.* The Commission attempts to distinguish *Mid States* on the basis that the agency in that case conceded that the harm in question was reasonably foreseeable. *New Market*, 163 FERC ¶ 61,128 at P 65. I agree that where an agency finds that a harm is reasonably foreseeable, but nevertheless fails to consider that harm, it invites *vacatur*. But while that concession may be sufficient, it is not necessary. As noted above, whether a particular harm is reasonably foreseeable should be a record-by-record determination and, accordingly, there may be instances in which an agency contends that a harm is not reasonably foreseeable, but the record indicates otherwise. *See Sabal Trail*, 867 F.3d at 1371–72.

I recognize that, even if the Commission were to try, there may be instances in which it will not have sufficient information to assess the consequences that issuing a particular certificate may have for climate change. But, in that scenario, it is the fact that the Commission made every effort to identify the climate-change impacts that satisfies the Commission's obligation to consider those impacts as indirect or cumulative effects under NEPA. The mere fact that the record does not contain specific information regarding the greenhouse gas emissions associated with increased production or consumption from a particular natural gas pipeline cannot excuse the Commission from considering those effects under NEPA when the Commission has not seriously attempted to gather that information in the first place.

As stated earlier, anthropogenic climate change is among the most serious threats we face as a nation. For that reason, the Commission cannot determine whether a natural gas pipeline is in the "public interest" without considering the effect that granting a certificate will have on climate change. I certainly cannot support issuing a certificate where the Commission has not made its best effort to collect information regarding those emissions. Accordingly, I believe that the NGA's public interest standard requires the Commission to consider greenhouse gas emissions associated with the incremental production and consumption of natural gas caused by a new pipeline.<sup>23</sup>

The fact that individual states and other federal agencies may consider, and even regulate, some of the environmental impacts from the pipeline, does not limit the Commission's responsibility to consider these impacts when evaluating the public interest.<sup>24</sup> Indeed, the certificate process is replete with overlapping jurisdiction:

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<sup>23</sup> The Court has explained that the NGA's purposes are multi-faceted. *See NAACP v. FPC*, 425 U.S. 662, 670 & n.6 (1976) (noting that, in addition to "encourag[ing] the orderly development of plentiful supplies of electricity and natural gas at reasonable prices," the Commission has the authority to consider "conservation, environmental, and antitrust" concerns as relevant to the Commission's statutory authority). Congress' instruction that the Commission consider "the public convenience and necessity" is plenty broad enough to permit the Commission to balance these different purposes when exercising its statutory authority under the NGA. *Cf. Atl. Ref. Co. v. Pub. Serv. Comm'n*, 360 U.S. 378, 391 (1959) (holding that NGA section 7 requires the Commission to consider "all factors bearing on the public interest").

<sup>24</sup> The order appears to suggest that the allocation of jurisdiction in NGA section 1(b) implies a limit on the Commission's authority, or even its ability, to consider environmental effects under the NGA. That provision does no such thing. In considering the reasonably foreseeable consequences of its certification decisions, the Commission is not regulating, much less directly regulating, areas reserved for exclusive state jurisdiction. Although the Commission's evaluation of the public interest could, (continued ...)

numerous federal and state agencies consider a pipeline's impact on natural resources under parallel and complementary statutes, including potential effects on endangered species, air quality, water bodies, and wetlands. Rather than indicating a problem with or a limit on the Commission's authority, these overlapping interests merely reflect the broad scope of the Commission's authority to evaluate the public interest and the sweeping impacts that a pipeline can have on the environment, communities, and individuals.

\* \* \*

Today's order, following the Commission's recent order in *Sabal Trail*,<sup>25</sup> represents another step toward drastically limiting the Commission's consideration of climate change in the section 7 certification process. As I have explained, the Commission's consideration of climate change falls short of our statutory responsibilities under NEPA and the NGA. To be clear, I am not suggesting that the Commission should issue no new section 7 certificates. Pipeline facilities may have benefits that outweigh their costs. What I am arguing is that, as a result of the Commission's new policy, we frequently will not know whether the benefits outweigh the costs because the Commission is not asking enough questions or doing enough analysis.

For these reasons, I respectfully dissent.

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Richard Glick  
Commissioner

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theoretically, affect matters subject to state jurisdiction, as long as the Commission is acting pursuant to its statutory authority and not directly regulating matters subject to state jurisdiction, the Commission will “not run afoul of [the NGA's jurisdiction limitations] just because it affects—even substantially—the” matters left for the states to decide. *FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760, 776 (2016), as revised (Jan. 28, 2016); *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1292 (2016); *see also FPC v. Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 30–31 (1961) (recognizing the Commission's authority to consider the impact of air pollution from industrial boilers under NGA section 7).

<sup>25</sup> *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233.

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