

172 FERC ¶ 61,259
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and James P. Danly.

Kinder Morgan Louisiana Pipeline LLC

Docket No. CP19-484-000

ORDER ISSUING CERTIFICATE

(Issued September 17, 2020)

1. On June 28, 2019, Kinder Morgan Louisiana Pipeline LLC (Kinder Morgan Louisiana) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² requesting a certificate of public convenience and necessity to construct, modify, and operate certain natural gas compression and meter station facilities in Acadia and Evangeline Parishes, Louisiana (Acadiana Project). The Acadiana Project is designed to provide an additional 894,000 dekatherms per day (Dth/d) of firm transportation service in a southerly direction from existing receipt points in Louisiana to the existing liquified natural gas (LNG) export terminal in Cameron Parish, Louisiana (Sabine Pass LNG Export Terminal), owned and operated by Sabine Pass Liquefaction, LLC (Sabine Pass Liquefaction).
2. For the reasons discussed below, we will grant the requested authorizations, subject to the conditions described herein.

I. Background and Proposal

3. Kinder Morgan Louisiana, a Delaware limited liability company, is a natural gas company, as defined by section 2(6) of the NGA,³ engaged in the transportation of natural gas in interstate commerce. Kinder Morgan Louisiana owns and operates over 130 miles of interstate natural gas pipeline in Louisiana.
4. Kinder Morgan Louisiana's pipeline system was originally constructed to provide firm transportation service from the LNG import terminal owned by Sabine Pass Liquefaction at Sabine Pass in Cameron Parish, Louisiana, to various delivery points in

¹ 15 U.S.C. § 717f (2018).

² 18 C.F.R. pt. 157 (2020).

³ 15 U.S.C. § 717a(6) (2018).

Louisiana, and did not include compression facilities.⁴ In 2009 and 2012, the Commission approved Sabine Liquefaction's requests to construct liquefaction facilities and to export LNG from the Sabine Pass Terminal.⁵ In 2015, the Commission approved a request to expand the Sabine Pass LNG Terminal with the construction of Trains 5 and 6.⁶

5. On April 15, 2016, the Commission authorized Kinder Morgan Louisiana, in Docket No. CP14-511-000, to construct and operate the Lake Charles Expansion Project to allow Kinder Morgan Louisiana's existing pipeline facilities to transport domestically produced gas to the Magnolia LNG Project (jointly approved in an order with the Lake Charles Expansion) for processing, liquefaction, and export.⁷ The Lake Charles Expansion project included new Compressor Station No. 760, with four 16,000 horsepower (hp) gas-fired turbine driven compressor units to be located near Eunice in Acadia Parish, Louisiana, and modifications of certain facilities to enable bi-directional flow at various interconnects. However, due to market conditions, the Lake Charles Expansion Project has not yet been constructed. Pursuant to the terms of its certificate, Kinder Morgan Louisiana has until April 15, 2021, to construct the Lake Charles Expansion Project and put it into operation.⁸

6. In 2017, the Commission authorized Kinder Morgan Louisiana, in Docket No. CP17-22-000, to modify and construct certain facilities to enable gas to flow from north to south on its existing 132-mile pipeline system and to provide additional service to the Sabine Pass LNG Terminal (Sabine Pass Expansion Project).⁹ Kinder Morgan Louisiana stated in its application for the Sabine Pass Expansion Project that the majority of the facilities are common to, and will be used by, both the Sabine Pass Expansion Project and its Lake Charles Expansion Project. The Sabine Pass Expansion Project included the construction of Compressor Station 760 (since the previously-authorized station had not yet been constructed as part of the Lake Charles Expansion Project), and the construction and modification of certain facilities to enable bi-directional flow at

⁴ *Natural Gas Pipeline Co. of America*, 119 FERC ¶ 61,309 (2007).

⁵ *Sabine Pass LNG*, 127 FERC ¶ 61,200 (2009) (order granting authorization to export previously imported LNG) and *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039 (2012) (order approving the authorization of liquefaction facilities – trains 1-4).

⁶ *See Sabine Pass Liquefaction Expansion, LLC*, 151 FERC ¶ 61,012 (2015).

⁷ *Magnolia LNG, LLC*, 155 FERC ¶ 61,033 (2016).

⁸ *Id.* at ordering para. (D).

⁹ *Kinder Morgan Louisiana Pipeline LLC*, 161 FERC ¶ 61,205 (2017).

various interconnects.¹⁰ The authorization included installation of three Mars 100 15,900 hp gas fired turbine driven compressor units at Compressor Station 760, beyond those which had been authorized as part of Lake Charles Expansion Project.

7. The design of the Sabine Pass Expansion Project was based upon the assumption that the Lake Charles Expansion Project would have been constructed and placed into service (to transport gas to the Magnolia LNG Project). However, since the Lake Charles Expansion Project was essentially on hold, Kinder Morgan Louisiana determined that it could meet its remaining transportation service obligations by installing only two of the three compressor units approved as part of the Sabine Pass Expansion Project. These two units also made available unsubscribed capacity, the 145,000 Dth/d of which will be used to provide service to the Acadiana Project shippers. Upon certification of the Acadiana Project, Kinder Morgan plans to file a request in Docket No. CP17-22-000 to vacate its certificate authority to install the third Mars 100 compressor unit.

8. For the Acadiana Project, Kinder Morgan Louisiana states that it has entered into a precedent agreement with Sabine Pass Liquefaction to provide 945,000 Dth/d of north-to-south firm transportation service from existing interconnections with Columbia Gulf Transmission, LLC (Columbia Gulf) and ANR Pipeline Company (ANR Pipeline) to an existing delivery point at the Sabine Pass LNG Terminal.¹¹ Kinder Morgan Louisiana proposes to provide this service through a combination of existing capacity and capacity to be made available by the addition of compression at Compressor Station 760. Specifically, Kinder Morgan Louisiana proposes to install three new 31,900 hp Solar Titan 250 natural gas-fired turbine driven compressor units at the existing Compressor Station 760 and to construct miscellaneous auxiliary facilities, enabling it to provide an additional 894,000 Dth/d of firm transportation service. In addition, it has reserved existing unsubscribed capacity sufficient to provide 145,000 Dth/d of transportation service to Acadiana Project shippers.¹²

¹⁰ *Id.* P 5.

¹¹ Kinder Morgan Louisiana and Cheniere Energy state that “[t]he Project is needed for Train 6 of SPL’s Sabine Pass Liquefaction Project located in Cameron Parish, Louisiana (the “SPL Terminal”), which is already under construction and 67% complete as of the end of July 2020.” Kinder Morgan Louisiana September 8, 2020 Filing at 1.

¹² Installation of the three 31,900 hp compressor units will result in capacity sufficient to provide 94,000 Dth/d more firm transportation service than has currently been subscribed. That service will be made available pursuant to the terms and conditions of Kinder Morgan Louisiana’s tariff. Application at 3 n7.

9. Kinder Morgan Louisiana also states that it will install the following auxiliary facilities pursuant to section 2.55(a) of the Commission's regulations:¹³ natural gas cooling equipment, two compressor buildings, two master control buildings, a switchgear building, two emergency generators (requiring an extension of the existing auxiliary building), filter separators, fuel gas skids, fuel gas heaters, and re-wheeling of the two existing compressor units at Compressor Station 760. In addition, pursuant to section 2.55(a), Kinder Morgan Louisiana will construct piping modifications and new control valves at the existing Columbia Gulf interconnect in Evangeline Parish, Louisiana.¹⁴

10. Prior to holding an open season, Kinder Morgan Louisiana executed a precedent agreement with Sabine Pass Liquefaction for 945,000 Dth/d of firm transportation service. Kinder Morgan Louisiana states that it held an open season from January 24, 2019, to February 11, 2019, for the Acadiana Project, but did not receive any bids for firm transportation service.¹⁵ The precedent agreement with Sabine Pass Liquefaction will be for a primary term of 20 years at negotiated rates.

11. The estimated cost of the Acadiana Project is \$143,048,567. Kinder Morgan Louisiana proposes to establish its existing rates under Rate Schedule FTS as initial recourse rates for firm project service and to apply its generally applicable system fuel retention and electric power rates. Kinder Morgan Louisiana also requests a predetermination that rolled-in rate treatment for the project costs associated with the expansion capacity would be appropriate in a future general section 4 rate proceeding.

¹³ 18 C.F.R. § 2.55(a) (2020).

¹⁴ Columbia Gulf filed a related application on July 16, 2019, in Docket No. CP19-488-000. Columbia Gulf proposes to construct certain facilities to increase the firm transportation service on its mainline by 493,000 Dth/d to transport and deliver natural gas to the interconnection point with Kinder Morgan Louisiana in Evangeline Parish, Louisiana (Louisiana Xpress Project). The order approving the Louisiana Xpress Project is being issued contemporaneously with the instant order. *Columbia Gulf Transmission, LLC*, 172 FERC ¶ 61,260 (2020). Together with existing capacity, this will allow Columbia Gulf to provide Sabine Pass Liquefaction with 800,000 Dth/d of firm transportation service on a north-to-south path to a primary delivery point with Kinder Morgan Louisiana. *Id.* P 4.

¹⁵ Kinder Morgan Louisiana received no bids from parties other than Sabine Pass Liquefaction, and no offers to turn back capacity because Sabine Pass Liquefaction is the only existing shipper on the system. Application at 9.

II. Notice, Interventions, and Comments

12. Notice of Kinder Morgan Louisiana's application was published in the *Federal Register* on July 19, 2019.¹⁶ NJR Energy Services, Pine Prairie Energy Center, LLC, and Magnolia LNG, LLC, filed timely motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹⁷ Sabine Pass Liquefaction filed comments in support of the application.

III. Discussion

13. Because the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to subsections (c) and (e) of section 7 of the NGA.¹⁸

A. Application of Certificate Policy Statement

14. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁹ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

¹⁶ 84 Fed. Reg. 34,884 (July 19, 2019).

¹⁷ 18 C.F.R. § 385.214(c)(1) (2020).

¹⁸ 15 U.S.C. §§ 717f(c) and (e) (2018).

¹⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227; *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128; *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

captive customers, or landowners and communities affected by the construction of the new natural gas facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis where other interests are addressed.

16. Kinder Morgan Louisiana's proposal satisfies the threshold requirement that it financially support the project without relying on subsidization from its existing customers. As discussed below, we will approve Kinder Morgan Louisiana's proposal to use its existing system rates as the initial recourse rates for services using the incremental capacity created by the proposed facilities because those rates exceed illustrative incremental rates calculated to recover the costs of the project. Further, as discussed in more detail below we find that the revenues from generated from Kinder Morgan Louisiana's agreement with Sabine Pass Liquefaction will exceed the estimated cost of service. Therefore, we find that Kinder Morgan Louisiana's existing customers will not subsidize the Acadiana Project and that the threshold no-subsidy requirement is met.

17. We find that the proposed project will have no adverse effect on service to Kinder Morgan Louisiana's existing customers because the proposed expansion facilities are properly designed to provide incremental service to meet the needs of the project shipper with no impact to the service of existing customers. We also find that there will be no adverse impact on other pipelines in the region or their captive customers and note that no other pipelines or their captive customers have filed adverse comments regarding Kinder Morgan Louisiana's proposal.

18. We are further satisfied that Kinder Morgan Louisiana has taken appropriate steps to minimize adverse impacts on landowners. Kinder Morgan Louisiana's proposed project will disturb approximately 88.52 acres of land during construction; of these, only 3.14 acres will be permanently impacted. Kinder Morgan Louisiana has already acquired the necessary property interests for 64.65 of the necessary acres and is currently engaged in negotiations for rights to the remaining 11.63 acres.²⁰ All of the proposed facilities will be located at existing sites on the Kinder Morgan Louisiana pipeline system.²¹

19. The proposed project will create 894,000 Dth/d of incremental firm transportation service on Kinder Morgan Louisiana's system, of which 800,000 Dth/d or 89% is subscribed. We find that Kinder Morgan Louisiana has demonstrated a need for the Acadiana Project, and that the project will not have adverse economic impacts on existing

²⁰ Calculations do not include the alternate construction yards, Manco Yard and Cole Pit Yard.

²¹ See Resource Report 1 of Kinder Morgan Louisiana's Application.

shippers or other pipelines and their existing customers, and that the project's benefits will outweigh any adverse economic effects on landowners and surrounding communities. Therefore, we conclude that the project is consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.²²

B. Rates

1. Initial Recourse Rates

20. Kinder Morgan Louisiana proposes to use its existing monthly reservation charge under Rate Schedule FTS of \$4.5900 per Dth,²³ and an incremental recourse usage charge of \$0.0015 per Dth, as the initial recourse rates for project service. Kinder Morgan Louisiana calculated an illustrative incremental monthly reservation charge of \$2.2053 per Dth based on fixed costs of \$23,658,549 and annual design volumes of 10,728,000 Dth.²⁴ The proposed incremental usage charge of \$0.0015 per Dth is calculated based on variable costs of \$483,733 and annual design volumes of 326,310,000 Dth.²⁵ Kinder Morgan Louisiana's illustrative incremental charges for firm service on the Acadiana Project are based on a total cost of service that incorporates its last-approved depreciation rate of 3.00% and overall rate of return of 9.65%.²⁶

21. We have reviewed Kinder Morgan Louisiana's proposed changes and cost of service and find that they reasonably reflect current Commission policy. For integrated mainline expansion facilities, the Commission has required pipelines to use their existing system rate as the initial recourse rate if the system rate is higher than the appropriately calculated, cost-based incremental rate. Here, Kinder Morgan Louisiana has calculated an illustrative monthly incremental recourse reservation charge of \$2.2053 per Dth,²⁷

²² See Certificate Policy Statement, 88 FERC at ¶ 61,745-46 (explaining that only when the project benefits outweigh the adverse effects on the economic interests will the Commission then complete the environmental analysis).

²³ Kinder Morgan Louisiana Pipeline LLC, FERC NGA Gas Tariff, First Revised Volume No. 1, Sheet No. 5, Currently Effective Rates - Rate Schedules FTS, ITS and PALS, 4.0.0.

²⁴ Exhibit P – Part I at 2.

²⁵ *Id.*

²⁶ See *id.* – Part I at 4 (citing *Kinder Morgan Louisiana Pipeline LLC*, 118 FERC ¶ 61,211, at PP 41-42 (2007)).

²⁷ Kinder Morgan Louisiana based its illustrative incremental rate on the 894,000 Dth/d of new capacity created by the Acadiana Project. However, we note that

which is lower than its existing monthly system reservation charge of \$4.5900 per Dth. Therefore, Kinder Morgan Louisiana's proposal to establish its existing monthly system Rate Schedule FTS recourse reservation charge of \$4.5900 per Dth as the initial recourse rate for Acadiana Project service is approved.

22. Kinder Morgan Louisiana calculated an illustrative usage charge of \$0.0015 per Dth for firm transportation service on the Acadiana Project. This proposed usage charge is equal to the currently effective usage charge for north-to-south transportation service using capacity created by the Sabine Pass Expansion Project.²⁸ Accordingly, we approve Kinder Morgan Louisiana's proposed usage charge of \$0.0015 per Dth for the Acadiana Project.

2. Rolled-in Rate Determination

23. Kinder Morgan Louisiana requests a pre-determination that it may roll the Acadiana Project costs into its system-wide rates in a future NGA section 4 general rate proceeding. In support of its request for such a pre-determination, Kinder Morgan Louisiana calculated an estimated first-year cost of service of \$24,142,282 and projected revenues of \$29,200,320 based on a negotiated reservation charge of \$3.0417 per Dth and contracted volumes.²⁹

24. To receive a pre-determination favoring rolled-in rate treatment, a pipeline must demonstrate that rolling-in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. A pipeline must show that the revenues generated from an expansion project will exceed the costs of the project. To make this determination, the Commission compares the estimated cost of the project to the projected revenues generated using actual contract volumes and the

when pre-existing capacity is specifically reserved for project use, billing determinates associated with that capacity should be included in the rate calculations. Nevertheless, the addition of the billing determinants associated with 145,000 Dth/d of reserved capacity would only serve to lower the illustrative rate even further below the comparable system rate. We also note that Kinder Morgan Louisiana's illustrative rate reflects a return on equity (ROE) of 14%. The Commission's general policy is to not allow the use of the 14% ROE approved in a pipeline's initial certificate authorizations when determining the cost of service for subsequent incremental expansions, instead requiring pipelines to use the most recent ROE approved in a litigated NGA section 4 rate case. In this case, incorporating the last-litigated ROE of 10.55% would decrease Kinder Morgan Louisiana's illustrative incremental reservation charge. Thus, neither error affects our determination regarding the appropriate initial recourse rate for Acadian Project service.

²⁸ *Kinder Morgan Louisiana Pipeline, LLC*, 161 FERC ¶ 61,205 at P 20.

²⁹ Exhibit P – Part V.

maximum recourse rate, or the actual negotiated rate if the negotiated rate is lower than the recourse rate.³⁰

25. Based on a review of Exhibit P - Part V, we find that Kinder Morgan Louisiana has properly calculated revenues for the Acadiana Project and that the revenues generated by the service agreement underlying the project will exceed the cost of the proposed facilities. Accordingly, a pre-determination is granted for Kinder Morgan Louisiana to roll the costs of the Acadiana Project into its system rates in a future NGA section 4 rate case, absent a significant change in circumstances.

3. Fuel

26. Section 36 of the General Terms and Conditions (GT&C) of its tariff permits Kinder Morgan Louisiana to retain, in-kind, a percentage of gas volumes as reimbursement for fuel gas and unaccounted for gas. Kinder Morgan Louisiana's current fuel gas reimbursement percentage is 0.86%.³¹

27. Kinder Morgan Louisiana proposes to establish a single fuel gas reimbursement percentage of 1.06% based on projected fuel gas consumed by existing compressors that were installed as a part of the Sabine Pass Expansion Project, as well as projected fuel gas consumed by compressors that will be installed as part of the Acadiana Project.³² Kinder Morgan Louisiana proposes that the fuel gas reimbursement percentage proposed herein would be assessed on transportation under any contract which uses the north-to-south transportation path to deliver gas to the Sabine Pass LNG Terminal and would be subject to annual adjustment and true-up under its tariff's fuel retention mechanism. Kinder Morgan Louisiana asserts that its proposal does not raise an issue of potential fuel subsidization by existing shippers because Sabine Pass Liquefaction is the only firm shipper on its system.

28. We approve Kinder Morgan Louisiana's proposal to charge a fuel gas reimbursement percentage of 1.06% for transportation service on the Acadiana Project. Kinder Morgan Louisiana has supported the reasonableness of this projected fuel gas

³⁰ See *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

³¹ The fuel gas reimbursement percentage is comprised of a current reimbursement percentage of 0.82%, applicable to shippers using a north-to-south transportation path, and a deferred reimbursement percentage of 0.04%. See Kinder Morgan Louisiana Pipeline LLC, FERC NGA Gas Tariff, First Revised Volume No. 1, [Sheet No. 6, Currently Effective Rates - Reimbursement Percentages, 9.0.0.](#)

³² Application at 18-19.

reimbursement rate based on its fuel study in Exhibit P – Part II.³³ However, because the Commission lacks the authority to change existing rates or fuel reimbursement factors in an NGA section 7 proceeding, we reject Kinder Morgan Louisiana’s proposal to apply this calculated fuel reimbursement percentage to its existing transportation service.³⁴ The proper forum for examining the design of Kinder Morgan Louisiana’s overall north-to-south fuel rate is a limited NGA section 4 proceeding.

4. Reporting Incremental Costs

29. The Commission will require Kinder Morgan Louisiana to keep separate books and accounting of costs and revenues attributable to Acadiana Project capacity and incremental services using that capacity in the same manner as required by section 154.309 of the Commission’s regulations.³⁵ The books should be maintained with applicable cross-references in the same manner as required by section 154.309. This information must be in sufficient detail, so the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.³⁶

5. Negotiated Rates

30. Sabine Pass Liquefaction has elected to pay negotiated rates for the firm transportation service on the Acadiana Project facilities. The negotiated rates include a negotiated base reservation charge that will be fixed for the term of the FTS agreement. In addition, Sabine Pass Liquefaction will pay the tariff usage charge as it may be revised from time to time and any fuel and unaccounted for gas charges, authorized and unauthorized overrun charges, and all other applicable rates, charges, surcharges and penalties of any nature set forth in Kinder Morgan Louisiana’s tariff.

31. Kinder Morgan Louisiana must file either the negotiated rate agreement or a tariff record setting forth the essential elements of the agreement in accordance with the

³³ Kinder Morgan Louisiana derives the fuel gas reimbursement percentage of 1.06 % by dividing the estimated total compressor fuel usage of 17,438 Dth/d by total north-to-south capacity of 1,639,00 Dth/d. Both figures reflect estimated cumulative totals following the completion of the Acadiana Project. *See* Exhibit P – Part II.

³⁴ *See Sierrita Gas Pipeline LLC*, 165 FERC ¶ 61,001 (2018).

³⁵ 18 C.F.R. § 154.309 (2020).

³⁶ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008).

Alternative Rate Policy Statement³⁷ and the Commission's negotiated rate policies.³⁸ Kinder Morgan Louisiana must file the negotiated rate agreement or a tariff record reflecting the essential elements of the agreement at least 30 days, but no more than 60 days, before the proposed effective date for such rate.³⁹

6. Non-Conforming Provisions

32. Kinder Morgan Louisiana and Sabine Pass Liquefaction have executed a binding precedent agreement for the Acadiana Project. Kinder Morgan Louisiana states that there are differences between the precedent agreement and the *pro forma* FTS agreement set forth in its tariff, which are reflected in redline format in Exhibit P of its application. These provisions pertain to credit support and assurances to be provided by Sabine Pass Liquefaction, as well as certain minimum pressure requirements at select receipt and delivery points on Kinder Morgan Louisiana's system. To the extent these provisions are material deviations and non-conforming, Kinder Morgan Louisiana requests a pre-determination that these non-conforming provisions are permissible.

33. In *Columbia*, the Commission clarified that a material deviation is any provision in a service agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties.⁴⁰ However, not all material deviations are impermissible. As explained in *Columbia*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit

³⁷ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194, *order on reh'g and clarification*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066, *reh'g dismissed*, 75 FERC ¶ 61,291 (1996), *petition for review denied sub nom. Burlington Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

³⁸ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

³⁹ Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. *See, e.g. Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014). 18 C.F.R. § 154.112(b) (2020).

⁴⁰ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001); *see also ANR Pipeline Co.*, 97 FERC ¶ 61,224, at 62,022 (2001).

because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.

34. We find that the minimum pressure provision set forth in Kinder Morgan Louisiana's precedent agreement with Sabine Pass Liquefaction represents a permissible non-conforming provision. GT&C sections 18.1 and 18.2 of Kinder Morgan Louisiana's tariff allow Kinder Morgan Louisiana and its shippers to agree in writing to different pressures at receipt and delivery points. Although the proposed minimum pressure provision is a material deviation, we find it is consistent with Kinder Morgan Louisiana's tariff that allows for negotiating minimum pressures. We also find this provision is not unduly discriminatory because all shippers on Kinder Morgan Louisiana's system have the right to negotiate minimum pressure requirements.

35. The creditworthiness provision contained in Article 3 of Kinder Morgan Louisiana's agreement with Sabine Pass Liquefaction sets forth the specific credit requirements for Sabine Pass Liquefaction to proceed with (or with respect to) the construction of the expanded facilities. We find that the creditworthiness provision constitutes a material deviation from Kinder Morgan Louisiana's *pro forma* FTS service agreement. However, the Commission's policy with regard to creditworthiness, as stated in the Commission's 2005 Policy Statement, allows pipelines to enter into alternative credit arrangements for expansion projects.⁴¹ Therefore, we find the non-conforming provisions related to creditworthiness identified by Kinder Morgan Louisiana are permissible.

36. At least 30 days, but not more than 60 days, before providing service to any shipper under a non-conforming agreement, Kinder Morgan Louisiana must file an executed copy of the non-conforming agreement disclosing and reflecting all non-conforming language as part of Kinder Morgan Louisiana's tariff and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.⁴² In addition, we emphasize that the above determination relates only to those items described by Kinder Morgan Louisiana in its application and not to the entirety of the precedent agreement or the language contained in the precedent agreement.⁴³

⁴¹ *Policy Statement on Creditworthiness Issues for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412 (2005) (2005 Policy Statement).

⁴² 18 C.F.R. § 154.112.

⁴³ A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreement(s) and a tariff record identifying the agreement(s) as

7. Pro-Forma Tariff Changes

37. Kinder Morgan Louisiana proposes *pro forma* changes to its tariff that are necessary to define the Acadiana Project, to incorporate the initial recourse rates into its tariff, and to list the FTS agreement with Sabine Pass Liquefaction as a non-conforming agreement. Kinder Morgan Louisiana's proposed *pro forma* tariff changes are approved, subject to the determinations discussed above.

C. Environmental Analysis

38. On August 28, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Acadiana Project and Request for Comments on Environmental Issues* (NOI).⁴⁴ The NOI was published in the *Federal Register* on September 4, 2019, and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries; and affected property owners. In response to the NOI, the Tunica-Biloxi Indian Tribe, Cheniere Energy, Inc., and the Louisiana Department of Wildlife and Fisheries filed comments. The primary issues raised included potential impacts on the wild coco orchid and a request for an environmental impacts analysis on multiple resources. The Tunica-Biloxi Tribe requested that the Commission address impacts on habitat loss, visual resources, vegetation, greenhouse gases, public health, and requested a detailed cultural and archeological resource survey. Cheniere Energy, Inc. provided comments in support of the Acadiana Project.

39. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),⁴⁵ our staff prepared an Environmental Assessment (EA) for Kinder Morgan Louisiana's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, wildlife, threatened and endangered species, land use, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA. Because the Acadiana Project and Columbia Gulf's proposed Louisiana

non-conforming are filed with the Commission, consistent with section 154.112 of the Commission's regulations. *See, e.g., Tennessee Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160, at P 44 n.33 (2015).

⁴⁴ On August 28, 2019, the Commission also issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Louisiana XPress Project, and Request for Comments on Environmental Issues*. Both projects were discussed in the same Environmental Assessment.

⁴⁵ 42 U.S.C. §§ 4321 et seq. (2018); *see also* 18 C.F.R. pt. 380 (2020) (Commission's regulations implementing NEPA).

XPress Project in Docket No. CP19-488-000 were considered connected actions, our staff addressed both projects in the same EA as discussed below.

40. The EA concludes that neither project would result in significant impacts on any resources (e.g., geology; soils; wetlands; waterbodies; fisheries, vegetation and wildlife; cultural resources; land use; air quality; and noise). We agree with and adopt that conclusion and the analysis on which it was based.

1. Combined Impacts of Louisiana XPress and Acadiana Projects

41. Under the Council on Environmental Quality's (CEQ) regulations implementing NEPA, agencies must consider all "connected actions" within a single environmental impact statement.⁴⁶ "An agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration."⁴⁷ Because the Louisiana XPress Project and the Acadiana Project are connected actions,⁴⁸ NEPA requires that the impacts of both projects must be considered in aggregate. In order to evaluate the projects' combined impacts, we discuss below those resources that could be cumulatively affected by both projects.

Water Resources and Wetlands

42. As stated in the EA, both Kinder Morgan Louisiana and Columbia Gulf propose to hydrostatically test the project facilities, as required by the U.S. Department of Transportation regulations, to verify the integrity of the pipeline facilities before placing them into service.⁴⁹ Both companies propose to use municipal sources or wells for all of the test water; thus avoiding impacts on aquatic life. Combined, the companies propose a

⁴⁶ 40 C.F.R. § 1508.25(a) (2020).

⁴⁷ *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

⁴⁸ Under CEQ's regulations, actions are connected if they "[a]re interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. § 1508.25(a)(1)(iii) (2020). Here, the Louisiana XPress and Acadiana Projects are physically interdependent because the Acadiana Project is dependent on the incremental mainline capacity generated by the Louisiana XPress Project's three new compressor stations, which will enable the firm transportation of natural gas from a primary receipt point on Columbia Gulf's Mainline Pool to a primary delivery point at an interconnection with Kinder Morgan Louisiana in Evangeline Parish, Louisiana. The projects also have similar construction and in-service dates. *See supra* note 12.

⁴⁹ EA at 35-36.

total volume of water of about 982,000 gallons.⁵⁰ The companies would not use hydrostatic test water for consumptive purposes, and would either discharge water in well-vegetated upland areas in the same watershed as the municipality from where the water came from or discharge water into storage tanks. Further, the companies commit to discharge hydrostatic test water in accordance with the Commission's *Wetland and Waterbody Construction and Mitigation Procedures (Procedures)*. Therefore, we find that the effects of the test water use for the projects will not result in significant impacts.

43. As stated in section B.3.3 of the EA, no impacts on wetlands would occur as a result of the Acadiana Project, and although the Louisiana XPress Project would impact a total of 16.1 acres of wetlands during construction, Columbia Gulf would limit operational wetland impacts to 0.6 acre.⁵¹ Additionally, construction of the Louisiana XPress Project's Shelburn and Red Mountain Compressor Stations would temporarily impact six waterbodies, and require the installation of four waterbody culverts for operation. Construction at the existing Compressor Station 760 for the Acadiana Project would require one waterbody crossing, via a culvert crossing. Both Columbia Gulf and Kinder Morgan Louisiana will adhere to the waterbody construction and operation mitigation measures included in the Commission's *Procedures*. As most impacts on waterbodies would be temporary and impacts on wetlands would be minor and minimized to the extent practicable, we find that neither the individual nor combined impacts of these projects would result in significant wetland and waterbody impacts.

Vegetation

44. As stated in section 4.2 of the EA impacts on forested land would occur only from the Louisiana XPress Project, with 33.9 acres required for construction and 11.4 acres required for operation.⁵² Although combined impacts on agricultural land would be 92.1 acres from construction, and 24.5 acres for operation, only 1.2 acres of agricultural land would be required for construction and 0.7 acre for operation of the Acadiana Project. We conclude that neither the individual nor the additive impacts of these projects on vegetation would result in significant impacts because: (1) Columbia Gulf and Kinder Morgan Louisiana would restore all temporary construction workspaces to

⁵⁰ The specific information for each withdrawal volume, discharge location, and water source are described on pages 35 and 36 of the EA.

⁵¹ On March 9, 2020, in comments on the EA, Columbia Gulf noted that the U.S. Army Corps of Engineers identified an additional 4.2 acres of palustrine emergent wetland that will be temporarily impacted during construction of the proposed Chicot Compressor Station. Columbia Gulf provided an updated Table 11 listing the wetland impacts in its March 9 Response. Columbia Gulf, Comments on the EA, Docket No. CP19-488-000, at 2, 7 (filed March 9, 2020).

⁵² EA at 37-38.

previous use; (2) similar vegetation types in the area of the projects are abundant; and (3) the impacts associated with the projects (35.9 acres of agricultural and forested vegetation spread across five parishes in Louisiana) are minimal.

45. Impacts on developed land and open land from construction of both projects would have the largest combined impact, with 87.3 acres overall from the Acadiana Project⁵³ and 30.8 acres from the Louisiana Xpress Project.⁵⁴ However, 21.2 acres of construction workspace for the Acadiana Project would occur within existing facilities and only 2.5 acres would be permanently impacted. None of the Louisiana Xpress Project's impacts on open/developed land are expected to be permanent. Additionally, more than 40 miles separates the open/developed land impacted by the Acadiana Project from the open/developed land impacted by the Louisiana Xpress Project. Therefore, we conclude that the effects, when considered individually or additively, would be localized and minor.

Wildlife

46. Wildlife would be most impacted by removal of forested and wetland vegetation, which (as described above and in the EA) is only proposed for the Louisiana Xpress Project. However, most species would relocate to abundant habitat adjacent to the project area.⁵⁵ Based on the determinations made in the EA, the projects would not adversely affect federally listed species.⁵⁶ Neither the individual nor additive impact of the projects trigger any additional consultation requirements under the Endangered Species Act. Minimal impacts on state-listed species are expected from the combined projects, as the EA concludes that these species are not likely within the respective project areas. Therefore, we conclude that there will not be significant impacts on wildlife.

Cultural Resources

47. Commission staff, in accordance with Section 106 of the National Historic Preservation Act, considered the effects of the projects on historic properties. To the extent possible, effects to historic properties will be avoided and minimized. As stated in the EA, due to Columbia Gulf's project changes to expand the footprints of both the Red Mountain and Shelburn Compressor Stations, Section 106 compliance for the Louisiana

⁵³ *Id.* at 49-50.

⁵⁴ *Id.* at 37-38. The primary impact would be the cutting, clearing, and/or removal of existing vegetation within the construction work area.

⁵⁵ EA at 41-42.

⁵⁶ *Id.* at section 4.3.3.

XPress Project was incomplete. However, since issuance of the EA, Columbia Gulf has filed updated survey information indicating that no historic properties would be affected and correspondence with the Louisiana State Historic Preservation Officer (SHPO) stating its concurrence with these findings.⁵⁷ We agree with this finding, and consultation with the Louisiana SHPO is now complete.

Socioeconomics

48. The socioeconomic impact of a natural gas project is typically associated with the temporary workforce impact on population, public services, and housing as well as, an increase in traffic, jobs, property tax revenues, and increase in tax revenue. Overall, most of these impacts would be associated with the construction of the three greenfield compressor stations for the Louisiana XPress Project. We agree with staff's conclusion that the impacts from the projects would not be significant.⁵⁸

Air Quality

49. In section B.8.1, the EA described the construction and operational air impacts of each project component on the environment and concluded that neither project would have significant impacts on air quality. The proposed Acadiana Project facilities are more than 50 kilometers from the proposed Louisiana XPress Project facilities; therefore, as air quality impacts disperse with distance, we conclude that any additive construction or operational air quality impacts would not occur and the combined air quality impacts would not result in significant air quality impact.

50. Based on the analysis above and the analysis included in the EA, we conclude that when considered additively, the impacts from the Acadiana and Louisiana XPress Projects are not significant.

2. Comments on the EA

51. The EA was issued for a 30-day comment period and placed into the public record on February 6, 2020. The Commission received comments on the EA that were specific to the proposed Acadiana Project from the Institute for Policy Integrity at New York University School of Law (Policy Integrity) and the Tunica-Biloxi Tribe.

⁵⁷ Columbia Gulf, Comments on the EA, Docket No. CP19-488-000, at 4 (filed March 9, 2020).

⁵⁸ EA at 62-71.

a. **Policy Integrity Comments**

i. **Greenhouse Gas Emissions and Climate Change Impacts**

52. In its March 9, 2020 comments, Policy Integrity asserts that the EA “fail[ed] to disclose the potential downstream emissions from these projects.” Although the Commission did provide direct emissions estimates associated with construction and operation of the Louisiana XPress and Acadiana Projects,⁵⁹ Policy Integrity argues that the Commission must disclose downstream greenhouse gases (GHG) emitted by the combustion of the natural gas and analyze the indirect impacts associated with downstream end use.

53. Indirect effects are defined as those “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”⁶⁰ Accordingly, to determine whether an impact should be studied as an indirect impact, the Commission must determine whether it is: (1) caused by the proposed action; and (2) reasonably foreseeable.⁶¹

54. With respect to causation, “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause”⁶² in order “to make an agency responsible for a particular effect under NEPA[.]”⁶³ As the Supreme Court explained, “a ‘but for’ causal relationship is insufficient [to establish cause for purposes of NEPA].”⁶⁴ Thus, “[s]ome effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation,” will not fall within NEPA if “the causal chain is too

⁵⁹ EA at 78-82, Tables 20-25.

⁶⁰ CEQ, 40 C.F.R. § 1508.8(b).

⁶¹ *See id.*; *see also id.* § 1508.25(c).

⁶² *U.S. Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (*Pub. Citizen*) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (*Metro. Edison Co.*)).

⁶³ *Pub. Citizen*, 541 U.S. at 767.

⁶⁴ *Id.*; *see also Sierra Club v. FERC*, 827 F.3d 36, 46 (D.C. Cir. 2016) (Freeport LNG) (finding that the Commission need not examine everything that could conceivably be a but-for cause of the project at issue); *Sierra Club v. FERC*, 827 F.3d 59, 68 (D.C. Cir. 2016) (Sabine Pass LNG) (recognizing that the Commission’s order authorizing the construction of liquefied natural gas export facilities is not the legally relevant cause of increased production of natural gas).

attenuated.”⁶⁵ Further, the Court has stated that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.”⁶⁶ Regarding reasonable foreseeability, courts have found that an impact is reasonably foreseeable if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”⁶⁷ Although NEPA requires “reasonable forecasting,”⁶⁸ an agency “is not required to engage in speculative analysis”⁶⁹ or “to do the impractical, if not enough information is available to permit meaningful consideration.”⁷⁰

55. With respect to indirect impacts associated with downstream end use, the U.S. Court of Appeals for the D.C. Circuit in *Sierra Club v. FERC* held that where it is known that the natural gas transported by a project will be used for a specific end-use combustion, the Commission should “estimate[] the amount of power-plant carbon emissions that the pipelines will make possible.”⁷¹ However, outside the context of known specific end use, the D.C. Circuit explained in *Birckhead v. FERC*, that “emissions from downstream gas combustions are [not], as a categorical matter, always a reasonably foreseeable indirect effect of a pipeline project.”⁷² The court in *Birckhead* also noted that “NEPA ... requires the Commission to at least attempt to obtain the

⁶⁵ *Metro. Edison Co.*, 460 U.S. at 774.

⁶⁶ *Pub. Citizen*, 541 U.S. at 770; *see also* Freeport LNG, 827 F.3d at 49 (affirming that *Public Citizen* is explicit that the Commission need not consider effects, including induced production, that could only occur after intervening action by the DOE); Sabine Pass LNG, 827 F.3d at 68 (same); *EarthReports, Inc. v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016) (same).

⁶⁷ *EarthReports, Inc. v. FERC*, 828 F.3d at 955 (citations omitted); *see also Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

⁶⁸ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1079 (9th Cir. 2011) (quoting *Selkirk Conservation Alliance v. Forsgren*, 336 F.3d 944, 962 (9th Cir. 2003)).

⁶⁹ *Id.* at 1078.

⁷⁰ *Id.* (quoting *Envtl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1014 (9th Cir. 2006) (internal quotation marks and citation omitted)).

⁷¹ *Sierra Club v. FERC*, 867 F.3d 1357, at 1371 (D.C. Cir. 2017).

⁷² *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019) (citing *Calvert Cliffs’ Coordinating Comm., Inc. v. U.S. Atomic Energy Comm’n*, 449 F.2d 1109, at 1122 (D.C. Cir. 1971)).

information necessary to fulfill its statutory responsibilities,” but, citing to *Delaware Riverkeeper Network*, the court acknowledged that NEPA does not “demand forecasting that is not meaningfully possible.”⁷³

56. In this case, Columbia Gulf and Kinder Morgan Louisiana have executed precedent agreements with Sabine Pass Liquefaction for 95% and 89%, respectively, of the firm transportation service created by the projects. Columbia Gulf and Kinder Morgan Louisiana will use natural gas to power the compressor units; emissions associated with that use are included in the EA’s emissions estimate regarding operation of the Louisiana XPress and Acadiana Projects.⁷⁴ However, the majority of the gas delivered to the Sabine Pass LNG Export Terminal will be liquefied for export. The Commission does not have authority over, and need not address the effects of, the anticipated export of the gas.⁷⁵ Further, the end-use of the gas transported by the unsubscribed capacity is unknown and therefore the effects are not reasonably foreseeable.

57. The EA estimates the maximum potential GHG emissions from operation of these projects to be 972,400.61 tons per year of carbon dioxide equivalent (CO₂e).⁷⁶ To provide context to the EA’s GHG estimate, 5.903 billion metric tons of CO₂e were emitted at a national level in 2018 (inclusive of CO₂e sources and sinks).⁷⁷ The operational emissions of the project could potentially increase national CO₂e emissions based on the 2018 levels by 0.017%, at the national level.⁷⁸ Currently, there are no national targets to use as a benchmark for comparison.⁷⁹

⁷³ *Id.* at 520 (quoting *Delaware Riverkeeper Network v. FERC*, 753 F.3d at 1310).

⁷⁴ EA at 80-82, Tables 22-25.

⁷⁵ Freeport LNG, 827 F.3d at 47.

⁷⁶ EA at 80-82, Tables 22-25.

⁷⁷ U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2018* at ES6-8 (Table ES-2) (2020), <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2018> (accessed April, 2020).

⁷⁸ We note that this calculation does not include the total estimated construction-related emissions of 20,396.3 tons per year of CO₂e, as such emissions are temporary and would occur only during construction of the project. *See* EA at 78-79 (Tables 20-21).

⁷⁹ The national emissions reduction targets expressed in the U.S. Environmental Protection Agency’s Clean Power Plan were repealed, Greenhouse Gas Emissions from

58. GHG emissions, such as those emitted from the projects' operation, will contribute incrementally to climate change, and we have previously disclosed various effects of climate change on the Gulf Coast and Southeast regions of the United States.⁸⁰ However, as the Commission has previously concluded, it cannot determine a project's incremental physical impacts on the environment caused by GHG emissions.⁸¹ We have also previously concluded the Commission cannot determine whether an individual project's contribution to climate change would be significant.⁸² That situation has not changed.

59. Policy Integrity also contends that the Commission's NEPA analysis is flawed because the EA does not use the Social Cost of Carbon, or a similar tool (e.g., the Social Cost of Methane or the Social Cost of Nitrous Oxide), to evaluate climate change impacts.⁸³ It further argues that the Commission's failure to use the Social Cost of Carbon or a similar methodology renders NEPA's "hard look" requirement unmet.

60. The Social Cost of Carbon tool, as well as the Social Cost of Methane and Nitrous Oxide tools, estimates the monetized climate change damage associated with an incremental increase in carbon dioxide (CO₂) emissions in the given year.⁸⁴ The Commission has provided extensive discussion on why the Social Cost of Carbon is not appropriate in project-level NEPA review, and cannot meaningfully inform the Commission's decisions on natural gas infrastructure projects under the NGA.⁸⁵ We

Existing Electric Utility Generating Units; Revisions to Emissions Guidelines Implementing Regulations, 84 Fed. Reg. 32,520, 32,522-32 (July 8, 2019), and the targets in the Paris Climate Accord are pending withdrawal.

⁸⁰ Gulf South Pipeline Company, LP, Willis Lateral Project Environmental Assessment, Docket No. CP18-525-000, at 73 (March 2019) (detailing the environmental impacts attributed to climate change in the Gulf Coast and Southeast region from U.S. Global Change Research Program's 2017 and 2018 Climate Science Special Report: Fourth National Climate Assessment).

⁸¹ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70 (2018) (LaFleur, Comm'r, *dissenting in part*; Glick, Comm'r, *dissenting in part*).

⁸² *Id.*

⁸³ Policy Integrity's March 9, 2020 Comments.

⁸⁴ Interagency Working Group on the Social Cost of Greenhouse Gases, *Technical Support Document: –Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis – Under Executive Order 12866*, at 3 (Aug. 2016), https://www.epa.gov/sites/production/files/2016-12/documents/sc_co2_tsd_august_2016.pdf.

⁸⁵ *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 296 (2017), *order on reh'g*, 163 FERC ¶ 61,197, at PP 275-297 (2018), *aff'd sub nom. Appalachian Voices v.*

adopt that reasoning here. As the Commission has previously explained, the Social Cost of Carbon is not appropriate for use in any project-level NEPA review for the following reasons:

- (1) the U.S. Environmental Protection Agency (EPA) states that “no consensus exists on the appropriate [discount] rate to use for analyses spanning multiple generations”⁸⁶ and consequently, significant variation in output can result;⁸⁷
- (2) the tool does not measure the actual incremental impacts of a project on the environment; and
- (3) there are no established criteria identifying the monetized values that are to be considered significant for NEPA reviews.

ii. Methane and Nitrous Oxide Emissions

61. Policy Integrity urges the Commission to use the global warming potential for methane from the Intergovernmental Panel on Climate Change Fifth Assessment Report, which provides a 100-year global warming potential for methane of 30-36 or a 20-year global warming potential for methane of 85-87. Additionally, Policy Integrity requests that the Commission “disclose actual methane and nitrous oxide emissions, rather than providing CO₂e emissions, and use the social costs of methane and nitrous oxide, in order to provide an accurate picture of the projects’ climate impacts.”⁸⁸

62. We disagree. As stated in the EA, emissions of GHGs are typically quantified in terms of CO₂e by multiplying emissions of each GHG by its respective global warming potential.⁸⁹ Methane and nitrous oxide emissions were included in the total estimated CO₂e emissions for the projects. Estimates of applicable emissions that would be

FERC, No. 17-1271, 2019 WL 847199, at *2 (D.C. Cir. 2019) (“[The Commission] gave several reasons why it believed petitioners’ preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes.”).

⁸⁶ See Fact Sheet: EPA, *Social Cost of Carbon* (November 2013).

⁸⁷ Depending on the selected discount rate, the tool can project widely different present-day cost to avoid future climate change impacts.

⁸⁸ Policy Integrity’s March 9, 2020 Comments at 3.

⁸⁹ EA at 74.

generated during construction and operation of the projects are presented in the EA.⁹⁰ The EA's use of the global warming potential for methane designated as 25 specifically follows EPA guidance for methane.⁹¹ The use of a 100-year global warming potential for methane of 25 is the current scientific methodology used for consistency and comparability with other emissions estimates in the United States and internationally, including the EPA's Greenhouse Gas Mandatory Reporting Rule.⁹² This context would be lost if we used Policy Integrity's suggested 100-year global warming potential for methane of 30-36 or a 20-year global warming potential for methane of 85-87.

63. We also decline Policy Integrity requests to disclose the raw tons of methane and nitrous oxide emitted by the projects rather than subsuming the totals into CO₂e aggregates. The nitrous oxide emissions have already been disclosed in Table 20 – 25 of the EA. Methane emissions are included as part of the GHGs presented in the EA.⁹³ Because we find that CO₂e (which includes methane) were appropriately calculated, we do not find it necessary to provide separate methane calculations. Emissions of GHGs are quantified in the EA as units of CO₂e.⁹⁴ As discussed above, the EA estimates the maximum potential GHG emissions from operation of these projects to be 972,400.61 tons per year of CO₂e.

⁹⁰ EA at 78-82.

⁹¹ EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2018*, <https://www.epa.gov/sites/production/files/2020-04/documents/us-ghg-inventory-2020-main-text.pdf>.

⁹² See EPA, *Revisions to the Greenhouse Gas Reporting Rule and Final Confidentiality Determinations for New or Substantially Revised Data Elements*, 78 Fed. Reg. 71,903 (Nov. 29, 2013). See also *Texas E. Transmission, LP*, 146 FERC ¶ 61,086, at P 122 (2014) (explaining that the Commission uses the global warming potentials in EPA's Greenhouse Gas Reporting Rule in effect when the NEPA document is prepared); *Dominion Transmission, Inc.*, 158 FERC ¶ 61,029, at P 4 (2017) (applying the global warming potential for methane from EPA's 2013 Greenhouse Gas Reporting Rule).

⁹³ EA at 74.

⁹⁴ *Id.*

b. Tunica-Biloxi Tribe Comments

64. The Tunica-Biloxi Tribe provides comments on the EA that address both the proposed Acadiana Project and the proposed Louisiana XPress Project. The Tribe requests that the Commission immediately notify it in the event of an unanticipated discovery in accordance with the Unanticipated Discoveries Plan proposed by both companies. The Tribe also states that it reserves the right to supplement its comments insofar as cultural and archeological resource surveys were not prepared in collaboration with the Tribe. As indicated in the EA, no archaeological sites or traditional cultural properties were identified within the project area of potential effects. In the event of an unanticipated discovery, Kinder Morgan Louisiana and Columbia Gulf must notify the interested tribes of the discovery per the procedures outlined in their Unanticipated Discoveries Plans.

3. Environmental Analysis Conclusion

65. Based on the analysis in the EA and our analysis above, we conclude that if constructed and operated in accordance with Kinder Morgan Louisiana's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal, as considered additively with the Louisiana XPress Project, would not constitute a major federal action significantly affecting the quality of the human environment.

D. Conclusion

66. Based on our Certificate Policy Statement determination and our environmental analysis, we find under section 7 of the NGA that the public convenience and necessity requires approval of Kinder Morgan Louisiana's Acadiana Project, subject to the conditions in this order.

67. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

68. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities.

However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction/operation of facilities approved by this Commission.⁹⁵

69. At a meeting held on September 17, 2020, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and comments, and upon consideration of the record.

The Commission orders:

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

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

- (1) completing construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) complying with all applicable Commission regulations under the NGA including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) complying with the environmental conditions listed in the appendix to this order; and
- (4) filing written statements affirming that executed firm service agreements for volumes and service terms equivalent to those in its precedent agreement, prior to commencing construction.

⁹⁵ See 15 U.S.C. § 717r(d) (2018) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

Docket No. CP19-484-000

- 26 -

(C) Kinder Morgan Louisiana's proposal to use its existing system Rate Schedule FTS recourse reservation charge and an incremental usage charge is approved. Kinder Morgan Louisiana shall file actual tariff records with the initial incremental usage charge no more than 60 days, and no less than 30 days, prior to the date the project facilities go into service.

(D) Kinder Morgan Louisiana's proposal to charge a fuel gas reimbursement percentage of 1.06% for transportation service on the Acadiana Project is approved, but its proposal to establish this as the fuel gas reimbursement percentage to be applied to all north-to-south transportation is rejected, as discussed in the body of this order.

(E) Kinder Morgan Louisiana's request for a pre-determination of rolled-in rates of project costs is granted as discussed above, absent a material change in circumstances.

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

By the Commission. Commissioner Glick is dissenting in part with a separate statement Attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix Environmental Conditions

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

1. Kinder Morgan Louisiana Pipeline LLC (Kinder Morgan Louisiana) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Commission Order (Order). Kinder Morgan Louisiana must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of Office of Energy Projects (OEP), or the Director's designee, **before using that modification.**

2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction**, Kinder Morgan Louisiana shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Kinder Morgan Louisiana shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Kinder Morgan Louisiana's exercise of eminent domain authority granted under Natural Gas Act Section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Kinder Morgan Louisiana's right of eminent domain granted under Natural Gas Act Section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

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

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

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

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and

- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction begins**, Kinder Morgan Louisiana shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the Director's designee. Kinder Morgan Louisiana must file revisions to the plan as schedules change. The plan shall identify:
- a. how Kinder Morgan Louisiana will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Kinder Morgan Louisiana will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Kinder Morgan Louisiana will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Kinder Morgan Louisiana's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Kinder Morgan Louisiana will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and

- iv. the start and completion of restoration.
7. Kinder Morgan Louisiana shall employ at least one EI. The EI(s) shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - e. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Kinder Morgan Louisiana shall file updated status reports with the Secretary on a **monthly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Kinder Morgan Louisiana's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered, and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;

- f. a description of any landowner/resident complaints that may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Kinder Morgan Louisiana from other federal, state, or local permitting agencies concerning instances of noncompliance, and Kinder Morgan Louisiana's response.
9. Kinder Morgan Louisiana must receive written authorization from the Director of OEP, or the Director's designee, **before commencing construction of any project facilities**. To obtain such authorization, Kinder Morgan Louisiana must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Kinder Morgan Louisiana must receive written authorization from the Director of OEP, or the Director's designee, **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Kinder Morgan Louisiana shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Kinder Morgan Louisiana has complied with or will comply with. This statement shall also identify any areas affected by the projects where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. Kinder Morgan Louisiana shall file a noise survey with the Secretary **no later than 60 days** after placing the three additional compressor units at the existing Compressor Station 760 into service. If a full power load condition noise survey is not possible, Kinder Morgan Louisiana shall file an interim survey at the maximum possible power load **within 60 days** of placing the additional three compressor units in service and file the full load survey **within 6 months**. If the noise attributable to the operation of all the units at the modified compressor station at full or interim power load conditions exceeds day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any nearby noise-sensitive area (NSA), Kinder Morgan Louisiana shall:

- a. file a report with the Secretary, for review and written approval by the Director of OEP, or the Director's designee, on what changes are needed;
 - b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
 - c. confirm compliance with this requirement by filing a second full power load noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
13. Kinder Morgan Louisiana shall file a noise survey with the Secretary **no later than 60 days** after placing the modifications at the Columbia Gulf Transmission Meter Station into service. If the noise attributable to the operation of the meter station exceeds an L_{dn} of 55 dBA at any nearby NSA, Kinder Morgan Louisiana shall:
- a. file a report with the Secretary, for review and written approval by the Director of OEP, or the Director's designee, on what changes are needed;
 - b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
 - c. confirm compliance with this requirement by filing a second full power load noise survey with the Secretary **no later than 60 days** after it installs the additional noise control.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Kinder Morgan Louisiana Pipeline, LLC
Columbia Gulf Transmission, LLC

Docket Nos. CP19-484-000
CP19-488-000

(Issued September 17, 2020)

GLICK, Commissioner, *dissenting in part*:

1. I dissent in part from today's orders because they fail to comply with our obligations under the Natural Gas Act¹ (NGA) and the National Environmental Policy Act² (NEPA). The Commission once again refuses to consider the consequences its actions have for climate change. Although neither the NGA nor NEPA permit the Commission to ignore the climate change implications of constructing and operating these projects, that is precisely what the Commission is doing here.

2. In today's orders authorizing Kinder Morgan Louisiana Pipeline, LLC's Acadiana Project and Columbia Gulf Transmission, LLC's Louisiana Xpress Project (Projects), the Commission continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts.³ The Commission again refuses to consider whether the Projects' contribution to climate change from GHG emissions would be significant, even though it quantifies the Projects' direct GHG emissions from construction and operation.⁴ That failure forms an integral part of the Commission's decisionmaking: The refusal to assess the significance of the Projects' contribution to the harm caused by climate change is what allows the Commission to state that approval of the Projects "would not constitute a major federal action significantly affecting the quality of the human environment"⁵ and, as a result, conclude that the Projects are

¹ 15 U.S.C. § 717f(c) (2018).

² National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*

³ *Kinder Morgan Louisiana Pipeline, LLC*, 172 FERC ¶ 61,259 (2020) (Kinder Morgan Certificate Order) and *Columbia Gulf Transmission, LLC*, 172 FERC ¶ 61,260 (2020) (Columbia Gulf Certificate Order).

⁴ Kinder Morgan Certificate Order, 172 FERC ¶ 61,259 at P 57; Columbia Gulf Certificate Order, 172 FERC ¶ 61,260 at P 53; Acadiana Project and Louisiana Xpress Project Environmental Assessment at 80-82, Tbls. 22-25 (EA).

⁵ EA at 116.

required by the public convenience and necessity.⁶ Claiming that these projects have no significant environmental impacts while at the same time refusing to assess the significance of the projects' impact on the most important environmental issue of our time is not reasoned decisionmaking.

3. The Commission's failure to meaningfully consider climate change forces me into dissenting from certificate orders that I might otherwise support. Prior to issuing a section 7 certificate, the Commission must find both that a proposed project is needed, and that, on balance, its potential benefits outweigh its potential adverse impacts.⁷ The Commission cannot make that determination without meaningfully considering the Projects' contribution to climate change. That leaves me no choice but to dissent. No matter what I might otherwise think of a project, I will not join an order that functionally excludes climate change from the Commission's analysis.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner

⁶ Kinder Morgan Certificate Order, 172 FERC ¶ 61,259 at P 66; and Columbia Gulf Certificate Order, 172 FERC ¶ 61,260 at P 61.

⁷ See *Sierra Club v. FERC*, 867 F.3d 1357, 1373 (explaining that section 7 of the NGA requires the Commission to balance “the public benefits [of a proposed pipeline] against the adverse effects of the project,” including adverse environmental effects” (quoting *Myersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1309 (D.C. Cir. 2015))).

Document Content(s)

CP19-484-000.DOCX.....1