

## REPORT OF THE NATURAL GAS COMMITTEE

This report summarizes policy developments and legal decisions that occurred at the Federal Energy Regulatory Commission (FERC or the Commission), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the United States Courts of Appeals in the area of natural gas regulation between July 1, 2023, and June 30, 2024.\*

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## I. RULEMAKING ACTIONS

### A. *Notice of Proposed Rulemaking, Standards for Business Practices of Interstate Natural Gas Pipelines, 186 FERC ¶ 61,196 (2024).*

On March 31, 2024, the Commission issued the “Notice of Proposed Rulemaking,” *Standards for Business Practices of Interstate Natural Gas Pipelines*,<sup>1</sup> proposing to amend its regulations to incorporate by reference certain additional, modified, North American Energy Standards Board (NAESB) business practices for interstate pipelines. Specifically, the Commission proposed to adopt (with exceptions) the most recent version of Wholesale Gas Quadrant (WGQ) Version 4, which had been subject to a notice from NAESB published at the Commission on October 2, 2023,<sup>2</sup> that it planned to replace Version 3.2 with Version 4.0, based on industry input and input from the Sandia National Laboratory (regarding cybersecurity standards).<sup>3</sup> The proposed modifications of Version 3.2 include a new “set of standards consolidating existing NAESB cybersecurity standards into a single manual,”<sup>4</sup> new data elements in the WGQ Additional Standards and Capacity Release Related Standards, as well as changes to current data elements in the Flowing Gas Related Standards and Invoicing Related Standards.<sup>5</sup> Version 4.0 would also add a new data element to the WGQ Additional Standards, “Cycle Indicator,” to improve reporting and data interpretation regarding natural gas storage balances and activities.<sup>6</sup> The Commission declined to incorporate by reference optional contract models consistent with or incorporate the Wholesale Electric Quadrant/WGQ eTariff Related Standards.<sup>7</sup> The Commission proposes implementation provisions consistent with Order No. 587-V,<sup>8</sup> and summarized the standards to be incorporated by reference in accordance with the requirements of the Office of the Federal Register,<sup>9</sup> as well as the procedures for obtaining the standards themselves from NAESB.<sup>10</sup> As of this writing, no final rule has been issued.

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1. Notice of Proposed Rulemaking, *Standards for Business Practices of Interstate Natural Gas Pipelines*, 186 FERC ¶ 61,196 (2024) [hereinafter NOPR].

2. Rulemaking Comment, *NAESB WGQ Business Practice Standards Version 4.0 Report*, Docket No. RM96-1-043 (Oct. 2, 2023).

3. NOPR, *supra* note 1, at P 3.

4. *Id.* at P 9.

5. *Id.* at P 10.

6. *Id.* at P 11.

7. NOPR, *supra* note 1, at P 15.

8. *Id.* at PP 18-22.

9. *Id.* at PP 24-32.

10. *Id.* at PP 33-34.

*B. Notice of Inquiry, Petition for Rulemaking to Update Commission Regulations Regarding Allocation of Interstate Pipeline Capacity, 186 FERC ¶ 61,197 (2024).*

On March 21, 2024, the Commission issued the “Notice of Inquiry,” *Petition for Rulemaking to Update Commission Regulations Regarding Allocation of Interstate Pipeline Capacity*,<sup>11</sup> seeking information regarding “the packaging of non-contiguous and/or operationally unrelated segments of capacity in a single auction or open season and the aggregation of bids across those segments to determine the highest value bid for the purpose of awarding capacity,” and whether such practices should be permitted.<sup>12</sup> The Commission reviewed its policies regarding pipeline marketing of unsubscribed capacity,<sup>13</sup> which permit auctions of unsubscribed capacity on a net present value (NPV) basis, even for multiple segments that are geographically or operationally unrelated, on the grounds that such auctions can increase pipeline capacity use and billing determinants to the benefit of customers in the next rate case.<sup>14</sup> The Commission noted that reliance on awards of capacity to a bid with the highest NPV has been judicially upheld, in a related context.<sup>15</sup>

The Notice of Inquiry (NOI) results from a petition filed on June 22, 2022, by a number of shipper-affiliated trade associations<sup>16</sup> requesting that the Commission commence a rulemaking proceeding to weigh prohibiting pipelines from combining bids on geographically or operationally unrelated capacity segments in determining the highest NPV (Petition).<sup>17</sup> Petitioners asserted that the practice of offering valuable segments in conjunction with unwanted capacity has been increasing, with a number of alleged harms (unreasonable rates, distorted market pricing, diminished incentives to expand capacity, unlawful tying, loss of capacity needed by industrials, municipalities and local distribution companies, and higher consumer prices), and sought a rule preventing both the bundling of geographically or operationally unrelated segments and basing awards of capacity bids based on the NPV of aggregated segments.<sup>18</sup> The Petition was noticed on June 15, 2022, and the Commission received a number of comments both in support and in opposition.<sup>19</sup> Commission staff also surveyed a number of capacity postings, identifying some that involved non-contiguous paths and which could be the subject

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11. Notice of Inquiry, *Petition for Rulemaking to Update Commission Regulations Regarding Allocation of Interstate Pipeline Capacity*, Docket No. RM22-17-000, 186 FERC ¶ 61,197 (Mar. 21, 2024) [hereinafter Notice of Inquiry].

12. *Id.* at P 1.

13. *Id.* at P 2.

14. *Id.* at P 4.

15. Notice of Inquiry, *supra* note 11, at P 5.

16. Notice of Petition for Rulemaking, *American Gas Association, American Public Gas Association, Process Gas Consumers Group, and Natural Gas Supply Association*, 87 Fed. Reg. 37,321 (2022).

17. Notice of Inquiry, *supra* note 11, at P 6.

18. *Id.* at P 7.

19. *Id.* at P 8.

of aggregated bids but did not analyze whether these different paths had different market values.<sup>20</sup>

In the NOI, the Commission sought comments on a number of issues relevant to the Petition, including the frequency and nature of aggregated and non-contiguous segments in capacity postings,<sup>21</sup> the impacts of bid aggregation on rates,<sup>22</sup> customer and operational needs,<sup>23</sup> and the nature and effects of any policy changes.<sup>24</sup> As of this writing, initial and reply comments have been submitted, but the Commission has taken no further action.

## II. SIGNIFICANT FEDERAL MATTERS

### A. Methane Fee

#### 1. Proposed Rule, Waste Emissions Charge for Petroleum and Natural Gas Systems, 89 Fed. Reg. 5,318 (2024)

On January 26, 2024, the U.S. Environmental Protection Agency (EPA) published a proposed rule for implementing the methane waste emissions fee, known as the Waste Emissions Charge (WEC),<sup>25</sup> i.e., the “Methane Fee,” as directed by the Inflation Reduction Act (IRA).<sup>26</sup> The IRA added section 136 of the Clean Air Act (CAA) concerning “Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems” and instructed EPA to issue rules to calculate the charge and determine eligibility for exemptions provided by the IRA.<sup>27</sup>

In the proposed Methane Fee rule, EPA explains how it expects emission sources to determine the emissions threshold above which they must apply the per-ton charge to calculate their total Methane Fee. EPA also defines the exemptions included in the IRA and prescribes how sources can net emissions across commonly owned facilities when calculating the fee.<sup>28</sup>

The IRA includes a fee on nine categories of facilities reporting more than 25,000 metric tons of carbon dioxide equivalent (CO<sub>2e</sub>) of greenhouse gas emissions under EPA’s Greenhouse Gas Reporting Rule, found in 40 C.F.R. subpart W:

- (1) Offshore petroleum and natural gas production. (2) Onshore petroleum and natural gas production. (3) Onshore natural gas processing. (4) Onshore natural gas

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20. *Id.* at P 9.

21. Notice of Inquiry, *supra* note 11, at PP A1-A5.

22. *Id.* at PP B1-B2.

23. *Id.* at PP C1, C3.

24. *Id.* at PP D1-D2.

25. Proposed Rule, *Waste Emissions Charge for Petroleum and Natural Gas Systems*, 89 Fed. Reg. 5,318 (2024) (to be codified at 40 C.F.R. pts. 2, 99).

26. *See generally* Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818 (2022).

27. *Id.* § 60113(e).

28. 89 Fed. Reg. 5,318, at 5,328.

transmission compression. (5) Underground natural gas storage. (6) Liquefied natural gas [(LNG)] storage. (7) [LNG] import and export equipment. (8) Onshore petroleum and natural gas gathering and boosting. (9) Onshore natural gas transmission pipelines.<sup>29</sup>

The IRA contained three different thresholds for facilities to determine the amount of excess emissions used to calculate the fee, primarily based on the percentage of natural gas sent to a sales line or passing through a facility.<sup>30</sup>

In the proposed rule, EPA uses the IRA thresholds in its equation to determine when a facility is subject to the Methane Fee. As provided for in the IRA, a facility must pay for each ton of methane above the waste emissions threshold, \$900 in 2025 for its excess 2024 emissions, with the charge increasing to \$1,200 in 2026 for 2025 excess emissions and to \$1,500 in 2027 and each year beyond for the preceding year's excess emissions.<sup>31</sup> Facilities are required to calculate and pay the Methane Fee for the prior year's emissions by March 31, when the subpart W annual reports are due to EPA.<sup>32</sup>

The IRA included certain exemptions as defined in EPA's proposed Methane Fee rule. First, there is a "Compliance Exemption," which exempts an applicable facility that complies "with methane emissions requirements" under CAA sections 111(b), (d) (Methane Emissions Standards), provided EPA determines that methane regulations for new and existing sources have been approved and are in effect in all States and result in equivalent or greater emissions reductions than what would have been achieved by a 2021 proposed Methane Emissions Standards.<sup>33</sup> The second exemption is the "Unreasonable Delay Exemption" that exempts a source for methane emissions caused by unreasonable delay in environmental permitting of gathering or transmission infrastructure, as determined by EPA.<sup>34</sup> This exemption applies to onshore oil production that lacks the infrastructure to capture associated gas. Third, subject to EPA approval, the IRA also exempts emissions from wells that have been permanently shut-in or plugged in the preceding year.<sup>35</sup>

The IRA permits companies with facilities under common ownership or control to net emissions by accounting for facility emissions levels that are below the applicable threshold within and across all applicable segments.<sup>36</sup> In the proposed Rule, EPA interprets the netting provision to prohibit including facilities that are either below the subpart W 25,000 ton CO<sub>2e</sub> threshold or subject to the Compliance Exemption by reasoning that such facilities are not "applicable facilities" subject to the Methane Fee.<sup>37</sup> The EPA reads the IRA as prohibiting companies from netting their Methane Fee down to zero. Netting will be done using an equation

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29. Inflation Reduction Act § 60113(d).

30. *Id.* § 60113(f).

31. 89 Fed. Reg. 5,318, at 5,376.

32. *Id.* at 5,321.

33. Inflation Reduction Act § 60113(f)(6).

34. *Id.* § 60113(f)(5).

35. *Id.* § 60113(f)(7).

36. *Id.* § 60113(f)(4).

37. 89 Fed. Reg. 5,318, at 5,322.

proposed under new 40 C.F.R. section 99.21 using the existing subpart W definition of “common ownership or control.”<sup>38</sup>

### B. DOE LNG Pause

#### 1. DOE, The Temporary Pause on Review of Pending Applications to Export Liquefied Natural Gas (Jan. 2024).

On January 26, 2024, the Department of Energy (DOE) announced a temporary pause on reviewing applications to export LNG to countries with which the U.S. does not have a free trade agreement requiring national treatment for trade in natural gas (non-FTA countries).<sup>39</sup> According to DOE, the pause will allow the agency to update its economic and environmental analyses to determine if such exports are in the public interest.<sup>40</sup> No timeline has been provided for the completion of these analyses, but the analysis will be open for public comment.

DOE’s notice provides that the pause affects pending and new LNG export applications to non-FTA countries.<sup>41</sup> Current authorizations for non-FTA exports will not be reviewed retroactively.<sup>42</sup> DOE’s authority to regulate LNG exports is provided in section 3 of the Natural Gas Act (NGA), which governs the export and import of natural gas.<sup>43</sup>

On July 1, 2024, in *Louisiana v. Biden*, the U.S. District Court for the Western District of Louisiana issued an order that immediately stayed DOE’s temporary pause on reviewing applications to export LNG.<sup>44</sup> The court noted that the pause contradicted the language of the NGA and was subverting Congress’s determination that LNG exports are presumptively in the public interest.<sup>45</sup> The opinion explained that the NGA instructs DOE to ensure expeditious completion of reviewing export applications.<sup>46</sup>

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38. *Id.* at 5,327-28.

39. U.S. DEP’T OF ENERGY, THE TEMPORARY PAUSE ON REVIEW OF PENDING APPLICATIONS TO EXPORT LIQUEFIED NATURAL GAS (Feb. 23, 2024), <https://www.energy.gov/sites/default/files/2024-02/The%20Temporary%20Pause%20on%20Review%20of%20Pending%20Applications%20to%20Export%20Liquefied%20Natural%20Gas.pdf>.

40. *Id.*

41. *Id.*

42. *Id.*

43. U.S. DEP’T OF ENERGY, *supra* note 38.

44. *Louisiana v. Biden*, No. 2:24-CV-00406, 2024 WL 3253103 (W. Dist. La. July 1, 2024).

45. *Id.* at \*17.

46. *Id.* at \*2.

## III. ENFORCEMENT

*A. BP America Inc., “Order Approving Stipulation and Consent Agreement,” 184 FERC ¶ 61,016 (2023), “Order Granting Motion and Directing Return of Overpayment of Civil Penalty,” 186 FERC ¶ 61,081 (2024).*

FERC and BP America Inc. (BP) entered into an agreement to a civil penalty of \$10,750,000 and disgorgement of \$250,295 in profits stemming from transactions in violation of FERC’s Anti-Manipulation Rule (18 C.F.R. § 1c.1) and section 4A of the NGA by BP gas traders (Docket No. IN13-15).<sup>47</sup> BP held financial spread positions whose value was determined by the difference between gas prices at Henry Hub (a major gas market in Louisiana) and the Houston Ship Channel (HSC, a gas hub in Houston). When Hurricane Ike made landfall in Texas in 2008, this position became particularly valuable as prices increased at Henry Hub, as compared to HSC. To maintain this favorable differential after the hurricane passed, BP engaged in trades to bring additional gas to HSC to depress prices at this hub; such trades involved moving gas on an intrastate pipeline even when those transactions were themselves uneconomic because the depressed price would benefit their spread contracts.<sup>48</sup> A protracted enforcement proceeding resulted in a July 2016 FERC order assessing a \$20.16 million penalty and \$207,169 disgorgement of profits.<sup>49</sup> Following a denial of rehearing, BP appealed FERC’s decision to the U.S. Court of Appeals for the Fifth Circuit.

The court upheld FERC on all claims except one: the court found that FERC has jurisdiction only over transactions involving natural gas directly regulated by the NGA.<sup>50</sup> The Energy Policy Act of 2005 amended the NGA by adding section 4A which states that:

It shall be unlawful for any entity, directly or indirectly, to use or employ, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance. . . .<sup>51</sup>

FERC did not contend that all of the transactions involved in BP’s scheme were interstate transactions directly subject to the NGA but that section 4A forbids manipulation by “any entity” “in connection with” a jurisdictional transaction, and so long as that scheme affects the price of an NGA-jurisdictional transaction, an intrastate transaction falls under FERC jurisdiction.<sup>52</sup> The court disagreed. The court noted that the NGA clearly gives FERC authority over gas in interstate commerce and that the NGA shall not apply to intrastate transportation and sales.<sup>53</sup>

47. *BP America Inc. et al*, 184 FERC ¶ 61,016 at PP 1-2 (2023).

48. *BP American Inc. et al*, 144 FERC ¶ 61,100 at P 2 (2013).

49. Opinion No. 549, *BP Am. Inc. et al.*, 156 FERC ¶ 61,031 at P 3 (2016), *order on reh’g*, Opinion No. 549-A, 173 FERC ¶ 61,239 (2020).

50. *BP Am., Inc. v. FERC*, 52 F.4th 204, 226 (5th Cir. 2022).

51. 15 U.S.C. § 717c-1 (2005).

52. *BP Am., Inc.*, 52 F.4th at 215.

53. *See id.* at 215-17.



The court held that the “in connection with” phrase of the 2005 amendment does not support FERC’s claim that it means any connection whatsoever, regardless of how indirect or tenuous.<sup>54</sup> The court sustained FERC’s findings about eighteen transactions.<sup>55</sup> Although these transactions did not involve interstate movement of gas, the gas had been in interstate commerce, and “once gas is sold or transported in a transaction subject to NGA regulations, all subsequent transactions, whether interstate or intrastate, are controlled by the NGA.”<sup>56</sup> Accordingly, the Court remanded the case for FERC to reassess penalties in light of its holding that FERC had jurisdiction over only some of the transactions.<sup>57</sup>

The order approving the settlement penalty of \$10,750,000 permitted BP to seek to reclaim the excess in civil penalties it paid — \$13,606,686 (the penalty including interest) — through a suit in the U.S. Court of Federal Claims or any other forum of competent jurisdiction.<sup>58</sup> BP filed a motion requesting that the Commission issue an order directing return of the overpayment, which the Commission issued on January 30, 2024.<sup>59</sup>

*B. Georgia-Pacific Crossett LLC, 184 FERC ¶ 61,151 (2023).*

FERC issued an order approving the settlement surrounding the FERC Office of Enforcement’s (Enforcement) investigation into whether Georgia-Pacific Crossett, LLC (Georgia-Pacific) “violated any Commission statutes, rules, regulations, or orders, including but not limited to 18 C.F.R. section 157, in connection with the abandonment of the 19.5 mile, 8-inch diameter interstate pipeline at issue in Commission Docket No. CP22-16.”<sup>60</sup> Enforcement determined that Georgia-Pacific committed two violations.<sup>61</sup> First, Georgia-Pacific violated section 7(b) of the NGA by abandoning the pipeline without FERC’s approval.<sup>62</sup> Second, Georgia-Pacific filed an abandonment application that did not follow the following sections of the Commission’s regulation: (1) Section 157.5(a) by lacking “all pertinent data and information necessary for a full and complete understanding of the proposed project,” (2) Section 157.7(a) by not having “all information and supporting data necessary to explain fully the proposed project,” and (3) Section 157.18 by not providing “a full and complete explanation of the data submitted.”<sup>63</sup> Specifically, the Commission determined that Georgia-Pacific had done the physical work to abandon the pipeline prior to filing the certificate application.<sup>64</sup> In the

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54. *Id.* at 215.

55. *Id.* at 218.

56. *BP Am., Inc.*, 52 F.4th at 217.

57. *Id.* at 227.

58. 184 FERC ¶ 61,016, at PP 21-22.

59. *See generally BP America Inc. et al.*, 186 FERC ¶ 61,081 (2024).

60. *Georgia-Pacific Crossett LLC*, 184 FERC ¶ 61,151 at P 1 (2023).

61. *Id.* at P 13.

62. *Id.*

63. *Id.*

64. 184 FERC ¶ 61,151, at PP 6-7.

application, Georgia Pacific failed to state that the work had previously been performed and represented that the physical work would be performed at a future date.<sup>65</sup> Georgia-Pacific fully cooperated with Enforcement during its investigation.<sup>66</sup>

Enforcement and Georgia-Pacific entered into an agreement to resolve the investigation (Agreement). Georgia-Pacific “agree[d] to pay a civil penalty of \$1,200,000 to the United States Treasury” and “stipulated to the facts set forth in Section II of the Agreement, but neither admit[ted] nor denie[d] the alleged violations” (outlined in section III of the Agreement) found by Enforcement.<sup>67</sup> FERC approved the Agreement.

#### IV. RATES, TERMS, AND CONDITIONS OF SERVICE

##### A. Abandonment

1. Trailblazer Pipeline LLC and Rockies Express Pipeline LLC, 185 FERC ¶ 61,039 (2023).

In *Trailblazer Pipeline Company LLC and Rockies Express Pipeline LLC*, FERC approved the abandonment of approximately 392 miles of Trailblazer’s interstate natural gas pipeline facilities in order for the pipeline to convert its facilities to future CO<sub>2</sub> service.<sup>68</sup> FERC granted the abandonment because Trailblazer was able to continue to serve all of its customers at the existing rates at existing receipt and delivery points by entering into a capacity lease with Rockies Express Pipeline for underutilized capacity and a firm transportation service agreement with Tallgrass Interstate Gas Transmission.<sup>69</sup> Based on the continuity and stability of existing services and Trailblazer’s use of Rockies Express’s currently underused capacity, FERC concluded that the abandonment was consistent with the public interest.<sup>70</sup> FERC noted that it does not have jurisdiction over an abandoned pipeline once it is abandoned, nor does it have jurisdiction over CO<sub>2</sub> gas pipelines.<sup>71</sup>

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65. *Id.* at P 7.

66. *Id.* at P 12.

67. *Id.* at P 2.

68. *Trailblazer Pipeline LLC and Rockies Express Pipeline LLC*, 185 FERC ¶ 61,039 at P1 (2023).

69. *Id.* at P 21.

70. *Id.* at P 21.

71. *Id.* at P 67 & n.91 (citing *Trunkline Gas Company*, 145 FERC ¶ 61,108 at P 89 (2013)) (stating that the eventual disposition of the pipeline is not a factor when determining whether to grant a request for abandonment); *Cortez Pipeline Company*, 7 FERC ¶ 61,024 (1979) (construction and operation of a proposed pipeline and the transportation of predominantly pure CO<sub>2</sub> in interstate commerce are not within the jurisdiction of the Commission).

2. Stingray Pipeline Co., 185 FERC ¶ 61,171 (2023).

In *Stingray Pipeline Co.*, the Commission issued an order addressing arguments raised on rehearing and modifying the discussion of a prior order<sup>72</sup> that authorized Stingray Pipeline Company, LLC (Stingray) to abandon its pipeline system by sale to Triton Gathering LLC (Triton), a non-jurisdictional gathering company.<sup>73</sup>

“In 1974, the Federal Power Commission authorized Stingray to construct and operate a natural gas pipeline system to transport natural gas from offshore Louisiana to a point onshore in Louisiana.”<sup>74</sup> “In subsequent proceedings, Stingray was authorized to expand its pipeline system to connect to the High Island Offshore System . . . and to add compression, resulting in Stingray’s system being certificated with a maximum capacity of 1,120,000 thousand cubic feet per day (Mcf/d).”<sup>75</sup> “[B]eginning in 2004, in the face of declining throughput, Stingray sought to downsize its system, receiving Commission authorization to deactivate or abandon compression facilities that needed to be repaired, replaced, or had reached the end of their useful lives.”<sup>76</sup> “The abandonment of the compression facilities resulted in a reduction of Stingray’s certificated system capacity in 2004 from 1,120,000 Mcf/d to 800,000 Mcf/d, in 2008 to 650,000 Mcf/d, in 2011 to 560,000 Mcf/d, and in 2019 to 350,000 Mcf/d.”<sup>77</sup>

On September 25, 2020, and as amended on December 11, 2020, Stingray applied for authorization to “abandon variously by removal, in-place, and sale to [Triton], facilities located in federal waters offshore Louisiana and Texas (West Cameron 509 System).”<sup>78</sup> Further, Stingray requested a determination that upon acquisition by Triton, the West Cameron 509 System would function as non-jurisdictional gathering facilities.<sup>79</sup>

A coalition of producers filed a protest arguing that other existing facilities (Segment 3394) had been temporarily taken out of service, shutting in certain production, and that Stingray should be required to provide a plan to bring Segment 3394 back into service and to ensure producers that it would not ultimately be abandoned.<sup>80</sup> In its Answer, Stingray stated that Segment 3394 was only temporarily out-of-service, Stingray did not intend to abandon it, and it was in the process developing a plan to bring the segment back into service.<sup>81</sup>

The Commission granted the requested abandonment authorization. The Commission conditioned its abandonment authorization on Stingray either placing

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72. *Stingray Pipeline Company*, 183 FERC ¶ 61,201 (2023) (Abandonment Order).

73. *See generally Stingray Pipeline Company*, 185 FERC ¶ 61,171 (2023).

74. 183 FERC ¶ 61,201, at P 6.

75. *Id.*

76. *Id.* at P 7.

77. *Id.*

78. 183 FERC ¶ 61,201, at P 1.

79. *Id.*

80. *Id.* at P 55.

81. *Id.* at P 58.

Segment 3394 back into service prior to abandonment or filing a statement with the Commission demonstrating that Energy Resource Technology GOM (ERT), a producer dependent on Segment 3394, accepts Segment 3394 remaining out of service.<sup>82</sup> The Abandonment Order also determined the West Cameron 509 System to be non-jurisdictional gathering facilities.<sup>83</sup>

Stingray requested rehearing of the condition that Stingray either place Segment 3394 back into service prior to abandonment or file a statement that ERT accept Segment 3394 remaining out of service.<sup>84</sup>

The Commission denied rehearing. In the rehearing order, the Commission explained its decision to condition Stingray's abandonment "upon either placing Segment 3394 into service or filing a statement demonstrating ERT accepts Segment 3394 remaining out of service was based on Stingray's repeated representations that it was developing a plan to return the segment to service."<sup>85</sup> Therefore, "the Commission did not address the potential ramifications of Segment 3394 not being abandoned in working condition, beyond the condition at issue."<sup>86</sup> The Commission found that "conditioning Stingray's abandonment on the operational status of Segment 3394 appropriately takes into account Stingray's continuity of service obligation to firm shippers and its representations before the Commission."<sup>87</sup>

#### B. Bankruptcy

1. Elgin Energy Center, LLC and MRP Elgin, LLC, 185 FERC ¶ 61,103 (2023).

In *Elgin Energy Center, LLC and MRP Elgin, LLC*, FERC granted waivers of its capacity release regulations to "effectuate a pre-negotiated plan of reorganization under Chapter 11 of the United States Bankruptcy Code to implement a bankruptcy reorganization in which Elgin Energy" proposed to sell "an existing electric generation facility and related equipment . . . to MRP Elgin" and assign and permanently release natural gas pipeline firm transportation and storage capacity to the new owner.<sup>88</sup> Although FERC recognized that the capacity releases were part of the pre-negotiated plan of reorganization, it did not base its public interest finding on the bankruptcy reorganization.<sup>89</sup>

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82. 183 FERC ¶ 61,201, at P 61.

83. *Id.* at P 3.

84. 185 FERC ¶ 61,171, at P 8.

85. *Id.* at P 9.

86. *Id.*

87. *Id.*

88. *Elgin Energy Center, LLC and MRP Elgin LLC*, 185 FERC ¶ 61,103 at PP 4-5 (2023).

89. *See id.*

*C. Capacity Release*

## 1. Osaka Gas Trading &amp; Export LLC, 185 FERC ¶ 61,051 (2023).

On October 20, 2023, FERC granted a limited waiver of the Commission's buy/sell prohibition to enable Osaka Gas Trading & Export LLC (Osaka) to purchase gas from a supplier, transport gas on an interstate pipeline to the Freeport LNG facility for processing, and sell the LNG to the supplier or its affiliate at the Freeport LNG terminal.<sup>90</sup> Osaka had obtained interstate pipeline capacity to deliver natural gas for use as feedstock to the Freeport LNG terminal.<sup>91</sup> Osaka planned to purchase gas upstream, transport the gas using its interstate capacity, and transfer title to an equivalent amount of LNG to its ultimate parent company, Osaka Gas, at the Freeport LNG terminal.<sup>92</sup> Osaka stated that "there could be circumstances when Osaka would seek to sell LNG to parties other than Osaka Gas, including to parties or affiliates of parties from whom Osaka purchases natural gas feedstock."<sup>93</sup>

FERC found good cause to grant the waiver. Consistent with prior Commission orders granting waiver, the Commission stated it "continue[s] to find value in fostering a robust, efficient, and a transparent marketplace for LNG and agree[s] that the instant request for waiver may help provide Osaka with assurance and the capability to manage varying demands and conditions in its portfolio of supply and transport capacity."<sup>94</sup>

The waiver was "limited to transactions which enable the capacity to be used for the same purpose for which Osaka originally purchased that capacity: to transport natural gas to its LNG terminal for export."<sup>95</sup> Osaka stated that it will submit reports on the annual volume of gas purchased from sellers who also buy LNG.<sup>96</sup> The Commission imposed the monitoring requirement offered by Osaka: "On or before March 1, 2024, 2025, and 2026, Osaka must report to the Commission the total annual volume of natural gas that it purchased during the preceding calendar year from sellers who also purchase LNG from Osaka or are affiliates of the purchaser of LNG."<sup>97</sup>

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90. *Osaka Gas Trading & Export LLC*, 185 FERC ¶ 61,051 at P 6 (2023).

91. *Id.* at P 3.

92. *Id.*

93. *Id.* at P 4.

94. 185 FERC ¶ 61,051, at P 11.

95. *Id.* at P 12.

96. *Id.* at P 7.

97. *Id.* at P 4.

*D. Fuel*

## 1. Tennessee Gas Pipeline Co., 186 FERC ¶ 61,069 (2024).

On January 26, 2024, the Commission issued the “Order on Initial Decision,” *Tennessee Gas Pipeline Company, L.L.C.*<sup>98</sup> The Order affirmed the Initial Decision, which found that Tennessee Gas Pipeline Company, L.L.C.’s (Tennessee) fuel and loss percentage (F&LR) and electric power cost rates (ECPR) filed in its annual fuel filing in 2021 were just and reasonable.<sup>99</sup> The proceeding arose following Tennessee’s 2021 tariff filing to implement its F&LR and ECPR rates pursuant to the tracker provisions in its FERC tariff (Fuel Filing).<sup>100</sup> The filing had proposed separate rates for its general system shippers and for expansion shippers (incremental fuel costs) that were based on the composite fuel curve methodology approved by the Commission in 2018.<sup>101</sup> However, the Fuel Filing modified the approach approved in 2018 to recognize fuel savings stemming from more efficient expansion project facilities.<sup>102</sup> The expansion shipper, Antero Resources Corporation (Antero), filed a protest to the Fuel Filing, alleging that the fuel charges created cross-subsidies from the expansion shipper to the general system shippers and that the modification proposed by Tennessee did not correct that cross-subsidy.<sup>103</sup> Antero asserted that it had worked with Tennessee to revise the fuel methodology and that it had created its own “Revised Allocation Methodology.”<sup>104</sup> The Commission set the disputed issues for hearing,<sup>105</sup> and a hearing took place in January 2022.<sup>106</sup> The Presiding Judge issued the Initial Decision on June 15, 2022, finding that Tennessee’s fuel methodology was just and reasonable, Antero filed exceptions, and Tennessee and other participants opposed those exceptions.<sup>107</sup> The discussion below reflects the Commission’s view of the Initial Decision’s rationale, followed by the Commission’s analysis.

The Initial Decision noted that pipelines have substantial discretion in establishing fuel rates<sup>108</sup> and further concluded that the 1999 Certificate Policy Statement<sup>109</sup> a no-subsidization policy as to fuel rates in connection with expansion facilities.<sup>110</sup> The Initial Decision further found that in issuing a certificate for the

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98. *Tennessee Gas Pipeline Company*, 186 FERC ¶ 61,069 (2024).

99. *Tennessee Gas Pipeline Company*, 179 FERC ¶ 63,024 (2022).

100. 186 FERC ¶ 61,069, at P 12.

101. Letter Order Pursuant to § 375.307 *Tennessee Gas Pipeline Company, L.L.C.*, FERC Docket No. RP18-977-000 (Aug. 14, 2018) (delegated letter order).

102. 186 FERC ¶ 61,069, at P 13.

103. *Id.* at P 14.

104. *Id.*

105. *Tennessee Gas Pipeline Company*, 174 FERC ¶ 61,256 (2021).

106. 186 FERC ¶ 61,069, at P 14.

107. *Id.*

108. *Id.* at P 17.

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

110. 186 FERC ¶ 61,069, at P 18.

Expansion Facilities,<sup>111</sup> the Commission had specifically found that the Expansion Facilities' fuel rates must be set initially on an incremental basis, subject to later filings proposing otherwise,<sup>112</sup> and that the post-expansion fuel rates should be set on the basis of "current operating conditions."<sup>113</sup> Turning to the specific issues in this proceeding, the Initial Decision found that the record supported the conclusion that incremental rates continued to be appropriate because under rolled-in rates, the Expansion Facilities would have the effect of increasing general system fuel rates under current operating conditions.<sup>114</sup> The Initial Decision approved Tennessee's use of its fuel curves,<sup>115</sup> as well as its decision to "assign the last throughput flows on the fuel curve, and therefore the corresponding last fuel consumption, to Expansion Project Shipper Antero."<sup>116</sup> The Initial Decision supported the allocation of system last flows to Antero on the basis of engineering principles and evidence,<sup>117</sup> Antero's contract rights,<sup>118</sup> and the cost causation evidence, which included testimony that the incremental transportation at issue causes "exponentially" higher fuel costs.<sup>119</sup> The Initial Decision also approved Tennessee's methodology for crediting Antero's incremental fuel rate for certain fuel efficiencies potentially created by the Expansion Facilities,<sup>120</sup> specifically applying the credit when the Tennessee system operates at an 80% or greater throughput level.<sup>121</sup> In addition to approving Tennessee's methodology for determining the savings fuel adjustment factor by comparing pre- and post- expansion fuel curves at different throughput levels, the Initial Decision noted that Antero had received a credit in the 2021 fuel filing.<sup>122</sup> The Initial Decision concluded that Tennessee had met its burden under section 4 of the NGA to demonstrate that the 2021 Fuel Filing was reasonable; consequently, there was no basis for further reviewing the evidence.<sup>123</sup>

After reviewing the arguments in Antero's exceptions<sup>124</sup> and the other participants' briefs opposing exceptions,<sup>125</sup> the Commission affirmed the Initial Decision, finding that Tennessee had met its burden to show that the 2021 Fuel Filing

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111. *Tennessee Gas Pipeline Company*, 156 FERC ¶ 61,157 at P 33 (2016), *reh'g denied*, 163 FERC ¶ 61,190 (2018) (certificate rehearing order).

112. 186 FERC ¶ 61,069, at P 21.

113. *Id.* at P 22.

114. *Id.* at P 23. The Initial Decision found record evidence that Antero's witness agreed that, in a roll-in scenario, the Expansion Facilities would cause general system shipper fuel rates to increase. *Id.* at P 24.

115. *Id.* at PP 25-26.

116. 186 FERC ¶ 61,069, at P 27.

117. *Id.* at P 28.

118. *Id.* at P 29.

119. *Id.* at P 30.

120. 186 FERC ¶ 61,069, at P 31.

121. *Id.* at P 32.

122. *Id.*

123. *Id.*

124. 186 FERC ¶ 61,069, at PP 33-37.

125. *Id.* at PP 38-47. Briefs opposing exceptions were filed by Tennessee, Commission Trial Staff, and the Shipper Group. *Id.* at P 38.

was just and reasonable and that it was therefore not necessary to review whether Antero's alternative fuel rates were reasonable.<sup>126</sup> The Commission adopted the Initial Decision's reasoning "without modification."<sup>127</sup> The Commission noted its presumption in the 1999 Certificate Policy Statement in favor of incremental fuel rates for incremental expansions,<sup>128</sup> as well as its own prior 2016 Certificate Order requiring incremental rates for the Expansion Facilities in light of the fact that the expansion would result in increased fuel rates for system customers if rolled in.<sup>129</sup> The Commission described how it had approved the initial incremental fuel rates filed by Tennessee (which were not protested by Antero),<sup>130</sup> as well as the 2019<sup>131</sup> and 2020<sup>132</sup> fuel filings by Tennessee. The Commission agreed with the Initial Decision's assessment that the record supported incremental rates for the Expansion Facilities because had rolled-in rates been used in 2018, fuel costs would have risen for general system shippers.<sup>133</sup> The Commission went on to approve Tennessee's use of fuel curves, including its assignment of the last flows on the fuel curves to Antero, on the grounds cited in the Initial Decision,<sup>134</sup> and concluded that due to operational and contract grounds, including the compression-only nature of the expansion, Antero's volumes caused an increase in fuel use relative to the general system.<sup>135</sup> The Commission rejected Antero's contentions that cost causation principles do not support assigning the marginal increase in fuel costs entirely to Antero, citing Antero's witness' statements.<sup>136</sup> Consequently, the Commission found Tennessee's fuel rates, derived from its calculations, to be just and reasonable. Regarding the "fuel savings crediting mechanism," the Commission discussed the factors cited by the Initial Decision as well as the parties agreed upon facts, in concluding that at throughput levels of 80% or more the Expansion Facilities would reduce fuel use.<sup>137</sup> The Commission noted the actual credits passed through to Antero as a result of this mechanism<sup>138</sup> and rejected Antero's contention that the mechanism did not adequately credit Antero in light of the effect of the Expansion Facilities, noting in part that Antero did not dispute that savings occurred when system flows exceed 80% of capacity.<sup>139</sup> In its summary approval of the 2021 Fuel Filing, the Commission noted that the parties agreed on much of the

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126. *Id.* at P 48.

127. *Id.*

128. 186 FERC ¶ 61,069, at P 49.

129. *Id.* at P 50.

130. *Id.* at P 51.

131. *Id.* at P 52.

132. 186 FERC ¶ 61,069, at P 53.

133. *Id.* at P 55.

134. *Id.* at P 57.

135. *Id.* at P 58.

136. 186 FERC ¶ 61,069, at P 59.

137. *Id.* at P 60.

138. *Id.* at P 61.

139. *Id.* at P 62.



underlying data.<sup>140</sup> The Commission cited additional analytic data on the record in support of the crediting mechanism<sup>141</sup> and criticized Antero's opposition to the mechanism as resting on its position that the Commission had rejected — that assigning marginal fuel costs to the incremental service was unreasonable.<sup>142</sup>

*E. Force Majeure/Reservation Charge Credits*

1. *Antero Resources Corp. v. Columbia Gulf Transmission, LLC*, 187 FERC ¶ 61,113 (2024).

On May 28, 2024, FERC issued an order addressing complaints filed by Antero Resources Corporation and MU Marketing LLC against Columbia Gulf Transmission, LLC.<sup>143</sup>

On February 20, 2024, Antero and MU Marketing filed a complaint stating that Columbia Gulf failed to provide firm service and that its tariff provisions regarding force majeure events and reservation charge crediting do not comply with FERC policy.<sup>144</sup> FERC has set the issues raised in the complaint for hearing.<sup>145</sup>

In 2023, Columbia Gulf stated that they experienced frequent service interruptions, which they declared as force majeure events, leading to the collection of reservation charges.<sup>146</sup> Antero and MU Marketing argued that these outages were due to scheduled maintenance, which should not qualify as force majeure under FERC policy.<sup>147</sup> They sought revisions to Columbia Gulf's tariff to exclude routine maintenance from force majeure events and to ensure proper reservation charge credits.<sup>148</sup>

Columbia Gulf contended that the interruptions were necessary for maintenance and compliance with regulatory requirements.<sup>149</sup> It also argued that its current tariff provisions are consistent with FERC policy and that it had fulfilled its settlement obligations by negotiating in good faith with its customers, including Antero and MU Marketing.<sup>150</sup> Several other parties, including EQT Energy, Kaiser Marketing Appalachian, and SWN Energy, supported the complaint, highlighting similar issues with service interruptions and reservation charge crediting on Columbia Gulf's system.<sup>151</sup>

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140. 186 FERC ¶ 61,069, at P 65.

141. *Id.* at P 63.

142. *Id.* at P 64.

143. *See generally Antero Res. Corp. v. Columbia Gulf Transmission, LLC*, 187 FERC ¶ 61,113 (2024).

144. *Id.* at P 1.

145. *Id.*

146. *Id.* at P 4.

147. 187 FERC ¶ 61,113, at P 13.

148. *Id.* at P 14.

149. *Id.* at PP 15-16.

150. *Id.* at PP 20, 24.

151. 187 FERC ¶ 61,113, at P 17.

In the order, FERC determined that the complaint raises issues of material fact that cannot be resolved based on the current record.<sup>152</sup> Therefore, a hearing was ordered to explore the reliability of firm service, the circumstances under which force majeure was invoked, the status of post-settlement negotiations, and the calculation of reservation charge credits under Columbia Gulf's tariff.<sup>153</sup> A settlement judge has been designated in this proceeding.

*F. Gas Quality/RNG*

1. Florida Gas Transmission Co., 182 FERC ¶ 61,204 (2023).

On February 27, 2023, Florida Gas Transmission Company, LLC (Florida Gas) filed revised tariff records to modify the definition and gas quality sections of the General Terms and Conditions (GT&C) of its FERC Gas Tariff to define and allow for the receipt and transport of renewable natural gas (RNG) on its pipeline system.<sup>154</sup> Several shippers protested Florida Gas' proposed tariff changes.<sup>155</sup>

In an order issued on March 29, 2023, the Commission accepted and suspended the proposed tariff records to be effective upon motion August 27, 2023, subject to refund and the outcome of the hearing and technical conference established therein.<sup>156</sup> The Commission stated that its preliminary analysis indicated that Florida Gas's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful.<sup>157</sup> It found that Florida Gas's filing and the parties' protests raised technical, engineering, and operational issues that could not be resolved based on the record before it at that time.<sup>158</sup>

Commission staff convened a technical conference on May 23, 2023, where various parties gave presentations describing their support or opposition to Florida Gas's proposal.<sup>159</sup> Commission staff directed the various parties to submit initial post-technical conference comments by June 12, 2023, and reply comments by June 30, 2023.<sup>160</sup>

The Commission rejected Florida Gas's proposed tariff records in an order following technical conference issued on August 25, 2023.<sup>161</sup> The Commission evaluated Florida Gas's proposed tariff records under the framework of the Gas Quality Policy Statement.<sup>162</sup> Among other things, the Commission was critical of

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152. *Id.* at P 36.

153. *Id.*

154. *Florida Gas Transmission Company*, 182 FERC ¶ 61,204 (2023).

155. *Id.* at PP 8-19.

156. *Id.* at P 1.

157. *Id.* at P 20.

158. 182 FERC ¶ 61,204, at P 20.

159. *Florida Gas Transmission Company*, 184 FERC ¶ 61,121 at P 4 (2023).

160. *Id.*

161. *Id.* at P 1.

162. *Id.* at PP 42-45.

Florida Gas's attempt to rely on studies and standards outside of its own system to support its proposal.<sup>163</sup> The Commission found that Florida Gas had not met its evidentiary burden under section 4 of the NGA to show that its proposed RNG quality standards were just and reasonable and not unduly discriminatory.<sup>164</sup> It noted that its rejection was without prejudice to the pipeline refiling the proposal with proper support.<sup>165</sup> The Commission also encouraged Florida Gas and interested parties to "work collaboratively to resolve any and all issues through cooperative discussion. Settlement is encouraged and would help to establish industry standards in the field of RNG."<sup>166</sup> Commissioner Danly concurred with a separate statement.

Florida Gas and certain parties filed requests for rehearing of the Commission's order rejecting the tariff records.<sup>167</sup> Although the rehearing requests were deemed denied by operation of law, on January 30, 2024, the Commission issued an order addressing arguments raised on rehearing in which it modified the discussion in the August 25, 2023, order but continued to reach the same result.<sup>168</sup> In their requests for rehearing, the petitioners raised the following arguments alleging that the Commission had erred by: (1) rejecting the tariff records after having previously accepted and suspended them; (2) "failing to provide a reasonable explanation for relying on the Gas Quality Policy Statement, previous gas quality cases, or any other source to support its conclusion that a pipeline should not be allowed to use studies, data and evidence from outside the pipeline's own system to support its proposed RNG gas quality standards"; (3) departing, without explanation, from the Commission's approval of RNG quality standards in other proceedings and "purportedly establishing a policy of only accepting unopposed RNG tariff filings"; (5) "purportedly forcing RNG project owners to rely on waivers to RNG quality specifications, in contravention to the Gas Quality Policy Statement"; and (6) "rejecting Florida Gas' unopposed Wobbe Index and associated British thermal unit (Btu) levels."<sup>169</sup> The Commission found each of the alleged errors raised on rehearing to be without merit.<sup>170</sup>

On July 10, 2024, Florida Gas filed an offer of settlement of issues in the proceeding, which was supported by over 95% of shippers in the proceeding, but opposed by one shipper and one non-shipper intervenor.<sup>171</sup> As of this writing, the settlement is pending before the Commission.

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163. 184 FERC ¶ 61,121, at P 43.

164. *Id.* at P 46.

165. *Id.*

166. *Id.*

167. *Florida Gas Transmission Company*, 186 FERC ¶ 61,082 (2024).

168. *Id.* at P 2.

169. *Id.* at P 9.

170. *Id.*

171. Stipulation and Agreement of Settlement, *Florida Gas Transmission Company*, FERC Docket No. RP23-466-000 et al. (July 10, 2024).

*G. Jurisdiction*

## 1. Virginia Electric and Power Co., 185 FERC ¶ 61,131 (2023)

On November 16, 2023, the Commission granted a petition for a declaratory order filed by Virginia Electric and Power Company (VEPCO), finding that a LNG production, storage, and regasification facility planned to be used as a back-up fuel source for two of its electric generating plants is not a jurisdictional facility under the NGA.<sup>172</sup> The two electric generation plants receive natural gas deliveries via laterals on Transcontinental Gas Pipe Line Company's (Transco) interstate pipeline system.<sup>173</sup> VEPCO stated that it would use those existing laterals to feed gas to its LNG facility and to deliver regasified LNG to the second of its generation plants, all located entirely within the state of Virginia.<sup>174</sup>

VEPCO stated that the facilities should be exempt from Commission jurisdiction under its "plant line" exception, under which pipelines and facilities located wholly within a state and used solely to transport natural gas for plant use are not jurisdictional under the NGA.<sup>175</sup> VEPCO stated that its injection of regasified LNG into Transco's system to serve its second generating plant would not further interstate transportation because the LNG facilities "would not be a link in an interstate chain of commerce or an integral part of the interstate flow" — once the gas leaves Transco's system and is delivered to the LNG facility, "it will not be sold to any other parties or used for any purpose beyond storage and fuel for the two generating [plants]."<sup>176</sup>

VEPCO stated that if the facility was not a non-jurisdictional plant line, as an alternative, it was a "Hinshaw" pipeline exempt from Commission jurisdiction.<sup>177</sup> The Hinshaw Exemption is an amendment to the NGA that exempts from NGA jurisdiction, as a matter primarily of local concern, entities that receive gas at or within the border of a state, where the gas so received is ultimately consumed within that state, and the rates and service of such entity is subject to regulation by a state commission.<sup>178</sup>

The Commission found that the LNG facility did not qualify as a non-jurisdictional plant line because such facilities "must be owned and controlled by an entity separate from the interstate pipeline and must not be integrated into the interstate pipeline system."<sup>179</sup>

The Commission, however, adopted VEPCO's alternative claim that the facilities qualify under the Hinshaw Exemption.<sup>180</sup> The Commission found that the

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172. *Virginia Electric and Power Company*, 185 FERC ¶ 61,131 (2023).

173. *Id.* at P 4.

174. *Id.* at P 5.

175. *Id.* at P 12.

176. 185 FERC ¶ 61,131, at P 12.

177. *Id.* at P 14.

178. *Id.* at P 15 (citing 15 U.S.C. § 717(c)).

179. *Id.* at P 13.

180. 185 FERC ¶ 61,131, at P 19.

gas would be delivered from Transco to VEPCO within Virginia, the gas would be consumed entirely within Virginia, and that the Virginia State Corporation Commission will authorize the project and regulate the rates and services of the project.<sup>181</sup>

#### H. Rate Cases

##### 1. Maritimes & Northeast Pipeline, L.L.C., 187 FERC ¶ 61,214 (2024).

On June 27, 2024, FERC issued an order accepting and suspending Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tariff records to implement a general rate case.<sup>182</sup> On May 30, 2024, Maritimes proposed several changes, including rate increases, to reflect the fact that the quantity of capacity available on the Maritimes system now greatly exceeds the quantity of supply available to the system.<sup>183</sup> Maritimes proposed an annual total cost of service of \$186,376,7097 and total rate base of \$511,564,103.<sup>184</sup> Maritimes also proposed a debt-to-equity ratio of 33.83% to 66.17%, a cost of debt of 4.85%, and a return on equity (ROE) of 15.87%.<sup>185</sup> Maritimes stated “this rate case filing reflects future supply, cost recovery, and commercial risks that translate to a shorter economic life for the Maritimes system.”<sup>186</sup>

Protestors raised several issues, including Maritimes’ accumulated deferred income tax, excess deferred income tax adjustments, Maritimes’ lateral costs, roll-in of incrementally priced facilities, and the reservation charge crediting provision.<sup>187</sup> The Commission determined that Maritimes’ filing raised issues of material fact and set for hearing issues including but not limited to “cost of service, depreciation, rate of return, cost allocation and rate design, billing determinants, capital structure, negative salvage, tax changes, and the tariff change.”<sup>188</sup>

##### 2. Algonquin Gas Transmission, LLC, 187 FERC ¶ 61,218 (2024).

On June 28, 2024, FERC issued an order accepting and suspending Algonquin Gas Transmission, LLC (Algonquin) tariff records to implement a general rate case.<sup>189</sup> On May 30, 2024, Algonquin proposed rate changes, including certain rate decreases, to recover its cost of service and “provide Algonquin with a reasonable return on and a return of the substantial capital investment it has made

181. *Id.* at 16-19.

182. *Maritimes & Northeast Pipeline, L.L.C.*, 187 FERC ¶ 61,214 at P 4 (2024).

183. *Maritimes & Northeast Pipeline, L.L.C.*, Section 4 Rate Case Filing, FERC Docket No. RP24-780-000 (May 30, 2024).

184. 187 FERC ¶ 61,214, at P 5.

185. *Id.*

186. *Maritimes & Northeast Pipeline, L.L.C.*, Section 4 Rate Case Filing, FERC Docket No. RP24-780-000, at p. 2 (May 30, 2024).

187. 187 FERC ¶ 61,214, at P 12.

188. *Id.* at P 14.

189. *Algonquin Gas Transmission, LLC*, 187 FERC ¶ 61,218 (2024).

as part of its ongoing efforts to enhance the integrity, reliability, and safety of its system operations for the benefit of its shippers and the markets in which Algonquin serves.”<sup>190</sup> Algonquin proposed a total cost of service of \$839,110,335 and a total rate base of \$2,960,924,429, as well as a 36.10% debt and 63.90% equity capital structure, a 4.38% cost of debt, and a ROE of 15.38%, for an overall rate of return of 11.41%.<sup>191</sup> Algonquin also proposed changes to its depreciation rates and negative salvage rates.<sup>192</sup>

Protestors raised several issues, including Algonquin’s proposed cost of service, removal of the interruptible revenue crediting mechanism from its tariff, the reservation charge credit provision, capital structure, roll-in proposal, accumulated deferred income taxes, and excess deferred income tax adjustments.<sup>193</sup> The Commission determined that Algonquin’s filing raised issues of material fact and set for hearing issues including but not limited to “cost of service, depreciation, rate of return, cost allocation and rate design, billing determinants, capital structure, negative salvage, rate base, proposed rolled-in rate treatment for certain incremental projects, and the proposed removal of Algonquin’s interruptible revenue crediting mechanism from [its tariff].”<sup>194</sup> The proceeding has been assigned to a settlement judge, and at the time of publication, settlement conferences are ongoing.

### 3. Panhandle Eastern Pipe Line Co., 187 FERC ¶ 61,112 (2024).

On May 28, 2024, FERC issued an order rejecting Panhandle Eastern Pipe Line Company, LP’s (Panhandle) refund report and directed further compliance.<sup>195</sup>

In August 2019, Panhandle filed a rate case, and on September 30, 2019, FERC accepted and suspended the tariff records, effective March 1, 2020, subject to refund and established hearing procedures and a technical conference.<sup>196</sup> On December 16, 2022, the Commission issued Opinion No. 855, an order affirming in part and reversing in part an Initial Decision on Panhandle’s proposed tariff records.<sup>197</sup> Subsequently, on February 14, 2023, Panhandle submitted a compliance filing pursuant to the directives set out in Opinion No. 855.<sup>198</sup> On May 26, 2023, FERC accepted Panhandle’s compliance filing.<sup>199</sup> On September 25, 2023, FERC issued an order on rehearing and compliance that directed Panhandle to provide refunds and a report to FERC consistent with FERC’s regulations within

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190. Algonquin Gas Transmission, LLC, Section 4 Rate Case Filing, FERC Docket No. RP24-781-000, at p. 1 (May 30, 2024).

191. 187 FERC ¶ 61,218, at P 4.

192. *Id.*

193. *Id.* at PP 8-9.

194. *Id.* at P 12.

195. *Panhandle Eastern Pipe Line Company*, 187 FERC ¶ 61,112 (2024).

196. *Id.* at P 2.

197. Opinion No. 885, *Panhandle E. Pipe Line Co.*, 181 FERC ¶ 61,211 (2022); *order on reh’g*; Opinion No. 885-A, *Arguments Raised on Rehearing and Compliance*, 184 FERC ¶ 61,181 (2023), *order on reh’g*; Opinion No. 885-B, *Arguments Raised on Rehearing*, 186 FERC ¶ 61,015 (2024).

198. *Panhandle Eastern Pipe Line Company*, 183 FERC ¶ 61,148 at P 1 (2023).

199. *Id.* at P 2.

sixty days of the date of the order.<sup>200</sup> Panhandle filed its refund report at FERC and noted that it provided the required refunds to its shippers on November 17, 2023.<sup>201</sup> Specifically, in calculating refunds, Panhandle stated that it compared the subcomponents of the rates proposed in its NGA section 4 rate case relative to the rates Panhandle would have collected under the FERC-approved rates (Opinion No. 885 Rates), subject to the refund floor of the rates in effect before the end of the suspension period on March 1, 2020 (Pre-Existing Lawful Rates).<sup>202</sup>

Ameren Companies, Spire Missouri Inc., POET Holding Company LLC and Archer Daniels Midland Company, and SEMCO Energy Gas Company filed protests in response to Panhandle's refund report.<sup>203</sup>

In the order, FERC rejected Panhandle's refund report. FERC found that Panhandle used the appropriate refund floor in calculating refunds but did not use the appropriate methodology in calculating refunds.<sup>204</sup> Therefore, FERC directed Panhandle to file a corrected refund report within thirty days.

FERC explained that "Panhandle's method of separately calculating refunds for each subcomponent of its rates departs from judicial and Commission precedent, which led to miscalculations of the refunds."<sup>205</sup> FERC held that:

pipelines should calculate [the] amount by using "the entirety of the revenues derived from a rate schedule" as the standard for calculating refunds. To calculate refunds based on the entirety of the revenues from a rate schedule means that the subcomponents are to be considered together as one filed rate. Panhandle instead calculated refunds by comparing the subcomponents of the Proposed Section 4 Rates relative to what Panhandle would have collected under the Opinion No. 885 Rates, subject to the refund floor of the Pre-Existing Lawful Rates.<sup>206</sup>

In the order, FERC instructed Panhandle to recalculate refunds for each customer "on a contract-by-contract basis with the corrected interest amounts" within thirty days of the date of the order.<sup>207</sup> Additionally, FERC concluded that a waiver is not needed for Panhandle's refund report.<sup>208</sup>

### *I. Complaints*

#### *1. Elwood Energy LLC v. ANR Pipeline Co., 187 FERC ¶ 61,166 (2024).*

On June 12, 2024, FERC issued an order denying ANR Pipeline Company's (ANR) petition for reconsideration in the complaint case brought by Elwood Energy LLC.<sup>209</sup>

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200. 187 FERC ¶ 61,112, at P 2.

201. *Id.* at P 3.

202. *Id.* at P 4.

203. *Id.* at P 5.

204. 187 FERC ¶ 61,112, at P 15.

205. *Id.* at P 16.

206. *Id.*

207. *Id.* at P 17.

208. 187 FERC ¶ 61,112, at P 18.

209. *Elwood Energy LLC v. ANR Pipeline Co.*, 187 FERC ¶ 61,166 (2024).

The initial complaint, filed on August 14, 2023, alleged that ANR failed to provide firm services to Elwood during Winter Storm Elliott as required by Rate Schedule FTS-3 and the Short-Notice Service enhancement.<sup>210</sup> Furthermore, in March 2024, FERC set the issues raised in Elwood's complaint for hearing and settlement judge procedures.<sup>211</sup> ANR filed a petition for reconsideration, challenging FERC's decision to allow LS Power to intervene out-of-time in the proceedings.<sup>212</sup>

ANR argued that the late intervention by LS Power was granted improperly because the motion was ruled unopposed before the response period had expired and that LS Power failed to demonstrate good cause for the delay.<sup>213</sup> ANR contended that allowing LS Power to intervene late would disrupt the proceedings and prejudice ANR by introducing additional matters.<sup>214</sup>

LS Power countered that its late intervention was justified because it had not been served with Elwood's complaint and that its participation would not disrupt the proceeding.<sup>215</sup> LS Power emphasized that its interests, as an ANR shipper under the same rate schedule as Elwood, were not adequately represented by other parties.

FERC denied ANR's petition for reconsideration, affirming that it had discretion to grant late interventions, especially when significant interests are at stake and there is no undue prejudice or delay.<sup>216</sup> FERC found that LS Power's late intervention before the case was set for hearing did not disrupt the proceedings or impose additional burdens on existing parties.<sup>217</sup>

In the order, FERC dismissed ANR's arguments about administrative oversight, noting that previous Commission precedents allowed for late intervention under similar circumstances.<sup>218</sup> FERC concluded that LS Power's interests in the Short-Notice Service provision were significant and warranted consideration in the ongoing proceedings.<sup>219</sup> Therefore, FERC upheld its initial decision to grant LS Power's motion to intervene out-of-time and denied ANR's petition for reconsideration, ensuring that the issues raised in Elwood's complaint against ANR would proceed to hearing and settlement judge procedures with LS Power as an intervenor.<sup>220</sup> Conferences before the settlement judge were ongoing at the time of publication.

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210. *Id.* at P 2.

211. *Id.* at P 5.

212. *Id.* at P 7.

213. 187 FERC ¶ 61,166, at PP 8-9.

214. *Id.* at P 10.

215. *Id.* at P 4.

216. *Id.* at P 14-15.

217. 187 FERC ¶ 61,166, at P 14.

218. *Id.* at P 15.

219. *Id.* at P 14.

220. *Id.* at P 12.



## V. INFRASTRUCTURE

## A. Pipeline Projects

1. *Sierra Club v. FERC*, 97 F.4th 16 (D.C. Cir. 2024).

On March 29, 2024, the D.C. Circuit upheld the Commission’s decision to grant extensions of time to complete two projects — improvements to an LNG terminal in Texas and related pipeline and a 99-mile pipeline in the Northeast connecting gas producers to markets in Canada.<sup>221</sup> The Court noted that although the NGA does not require the Commission to set deadlines for completion of projects, the Commission has in place regulations requiring a deadline for completion of a project and regulations for granting of extensions for “good cause.”<sup>222</sup> These regulations are predicated on NGA authority to “perform any and all acts” to “prescribe, issue, make, amend [or] rescind” a certificate order, “as [the agency] may find necessary or appropriate to carry out the [NGA]”<sup>223</sup> The Court stated that the Commission’s discretion in granting an extension is limited only by the arbitrary-and-capricious standard of the Administrative Procedure Act (APA), which means that the Court must uphold the Commission’s decision “if the Commission has examined the relevant considerations and articulated a satisfactory explanation for its action, including a rational connection between the facts found and the choice made.”<sup>224</sup> Here, the Commission reasonably found that litigation delays for the 99-mile pipeline constituted good cause for an extension and COVID-19 pandemic causing logistical problems for the LNG project amounted to good cause.<sup>225</sup>

Under Commission precedent, however, “good cause” applies only within a timeframe during which the environmental and other public interest findings underlying the authorization can be expected to remain valid, and the Commission may account for changed conditions by relying on its discretion to “amend” a certificate as “necessary or appropriate.”<sup>226</sup> The Commission disagreed with petitioners that this NGA authority also constitutes a requirement to reevaluate finding under the certificate to ensure that its decision is “appropriate.”<sup>227</sup> The Court found that this provision empowers the Commission to take action and the plain language allows the Commission to determine, in its discretion, what is “appropriate.”<sup>228</sup> Nevertheless, the Court stated the Commission must account for substantial or significant changes that impact an approval under National Environmental Policy Act (NEPA) regulations and “must prepare a supplemental environmental analysis if (1) a major Federal action remains to occur, and (2) the agency makes substantial

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221. *Sierra Club v. FERC*, 97 F.4th 16, 19 (D.C. Cir. 2024).

222. *Id.* at 20-21.

223. *Id.* at 20 (citing 15 U.S.C. § 717o (2024)).

224. *Id.* at 23.

225. *Sierra Club*, 97 F.4th at 24.

226. *Id.* at 21.

227. *Id.* at 18.

228. *Id.* at 18.

changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns.”<sup>229</sup>

In sum, the Court stated that NGA, NEPA, and Commission precedent provide bases for the Commission “to revisit its prior findings due to a significant change in circumstances,” and the Commission has substantial discretion to amend an approved certificate if it believes doing so is “necessary or appropriate” under the NGA or is mandated by NEPA; such decision is entitled to substantial deference because it necessarily relies on the Commission’s technical expertise in determining what constitutes substantial changes to a project or significant new circumstances or information related to a project.<sup>230</sup>

2. *Alabama Municipal Distributors Group v. FERC*, 100 F.4th 207 (D.C. Cir. 2024).

On April 30, 2024, the D.C. Circuit denied a petition for review of the Commission’s certification of two related projects (collectively, Project) to provide firm transportation of gas to Plaquemines LNG, LLC, an operator of a liquefied natural gas export terminal.<sup>231</sup> Tennessee Gas Pipeline Company (Tennessee) proposed to build pipeline looping and a new compressor station and to lease capacity from Southern Natural Gas Company (Southern).<sup>232</sup> Southern proposed to build facilities, including a new compressor station, and to lease the additional capacity from this project to Tennessee to support its new service to the LNG exporter.<sup>233</sup>

In its petition for review, Sierra Club argued that the Commission violated the NEPA for three reasons, discussed in turn below. The Court rejected each of Sierra Club’s arguments.

First, Sierra Club argued that the Commission’s Environmental Impact Statement (EIS) should have included four other projects as “connected actions” under NEPA regulations.<sup>234</sup> These included the Plaquemines LNG export terminal, an amendment to increase the amount of LNG the terminal can export, a new pipeline that serves as a hub for that terminal (connects other pipelines (spokes) serving the terminal), and two new pipelines that are spokes on that hub.<sup>235</sup> The Court rejected this argument, finding that these projects are independent and do not require analysis of the impacts of these projects in connection with the Project.<sup>236</sup> The Court explained that the Commission relied on substantial evidence that each of these other projects were physically and functionally independent of the Project.<sup>237</sup> The

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229. *Sierra Club*, 97 F.4th at 18-19.

230. *Id.* at 19.

231. *Ala. Mun. Distribs. Grp. v. FERC*, 100 F.4th 207 (D.C. Cir. 2024).

232. *Id.* at 210.

233. *Id.*

234. *Id.* at 21.

235. *Ala. Mun. Distribs. Grp.*, 100 4th at 211 & n.6.

236. *Id.* at 212-13.

237. *Id.* at 212.

Court also noted that none of the other projects share ownership with the Project.<sup>238</sup> The Court also found that there was no “temporal overlap” between the projects that required analysis as connected actions because most of these projects proceeded on different timeline from the Project, and the projects would proceed even if the Project does not.<sup>239</sup>

Second, Sierra Club asserted that the Commission erred in not evaluating the effects of gas exported by the LNG terminal as “indirect effects” of the Commission authorization of the Project, which delivers gas to the LNG terminal.<sup>240</sup> The Court found that the Commission was not required to analyze this as an indirect effect.<sup>241</sup> The Court found that the NGA expressly excludes authority over foreign transport from the authority granted over interstate transport<sup>242</sup> and noted that the Court had sustained the Commission’s determination that a facility transporting gas in interstate commerce is not an export facility under NGA section 3 even if some of the gas it transports is ultimately exported.<sup>243</sup> The Court also noted that it had previously declared that the DOE, not the Commission, has sole authority to license the export of any natural gas, and therefore, the Commission does not have to address the indirect effects of the anticipated export of natural gas.<sup>244</sup> While admitting that most of its decisions concerning the impact of exported gas involved certification of export facilities under NGA section 3, whereas this case involves certification of interstate facilities under NGA section 7, the Court stated that the key question was “What factors can FERC consider when regulating in its proper sphere?”<sup>245</sup> Congress was clear about NGA section 7 authority — it defined interstate commerce to exclude foreign commerce.<sup>246</sup>

Third, Sierra Club argued that the Commission erred by declining to use an analytical tool known as the social cost of carbon (SCC) in its NEPA analysis, which assigns a dollar figure for every ton of emitted greenhouse gases.<sup>247</sup> The Court found that the Commission was not required to use the SCC tool.<sup>248</sup> The Court noted that the Commission conducted a comparative analysis of the estimated direct emissions against state and national emissions and by calculating the percentage amount the Project would add to state and national emissions; although not relying on the SCC tool, Commission staff estimated the SCC and publicly shared this information in the EIS.<sup>249</sup> The Court found reasonable the Commis-

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238. *Id.*

239. *Ala. Mun. Distribs. Grp.*, 100 4th at 212.

240. *Id.* at 213.

241. *Id.*

242. *Id.* (citing 15 U.S.C. § 717f(c)).

243. *City of Oberlin v. FERC*, 39 F.4th 719, 725-26 (D.C. Cir. 2022).

244. *Sierra Club v. FERC*, 827 F.3d 36, 47 (D.C. Cir. 2016).

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

246. *City of Oberlin*, 39 F.4th at 726.

247. *Ala. Mun. Distribs. Grp.*, 100 4th at 214.

248. *Id.* at 214-15.

249. *Id.* at 214.

sion's claim that it was not relying on the tool because of pending litigation challenging it and because the Commission has not determined which, if any, modifications are needed to render that tool useful for project-level analyses.<sup>250</sup>

3. Transcontinental Gas Pipe Line Co. and Columbia Gas Transmission, LLC, 185 FERC ¶ 61,130 (2023), order on reh'g, 187 FERC ¶ 61,024 (2024).

On November 16, 2023, the Commission authorized the construction and operation of two related pipeline projects: (1) Transcontinental Gas Pipe Line Co.'s (Transco) proposal to install a 6.35-mile looping of its mainline and a new compressor unit at an existing compressor station to create 105,000 Dth/day of firm transportation capacity contracted by Virginia Natural Gas, Inc. (Virginia Natural Gas), a local distribution company; and (2) Columbia Gas Transmission, LLC's (Columbia Gas) proposal to replace 49.2 miles of 12" line with 24" pipe and install a new compressor unit at an existing station and modify facilities at another compressor station to increase horsepower for purposes of both increasing reliability and flexibility of service to existing customers and to provide Virginia Natural Gas with 100,000 Dth/day of firm service (the Transco project would deliver gas to Columbia Gas for ultimate delivery to Virginia Natural Gas).<sup>251</sup> Columbia Gas proposed to allocate about a third of the project's estimated \$917,925,527 cost to recovery from the new incremental expansion service, with two-thirds allocated to existing system rates in a future NGA section 4 rate case.<sup>252</sup>

Protestors questioned the need for Columbia Gas to replace existing facilities, pointing out that Columbia Gas had not identified outages, incidents, or other problems related to the pipeline segments.<sup>253</sup> In response, Columbia Gas described potential problems with its aging pipeline and stated that the replacement lines would be more reliable and less susceptible to integrity-driven outages that would increase operational costs over time.<sup>254</sup> Columbia Gas also asserted that the replacement would result in added system flexibility.<sup>255</sup> Columbia Gas stated that the increased diameter of the new pipeline would reduce the need to install additional compression and allow for additional line pack, which increases inventory available for operations, thereby reducing service interruptions for commercial and industrial customers, particularly during cold days.<sup>256</sup>

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250. Ctr. for Biological Diversity v. FERC, 67 F.4th 1176 (D.C. Cir. 2023) (sustaining the Commission's approach to SCC).

251. *Transcontinental Gas Pipe Line Company and Columbia Gas Transmission, LLC*, 185 FERC ¶ 61,130 (2023), order on reh'g, 187 FERC ¶ 61,024 (2024).

252. *Id.* at P 12.

253. *Id.* at P 27.

254. *Id.* at P 29.

255. 185 FERC ¶ 61,130, at P 29.

256. *Id.*

Protestors also asserted, on the basis of their own engineering analysis, that Columbia Gas had oversized its project in order to pre-build for a future expansion.<sup>257</sup> Columbia Gas responded that the protestors' analysis did not consider the operational reserve that Columbia Gas maintains to provide reliable service, which reflect the small amount of usable line pack in the project area, distance from storage and interconnection with other supplies, and the fact that loads in the project area are end-use loads that are prone to high hourly variation.<sup>258</sup>

The Commission approved the projects. The Commission agreed with Columbia Gas that the record supported the finding that the replacement facilities will provide existing customers more reliable service.<sup>259</sup> The Commission also accepted Columbia Gas' proposed allocation of costs between existing services and the incremental expansion.<sup>260</sup> The Commission stated that its policy is that existing customers should not pay for the cost of an incremental expansion, however, that does not mean that existing customers should not be allocated the full cost of replacement facilities even when replacement is paired with expansion.<sup>261</sup> The Commission, based on past precedent, adopted the "in-kind" cost allocation method — the estimated cost of recreating existing capacity/function of the replaced facilities is allocated to existing customer service with the remainder allocated to the incremental expansion shippers.<sup>262</sup>

The Sierra Club sought rehearing of the Commission's order, raising three issues: first, that the Commission violated NEPA and the APA by failing to fully consider alternatives, including water crossings and routes, or mitigation measure;<sup>263</sup> second, that the Commission did not perform a full assessment of the climate impacts of the projects' greenhouse gas (GHG) emissions, including significance, cumulative impacts, and upstream emissions;<sup>264</sup> and third, that the Commission did not adequately consider air quality impacts or mitigation measures in the final EIS' environmental justice analysis.<sup>265</sup> The Commission's April 18, 2024, Order Addressing Arguments Raised on Rehearing affirmed its initial certificate order but included additional discussion on the issues of alternatives, emissions, and environmental justice.<sup>266</sup>

Commissioner Clements dissented from the rehearing order. Commissioner Clements disagreed with the majority that the Commission is unable to assess the

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257. *Id.* at P 36.

258. *Id.* at P 37.

259. 185 FERC ¶ 61,130, at P 30.

260. *Id.* at P 60.

261. *Id.* at P 61.

262. *Id.* at P 62.

263. Request for Rehearing of Sierra Club, *Transcontinental Gas Pipe Line Company*, FERC Docket No. CP22-495-000 at 11 (2024).

264. *Id.* at 5-7.

265. *Id.* at 17.

266. 187 FERC ¶ 61,024.

significance of the impacts of greenhouse gas emissions.<sup>267</sup> Commissioner Clements also concluded that the Commission is required to meaningfully assess and weigh the effects of a proposed project's GHG emissions and failed to do so in this proceeding.<sup>268</sup>

4. Tennessee Gas Pipeline Co., 185 FERC ¶ 61,132 (2023).

On March 25, 2022, the Commission granted an order authorizing construction of Tennessee Gas Pipeline's Evangeline Pass Expansion Project (Evangeline Project), which consists of pipeline and compressor facilities designed to provide 1,100,000 Dth/d of firm transportation capacity to support exports of LNG from the Venture Global Plaquemines LNG terminal.<sup>269</sup> Sierra Club sought rehearing of the certificate order, and following denial of rehearing on October 4, 2022,<sup>270</sup> filed a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit.

On August 15, 2023, while the petition for review was pending before the court, Tennessee Gas requested a notice to proceed with construction of the Evangeline Project.<sup>271</sup> Commission staff granted the request for notice to proceed on September 8, 2023.<sup>272</sup> On September 21, 2023, Sierra Club filed a request for stay and rehearing of the notice to proceed.<sup>273</sup> In support of its request for stay, Sierra Club asserted that construction of the Evangeline Project would cause irreparable environmental damage and that its request for rehearing automatically triggered a regulatory stay of any construction activity, pursuant to section 157.23 of the Commission's regulations.<sup>274</sup> In support of its request for rehearing of the notice to proceed, Sierra Club argued that no construction should be permitted until the case at the D.C. Circuit was resolved.<sup>275</sup>

On November 16, 2023, the Commission issued an order denying rehearing and stay of the notice to proceed.<sup>276</sup> The Commission found that Sierra Club's claims of environmental harm from the construction did not constitute the evidence of irreparable harm needed to support a stay — the Commission's environmental review found that Tennessee Gas's proposed mitigation measures and conditions imposed by the Commission will result in no significant environmental impacts from the project.<sup>277</sup> The Commission also dismissed Sierra Club's claim

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267. *Id.* at P 1 (Clements, Comm'r, dissenting).

268. *Id.*

269. *Tennessee Gas Pipeline Company and Southern Natural Gas Company*, 178 FERC ¶ 61,199 at P 1 (2022).

270. *Tennessee Gas Pipeline Company and Southern Natural Gas Company*, 180 FERC ¶ 61,205 at PP 2-3 (2022).

271. *Tennessee Gas Pipeline Company*, 185 FERC ¶ 61,132 at P 5 (2023).

272. *Id.* at PP 1, 6.

273. *Id.* at 7.

274. *Id.* at P 14 (2023); *see* 18 C.F.R. §157.23 (2020).

275. 185 FERC ¶ 61,132, at P 15.

276. *Id.* at P 2.

277. *Id.* at P 12.

that its request for rehearing of the notice to proceed automatically triggers a regulatory stay and precludes Tennessee Gas from continuing any authorized construction activity.<sup>278</sup> The Commission stated that in promulgating the regulation cited by Sierra Club, the Commission stated that the restriction does not apply to non-initial orders, such as notices to proceed.<sup>279</sup>

The Commission dismissed Sierra Club's request for rehearing of the notice to proceed on similar grounds. The Commission found the request to be outside of the scope of the notice to proceed and a collateral attack on the certificate order.<sup>280</sup> The Commission explained that the scope of its review of a notice to proceed is simply whether the order was properly issued, *i.e.*, whether Commission Staff had properly concluded that the applicant had complied with the pre-construction conditions of the certificate order.<sup>281</sup>

5. Transcontinental Gas Pipe Line Co., 186 FERC ¶ 61,047 (2024), *reh'g denied*, 187 FERC ¶ 61,200 (2024).

On January 18, 2024, the Commission authorized the construction and operation of Transco's Louisiana Energy Pathway Project (Pathway Project) which is designed to provide 364,000 Dth/d of firm transportation service through: "(1) the conversion of existing IT Feeder System service to firm transportation service; (2) the turnback of firm transportation service by existing customers"; and (3) construction of a new compressor station.<sup>282</sup> The additional firm capacity would be provided from an existing interconnection with an upstream pipeline to a mainline pooling point on Transco.<sup>283</sup> All of the Pathway Project capacity was subscribed under negotiated rates by EOG Resources, Inc. (EOG), a producer.<sup>284</sup> Sierra Club filed a protest, questioning the need for the Pathway Project and raising environmental concerns.<sup>285</sup> The Commission rejected Sierra Club's protest and approved the Pathway Project.

Transco had proposed an incremental recourse rate for the Pathway Project that was higher than the applicable system recourse rate but which included costs associated with the turnback capacity.<sup>286</sup> The Commission rejected this proposal. The Commission found that the cost of existing capacity was already reflected in Transco's existing rates and therefore excluded those costs from the illustrative incremental rate used to determine whether incremental rates were appropriate for

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278. *Id.* at P 14. Commission regulations at 18 C.F.R. § 157.23 provide that no Notice to Proceed will be issued until the Commission acts on the merits of a timely filed rehearing request or the time for filing such a request has passed. *See* 18 C.F.R. § 157.23(a) (2020).

279. 185 FERC ¶ 61,132, at P 14.

280. *Id.* at P 16.

281. *Id.*

282. *Transcontinental Gas Pipe Line Company*, 186 FERC ¶ 61,047 at P 1 (2024), *reh'g denied*, 187 FERC ¶ 61,200 (2024).

283. *Id.* at P 3.

284. *Id.* at P 6.

285. *Id.* at P 17.

286. 186 FERC ¶ 61,047, at P 14.

the Pathway Project.<sup>287</sup> With the costs of turnback capacity excluded, the illustrative incremental rate was lower than the applicable system recourse rate, and accordingly, the Commission required Transco to charge its existing rate as the initial recourse rate.<sup>288</sup>

In its environmental impact analysis, the Commission adopted its current approach for addressing the social cost of GHGs metric for determining the significance of the downstream burning of gas delivered by the Pathway Project on climate change.<sup>289</sup> The Commission stated that, for informational purposes, its staff disclosed an estimate of social cost of GHGs in its Environmental Assessment and found that calculating the social cost of GHGs does not allow the Commission to credibly determine whether the GHG emissions associated with a project are significant or insignificant in terms of impact on global climate change.<sup>290</sup> The Commission claimed that there are no criteria to identify what monetized values are significant nor is the Commission aware of any other scientifically accepted method that would enable the Commission to determine the significance of GHG emissions.<sup>291</sup>

Commissioner Clements issued a dissenting opinion. First, Commissioner Clements claimed that the administrative record does not support the conclusion that the Pathway Project is required by the public convenience and necessity, which, under Supreme Court precedent, requires the Commission to consider all factors bearing on the public interest<sup>292</sup> and that this connotes a flexible balancing process.<sup>293</sup> Commissioner Clements stated that Transco had failed to show that the public benefits of the Pathway Project outweighed adverse impacts because it provided precedent agreements as the sole evidence supporting need and did not submit a market study or specify the end-use markets that could be indirectly served by gas transported on the Pathway Project.<sup>294</sup> Commissioner Clements stated that most cases in which the Commission relied on precedent agreements as the sole evidence of need or public benefits were distinguishable from this case

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287. *Id.*

288. The Commission sets a rate for the new increment of capacity being created (incremental rate) to fully recover the cost of the incremental capacity. Typically, that rate is higher than the existing system rate (new facilities tend to be more expensive to build, and older facilities reflect an allowed rate of return applied to depreciated facilities). The rate is referred to as a "recourse" rate because it is the maximum rate based on cost-of-service ratemaking, while customers may agree to a negotiated rate; in negotiating the rate, the customer is not coerced to accept the negotiated rate because, under Commission policy, the customer has "recourse" to take the Commission determined maximum cost-of-service rate. EOG accepted a negotiated rate, so the Commission's determination that the recourse rate is the lower existing rate does not affect Transco's immediate project economics. *See id.*

289. The social cost of GHGs is a monetized estimate, denominated in dollars, of the climate change damages attributable to the GHG caused by the project. *Id.* at P 104.

290. *Id.*

291. *See* discussion of *Tennessee Gas Pipeline Company*, *infra* Section V.A.5, for a more detailed discussion of this issue.

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

293. *FPC v. Transcon. Gas Pipe Line Corp.*, 365 U.S. 1, 23 (1961).

294. 187 FERC ¶ 61,024, at P 5 (Clements, Comm'r, dissenting).



because in those cases, the Commission had more information on need or the end use of the gas to be transported on the project.<sup>295</sup>

Commissioner Clements also dissented on the Commission's assessment of GHG emissions. Commissioner Clements stated that the Commission has not seriously studied whether the social cost of GHG protocol or another tool can or should be used to determine significance of emissions.<sup>296</sup> Commissioner Clements also stated that the Commission departed without explanation from the approach it had taken in previous certificate orders, in which it had explained that it was not determining the significance of GHG emissions because the issue was under consideration in a generic policy proceeding.<sup>297</sup>

On June 26, 2024, the Commission issued an order denying the Sierra Club's request for rehearing.<sup>298</sup> The Commission concluded that it reasonably exercised its discretion in determining that an executed precedent agreement with an unaffiliated shipper for 100% of the project capacity demonstrated sufficient evidence of need for the project.<sup>299</sup> The Commission also refuted the Sierra Club's claims that the Commission failed to issue an environmental impact statement for the Pathway Project, failed to analyze reasonably foreseeable downstream and upstream GHG emissions, and did not explain the Pathway Project's impacts on climate change, concluding that it had satisfied its required analysis under the NGA.<sup>300</sup> Commissioner Clements dissented from the rehearing order, citing the same reasons set out in her dissent of the certificate order.<sup>301</sup>

#### 6. Tennessee Gas Pipeline Co., 186 FERC ¶ 61,113 (2024).

On March 11, 2022, the U.S. Court of Appeals for the D.C. Circuit remanded an order in which the Commission issued a certificate approving a Tennessee Gas Pipeline Company (Tennessee) upgrade project, which consisted of 2.1 miles of pipeline looping and replacement of two compressor units with higher efficiency units designed to serve a local distribution company (Upgrade Project).<sup>302</sup> The Commission had concluded in the certificate order that, based on the record, it could not meaningfully forecast the indirect impacts resulting from the downstream GHG emissions from the project.<sup>303</sup> The court found that the Commission had failed to adequately account for the downstream GHG emissions, based on the available information regarding the intended end use of the gas to be transported

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295. *Id.* at P 8.

296. *Id.* at P 9.

297. *Id.*

298. 187 FERC ¶ 61,200 (2024).

299. *Id.* at P 25

300. *Id.* at P 32.

301. *Id.* at P 1 (Clements, Comm'r, dissenting).

302. *Food & Water Watch v. FERC*, 28 F.4th 277, 282 (D.C. Cir. 2022).

303. *Id.* at 286.

by the project.<sup>304</sup> The court directed the Commission to either quantify and consider the adverse impacts of downstream GHG emissions, or explain why it cannot so do.<sup>305</sup>

On February 15, 2024, the Commission issued an order on remand.<sup>306</sup> The Commission found that “the Upgrade Project’s construction emissions, operational emissions, and the emissions from the downstream combustion of gas transported by the project [were] reasonably foreseeable”; the record demonstrated that the gas would serve the local distribution company’s residential and industrial customers.<sup>307</sup> The Commission estimated the GHG emission rate at “full burn” while recognizing that actual utilization rates might be lower than the full use of contracted capacity every day of the year.<sup>308</sup> Additionally, the Commission concluded that, while there may be offsetting reductions in GHG emissions if natural gas replaces downstream consumption of higher-emitting energy sources, the Commission lacked evidence that would allow it to quantify these potential offsets.<sup>309</sup> To provide “context,” the Commission provided estimates of downstream GHG emissions and compared these emissions to total national and state level emissions and to state level emission reduction targets.<sup>310</sup>

The Commission also provided, “for informational purposes,” an estimate of the social cost of GHGs emissions associated with reasonably foreseeable project emissions.<sup>311</sup> But the Commission declined to do more with this information. The Commission stated that while it had, in past orders, recognized the social cost of GHGs as having utility in certain contexts, such as rulemakings, the Commission had also found that calculating the social cost of GHGs does not allow the Commission to credibly determine whether the reasonably foreseeable emissions of a project would have a significant impact on global climate change.<sup>312</sup> The Commission stated that there are currently no criteria to identify what monetized values are significant nor is the Commission aware of any other scientifically accepted

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304. *Id.* at 281.

305. *Id.* at 289.

306. *Tennessee Gas Pipeline Company*, 186 FERC ¶ 61,113 (2024) (order on remand).

307. *Id.* at P 14.

308. *Id.* at PP 14, 15.

309. *Id.* at PP 16-17.

310. 186 FERC ¶ 61,113, at P 18.

311. *Id.* at P 21.

312. *Id.* at P 22

method to determine significance.<sup>313</sup> The Commission cited D.C. Circuit precedent upholding its decisions not to use the social cost of carbon (a similar measure as the social cost of GHGs) in its NEPA analysis.<sup>314</sup>

## B. Storage Projects

### 1. Boardwalk Storage Company, LLC

On July 31, 2023, the Commission issued a certificate of public convenience and necessity to Boardwalk Storage Company, LLC (Boardwalk Storage) to replace an existing compressor unit and to place a different compressor unit on standby, both at the Choctaw Natural Gas Storage Facility (Choctaw Facility) in Iberville Parish, Louisiana (BSC Compression Replacement Project).<sup>315</sup> The BSC Compression Replacement Project would enable Boardwalk Storage to replace an existing unit that was damaged beyond repair by a 2018 lightning strike with a new, more efficient unit and place an existing unit on standby for use as backup in the event of an outage.<sup>316</sup> Although the proposed project reduced the total certificated active horsepower and decreased the maximum injection rate at the Choctaw Facility, Boardwalk Storage stated it would still be able to meet its firm service obligations and provide reliable service to customers while lowering its maintenance costs.<sup>317</sup> The Commission found that the project was needed to ensure safe, reliable service by replacing an inoperable compressor unit, that it was not a subsidy for existing customers to pay for replacements that improve reliability or flexibility of existing service, and that there would be no adverse impact on other pipelines or landowners because the new unit was entirely within the existing Choctaw Facility footprint.<sup>318</sup> Accordingly, the Commission determined the proposed BSC Compression Replacement Project was required by the public convenience and necessity.<sup>319</sup>

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313. *Id.* (Regulations promulgated under the National Environmental Policy Act prescribe the way agencies conduct their environmental review. A finding of a significant adverse effect requires the agency to prepare an Environmental Impact Statement rather than a less detailed Environmental Assessment. In this case, the Commission staff prepared an EA after finding no significant adverse impacts over a wide range of issues including GHG emissions. A finding of a significant adverse effect does not require the agency to reject an application or require the agency to prescribe mitigation measures; NEPA regulations are procedural and do not force an outcome. However, the resulting environmental review can be the basis for a challenge to the reasonableness of the agency action in authorizing a project. The Commission’s “public interest” determination in authorizing a project under the NGA includes consideration of the environmental impacts of the project).

314. 186 FERC ¶ 61,113, at P 22 (citing *Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1184 (D.C. Cir. 2023)).

315. *Boardwalk Storage Company*, 184 FERC ¶ 61,062 at P 1 (2023) (order issuing certificate and approving abandonment).

316. *Id.* at PP 4, 9.

317. *Id.* at P 9.

318. *Id.* at PP 12-14.

319. 184 FERC ¶ 61,062, at P 9.

## 2. Tres Palacios Gas Storage, LLC

On December 1, 2023, the Commission issued a certificate of public convenience and necessity to Tres Palacios Gas Storage, LLC (Tres Palacios) to convert an existing brine production well into a natural gas storage cavern at its facility in Matagorda County, Texas (Cavern 4 Expansion Project) and reaffirmed its authority to charge market-based rates.<sup>320</sup> The proposed project would increase the storage facility's working gas and base gas capacity and involve replacement of a compressor unit.<sup>321</sup> The Commission found that the Cavern 4 Expansion Project was needed to "meet market demand for increased natural gas storage capacity and ensure reliable storage services[.]" that there would be no service disruption to or subsidization by existing customers, that the proposed project would not adversely affect other pipelines or their customers, and that the economic benefits outweighed the adverse effects on landowners.<sup>322</sup> Based on this analysis, the Commission found that the public convenience and necessity required approval of the Cavern 4 Expansion Project.<sup>323</sup>

## 3. Golden Triangle Storage, LLC

On January 18, 2024, the Commission authorized Golden Triangle Storage, LLC (Golden Triangle) to amend its certificate of public convenience and necessity to increase the authorized maximum injection and withdrawal rates at its natural gas storage facility in Jefferson and Orange Counties, Texas (GTS Storage Facility).<sup>324</sup> The Commission also reaffirmed Golden Triangle's authority to charge market-based rates for its firm and interruptible storage, hub, and wheeling services.<sup>325</sup> The Commission determined that its previous analysis of the public convenience and necessity of the GTS Storage Facility was still applicable to the proposed amendment, as the proposal would enhance operational capacity without adverse impacts on existing customers, other pipelines and their customers, or landowners and the surrounding communities.<sup>326</sup> The Commission also reaffirmed its prior finding that Golden Triangle could charge market-based rates for its services, based on its lack of market power in the highly competitive Gulf Coast Production Area where the GTS Storage Facility is located.<sup>327</sup>

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320. *Tres Palacios Gas Storage, LLC*, 185 FERC ¶ 61,094 at P 1 (2023) (order issuing certificate and approving abandonment).

321. *Id.* at P 17.

322. *Id.* at PP 16-20.

323. *Id.* at P 65.

324. *Golden Triangle Storage, LLC*, 186 FERC ¶ 61,037 at P 1 (2024) (order amending certificate).

325. *Id.* at PP 13-18.

326. *Id.* at PP 11-12.

327. *Id.* at PP 17-18.

### C. LNG Projects

#### 1. Delfin LNG LLC

On October 4, 2023, the Commission granted Delfin LNG LLC's (Delfin) request for a four-year extension of time,<sup>328</sup> until September 28, 2027, "to construct and place into service the onshore metering, compression, and piping facilities . . . intended to interconnect with Delfin's planned deepwater LNG port," which is subject to the jurisdiction of the U.S. Department of Transportation's Maritime Administration.<sup>329</sup> Delfin received four one-year extensions of time since 2019 due to delays stemming from the COVID-19 pandemic and delays "in developing the connected deepwater port and in securing offtake agreements with potential customers."<sup>330</sup> Several environmental groups reiterated protests they lodged in the previous extension of time proceeding (November 2022 Extension Order),<sup>331</sup> which challenged Delfin's request and argued that the environmental analysis was no longer valid due to changed circumstances and that failure to acquire customers was not good cause to grant the extension.<sup>332</sup> The Commission rejected the environmental groups' arguments and found there was good cause to grant Delfin's request, given that Delfin "continues to make progress in the commercialization of its project."<sup>333</sup> The Commission also rejected the environmental groups' argument that changed circumstances rendered the Commission's previous environmental analysis inadequate, adopting its prior analysis of those arguments from the November 2022 Extension Order.<sup>334</sup>

#### 2. Texas LNG Brownsville LLC

On October 27, 2023, the Commission issued an order addressing arguments raised on rehearing by Sierra Club and other opposition groups (together, Sierra Club) sustaining the Commission's previous conclusion that Texas LNG Brownsville LLC's (Texas LNG) proposed LNG export terminal (Texas LNG Terminal) is not inconsistent with the public interest under section 3 of the NGA.<sup>335</sup> On April 21, 2023, the Commission issued an order (Texas LNG Remand Order) addressing issues remanded to the Commission from the D.C. Circuit — whether the social cost of GHGs or similar protocol should be used and the appropriate scope of the

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328. See generally *Delfin LNG LLC*, 185 FERC ¶ 61,009 (2023). The Commission granted several requests for extensions of time to LNG companies this past year along substantially similar grounds. See also *Gulf LNG Liquefaction Company, LLC et al.*, 187 FERC ¶ 61,096 (2024) (order granting extension of time); *Driftwood LNG LLC*, 186 FERC ¶ 61,112 (2024) (order granting extension of time).

329. 185 FERC ¶ 61,009, at PP 1, 2.

330. *Id.* at P 4.

331. See *Delfin LNG LLC*, 181 FERC ¶ 61,144 (2022).

332. 185 FERC ¶ 61,009, at PP 7, 13.

333. *Id.* at P 12.

334. *Id.* at P 13.

335. *Texas LNG Brownsville LLC*, 185 FERC ¶ 61,079 at P 1 (2023) (order addressing arguments raised on rehearing).

Commission's environmental justice analysis — and concluded that authorization of the Texas LNG Terminal was not inconsistent with the public interest.<sup>336</sup> On rehearing, Sierra Club argued that the Commission erred in the Texas LNG Remand Order by failing to: “(1) consider issues that were not remanded by the court; (2) properly consider air pollution and environmental justice impacts; (3) properly consider [GHG] emissions impacts”; and (4) supplement the 2019 EIS with new information.<sup>337</sup> The Commission rejected Sierra Club's procedural and environmental arguments, finding that the scope of the Commission's review on remand was proper, and that the Commission had adequately considered the air quality and environmental justice impacts.<sup>338</sup> The Commission reiterated that there is no accepted criteria for using the social cost of GHGs to assess the significance of reasonably foreseeable emissions and that the D.C. Circuit has repeatedly upheld the Commission's decision not to rely on this protocol.<sup>339</sup> The Commission also rejected Sierra Club's contention that a supplemental EIS was required because “the issues addressed on remand did not result in any new significance determinations” and because Sierra Club failed to provide support for its contention that Texas LNG's ongoing compliance requirements would be insufficient to mitigate harm from future SpaceX rocket launches.<sup>340</sup> The Commission pointed out that, under NGA section 3, “there is a presumption favoring authorization” and “to overcome the favorable presumption . . . there must be an affirmative showing of inconsistency with the public interest” and no such showing had been made.<sup>341</sup>

### 3. Rio Grande LNG, LLC

On October 27, 2023, the Commission issued an order addressing arguments raised on rehearing by Sierra Club and other opposition groups (together, Sierra Club) sustaining the Commission's previous conclusion that Rio Grande LNG, LLC's (Rio Grande) proposed LNG export terminal (Rio Grande LNG Terminal) is not inconsistent with the public interest under section 3 of the NGA.<sup>342</sup> On April 21, 2023, the Commission issued an order (Rio Grande Remand Order) addressing issues remanded to the Commission from the D.C. Circuit — whether a social cost of GHGs or similar protocol should be used and the appropriate scope of the Commission's environmental justice analysis — and concluded that authorization of the Rio Grande LNG Terminal Project was not inconsistent with the public interest.<sup>343</sup> On rehearing, Sierra Club argued that the Commission erred in the Rio Grande Remand Order by failing to: “(1) consider issues that were not remanded

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336. *Id.* at PP 5, 8.

337. *Id.* at P 10.

338. *Id.* at PP 5, 11-37.

339. 185 FERC ¶ 61,079, at PP 43-45.

340. *Id.* at PP 31, 48-49.

341. *Id.* at P 37 (internal citations and quotation marks omitted).

342. *Rio Grande LNG, LLC and Rio Bravo Pipeline Company*, 185 FERC ¶ 61,080 at PP 1-2 (2023) (order addressing arguments raised on rehearing).

343. *Id.* at P 12.

by the court; (2) address Rio Grande's plans to incorporate carbon capture and sequestration" system (CCSS) into the Rio Grande LNG Terminal; (3) "properly consider air pollution and environmental justice impacts"; (4) properly consider GHG emissions impacts; and (5) supplement the EIS with new information.<sup>344</sup> The Commission rejected Sierra Club's procedural and environmental arguments, finding that the scope of the Commission's review on remand was proper and that the Commission had adequately considered the air quality and environmental justice impacts.<sup>345</sup> The Commission found Sierra Club's arguments related to Rio Grande's CCSS to be outside the scope of the Rio Grande Remand Order, as the CCSS is being addressed in a separate, pending docket and "is not a connected action with the Rio Grande LNG Terminal."<sup>346</sup> The Commission reiterated that there is no accepted criteria for using the social cost of GHGs to assess the significance of reasonably foreseeable emissions and that the D.C. Circuit has repeatedly upheld the Commission's decision not to rely on this protocol.<sup>347</sup> Finally, the Commission rejected Sierra Club's contention that a supplemental Final EIS was required, concluded that a supplemental NEPA document was not necessary to facilitate public participation, and that Sierra Club failed to provide support for its contention that Rio Grande's ongoing compliance requirements would be insufficient to mitigate harm from future SpaceX rocket launches.<sup>348</sup> The Commission pointed out that, under NGA section 3, "there is a presumption favoring authorization" and "to overcome the favorable presumption . . . there must be an affirmative showing of inconsistency with the public interest" and no such showing had been made.<sup>349</sup>

Additionally, on January 24, 2024, the Commission issued an order denying Sierra Club's request for a stay of Commission staff's authorization to proceed with construction of the Rio Grande LNG Terminal.<sup>350</sup> In denying Sierra Club's motion for stay, the Commission found that Sierra club failed to prove irreparable injury absent a stay and that "the harms alleged by Sierra Club, even if irreparable," did not support a conclusion that a stay would be in the public interest.<sup>351</sup>

#### 4. Venture Global Plaquemines LNG, LLC

On October 23, 2023, the Commission issued an order amending Venture Global Plaquemines LNG, LLC's (Plaquemines LNG) existing NGA section 3

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344. *Id.* at P 11. Sierra Club also raised various arguments on rehearing related to amendments of the Rio Bravo Pipeline Project.

345. *Id.* at PP 14, 24-36.

346. 185 FERC ¶ 61,080, at P 18.

347. *Id.* at P 57.

348. *Id.* at PP 40-45, 75-76.

349. *Id.* at PP 52-53 (internal citations and quotation marks omitted).

350. *Rio Grande LNG, LLC and Rio Bravo Pipeline Company*, 186 FERC ¶ 61,021 at P 1 (2024) (order denying stay).

351. *Id.* at PP 27, 29.

authorization to allow for increased workforce and construction traffic and modifications to the scope of work that could be performed on a 24-hours-a-day, seven-days-a-week basis (24/7 Construction).<sup>352</sup> Although Plaquemines LNG's request was initially filed as a request for variance (December 2022 variance), the Commission determined that "[t]he magnitude and potential impacts of change requested in the December 2022 variance" were substantial enough to constitute a proposed amendment to the NGA section 3 approvals previously granted for the project.<sup>353</sup> Plaquemines LNG stated its request would maximize construction efficiency while reducing environmental and community disturbance, mitigate effects from lost workdays due to weather, and allow for a safer work environment and achievement of construction milestones.<sup>354</sup> The Commission concluded that Plaquemines LNG's proposed amendment "would not constitute a major federal action significantly affecting the quality of the . . . environment" and would not be inconsistent with the public interest.<sup>355</sup>

#### 5. Port Arthur LNG, LLC

On May 10, 2024, the Commission issued an order amending Port Arthur LNG, LLC and PALNG Common Facilities Company, LLC's (collectively, Port Arthur LNG) existing NGA section 3 authorization to allow for 24/7 Construction.<sup>356</sup> In its application for the proposed amendment, Port Arthur LNG stated its request would result in reduced congestion around the project area, maximize construction efficiency while reducing environmental and community disturbance, and enable timely completion of the Port Arthur LNG Export Terminal.<sup>357</sup> The Commission concluded that Port Arthur LNG's amendment "would not constitute a major federal action significantly affecting the quality of the human environment" and would not be inconsistent with the public interest.<sup>358</sup>

#### 6. Port Arthur LNG Phase II, LLC

On September 21, 2023, the Commission granted Port Arthur LNG Phase II, LLC and PALNG Common Facilities Company LLC's (collectively, PALNG Phase II) application pursuant to section 3 of the NGA and part 153 of the Commission's regulations for authorization to expand the Port Arthur LNG Export Terminal in Jefferson County, Texas (Expansion Project).<sup>359</sup> The approved Expansion Project consists of two liquefaction trains, each capable of producing up to

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352. *Venture Global Plaquemines LNG, LLC and Venture Global Gator Express, LLC*, 185 FERC ¶ 61,037 at P 1 (2023) (order amending authorization under section 3 of the Natural Gas Act).

353. *Id.* at P 2.

354. *Id.* at P 5.

355. *Id.* at PP 70-71.

356. *Port Arthur LNG, LLC and PALNG Common Facilities Company*, 187 FERC ¶ 61,058 at P 1 (2024) (order amending authorization under section 3 of the Natural Gas Act).

357. *Id.* at P 5.

358. *Id.* at PP 53, 55.

359. *Port Arthur LNG Phase II, LLC and PALNG Common Facilities Company*, 184 FERC ¶ 61,184 at P 1 (2023) (order granting authorization under section 3 of the Natural Gas Act).



6.73 million metric tonnes per annum (MTPA), as well as gas treatment facilities and associated utilities and infrastructure.<sup>360</sup> Sierra Club and other stakeholders opposed PALNG Phase II's application, arguing the project would "cause permanent damage to wetlands and . . . impact federally protected migratory bird species."<sup>361</sup> The Commission concluded that based on the analysis in the 2021 Environmental Assessment (EA) and the 2023 Supplemental EA, approval of the Expansion Project "would not constitute a major federal action significantly affecting the quality of the human environment."<sup>362</sup> The Commission's order also acknowledged that the Expansion Project would have impacts on environmental justice communities, but these would be temporary or mitigated to levels that would be "less than significant."<sup>363</sup>

On December 20, 2023, the Commission issued an order addressing arguments raised on rehearing by PALNG Phase II and setting aside its prior order in part.<sup>364</sup> PALNG Phase II requested modification of Condition 24 of Appendix A, which it argued was internally inconsistent with other conditions and would have required PALNG Phase II to file structural and foundational plans and receive written approval from the Commission's Director of the Office of Energy Projects (OEP) before undertaking certain construction activities that have not previously required a Notice to Proceed.<sup>365</sup> The Commission agreed with PALNG Phase II "that the Commission has not required applicants in other cases to file structural and foundational plans with the Director of OEP for review and written authorization as part of the Notice to Proceed process" and found Condition 24 was not required to fulfill the Commission's responsibilities.<sup>366</sup> Therefore, the Commission modified and set aside its prior order, in part, by deleting Condition 24 in its entirety.<sup>367</sup>

## 7. Venture Global CP2 LNG, LLC

On June 27, 2024, the Commission granted Venture Global CP2 LNG, LLC's (CP2 LNG) application pursuant to section 3 of the NGA and part 153 of the Commission's regulations for authorization to site, construct, and operate a new LNG export terminal in Cameron Parish, Louisiana (CP2 LNG Project).<sup>368</sup> The approved CP2 LNG Project has a nameplate capacity of 20 MTPA, with a peak achievable capacity of 28 MTPA, and consists of eighteen liquefaction blocks, four aboveground full containment LNG storage tanks, two marine LNG loading

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360. *Id.* at P 4.

361. *Id.* at P 9.

362. *Id.* at P 130.

363. 184 FERC ¶ 61,184, at PP 128-29.

364. *Port Arthur LNG Phase II, LLC and PALNG Common Facilities Company*, 185 FERC ¶ 61,194 at P 1 (2023) (order addressing arguments raised on rehearing, setting aside prior order, in part).

365. *Id.* at PP 4-7.

366. *Id.* at P 9.

367. *Id.* at PP 4-5.

368. *Venture Global CP2 LNG, LLC and Venture Global CP Express, LLC*, 187 FERC ¶ 61,199 at P 1, 3 (2024) (order granting authorizations under sections 3 and 7 of the Natural Gas Act).

docks, and other appurtenant facilities.<sup>369</sup> The Commission also authorized construction and operation of a new pipeline to connect the CP2 LNG Project to the existing grid in East Texas and Southwest Louisiana.<sup>370</sup> Multiple environmental groups (collectively, Environmental Coalition) intervened to challenge the CP2 LNG Project approval, asserting, among other things, that the project developers did not demonstrate market need for the project and that the climate impacts render the project inconsistent with the public interest.<sup>371</sup> The Commission declined to address the Environmental Coalition's market need claims, explaining that authority to disapprove the export or import of the underlying commodity is within the DOE's exclusive jurisdiction.<sup>372</sup> Based on its review of the information and analysis contained in the final EIS and elsewhere in the record, the Commission determined that the CP2 LNG Project and associated pipeline were "environmentally acceptable actions."<sup>373</sup> The Commission's approval was conditioned on "CP2 LNG's facilities being fully constructed and made available for service within seven years" and in "compliance with the environmental conditions in its order."<sup>374</sup>

#### 8. Venture Global Calcasieu Pass, LLC

On September 22, 2023, the Commission granted Venture Global Calcasieu Pass, LLC's (Calcasieu Pass) application pursuant to section 3 of the NGA and part 153 of the Commission's regulations to increase the liquefaction production capacity at its LNG export facility in Cameron Parish, Louisiana, from 620 billion cubic feet per year (Bcf/y) to 640.7 Bcf/y (Calcasieu Pass Uprate Amendment).<sup>375</sup> The increased LNG production capacity reflected "refinements in the conditions and assumptions concerning maximum potential operations" and would not require additional construction or modification of environmental permits.<sup>376</sup> The Calcasieu Pass Uprate Amendment did not require additional construction or modification of previously authorized facilities or increase the annual number of LNG tankers approved by the U.S. Coast Guard.<sup>377</sup>

#### 9. NFEnergía LLC

On July 31, 2023, the Commission issued an order (July 2023 Order) in response to NFEnergía LLC's (NFEnergía) application to construct and operate a new pipeline at its existing LNG import terminal at the Port of San Juan in Puerto

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369. *Id.* at P 7.

370. *Id.* at PP 2-3.

371. *Id.* at P 19.

372. 187 FERC ¶ 61,199, at P 27.

373. *Id.* at P 198.

374. *Id.* at Ordering ¶ (B).

375. *Venture Global Calcasieu Pass, LLC*, 184 FERC ¶ 61,185 at P 1 (2023) (order amending authorization under section 3 of the Natural Gas Act).

376. *Id.* at P 3.

377. *Id.*

Rico.<sup>378</sup> NFEnergía stated the pipeline was “necessary to supply natural gas to the U.S. Army Corps of Engineers’ emergency temporary generation project” which was “scheduled to be brought online in August 15, 2023.”<sup>379</sup> The Commission stated that there “is no explicit statutory authority for the Commission to issue the section 3 authorization sought” because the LNG terminal is still pending authorization; however, given the involvement of other Federal agencies in efforts to stabilize Puerto Rico’s electricity grid prior to hurricane season, the Commission stated it would not take any action to prevent the immediate construction and operation of the pipeline but rather would undertake a complete examination of the merits as part of the pending proceeding related to the authorization of the LNG terminal.<sup>380</sup>

On January 30, 2024, the Commission issued an order addressing arguments raised on rehearing of the July 2023 Order.<sup>381</sup> A group of non-governmental organizations (NGOs) filed a rehearing request, raising issues related to “(1) the environmental and safety effects of the project”; (2) the need for public hearing and translation into Spanish; “(3) the Commission’s authority to issue the requested authorization; and (4) the lack of adequate public comment period.”<sup>382</sup> Consistent with its approach in the July 2023 Order, the Commission stated that it viewed the emergency pipeline request as an application for amendment to the pending NGA section 3 authorization for NFEnergía’s LNG terminal and that the two applications would be processed together.<sup>383</sup> Therefore, the Commission stated that it would address the NGOs’ arguments raised on rehearing as part of the pending LNG terminal proceeding.<sup>384</sup>

#### 10. Cove Point LNG, LP

On April 25, 2024, the Commission issued an order granting in part and denying in part an application by Cove Point LNG, LP (Cove Point) requesting the Commission to “change the jurisdictional basis and scope of its regulation” of certain facilities at Cove Point’s LNG terminal in Calvert County, Maryland (Cove Point Terminal), and requesting authorization to abandon service under a rate schedule that was no longer needed.<sup>385</sup> In its application, Cove Point requested to abandon certain facilities previously authorized by the Commission under NGA

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378. *NFEnergía, LLC*, 184 FERC ¶ 61,061 at P 1 (2023) (order on request for section 3 authorization).

379. *Id.*

380. *Id.* at PP 2-3.

381. *NFEnergía, LLC*, 186 FERC ¶ 61,078 at P 1 (2024) (order addressing arguments raised on rehearing).

382. *Id.* at P 4.

383. *Id.* at P 9.

384. *Id.*

385. *Cove Point LNG, LP*, 187 FERC ¶ 61,038 at P 1 (2024) (order reauthorizing facilities under section 3 of the Natural Gas Act and granting in part and denying in part abandonment).

section 7 and reauthorize its terminaling and processing facilities and related operations solely under NGA section 3.<sup>386</sup> Additionally, Cove Point requested authorization to cancel its services and short-term contracts under Rate Schedule LTD-1, stating there is no market demand for them.<sup>387</sup> Although the Commission granted authorization of “all of Cove Point’s terminal facilities and their operations not previously authorized under section 3” to provide import and export services, the Commission denied Cove Point’s request to abandon its NGA section 7 certificate.<sup>388</sup> The Commission concluded that because “Cove Point plans to continue to provide section 7 peaking services[,]” it still required a certificate “in order to engage in interstate transportation or sale for resale of natural gas.”<sup>389</sup> The Commission also granted Cove Point permission to abandon service under Rate Schedule LTD-1 and modification of the associated tariff, noting that “Cove Point will bear the responsibility for the recovery of any costs associated with operation of the capacity.”<sup>390</sup> The Commission also approved contract termination for Cove Point’s recent short-term service agreement under LTD-1 and any remaining contracts with similar provisions.<sup>391</sup>

#### 11. Rio Grande LNG, LLC et al.

On May 23, 2024, the Commission issued an order authorizing a partial transfer of Rio Grande LNG, LLC’s (Rio Grande) existing NGA section 3 authorization to site, construct, and operate the Rio Grande LNG Terminal.<sup>392</sup> Specifically, Rio Grande requested to partially transfer the authorization associated with the terminal’s fourth liquefaction train (Train 4) to Rio Grande LNG Train 4, LLC (RGLNG 4) and the terminal’s fifth liquefaction train (Train 5) to Rio Grande LNG Train 5, LLC (RGLNG 5).<sup>393</sup> In support of the partial transfer, RGLNG stated that “a change in corporate structure is required to finance Trains 4 and 5 and facilitate continued development of the already authorized Rio Grande LNG Terminal.”<sup>394</sup> The Commission concluded that the proposed transfer was purely administrative in nature and had no effect on safety or environmental impacts, and authorized the partial transfer.<sup>395</sup>

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386. *Id.* at P 10.

387. *Id.*

388. *Id.* at PP 18-19.

389. 187 FERC ¶ 61,038, at P 18.

390. *Id.* at P 21.

391. *Id.* at P 22.

392. *Rio Grande LNG, LLC et al.*, 187 FERC ¶ 61,097 at P 1 (2024) (order authorizing partial transfer of Natural Gas Act section 3 authorization).

393. *Id.*

394. *Id.* at P 4.

395. *Id.* at PP 15-17.

## 12. EcoEléctrica, L.P.

On August 28, 2023, the Commission issued an order authorizing EcoEléctrica, L.P. (EcoEléctrica) to increase the LNG storage tank liquid level at its LNG import terminal in Peñuelas, Puerto Rico, from eighty-four feet to ninety-one feet.<sup>396</sup> The Commission had previously restricted the liquid level in EcoEléctrica's tank due to structural risk from earthquakes.<sup>397</sup> EcoEléctrica provided additional analysis, which satisfied the Commission's public safety concerns about increasing the liquid level to ninety-one feet and stated that such an increase would also provide significant reliability benefits.<sup>398</sup> Therefore, for good cause shown, the Commission granted EcoEléctrica's request.<sup>399</sup>

## 13. Venture Global Calcasieu Pass, LLC

On June 10, 2024, the Commission issued an order establishing procedures before an administrative law judge (ALJ) and directing Venture Global Calcasieu Pass, LLC (Calcasieu Pass) to provide certain customers with access to documents filed as privileged and confidential.<sup>400</sup> On February 15, 2024, Calcasieu Pass filed a request for an extension of time to place into service its remaining facilities authorized as part of its LNG terminal in Cameron Parish, Louisiana.<sup>401</sup> In its request for an extension of time, Calcasieu Pass cited to reliability issues with the heat recovery steam generators, which required the project to remain in the commissioning phase.<sup>402</sup> Multiple of Calcasieu Pass's customers intervened and submitted requests for materials that Calcasieu Pass filed as privileged, asserting that they could not properly comment on the extension of time request without access to documents regarding the commissioning status of the project.<sup>403</sup> Calcasieu Pass objected to the requests for privileged documents and refused to release the documents under a protective agreement unless ordered to do so by the Commission.<sup>404</sup> Several customers also moved to compel Calcasieu Pass to release the requested documents.<sup>405</sup> The Commission found that the customers' stated interest in the proceeding aligned with the information sought and that Calcasieu Pass "failed to

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396. *EcoEléctrica, L.P.*, 184 FERC ¶ 61,114 at P 1 (2023) (order approving request to increase storage tank level).

397. *Id.* at PP 2-3.

398. *Id.* at P 4.

399. *Id.* at P 6.

400. *Venture Global Calcasieu Pass, LLC*, 187 FERC ¶ 61,150 (2024) (order establishing procedures before an ALJ and directing release of information under a protective agreement).

401. *Id.* at P 1.

402. *Id.* at P 24.

403. *Id.* at P 5.

404. 187 FERC ¶ 61,150, at PP 1, 5.

405. *Id.* at P 5.

demonstrate why the ‘highly confidential’ documents requested by [the customers] c[ould not] be adequately protected by a protective agreement.”<sup>406</sup> The Commission concluded that, on balance, the customers’ “need to access the privileged information was not outweighed by [Calcasieu Pass’s] need to protect it” and ordered Calcasieu Pass to provide the customers with access to the requested documents “within 5 days of receiving an executed protective agreement that is either agreed to by the parties or issued by an [ALJ].”<sup>407</sup>

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406. *Id.* at P 27.

407. *Id.*