

178 FERC ¶ 61,200
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Iroquois Gas Transmission System, L.P.

Docket No. CP20-48-000

ORDER ISSUING CERTIFICATE

(Issued March 25, 2022)

1. On February 3, 2020, Iroquois Gas Transmission System, L.P. (Iroquois) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² requesting authorization to construct and operate natural gas compression and gas cooling facilities at four existing compressor stations in Greene and Dutchess Counties, New York, and Fairfield and New Haven Counties, Connecticut (Enhancement by Compression Project). The project is designed to provide up to 125,000 dekatherms per day (Dth/d) of firm natural gas transportation service to delivery points in South Commack and Hunts Point, New York. For the reasons discussed below, we grant the requested authorization, subject to certain conditions.

I. Background and Proposal

2. Iroquois, a Delaware limited partnership, is a natural gas company as defined by section 2(6) of the NGA³ engaged in the transportation of natural gas in interstate commerce. Iroquois' transmission system extends from the U.S.-Canadian border at Iroquois, Ontario, and Waddington, New York, through New York state, western Connecticut, and under the Long Island Sound to South Commack, New York, and then extending back under the Sound to a terminus at Hunts Point in the Bronx.

¹ 15 U.S.C. § 717f(c).

² 18 C.F.R. pt. 157 (2021).

³ 15 U.S.C. § 717a(6).

3. Iroquois proposes to:

- construct a new, 12,000 horsepower (hp) gas-fired turbine compressor unit, a new compressor building, and associated cooling, filter separators, and other appurtenant facilities at the existing Athens Compressor Station in Greene County, New York;
- construct a new, 12,000 hp gas-fired turbine compressor unit, a new compressor building, and associated cooling, filter separators, and other appurtenant facilities at the existing Dover Compressor Station in Dutchess County, New York;
- construct two new, 12,000 hp gas-fired turbine compressor units (Unit B1 and Unit B2), a control building, a new compressor building, and associated cooling, filter separators, and other appurtenant facilities, as well as adding incremental cooling equipment, to Plant 2-A⁴ at the existing Brookfield Compressor Station in Fairfield County, Connecticut;
- replace the turbine stacks on two existing compressor units (Unit A1 and Unit A2) and add other noise reduction measures at the Brookfield Compressor Station; and
- construct new gas cooling equipment and piping at the existing Milford Plant A Compressor Station in New Haven County, Connecticut.

4. On May 8, 2019, Iroquois and Consolidated Edison Company of New York, Inc. (Con Edison) entered into a precedent agreement, pursuant to which Iroquois agreed to construct and operate the facilities necessary for Iroquois to provide Con Edison 125,000 Dth/d of incremental firm transportation service under its existing Rate Schedule RTS from Waddington, New York, to Hunts Point, New York. The parties agreed to a term of 20 years and a negotiated rate.

5. Iroquois conducted an open season from June 10, 2019, to July 9, 2019, seeking customers that were willing to agree to the same terms included in the Con Edison precedent agreement.⁵ Iroquois received one response to the open season, from KeySpan Gas East Corporation doing business as National Grid (National Grid). Given the

⁴ Iroquois uses the term “plant” to refer to one or more compressor units and all facilities associated with such units.

⁵ As part of the open season, Iroquois solicited turnback capacity from existing customers on its interstate pipeline system. No existing shippers elected to turn back any capacity.

Enhancement by Compression Project's fixed incremental service of 125,000 Dth/d, and as anticipated in the Con Edison precedent agreement, Iroquois reduced the service made available to Con Edison by half and assigned that quantity (62,500 Dth/d) to National Grid.⁶

6. Iroquois estimates the cost of the Enhancement by Compression Project will be \$272 million and proposes an incremental firm recourse reservation charge of \$32.3672 per Dth per month and no usage charge for the project. Con Edison and National Grid have elected to pay negotiated rates for service on the proposed facilities.⁷ Iroquois also requests that the Commission make a pre-determination on several non-conforming provisions contained within the precedent agreements.

II. Notice, Interventions, and Comments

7. Notice of Iroquois' application was published in the *Federal Register* on February 19, 2020, with interventions, comments, and protests due March 4, 2020.⁸ Con Edison, National Grid Gas Delivery Companies, New York State Electric & Gas Corporation, NJR Energy Services Company, and Enbridge Gas Pipelines⁹ filed timely, unopposed motions to intervene.¹⁰ The New York State Department of Environmental Conservation (NYSDEC) filed a timely notice of intervention.¹¹ On March 5, 2020, Stephen D. Kohlhase and Bruno Ricci each filed late motions to intervene, which were

⁶ Iroquois' precedent agreement with National Grid was executed on July 9, 2019; the Con Edison precedent agreement was also amended as of that date to reflect the fact that Con Edison was no longer the sole project shipper and to update certain terms of the precedent agreement to be consistent with the agreement executed by National Grid.

⁷ Iroquois Application at 2.

⁸ 85 Fed. Reg. 9469 (Mar. 4, 2020).

⁹ Motions to intervene filed within the comment period for a draft environmental impact statement are deemed timely under Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 380.10(a)(i) (2021) (citing 18 C.F.R. § 385.214 (2021)).

¹⁰ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c).

¹¹ Timely notices of intervention are granted by operation of Rule 214(a)(2) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(a)(2).

granted.¹² In 2021, the Natural Gas Supply Association (NGSA) and Center for Liquefied Natural Gas (Center for LNG), American Gas Association (AGA), and Interstate Natural Gas Association of America (INGAA) filed late motions to intervene, which were granted.¹³

8. Con Edison and National Grid Gas Delivery Companies filed comments in support of the proposed project. Numerous individuals and entities filed comments expressing concerns about the need for and environmental impacts of the project. These comments are addressed in the Environmental Assessment (EA), Environmental Impact Statement (EIS), and as appropriate, below.

III. Discussion

9. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁴

A. 1999 Certificate Policy Statement

10. The 1999 Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁵ The 1999 Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The 1999 Certificate Policy Statement explains that, in deciding whether to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing

¹² See March 30, 2020 Notice Granting Late Interventions.

¹³ See June 7, 2021 Notice Granting Late Intervention to AGA and Center for LNG; June 30, 2021 Notice Granting Late Intervention to AGA; November 4, 2021 Notice Granting Late Intervention to INGAA.

¹⁴ 15 U.S.C. § 717f(c), (e).

¹⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (1999 Certificate Policy Statement). To clarify, by contemporaneous order, the Commission is suspending the effectiveness of the policy statements issued last month to replace the 1999 Statement. *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,197 (2022).

customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

11. Under this policy, the threshold requirement for applicants proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the route of the new pipeline facilities.¹⁶ If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

1. No Subsidy Requirement and Project Need

12. As discussed above, the threshold requirement for pipelines proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined that, in general, where a pipeline proposes to charge incremental rates for new construction, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.¹⁷ Iroquois proposes to establish an initial incremental recourse reservation rate for firm service using the capacity created by the Expansion by Compression Project. Its proposed incremental rate is designed to recover the full cost of the expansion and is higher than Iroquois's applicable system rate. Therefore, we find that Iroquois existing shippers will not subsidize the expansion project.

¹⁶ In 2021, the Commission established the Office of Public Participation (OPP) to support meaningful public engagement and participation in Commission proceedings. OPP provides members of the public, including environmental justice communities, with assistance in FERC proceedings—including navigating Commission processes and activities relating to the Project.

¹⁷ See, e.g., *Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155 (2002).

13. Iroquois has entered long-term, precedent agreements with two shippers for 125,000 Dth/d of firm transportation service, 100% of the project's capacity.¹⁸ Both shippers, Con Edison and National Grid, are local distribution companies that are not affiliated with Iroquois. Precedent agreements with unaffiliated shippers for 100% of the project's capacity is significant evidence of the need for the proposed project. Customers of Con Edison and National Grid will be the end users of the gas those companies ship and Con Edison and National Grid state that the project will allow them to meet their obligations to provide reliable, safe, and cost-effective service to the public and serve growing heating demand in downstate New York.¹⁹

14. Commenters, however, argue that the only entities that have expressed a desire for the project are the project shippers and that additional natural gas infrastructure, and arguably the gas to be delivered through it, is unnecessary because the region should transition to alternative sources of energy.²⁰ They note that New York has enacted the Climate Leadership and Community Protection Act, which mandates a reduction in greenhouse gas (GHG) emissions in the state,²¹ and state generally that construction of a project to deliver additional volumes of natural gas is inconsistent with the goal of reducing GHG emissions. Commenters assert that the project would become prematurely obsolete given these policy changes intended to reduce use of fossil fuels, and that the public would ultimately be responsible for removal of the facilities when they are no longer needed.²² New York Energy and Climate Advocates argue that the Commission

¹⁸ Contrary to commenters' assertions, the project shippers are both local distribution companies and nothing in the record indicates that any gas transported by the project will be exported.

¹⁹ National Grid January 27, 2022 Comments at 1-2; Con Edison January 28, 2022 Comments at 2.

²⁰ *See, e.g.*, Alison White March 2, 2020 Comments at 1; Ann L. Finneran March 2, 2020 Comments at 1; Carol Robin March 3, 2020 Comments at 1; Johanna V. Fallert March 3, 2020 Comments at 2; Caroline Fenner March 4, 2020 Comments at 1; New York Energy and Climate Advocates August 9, 2021 Comments; Michelle Freedman August 11, 2021 Comments; Matthew Hauser August 23, 2021 Comments.

²¹ *See, e.g.*, Alison White March 2, 2020 Comments at 1; Ann L. Finneran March 2, 2020 Comments at 1; Carol Robin March 3, 2020 Comments at 1; Johanna V. Fallert March 3, 2020 Comments at 2; Caroline Fenner March 4, 2020 Comments at 1.

²² *See, e.g.*, EPA December 20, 2021 Comments (stating that the Commission should consider project need, carbon lock-in, and potential stranded assets in its review of natural gas pipeline projects).

should take a holistic approach to assessing the need for energy infrastructure and examine the impact that new gas-fired generation and all uses are having on demand for gas from the Iroquois pipeline.²³

15. The commenters' claims that the project is not needed because of legislation in New York related to reducing GHG emissions are not sufficient to undermine our finding that Iroquois has demonstrated a need for the project through precedent agreements for 100% of the project capacity with unaffiliated LDC-shippers. New York's Climate Leadership and Community Protection Act mandates certain levels of GHG reductions but does not prohibit the use of natural gas by LDC-customers. Moreover, the fact that the project shippers were the only entities to express a desire for the project does not negate the demonstrated need for the project as evidenced by the precedent agreements.

16. In addition, we note that Con Edison and National Fuel contend that natural gas demand in their service territories is exceeding their available firm natural gas interstate pipeline capacity and additional transportation capacity is needed to reliably and safely serve their customers on peak winter days.²⁴ The shippers assert that increased demand for natural gas service has been driven by revitalization projects, new construction, and No. 2 oil and propane to natural gas conversions.²⁵ As detailed by National Grid and Con Edison, the New York Public Service Commission (NYPSC), which is charged with implementing major portions of the state's climate law, emphasized that the law does not alter a gas company's obligation to provide safe and reliable gas service.²⁶ National Grid and Con Edison also state that despite the recent enactment of a ban on new gas service connections within New York City limits and other demand-side management programs,

²³ New York Energy and Climate Advocates August 9, 2021 Comments (noting that the closing of the Indian Point nuclear power plant has diverted gas that could have been used to the project shippers to new gas-fired electricity generation).

²⁴ National Grid January 27, 2022 Comments at 4; Con Edison January 28, 2022 Comments at 4.

²⁵ National Grid January 27, 2022 Comments at 4 (noting that peak day gas demand has increased by 24% in the last decade); Con Edison January 28, 2022 Comments at 4 (noting that peak day gas demand has increased by just under 40% in the last decade).

²⁶ National Grid January 27, 2022 Comments at 6; Con Edison January 28, 2022 Comments at 6.

including Con Edison's Smart Solutions Program, they expect continued firm customer peak day gas demand growth in their service territories for the next several years.²⁷

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

17. As discussed above, Iroquois' existing shippers will not subsidize the proposed project. Further, the proposed project will have no adverse effect on Iroquois' existing customers because the proposed expansion facilities are designed to provide incremental service to meet the needs of the project shippers without degradation of service to Iroquois' existing customers. We also find that there will be no adverse impact on other pipelines in the region or their captive customers. The project shippers will use the project's capacity to serve the incremental growth requirements of their markets, not to displace existing service providers. Finally, no pipelines or their captive customers have objected to Iroquois' proposal.

18. We are further satisfied that Iroquois has taken steps sufficient to minimize adverse impacts on landowners and surrounding communities. While the construction activities will temporarily affect 45.5 acres of land, Iroquois will permanently maintain only approximately 15 acres of land for operation of the project facilities.²⁸ We note that construction of the project will occur within the fence line of Iroquois' existing facilities or on land owned by Iroquois,²⁹ thereby limiting new disturbances to affected landowners and not requiring the use of eminent domain.

19. The proposed project will enable Iroquois to provide up to 125,000 Dth/d of firm transportation service, 100% of the project's capacity, to Con Edison and National Grid. Accordingly, we find that Iroquois has demonstrated a need for the project. Further the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers and will have minimal impacts on the interests of landowners and surrounding communities. Therefore, we conclude that the project is

²⁷ National Grid January 27, 2022 Comments at 4-5; Con Edison January 28, 2022 Comments at 4-5.

²⁸ EA at A-5.

²⁹ Iroquois would lease off-site parcels for use as contractor staging areas. All other work would occur on lands owned by Iroquois for operation of its existing system. *Id.*

consistent with the criteria set forth in the 1999 Certificate Policy Statement and analyze the environmental impacts of the project below.³⁰

B. Rates

1. Initial Rates

20. Iroquois currently has two vintages of firm transportation service under its existing RTS rate schedule: one for service on its Eastchester extension and the other for non-Eastchester shippers. For Enhancement by Compression Project service, Iroquois proposes to charge an initial incremental monthly firm recourse reservation charge of \$32.3672 per Dth and provide service under the Eastchester extension RTS rate schedule. The incremental recourse reservation charge is based on the first-year cost of service of \$48,550,874 and a design capacity of 125,000 Dth/d. Iroquois' proposed recourse reservation charge reflects its system depreciation rate of 2.75% and negative salvage rate of 0.20%, which were both approved as part of a settlement of its NGA section 5 proceeding,³¹ and a rate of return of 10.02%, which was approved in Docket No. RP97-126-000.³²

21. Iroquois proposes no usage charge for the Enhancement by Compression Project, which it states is consistent with the existing rate design for its Eastchester extension and reflects its estimate that variable costs associated with the Enhancement by Compression Project, other than fuel and losses (which are tracked separately), will be negligible.³³ Iroquois also proposes to charge all other applicable rates, charges, and surcharges under Rate Schedule RTS for service on the project, such as annual charges, as well as the Enhancement by Compression Project Fuel and Losses Retention (F&LR) percentage.

22. In its application, Iroquois did not differentiate between fixed and variable costs in supporting its proposed rates. However, on August 7, 2020, Iroquois filed a data response identifying a total of \$869,353 in non-labor Operation and Maintenance costs

³⁰ See 1999 Certificate Policy Statement, 88 FERC at 61,745-46 (explaining that only when the project benefits outweigh the adverse effects on the economic interests will the Commission then complete the environmental analysis).

³¹ *Iroquois Gas Transmission Sys., LP*, 157 FERC ¶ 61,035 (2016).

³² *Iroquois Gas Transmission Sys., LP*, 84 FERC ¶ 61,086 (1998), *reh'g denied in part and granted in part*, 86 FERC ¶ 61,261 (1999).

³³ Iroquois Application at 17.

in Account Nos. 853, 857, and 864.³⁴ Consistent with the Commission's regulation requiring the use of straight fixed-variable rate design,³⁵ these costs are classified as variable costs and should not be recovered through the reservation charge.³⁶ Accordingly, Iroquois is directed to recalculate its incremental recourse reservation charge to recover only fixed costs when it files actual tariff records.

23. In addition, in Exhibit N of its application,³⁷ Iroquois states that its annual cost-of-service estimate for the Enhancement by Compression Project includes Administrative and General (A&G) expenses equaling 1.36% of gross plant for the project, or \$3,701,209. Iroquois explains that it based the A&G expense ratio for the proposed project on the current percentage of A&G expenses to gross plant in its 2018 Form 2. In a September 21, 2020 data response, Iroquois confirmed that the estimated costs relate solely to the Enhancement by Compression Project and noted that its methodology of applying an A&G expense ratio has been previously approved by the Commission.³⁸

24. For the reasons set forth herein, we find that Iroquois has not provided sufficient support for the estimated \$3.7 million in A&G costs it proposes be included in its recourse rate. Therefore, we will require Iroquois to remove these costs from its rates when it files its actual tariff records. In designing rates for incremental expansions, the Commission has stated that the incremental rate should only include the incremental costs associated with the new facilities.³⁹ As stated in Iroquois' Exhibit N, Iroquois calculated its A&G costs for this project by multiplying its estimated gross plant for the Enhancement by Compression Project by 1.36%. That percentage was calculated by Iroquois using Iroquois' 2018 Form 2 data for total existing A&G costs divided by total existing gross plant. While this approach may be an appropriate and accepted alternative methodology for allocating common costs in a rate case proceeding, for purposes of including the \$3,701,209 of A&G costs in Iroquois's initial incremental rates for this

³⁴ Iroquois August 7, 2020 Response to Staff's July 31, 2020 Data Request at Attachment 1.

³⁵ 18 C.F.R. § 284.7(e) (2021).

³⁶ *Columbia Gulf Transmission, LLC*, 152 FERC ¶ 61,214, at P 20 (2015); *Dominion Transmission, Inc.*, 153 FERC ¶ 61,382, at P 33 (2015).

³⁷ See Iroquois Application at Ex. N n.1.

³⁸ Iroquois September 21, 2020 Response to Staff's September 14, 2020 Data Request at 3 (citing *Transcontinental Gas Pipe Line Co., LLC*, 169 FERC ¶ 61,051 (2019)).

³⁹ *Transcontinental Gas Pipe Line Co., LLC*, 169 FERC ¶ 61,051, at P 45 (2019).

expansion project, we find the approach inadequate to demonstrate that Iroquois will actually incur that level of new, incremental costs as a direct result of the expansion. In response to staff's October 1, 2020 data request for specific expenses Iroquois will incur related to the Enhancement by Compression Project, Iroquois provided only general statements of anticipated expenses. For example, Iroquois stated that increases in Account 920, Administrative and General Salaries, are "expected to be incurred across multiple functions including, for instance, accounting, human resources, customer service, gas control, and senior management . . . [but] these allocated costs do not translate directly to specific new employee positions at this time but rather reflect anticipated increases in overall workload related to the increased plant in service from the [p]roject."⁴⁰ We do not find such generalities sufficient to support including these costs in the incremental rates of recourse rate shippers. While it is possible the overall workload for existing employees may increase due to the project, and that some of Iroquois' existing A&G costs, as well as other costs such as the costs of the reserved capacity of the project, should ultimately be allocated from Iroquois' existing rates to the incremental rates of the project, the proper forum to determine whether there should be such a reallocation of existing costs is Iroquois' next NGA section 4 rate case.⁴¹ Therefore, Iroquois is directed to remove all A&G costs from its incremental rate calculations.

25. We acknowledge that the Commission has previously allowed for the inclusion of increased A&G costs in incremental rates. *Paiute Pipeline Co.*⁴² was a proceeding involving the unusual situation of a pipeline that had no employees of its own and was allocated A&G costs by its corporate parent based on the application of the Modified Massachusetts Formula, which allocates overhead costs to corporate subsidiaries when the costs cannot be directly allocated to specific subsidiaries. There, we found that Paiute would indeed experience an incremental cost associated with the additional common A&G expenses to be allocated from its parent, and thus allowed Paiute to include that increase in costs in its rates. Moreover, we acknowledge that Iroquois is correct that the Commission allowed Transcontinental Gas Pipe Line Company to include similarly projected A&G costs in its expansion rates in Docket No. CP18-186-000. However, we now believe that decision, which was not discussed in the order, to have been in error. Only costs that a pipeline has demonstrated it will actually incur should be included in its rates. Here, Iroquois has failed to persuasively show that it will actually incur an additional \$3,701,209 of A&G costs as a result of its Enhancement by Compression

⁴⁰ Iroquois September 21, 2020 Response to Staff's September 14, 2020 Data Request at 1-2.

⁴¹ See, e.g., *Texas Eastern Transmission, LP*, 165 FERC ¶ 61,132, at P 19 (2018).

⁴² 153 FERC ¶ 61,292 (2015).

Project. Therefore, Iroquois is directed to remove all A&G costs from its incremental rate calculations.

26. Next, Iroquois states that it was able to minimize new construction, in part, by using existing available capacity in Zone 1 that it reserved for the Enhancement by Compression Project and installing additional equipment within existing compressor stations in Zone 2. Iroquois asserts that, in accordance with Commission policy, it has not included costs associated with existing Zone 1 capacity in its cost-of-service calculations.⁴³ However, Iroquois affirmed that it retains the right to revise Enhancement by Compression Project recourse rates in a future rate case to reflect responsibility for reserved capacity costs.⁴⁴

27. We have reviewed Iroquois' proposed cost of service, cost allocation, and rate design used to develop the incremental rates and find that, except for the items discussed above, they reasonably reflect current Commission policy. Under the 1999 Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate exceeds the maximum system recourse rate.⁴⁵ In this instance, the proposed 100% load factor rate of \$1.0641 per Dth, which reflects the reservation charges plus usage charges, appears to be higher than Iroquois' highest vintage incremental rate for service under Rate Schedule RTS of \$0.3693 per Dth.⁴⁶ Therefore, we will permit Iroquois to charge incremental rates, revised as discussed above, for the proposed Enhancement by Compression Project.

2. Fuel Rate

28. Iroquois has demonstrated that the projected fuel usage and losses associated with the proposed incremental facilities are higher than the existing maximum F&LR percentages for Eastchester service.⁴⁷ As a result, Iroquois proposes to establish a new stated maximum F&LR percentage of 7.5% for Enhancement by Compression Project

⁴³ Iroquois Application at 16 (citing *Texas Eastern Transmission, LP*, 163 FERC ¶ 61,020, at P 38 (2018); *Tennessee Gas Pipeline Co., LLC*, 161 FERC ¶ 61,265, at P 21 (2017), *reh'g denied*, 165 FERC ¶ 61,217, at P 10 (2018)).

⁴⁴ Iroquois Application at n.10.

⁴⁵ 1999 Certificate Policy Statement, 88 FERC at 61,745.

⁴⁶ Although the Enhancement by Compression Project recourse rate will likely decrease as a result of recalculation of rates in compliance with this order, we do not anticipate the reduction in the rate to change this finding.

⁴⁷ Iroquois Application at Ex. Z-2.

service. We therefore approve Iroquois' proposed F&LR percentage for service on the Enhancement by Compression Project.

3. Negotiated Rate Agreements

29. Iroquois proposes to provide Enhancement by Compression Project service to Con Edison and National Grid under negotiated rate agreements. Iroquois must file either its negotiated rate agreements or tariff records setting forth the essential terms of the agreements associated with the project in accordance with the Commission's Alternative Rate Policy Statement⁴⁸ and the Commission's negotiated rate policies.⁴⁹ Iroquois must file the negotiated rate agreements or tariff records, consistent with 18 C.F.R. § 284.112(b), not less than 30 days and not more than 60 days before the proposed effective date for such rates.⁵⁰

4. Non-Conforming Provisions

30. The proposed transportation service agreements with Con Edison and National Grid contain certain provisions that materially deviate from Iroquois' Schedule RTS *pro forma* service agreement. Iroquois states the deviations are equally applicable to both shippers and reflect the nature of this service as an expansion with incremental facilities and do not create a risk of undue discrimination. As discussed below, we find that Iroquois' non-conforming provisions constitute material deviations from Iroquois *pro forma* service agreement. We further find that these non-conforming provisions are permissible because they do not present a risk of undue discrimination, do not adversely

⁴⁸ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194, *order on reh'g and clarification*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066, *reh'g dismissed*, 75 FERC ¶ 61,291 (1996), *petition denied sub nom. Burlington Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

⁴⁹ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

⁵⁰ Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. *See* 18 C.F.R. § 154.112(b) (2021); *see also, e.g., Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

affect the operational conditions of providing service to other shippers, and do not result in any shipper receiving a different quality of service.⁵¹

31. In *Columbia Gas Transmission Corp. (Columbia)*,⁵² the Commission clarified that a material deviation is any provision in a service agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties. The Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than that offered other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.⁵³ However, not all material deviations are impermissible. As explained in *Columbia*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.⁵⁴

a. Partial Service Commencement

32. In article V, section 1 of the service agreements, Iroquois proposes to insert the phrase “all or any portion of” to specify that, in regard to this incremental facilities-based service, Iroquois will have the right to commence service on a partial basis on or after the November 1, 2023 service commencement date if not all facilities have been completed by that date, but the pipeline is able to provide a portion of the shipper’s Maximum Daily Transportation Quantity (MDTQ). In article X, section 6 of the service agreements, Iroquois proposes a similar right. Iroquois submits that the right is not unduly discriminatory because it was included in the precedent agreements presented by Iroquois to all prospective bidders in the open season and it will have no effect on the quality or character of the service provided by the project. According to Iroquois, the provision relates solely to the timing of facility construction and is limited to affording Iroquois the ability to commence service, on or after the agreed upon in-service date, even if only a portion of the service is available. Iroquois states the term is similar to other

⁵¹ See, e.g., *Texas Eastern Transmission, LP*, 153 FERC ¶ 61,311, at P 40 (2015); *Kinder Morgan Louisiana Pipeline LLC*, 155 FERC ¶ 61,033, at P 45 (2016).

⁵² *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*); *ANR Pipeline Co.*, 97 FERC ¶ 61,224 (2001) (*ANR*).

⁵³ *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

⁵⁴ *Columbia*, 97 FERC ¶ 61,221 at 62,002; *ANR*, 97 FERC ¶ 61,224 at 62,022.

construction-related deviating terms that the Commission has accepted,⁵⁵ and is consistent with Commission policy, which has afforded pipelines flexibility in service commencement timing for new service that requires facility construction.

33. The Commission has acknowledged that companies require additional flexibility in planning and executing expansions and has afforded the ability to provide partial service and other flexibility in the commencement date of the service.⁵⁶ As a result, we find that the non-conforming provision relating to the commencement date of the agreement to be permissible because it does not present a risk of undue discrimination and will not affect the operational conditions of providing service, nor result in any customer receiving a different quality of service.

b. Credit Provisions

34. Iroquois states that it and the project shippers included non-conforming creditworthiness and credit support terms in the service agreements. Iroquois affirms that while they are largely consistent with the terms of Iroquois' existing relevant creditworthiness and credit support tariff provisions,⁵⁷ the required level of credit support is higher to reflect the incremental facilities' costs. Iroquois explains that this deviation is reasonable, necessary to justify the financial risk Iroquois is undertaking with respect to this project, and consistent with Commission policy regarding credit terms applicable to expansion projects. Iroquois states it is not unduly discriminatory as the same credit support requirement applies to all Enhancement by Compression Project shippers.

35. The Commission recognizes the need for separate creditworthiness provisions for initial shippers on new construction projects and accepts these non-conforming provisions as not unduly discriminatory.⁵⁸

c. Most Favored Nation (MFN) Rights

36. Iroquois has included a limited MFN right in its service agreements with Con Edison and National Grid. The MFN provision provides that if, prior to the actual

⁵⁵ *Dominion Cove Point LNG, LLC*, 162 FERC ¶ 61,199, at PP 10-11 (2018); *National Fuel Gas Supply Corp.*, 137 FERC ¶ 61,054, at PP 33-34 (2011) (*National Fuel*).

⁵⁶ *National Fuel*, 137 FERC ¶ 61,054 at P 34.

⁵⁷ Iroquois Application at 22.

⁵⁸ *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412, at P 7 (2005).

service commencement date, Iroquois makes a lower rate available to comparable Enhancement by Compression Project shippers, Iroquois will offer the same rate to Con Edison and National Grid. Iroquois also states the MFN right is specified in the precedent agreement because it expires before service under the project commences and it is strictly rate-related, offered equally to both project shippers, and is consistent with Commission policy and precedent.⁵⁹

37. Commission policy requires that MFN clauses relate only to rates and not result in the customer receiving a different quality of service from other shippers or adversely affecting other shippers.⁶⁰ In this case, the rate provisions of Iroquois' MFN clause satisfy this requirement, and the Commission finds that this clause is permissible.

d. Right of First Refusal (ROFR)

38. Iroquois proposes to offer Enhancement by Compression Project shippers a contractual ROFR. Iroquois points out that section 29.4(a)(ii) of the General Terms and Conditions of its tariff sets forth provisions that Iroquois may include in its agreements such contractual ROFRs. The Commission has held that such expansion of these renewal rights to customers under negotiated contracts is permissible.⁶¹ As a result, we will approve the contractual ROFR granted to the shippers.

e. Other Provisions

39. The service agreements contain a "WHEREAS" clause that removes the language "has received and accepted all necessary regulatory and governmental approvals to construct and operate Transporter's System" and replaces it with "has agreed to seek all necessary regulatory and governmental approvals to construct and operate modifications to Transporter's System as necessary" to reflect the fact that this agreement has been executed in connection with a proposed incremental facilities project for which Iroquois is currently seeking approvals.⁶²

40. In article II, section 1 of the service agreements, Iroquois adds the "sum of the Maximum Equivalent Quantities specified on Schedule 1 shall equal the MDTQ." Iroquois states that the provision memorializes the relationship between the referenced

⁵⁹ *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 77 (2008); *Fayetteville Express Pipeline LLC*, 129 FERC ¶ 61,235, at P 40 (2009).

⁶⁰ *N. Nat. Gas Co.*, 110 FERC ¶ 61,321, at P 29 (2005).

⁶¹ *ANR Pipeline Co.*, 97 FERC ¶ 61,075 (2001).

⁶² Iroquois Application at 20.

term MDTQ and Maximum Equivalent Quantity (MEQ), which is Iroquois' tariff reference to the shipper's delivery point-specific firm entitlement. Iroquois states that in the case of both Enhancement by Compression Project shippers, there is only one primary delivery point; therefore, under the specified language, MDTQ equals MEQ for these shippers.⁶³

41. We find that the incorporation of these non-conforming provisions will constitute material deviations from Iroquois' *pro forma* service agreement. However, in other proceedings, the Commission has found that such material deviations may be necessary to reflect the unique circumstances involved with the construction of new infrastructure and to provide the needed security to ensure the viability of a project.⁶⁴

42. At least 30 days, but not more than 60 days, before providing service to any project shipper under a non-conforming agreement, Iroquois must file an executed copy of the non-conforming service agreement and identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement. Consistent with section 154.112 of the Commission's regulations, Iroquois must also file a tariff record identifying the agreements as non-conforming agreements.⁶⁵ In addition, the Commission emphasizes that the above determination relates only to those items described by Iroquois in its application and not to the entirety of the precedent agreement or the language contained in the precedent agreement.⁶⁶

5. Tariff

43. Iroquois proposes several revisions to its tariff that it states are necessary to reflect the introduction of the Enhancement by Compression Project rate as a third vintage of the

⁶³ *Id.*

⁶⁴ See, e.g., *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008); *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 78 (2006).

⁶⁵ 18 C.F.R. § 154.112.

⁶⁶ A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreement(s) and a tariff record identifying the agreement(s) as non-conforming are filed with the Commission, consistent with section 154.112 of the

Commission's regulations. See, e.g., *Tennessee Gas Pipeline Co., LLC*, 150 FERC ¶ 61,160, at P 44 n.33 (2015).

Rate Schedule RTS recourse rate.⁶⁷ Specifically, Iroquois proposes to rename “Non-Eastchester” to “Non Incremental” and to make conforming changes to reflect this name throughout the tariff. According to Iroquois, the amended language will help avoid confusion after a second incremental Rate Schedule RTS recourse rate is introduced.

44. Iroquois requests pre-approval of these proposed tariff changes so that they may be submitted by Iroquois along with its initial recourse rate and negotiated rate tariff change filings that Iroquois will make shortly before the Enhancement by Compression Project in-service date. We approve the proposed changes and direct Iroquois to file the amended language when it files its initial rates for the project.

6. Reporting Incremental Costs

45. Section 154.309 of the Commission’s regulations⁶⁸ includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are charged. The requirements ensure that costs are properly allocated between pipelines’ existing shippers and incremental expansion shippers. Therefore, we will require Iroquois to keep separate books and accounting of costs and revenues attributable to the proposed incremental services and capacity created by the Enhancement by Compression Project as required by section 154.309 of the Commission’s regulations. The books should be maintained with applicable cross-references as required by section 154.309. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.⁶⁹

C. Environmental Impacts

46. On March 25, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Enhancement by Compression Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal Register*⁷⁰ and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. To

⁶⁷ Iroquois Application at Ex. P.

⁶⁸ 18 C.F.R. § 154.309 (2021).

⁶⁹ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008).

⁷⁰ 85 Fed. Reg. 17,870 (Mar. 31, 2020).

satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),⁷¹ Commission staff prepared an EA for Iroquois' proposal.⁷² The analysis in the EA addressed all substantive environmental comments received prior to issuance of the EA and, noting that Commission staff was unable to assess the project's contribution to climate change, concluded that the project would not constitute a major federal action significantly affecting the quality of human environment.⁷³ The EA was issued for a 30-day comment period and placed into the public record on September 30, 2020.⁷⁴ In response to the EA, we received 22 comments, including comments from the U.S. Environmental Protection Agency (EPA), NYSDEC, 18 interested members of the public, and Iroquois.

47. Following issuance of the EA, on May 27, 2021, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Enhancement by Compression Project and Schedule for Environmental Review*. On June 11, 2021, the Commission issued a draft EIS, which incorporated the EA's analysis and conclusions, with the exception of those related to the project's impacts on climate change, responded to comments received on the EA, and estimated downstream GHG emissions related to the project, providing information that might assist the Commission's consideration of the project's contribution to climate change. The draft EIS was filed with the EPA, and a formal notice of availability was published in the *Federal Register* on June 25, 2021, which established a 45-day comment period on the draft EIS that ended on August 9, 2021.⁷⁵ The Commission received comments on the draft EIS concerning project need, climate change, air quality, cultural resources, reliability and safety, and alternatives.

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

⁷² On July 16, 2020, CEQ issued a final rule, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, which was effective as of September 14, 2020. 85 Fed. Reg. 43,304. Because the NEPA review of the Enhancement by Compression project was already in progress at that time, however, it was prepared pursuant to CEQ's 1978 regulations. See EIS at 5 n.10.

⁷³ EA at B-108 to B-109.

⁷⁴ Commenters requested an extension of the standard 30-day EA comment period due to the COVID-19 pandemic and the presidential election. See, e.g., Mary T. Finneran October 30, 2020 Comments. Because the draft and final EIS provided two additional public comment periods, an extension to the EA comment period is not necessary.

⁷⁵ 86 Fed. Reg. 33,705 (June 25, 2021).

48. Commission staff issued the final EIS for the project on November 12, 2021, and published a notice of the availability of the final EIS in the *Federal Register* on November 18, 2021.⁷⁶ The final EIS addresses all substantive environmental comments received on the draft EIS and concludes that construction of the project will result in adverse environmental impacts but that these impacts would be avoided or minimized through mitigation measures and would not be significant except for project's effect on climate change, the significance of which staff was unable to determine.⁷⁷ The final EIS evaluated the potential impacts of construction and operation of the project on geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, socioeconomics, environmental justice, cultural resources, air quality, noise, safety, cumulative impacts, and identified alternatives. The Commission received comments on the final EIS from Iroquois, Con Edison, National Grid, and the EPA, which are addressed below⁷⁸ as are environmental issues of concern, including climate change and impacts on environmental justice communities.

1. Greenhouse Gas Emissions and Climate Change

49. The Council on Environmental Quality (CEQ) defines impacts as “changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.”⁷⁹ An impact is reasonably foreseeable if it is “sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.”⁸⁰ For the proposed project, we find that the construction emissions, direct operational emissions, and the emissions from the downstream combustion of the gas transported by the project are reasonably foreseeable emissions. With respect to downstream emissions, the record in this proceeding demonstrates that the natural gas to be transported by the project will be combusted by end-use customers. Specifically, the project will be used by National Fuel and Con

⁷⁶ 86 Fed. Reg. 64,467 (Nov. 18, 2021).

⁷⁷ EIS at ES-3, 63.

⁷⁸ Con Edison and National Grid's comments were in support of the project.

⁷⁹ 40 C.F.R. § 1508.1(g) (2021).

⁸⁰ *Id.* § 1508.1(aa).

Edison to serve demand within their service territories for both new construction in the commercial and multi-family sectors and to replace heating oil.⁸¹

50. Iroquois submitted a study analyzing the lifecycle GHG emissions associated with the Enhancement by Compression Project.⁸² The study quantifies the lifecycle GHG emissions of the incremental natural gas supply from the project compared to the GHG emissions of the fuels that the study assumes would otherwise be required to meet demand for space heating, water heating, and other end uses if the project were not developed and sufficient gas was not available to meet projected demand.⁸³ The degree to which GHG emissions associated with the project are offset due to the use of more GHG-intensive fuels is primarily affected by two factors: (1) the quantity of gas transported by the project that could either be directed to new construction or used to facilitate conversions from heating oil to natural gas in existing buildings and (2) the market uptake of electric heat pumps.⁸⁴ Within each scenario, the analysis assumes improvement in upstream methane emission rates (consistent with historical trends) throughout the study period and increasing amounts of low- and zero-carbon gas supplies (e.g., renewable natural gas and hydrogen) blended into the pipeline supply during the study period.⁸⁵

51. For the potential amount of new construction, Iroquois' study examines two demand scenarios: (1) a low-construction scenario which assumes 35% of gas transported by the project will be used to satisfy demand from newly constructed buildings and (2) a high-construction scenario which assumes that 65% of the gas will

⁸¹ EIS at 4. *See also* National Grid January 27, 2022 Comments at 1 (“The Project is . . . designed to provide 125,000 [Dth/d] of incremental firm transportation service to [National Grid and Con Edison] to support system reliability and serve growing heating demand in downstate New York.”); Con Edison January 28, 2022 Comments at 1 (stating that the project is needed to safely and reliably serve its customers).

⁸² Iroquois October 15, 2021 Filing at Att. A (Iroquois GHG Study).

⁸³ The study quantifies emissions using a lifecycle approach that accounts for GHG emissions—carbon dioxide, methane, and nitrous oxide (N₂O)—emitted throughout the entire value chain (from production through end use) of natural gas and other fuels required to meet customer energy demand equivalent to the amount that would be supplied by the proposed project. Iroquois GHG Study at 4.

⁸⁴ *Id.* at 4-5.

⁸⁵ *Id.* at 4.

meet demand from new buildings.⁸⁶ In each demand scenario, the study analyzes four separate heat pump penetration scenarios: a 100% Oil scenario where no heat pumps are installed to replace the shortfall of natural gas; a 100% Electricity scenario where no fuel oil is used to replace the shortfall; and two scenarios (Heat Pumps and Oil Scenario and No Infrastructure Scenario) using National Grid's long-term capacity report.⁸⁷ The 100% Oil and 100% Electricity cases provide a high and low range of potential emissions that could occur without the development of the Enhancement by Compression Project.⁸⁸

52. Under the Heat Pumps and Oil Scenario, annual heat pump installations will be aligned with the trajectory of National Grid's Distributive Infrastructure Solution from 2021 to 2028 and effectively follows the New Efficiency New York (NENY) targets through 2025 before increasing significantly between 2026 and 2028.⁸⁹ Heat pump installation continues to increase linearly until 2035 and remains at the 2035 level through 2043, such that by 2043, this scenario results in higher cumulative heat pump installations than the No Infrastructure Scenario.

53. The No Infrastructure Scenario assumes aggressive electrification is applied to meet energy supply constraints projected to occur if the Enhancement by Compression Project is not built.⁹⁰ The heat pump installation rates in the No Infrastructure Scenario are assumed to be nearly five times greater than NENY targets in 2023 and approximately eight times higher than the NENY installation rates by 2024.⁹¹ This scenario corresponds with high cumulative heat pump installation projections relative to those forecasted in National Grid's "Distributed Infrastructure Solution" scenario.⁹²

⁸⁶ *Id.* at 5.

⁸⁷ *Id.*

⁸⁸ *Id.* at 6.

⁸⁹ NENY is a report by the New York State Energy Research and Development Authority (NYSERDA) that recommends a comprehensive mix of strategies to support building developers, commercial and institutional building owners, industrial facilities, and residential households to pursue improvements that reduce energy consumption across the state. NYSERDA, *New Efficiency: New York* (Apr. 2018), <https://www.nyserd.ny.gov/-/media/Files/Publications/New-Efficiency-New-York.ashx>.

⁹⁰ Iroquois GHG Study at 6.

⁹¹ *Id.*

⁹² *Id.* at 7.

Table 1 provides the changes in GHG emissions under each scenario as a result of the project.

Table 1: Change in Projected End-Use GHG Emissions⁹³

Demand Scenario	Heat Pump Penetration	Change in GHG Emissions
Low New Construction	100% Oil (No Heat Pumps)	-46%
	100% Heat Pumps (No Oil)	141%
	Heat Pumps and Oil	-7%
	No Infrastructure	26%
High New Construction	100% Oil (No Heat Pumps)	-43%
	100% Heat Pumps (No Oil)	141%
	Heat Pumps and Oil	-3%
	No Infrastructure	30%

54. Commenters argue that the Commission should not rely on Iroquois' proposed projections.⁹⁴ They state that the gas transported by the project would not be used solely for customers switching from fuel oil⁹⁵ and that increasing compression, by its very nature, cannot reduce existing emissions.⁹⁶ Additionally, the Institute for Policy Integrity contends that the study includes unrealistically high estimates of offsets to fuel oil because local laws require that fuel oil be phased out more quickly than what is

⁹³ *Id.* at 11.

⁹⁴ *See, e.g.*, Institute for Policy Integrity October 20, 2020 Comments at 4. Although Institute for Policy Integrity's comments criticized an earlier version of the GHG Study, we address those comments here as it relates to the study filed October 15, 2021.

⁹⁵ Dennis Higgins October 30, 2020 Comments.

⁹⁶ *Id.*

accounted for in the study.⁹⁷ The Institute for Policy Integrity notes that New York City laws require emission reductions for buildings larger than 25,000 square feet starting in 2024, with reductions reaching 80% by 2050.⁹⁸ Similarly, it states that local law requires the phase-out of all but No. 2 heating oil by 2030 and imposes increasingly stringent biodiesel requirements for fuel oil, making fuel oil more expensive and less likely to be used in the future.⁹⁹ The Institute for Policy Integrity argues that these laws demonstrate that the Iroquois study likely underestimates the use of electric heat pumps in the future.¹⁰⁰

55. Furthermore, the Institute for Policy Integrity argues that Iroquois' study fails to consider how demand for energy will increase due to the increase in natural gas supply.¹⁰¹ It notes that Iroquois' reliance on "perfect substitution" from one energy source to another is contrary to basic supply and demand principles because it assumes that the price of the target resource will remain constant as supply expands.¹⁰² The Institute for Policy Integrity asserts that the Commission should conduct a substitution analysis to assess the project's effects and that by failing to do so, the Commission did not attempt to obtain the information necessary to enable "reasonable forecasting" of emissions.¹⁰³

56. We believe Heat Pumps and Oil Scenario is, on balance, the best estimate of the project's climate change impacts of all the scenarios considered in the Iroquois GHG Study because: (1) it reflects National Grid's and Con Edison's updated natural gas demand forecasts¹⁰⁴ and assumed energy demand to be met by heat pumps based on the most recent, publicly available information regarding long-term system planning; (2) it accounts for the limited, eventual penetration of hydrogen and renewable natural gas into

⁹⁷ Institute for Policy Integrity October 20, 2020 Comments at 4.

⁹⁸ *Id.*

⁹⁹ *Id.* at 5; New York Energy and Climate Advocates August 9, 2021 Comments.

¹⁰⁰ Institute for Policy Integrity October 20, 2020 Comments at 5.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* (quoting *Birckhead v. FERC*, 925 F.3d at 520).

¹⁰⁴ The GHG Study uses a projected 25% utilization rate based on LDC-shippers' estimated need for additional peak day gas supplies in the greater New York City and Long Island areas. No party contested that such a utilization rate was unreasonable for the project.

the natural gas supply; (3) it accounts for reducing National Grid's reliance upon compressed natural gas facilities, which are a more expensive and more GHG-intensive gas supply than pipeline delivery;¹⁰⁵ and (4) it more accurately aligns with the CLCPA regulatory framework and NENY 2023-2024 heat pump installation targets.¹⁰⁶ We acknowledge that the GHG Study requires certain assumptions and variables that could diverge from actual demand and energy use. In particular we note that the uncertainty associated with future heat pump policies and incentives results in a wide range of potential heat pump requirements to meet energy demand. Nevertheless, many of the assumptions made in the GHG Study are conservative estimates that, if unrealized, would result in further reductions in GHG emissions. For instance, the heat pump installation assumptions exceed historical rates and state regulatory requirements. Currently, incentives or regulatory mandates do not exist that would support the heat pump penetration assumptions, and it is unclear what funding sources would support the assumed installation rates. If actual heat pump installations during the study period were to occur at rates that are closer to historical levels or current state policy targets, GHG emissions reductions for corresponding scenarios, assuming the project is not approved, would be greater than those that are reflected in the analysis. With respect to the Institute for Policy Integrity's criticism that the study wrongly relies on "perfect substitution," we note that such an assumption is not unreasonable given that the study is based on long-term forecasts for the project and corresponding scenarios that are driven by statewide GHG emissions limits established by the Climate Leadership and Community Protection Act as opposed to being based upon supply and demand principles. Based on the Heat Pumps and Oil Scenario, we find that the Enhancement by Compression Project would likely result in a net reduction of between 0.46 and 1.2 million metric tons CO_{2e}, between 3–7%, compared to supplying energy by a combination of fuel oil and heat pumps for the 20-year contract term.¹⁰⁷ Because the project will result in a net reduction of GHG emissions, we are not assessing whether the project has a significant impact on climate change.

¹⁰⁵ Iroquois October 15, 2021 Filing at 11.

¹⁰⁶ Thus, contrary to Institute for Policy Integrity's assertion, the GHG Study does account for changes in state law.

¹⁰⁷ *Sierra Club v. U.S. Dep't of Transp.*, 753 F.2d 120, 128 (D.C. Cir. 1985) ("It is clearly within the expertise and discretion of the agency to determine proper testing methods."); *see also Hughes River Watershed Conservancy v. Johnson*, 165 F.3d 283, 289 (4th Cir. 1999) ("Agencies are entitled to select their own methodology as long as that methodology is reasonable. The reviewing court must give deference to an agency's decision."); *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) ("some educated assumptions are inevitable in the NEPA process.").

57. The EPA recommends that the Commission disclose the conflict between project GHG emissions and national, state, and local GHG reduction policies and goals.¹⁰⁸ Specifically, the EPA recommends that the Commission evaluate the “inconsistencies with policy and energy use trajectories that would achieve national 2030 and 2050 GHG reduction targets,” such as those in the Long-Term Strategy of the United States.¹⁰⁹ Commenters also express concern that the project does not comply with the New York Climate Act, Connecticut’s goals regarding carbon reduction and renewable energy, and the Paris Climate Agreement.¹¹⁰ The Institute for Policy Integrity argues that the Commission should avoid comparisons to national or state emissions because they can misleadingly trivialize climate impacts, making large quantities of emissions from an individual project seem relatively small.¹¹¹ The Commission is unable to determine how individual projects will affect international, national, or state-wide GHG emissions reduction targets or whether a project’s GHG emissions comply with those goals or laws. However, based on the record as stated above, the proposed project is expected to result in a net reduction of GHG emissions.¹¹²

58. Several commenters state that the Commission should use the social cost of GHGs to assess climate impacts generated by each ton of GHGs emitted or saved by the project.¹¹³ In support of the Commission utilizing social cost of GHGs, the EPA urges

¹⁰⁸ EPA December 20, 2021 Comment at 3-4; *see also* NYSDEC August 9, 2021 Comments at 2-3 (stating that the Commission should consider whether mitigation should be implemented to the extent that the Commission finds that the project is inconsistent with New York’s climate laws).

¹⁰⁹ EPA December 20, 2021 Comment at 3-4 (citing White House, *The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050* (Nov. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/10/US-Long-Term-Strategy.pdf>).

¹¹⁰ *See, e.g.*, Leo Matteo Bachinger August 9, 2021 Comment at 1; NY4Whales July 22, 2021 Comment at 1; Benjamin Marting August 10, 2021 Comment at 1.

¹¹¹ Institute for Policy Integrity August 9, 2021 Comments at 12.

¹¹² To the extent that the Commission compares GHG emissions to state or national inventories, as was done in the EIS, such comparisons are intended to provide additional context.

¹¹³ *See, e.g.*, NYSDEC August 9, 2021 Comments at 4.

the Commission to consider the D.C. Circuit's recent decision in *Vecinos*¹¹⁴ where the court remanded the certificate order without vacatur due to deficiencies under the Administrative Procedure Act in the Commission's analysis of environmental justice issues and its failure to respond to an argument regarding the consideration of greenhouse gas emissions.

59. The social cost of GHGs is an administrative tool intended to quantify, in dollars, estimates of long-term damage that may result from future emissions of carbon dioxide, nitrous oxide, and methane. Because the project will result in a net reduction of GHG emissions, we are not calculating the social cost of carbon from emissions.

60. The EPA and other commenters argue that the EIS failed to consider reasonably foreseeable GHG emissions from increased natural gas production as a result of the proposed project.¹¹⁵ The EPA asserts that the purpose of the proposed project is to transport natural gas for consumption, that natural gas must be produced, and therefore upstream emissions from that production are demonstrably reasonably foreseeable indirect effects of the proposed action and therefore should be considered under NEPA.¹¹⁶

61. Commenters note that reasonable ranges of emissions forecasts can be produced for upstream emissions to give the public and the Commission the appropriate context for considering estimated climate damages associated with the proposal.¹¹⁷ Using data from the final EIS, the EPA quantifies upper-bound estimates of upstream GHG emissions (0.38 million metric tpy CO₂e) based on national data.¹¹⁸ The EPA further states that as part of its permit process, NYSDEC required Iroquois to submit a lifecycle assessment for GHG emissions, which includes upstream emission estimates, but those estimates were not included in the final EIS.¹¹⁹

¹¹⁴ *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1325 (D.C. Cir. 2021) (*Vecinos*).

¹¹⁵ See, e.g., EPA December 20, 2021 Comments at 1-4; NYSDEC August 9, 2021 Comments at 2; Institute for Policy Integrity August 9, 2021 Comments at 2-4; Sierra Club, Connecticut Chapter August 9, 2021 Comments.

¹¹⁶ EPA December 20, 2021 Comments at 3-4.

¹¹⁷ See, e.g., *id.* at 1.

¹¹⁸ *Id.* at 4.

¹¹⁹ *Id.* at 3-4.

62. NEPA requires agencies to consider indirect effects or impacts that “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”¹²⁰ With respect to causation, “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause”¹²¹ in order “to make an agency responsible for a particular effect under NEPA.”¹²² As the Supreme Court has explained, “a ‘but for’ causal relationship is insufficient [to establish cause for purposes of NEPA].”¹²³ Thus, “[s]ome effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation,” will not fall within NEPA if “the causal chain is too attenuated.”¹²⁴ Further, the Court has stated that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.”¹²⁵ Regarding reasonable foreseeability, courts have found that an impact is reasonably foreseeable if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”¹²⁶ Although courts have held that NEPA requires “reasonable forecasting,”¹²⁷ an agency “is not required to engage

¹²⁰ 40 C.F.R. § 1508.8(b) (2021).

¹²¹ *U.S. Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (*Pub. Citizen*) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (*Metro. Edison Co.*)).

¹²² *Pub. Citizen*, 541 U.S. at 767.

¹²³ *Id.*

¹²⁴ *Metro. Edison Co.*, 460 U.S. at 774.

¹²⁵ *Pub. Citizen*, 541 U.S. at 770.

¹²⁶ *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955 (D.C. Cir. 2016) (citations omitted); see also *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

¹²⁷ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1079 (9th Cir. 2011) (quoting *Selkirk Conservation All. v. Forsgren*, 336 F.3d 944, 962 (9th Cir. 2003)).

in speculative analysis”¹²⁸ or “to do the impractical, if not enough information is available to permit meaningful consideration.”¹²⁹

63. The environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ regulations, where the supply source is unknown.¹³⁰ Here, the specific source of natural gas to be transported via the Enhancement by Compression Project is currently unknown and may change throughout the project’s operation. In any event, we rely on Iroquois’ lifecycle GHG study, which includes estimates of upstream GHG emissions, and find that the project will result in a net reduction of emissions.

64. Next, the EPA recommends that the Commission consider and incorporate practicable mitigation measures to reduce the proposed action’s GHG emissions into the proposed terms and conditions required as part of certificate issuance.¹³¹ NYSDEC states that the Commission should consider whether mitigation should be implemented to the extent that the Commission finds that the project is inconsistent with New York’s climate laws.¹³² As stated above, the project will provide a net reduction in GHG emissions.¹³³

¹²⁸ *Id.* at 1078.

¹²⁹ *Id.* (quoting *Envtl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1014 (9th Cir. 2006)).

¹³⁰ See, e.g., *Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh’g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 F. App’x. 472, 474-75 (2d Cir. 2012) (unpublished opinion); see also *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220, at P 243 (2019), *order on reh’g*, 171 FERC ¶ 61,049, at P 89 (2020).

¹³¹ EPA December 20, 2021 Comments at 8.

¹³² NYSDEC August 9, 2021 Comments at 2-3.

¹³³ In any event, we note that as part of the project, Iroquois proposes to install vent recovery systems for planned blowdown events and recovery of compressor dry seal gas at the compressor stations. Iroquois January 28, 2022 Comments at 3. The vent recovery systems will reduce the aggregate methane emissions from all of the project compressor stations by an estimated 70% from historic levels (approximately 73% reduction in New York and 68% reduction in Connecticut methane emissions). Iroquois October 15, 2021 Supplemental Filing at 5.

2. Environmental Justice

65. In conducting NEPA reviews of proposed natural gas projects, the Commission follows the instruction of Executive Order 12898, which directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority and low-income populations (i.e., environmental justice communities).¹³⁴ Executive Order 14008 also directs agencies to develop “programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”¹³⁵ Environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹³⁶

¹³⁴ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). While the Commission is not one of the specified agencies in Executive Order 12898, the Commission nonetheless addresses environmental justice in its analysis, in accordance with our governing regulations and guidance, and statutory duty to evaluate all factors bearing on the public interest. 15 U.S.C. § 717f; *see also* 18 C.F.R. § 380.12(g) (2021) (requiring applicants to submit information about the socioeconomic impact area of a project for the Commission’s consideration during NEPA review); FERC, *Guidance Manual for Environmental Report Preparation* at 4-76 to 4-80 (Feb. 2017), <https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf>.

¹³⁵ Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Feb. 1, 2021). The term “environmental justice community” includes disadvantaged communities that have been historically marginalized and overburdened by pollution. *Id.* § 219, 86 Fed. Reg. 7619, 7629. The term also includes, but may not be limited to minority populations, low-income populations, or indigenous peoples. *See* EPA, *EJ 2020 Glossary* (Aug. 2, 2019), <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

¹³⁶ EPA, *Learn About Environmental Justice*, [https://www.epa.gov/environmentaljustice/learn-about-environmental-justice#:~:text=Environmental%20justice%20\(EJ\)%20is%20the,environmental%20laws%2C%20regulations%20and%20policies](https://www.epa.gov/environmentaljustice/learn-about-environmental-justice#:~:text=Environmental%20justice%20(EJ)%20is%20the,environmental%20laws%2C%20regulations%20and%20policies) (last visited Mar. 4, 2022). Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. *Id.* Meaningful involvement of potentially affected environmental justice community residents means: (1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) the public’s contributions can influence the regulatory agency’s decision; (3) community concerns

66. Consistent with CEQ¹³⁷ and EPA¹³⁸ guidance, Commission staff considers: (1) whether environmental justice communities (minority or low-income populations)¹³⁹ exist in the project area; (2) whether impacts on environmental justice communities are disproportionately high and adverse; and (3) what mitigation measures might be needed. Following the recommendations set forth in *Promising Practices*, the Commission uses the 50% and the meaningfully greater analysis methods to identify minority populations.¹⁴⁰ Using this methodology, minority populations have been defined as

will be considered in the decision-making process; and (4) decision makers will seek out and facilitate the involvement of those potentially affected. *Id.*

¹³⁷ CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* 4 (Dec. 1997) (CEQ's *Environmental Justice Guidance*), https://www.energy.gov/sites/default/files/nepapub/nepa_documents/RedDont/G-CEQ-EJGuidance.pdf. CEQ offers recommendations on how federal agencies can provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices. There were opportunities for public involvement during the Commission's pre-filing and environmental review processes, though the record does not demonstrate that these opportunities were targeted at engaging environmental justice communities. *See supra* PP 46-48. Iroquois's application noted that it held four open houses, one in each of the communities in which project facilities will be constructed. Iroquois Application at 41. For assistance with interventions, comments, requests for rehearing, or other filings, and for information about any applicable deadlines for such filings, members of the public are encouraged to contact OPP directly at 202-502-6592 or OPP@ferc.gov for further information. *See supra* note 16. Due to the COVID-19 pandemic, however, Commission staff was unable to conduct in-person scoping sessions. The scoping period was from March 25, 2020 to April 24, 2020, as stated in the scoping notice.

¹³⁸ *See generally* EPA, *Promising Practices for EJ Methodologies in NEPA Reviews* (Mar. 2016) (*Promising Practices*), https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

¹³⁹ *See generally* Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). Minority populations are those groups that include: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic. CEQ's *Environmental Justice Guidance* at 25.

¹⁴⁰ *See Promising Practices* at 21-25.

where either: (1) the aggregate minority population of the block groups in the affected area exceeds 50%; or (2) the aggregate minority population in the block group affected is 10% higher than the aggregate minority population percentage in the county.¹⁴¹

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

68. To identify potential environmental justice communities, Commission staff used 2019 U.S. Census American Community Survey data¹⁴² for the race, ethnicity, and poverty data at the block group level.¹⁴³ Additionally, in accordance with *Promising Practices*, staff used EJSCREEN, EPA's environmental justice mapping and screening tool, as an initial step to gather information regarding minority and low-income populations; potential environmental quality issues; environmental and demographic indicators; and other important factors and also reviewed additional Census data.

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

¹⁴¹ *Id.* at 23-25. Here, Commission staff selected county as the comparable reference community to ensure that affected environmental justice communities are properly identified. A reference community may vary according to the characteristics of the particular project and the surrounding communities.

¹⁴² U.S. Census Bureau, American Community Survey 2019 ACS 1-Year Estimates Detailed Tables, File# B17017, Poverty Status in the Past 12 Months by Household Type by Age of Householder, <https://data.census.gov/cedsci/table?q=B17017;File#B03002> Hispanic or Latino Origin By Race, <https://data.census.gov/cedsci/table?q=b03002>.

¹⁴³ For this project, we determined that a one-mile radius around the proposed aboveground facilities was the appropriate unit of geographic analysis for assessing project impacts on the environmental justice communities. A one-mile radius is sufficiently broad considering the likely concentration and range of construction emissions, noise, traffic impacts and visual impacts proximal to the proposed facilities.

were significant.¹⁴⁴ Commission staff assessed whether impacts to an environmental justice community were disproportionately high and adverse based on whether those impacts were predominately borne by that community, consistent with EPA's recommendations in *Promising Practices*.¹⁴⁵ Identified project impacts and subsequent mitigation measures are discussed below.

70. Commission staff found that three of the census block groups near the project facilities exceed the defined thresholds for minority or low-income communities and are therefore environmental justice communities: one block group with a low-income community near the Dover Compressor Station (Census Tract 400.03, Block Group 1); one block group with a low-income community near the Brookfield Compressor Station (Census Tract 2053, Block Group 2); and one block group with a minority community near the Milford Compressor Station (Census Tract 813, Block Group 4).¹⁴⁶

71. The final EIS appropriately disclosed impacts on the identified environmental justice communities in proximity to the existing Dover, Brookfield, and Milford Compressor Stations, including construction-related dust, traffic, noise, and visual impacts, as well as long-term noise and air quality effects from the facility operations, and concluded that impacts from the project would be minimized or mitigated, as applicable, and therefore would not result in significant impacts on minority or low-income residents.¹⁴⁷ We reaffirm this conclusion for the identified environmental justice communities in proximity to the Brookfield and Milford Compressor Stations.

72. Following issuance of the final EIS, Commission staff recognized an oversight in the applied threshold to define a "minority community." Instead of using the more appropriate "10 percent greater than the aggregate minority population percentage in the county" threshold, a "10 percentage points" threshold was applied instead. Applying the appropriate threshold criteria of 10% greater than the aggregate minority population

¹⁴⁴ See *Promising Practices* at 33 (stating that "an agency may determine that impacts are disproportionately high and adverse, but not significant within the meaning of NEPA").

¹⁴⁵ *Id.* at 44-46 (explaining that there are various approaches to determining whether an action will cause a disproportionately high and adverse impact, and that one recommended approach is to consider whether an impact would be "predominantly borne by minority populations or low-income populations"). We recognize that EPA and CEQ are in the process of updating their guidance regarding environmental justice and we will review and incorporate that anticipated guidance in our future analysis, as appropriate.

¹⁴⁶ EIS at 16.

¹⁴⁷ *Id.* at 44-54.

percentage in the county, environmental justice populations within one-mile of the project areas also include an environmental justice community with a minority population in proximity to the Athens Compressor Station (Census Tract 809, Block Group 3) and another environmental justice community with a minority population in proximity to the Dover Compressor Station (Census Tract 400.01, Block Group 1).¹⁴⁸

73. Below, we analyze the previously-identified block group with a low-income community near the Dover Compressor Station (Census Tract 400.03, Block Group 1) as well as the newly-identified community with a minority population (based on the minority threshold) in proximity to the Dover Compressor Station (Census Tract 400.01, Block Group 1); and the newly-identified environmental justice community (based on the minority threshold) with a minority population in proximity to the Athens Compressor Station (Census Tract 809, Block Group 3).

74. The Dover Compressor Station is located entirely within Census Tract 400.01, Block Group 1 and is within a 1-mile radius of Census Tract 400.03, Block Group 1. Impacts on the environmental justice communities in proximity to the Dover Compressor Station may include traffic, noise, visual, and air quality. Environmental justice concerns are not present for other resource areas, such as geology, groundwater (including private wells), wildlife, or cultural resources due to the minimal overall impact the project would have on these resources.

75. Traffic delays may occur within environmental justice communities during construction of the Dover Compressor Station should local roads within those communities be used by workers commuting to or from the site, or for delivery of construction equipment and materials. As discussed in the EA and final EIS, Iroquois has committed to implementing mitigation measures to alleviate potential road congestion during construction through avoidance of peak commute times, periods associated with school-related traffic, and in consultation with transportation authorities.¹⁴⁹ Therefore, traffic-related impacts on the population, including environmental justice communities, would be minor and short-term, lasting the duration of construction.¹⁵⁰

76. Regarding noise impacts, construction noise related to project activities would be temporary, lasting the duration of construction. Operation of the existing and modified Dover Compressor Station, with noise mitigation, would result in an increase in noise levels at the closest residence, south of the project facility, (located in Census Tract

¹⁴⁸ We note that table E.9-1 of the final EIS includes the most recent data available for each census tract block group.

¹⁴⁹ *Id.* at 16.

¹⁵⁰ *Id.* at 16.

400.01, Block Group 1) of 3.0 decibels and by 1.3 decibels at the closest residence to the west of the project facility (located in Census Tract 400.03, Block Group 1). Therefore, the anticipated noise increase would likely be perceptible at the closest residence to the south but would not likely be perceptible at the closest residence to the west. Noise would be below the applicable the Commission-established noise limit criterion at both residences. Therefore, the project would not result in significant noise impacts on local residents and the surrounding communities, which include environmental justice communities.

77. With respect to visual impacts on environmental justice populations, visual receptors in the vicinity of Dover Compressor Station would include motorists on County Route 26 (Dover Furnace Road), as well as residences across the street from and adjacent to the existing compressor station site. The closest residences to the facility within an environmental justice community are 925 feet south and 1,150 feet west of the new compressor station building and are located within environmental justice block groups, Census Tract 400.01, Block Group 1 and Census Tract 400.03, Block Group 1, respectively. The Dover Compressor Station would not be visible from the closest residence to the south in Census Tract 400.01, Block Group 1. The facility would be partially visible from County Route 26 and the closest residence in Block Group 1 and Census Tract 400.03, Block Group 1 as Iroquois has designed the modifications at this facility to be toward the back of the parcel and behind an existing compressor building. Due to the limited visibility of the new facilities from visual receptors, visual impacts on environmental justice communities would be less than significant.

78. Construction emissions at the Dover Compressor Station, in the form of particulate matter (e.g., dust) and combustion emissions from equipment exhaust, would result in localized impacts in the immediate vicinity of construction work areas over the duration of construction activity (about nine months).¹⁵¹ To mitigate dust and exhaust emissions during construction, Iroquois would implement dust control measures, including watering or application of other nontoxic dust suppressants (e.g., magnesium chloride, polyvinyl acetate, and organic dust suppressants, such as mulch, straw, or wood chips) to disturbed work areas and unpaved access roads, reducing vehicle speeds on unpaved roads, removing debris from paved surfaces, as well as maintenance of construction entrances, and ensuring compliance with federal, state, and local regulations for exhaust emissions from construction equipment.¹⁵² Air emissions during operations, when considered with existing and background concentrations, would be below the National Ambient Air Quality Standards (NAAQS), which are designated to protect public human health and welfare, including sensitive populations, such as children, the

¹⁵¹ EA at B-67.

¹⁵² EIS at 17.

elderly, and those with compromised respiratory function, i.e., asthmatics.¹⁵³ The NAAQS are discussed further below.

79. Based on the updated data from the corrected threshold and given that the Dover Compressor Station is within a minority community, impacts from construction and operation of the Dover Compressor Station would be predominately borne by an environmental justice community and thus would be disproportionately high and adverse. For this project, we consider mitigation measures identified in the final EIS to address whether impacts on the environmental justice communities are also significant as defined by NEPA. However, as previously described in the EA and final EIS, given that the facility is existing, and with Iroquois' identified mitigation measures, adherence to the FERC Plan and FERC Procedures, and our environmental conditions, including ensuring noise impacts would not exceed our established threshold (Environmental Condition 12 in the appendix to this order), the impacts on these environmental justice communities would be less than significant.¹⁵⁴

80. We also analyze impacts associated with the Athens Compressor Station separately because we have now identified an environmental justice community within 1.0 mile of the facility. Impacts on the environmental justice community in proximity to the Athens Compressor Station may include traffic, noise, visual, and air quality. Environmental justice concerns are not present for other resource areas, such as geology, groundwater (including private wells), wildlife, or cultural resources due to the minimal overall impact the project would have on these resources. Traffic delays may occur during construction of the Athens Compressor Station should local roads within Census Tract 809, Block Group 3 be used by workers commuting to or from the site, or for delivery of construction equipment and materials. As discussed in the EA and final EIS, Iroquois has committed to implementing mitigation measures to alleviate potential road congestion during construction through avoidance of peak commute times, periods associated with school-related traffic, and in consultation with transportation

¹⁵³ *Id.* at 53.

¹⁵⁴ *Id.* at 53-54. In reaching this conclusion with respect to the Dover Compression Station, we also note that as described above; traffic-related impacts would be minor and short term, noise would not exceed the Commission's noise limit criterion, visual impacts would be limited both from residences and from County Road 26, construction-related emissions would be mitigated by Iroquois' dust control measures and adherence to all federal, state, and local emissions requirements for construction equipment, and air emissions during operations, when considered with existing and background concentrations, would be below the NAAQS.

authorities.¹⁵⁵ Therefore, traffic-related impacts on the population, including environmental justice communities, would be minor and short-term.¹⁵⁶

81. The EA and final EIS state that there would not be a perceptible increase in noise associated with the project for nearby residences, including residences within the newly identified environmental justice community in proximity to the Athens Compressor Station.¹⁵⁷ The residences located within the environmental justice community closest to the Athens Compressor Station (Census Tract 809, Block Group 3) are about 0.7 mile away. Given this distance and the noise condition included in the appendix to this order (Environmental Condition 12), which requires that noise from the station not exceed a day-night sound level of 55 decibels, we find that noise impacts associated with the proposed modifications at the Athens Compressor Station would not significantly impact the environmental justice community.

82. With respect to visual impacts on environmental justice populations, the new compressor unit and other components proposed within the Athens Compressor Station would not be visible from the nearest residences within an environmental justice community, which are about 0.7 mile away. The facility would be partially visible by users of Schoharie Turnpike, which may include individuals from environmental justice communities. Due to the limited visibility of the facility from visual receptors within environmental justice communities, visual impacts from the modified Athens Compressor Station would be less than significant.

83. Construction emissions at the Athens Compressor Station, in the form of particulate matter (e.g., dust) and combustion emissions from equipment exhaust, would result in localized impacts in the immediate vicinity of construction work areas over the duration of construction activity (about nine months).¹⁵⁸ To mitigate dust and exhaust emissions during construction, Iroquois would implement dust control measures, including watering or application of other nontoxic dust suppressants (e.g., magnesium chloride, polyvinyl acetate, and organic dust suppressants such as mulch, straw, or wood chips) to disturbed work areas and unpaved access roads, reducing vehicle speeds on unpaved roads, removing debris from paved surfaces, as well as maintenance of construction entrances, and ensuring compliance with federal, state, and local regulations

¹⁵⁵ *Id.* at 16.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ EA at B-67.

for exhaust emissions from construction equipment.¹⁵⁹ Air emissions during operations, when considered with existing and background concentrations, would be below the NAAQS, which are designated to protect public human health and welfare, including sensitive populations, such as children, the elderly, and those with compromised respiratory function, i.e., asthmatics.¹⁶⁰ The NAAQS are discussed further below.

84. The Athens Compressor Station is 0.7 mile from the closest residences located within an environmental justice community. Impacts associated with the Athens Compressor Station would not be predominately borne by or appreciably more severe or greater in magnitude on an environmental justice community; therefore, impacts on environmental justice communities from project impacts at the Athens Compressor Station would not be disproportionately high and adverse.

85. The EA and EIS determine that the proposed project would not have a disproportionately high and adverse impact on environmental justice communities and would not have a significant adverse impact on the environment or on individuals living in the vicinity of the project facilities.¹⁶¹ We reaffirm this conclusion for the environmental justice communities in proximity to the Brookfield, Milford, and Athens Compressor Stations. Although impacts associated with construction and operation of the Dover Compressor Station would be predominately borne by the environmental justice communities and would be disproportionately high and adverse, we find that impacts on environmental justice communities from the project as a whole would not be disproportionately high and adverse or significant.

86. The EPA commented that the final EIS should have acknowledged and addressed the fact that the impacts of climate change are not equally distributed and that already overburdened communities with environmental justice concerns are disproportionately affected by GHG emissions.¹⁶² The EA and EIS address impacts associated with climate change, stating that the construction and operation of the project would increase the atmospheric concentration of GHGs, in combination with past and future emissions from all other sources and would contribute incrementally to future climate change impacts.¹⁶³ The EIS also explains that impacts from climate change can have a cumulative adverse

¹⁵⁹ EIS at 17.

¹⁶⁰ *Id.* at 53.

¹⁶¹ *Id.* at 16-17.

¹⁶² EPA December 20, 2021 Comments at 8.

¹⁶³ EIS at 23.

impact on environmental justice communities.¹⁶⁴ As discussed above, however, we find that the Enhancement by Compression Project's GHG emissions will result in a net decrease in GHG emissions.¹⁶⁵

87. The EPA acknowledges that the EIS states NAAQS attainment alone may not assure there is no localized harm to populations with environmental justice concerns due to project emissions.¹⁶⁶ In addition, the EPA states that the presence of non-project related pollution sources, local health risk factors, disease prevalence, and access (or lack thereof) to adequate health care may, in addition to the project, contribute to adverse health effects.¹⁶⁷ We agree. Further, the EPA states that air pollution from the project could contribute to a wide variety of adverse health effects that the EA and EIS did not adequately address when it disclosed estimated emission totals for pollutants covered by the NAAQS.¹⁶⁸ The EPA also states that "hot spots" may exist that exceed the level of the NAAQS in areas designated as attainment and that a quantitative air quality analysis should be performed.¹⁶⁹

88. The EIS disclosed the magnitude of criteria, volatile organic compounds, and hazardous air pollutant (HAP) emissions from the compressor stations, as well as fugitive emissions from pipe components.¹⁷⁰ In addition, we note that all criteria pollutants would not exceed the NAAQS, and most would be well below those levels. The maximum modeled incremental air quality impact of each compressor station for each of the NAAQS is small to moderate. The Brookfield Compressor Station emissions would be about 17.5% and 18.0% of the 1-hour and annual nitrogen dioxide (NO₂) standards, respectively; all other emissions from the proposed compressor station modifications would represent a smaller percentage of the applicable NAAQS. When combined with

¹⁶⁴ *Id.* at 52. Potential cumulative climate change impacts on environmental justice communities such as temperature extremes, floods, droughts, wildlife impacts, and sea-level rise as well as cumulative impacts on air quality are discussed in the EIS. *Id.* at 51-54.

¹⁶⁵ *See supra* P 64.

¹⁶⁶ EPA December 20, 2021 Comments at 9.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ EIS at table E.10-1.

ambient levels, the NO₂ emissions at the Brookfield Compressor Station would represent 72.6% of the NAAQS.¹⁷¹

89. Emissions of particulate matter with an aerodynamic diameter less than or equal to 2.5 microns (PM_{2.5}) would have the next highest percentages, with combined emissions from ambient levels and compressor station operations representing 55.0%, 35.8%, and 71.3% of annual levels at the Athens, Dover, and Brookfield Compressor Stations, respectively.¹⁷² The EIS concludes that the existing ambient background is the primary driver for these air quality impacts.¹⁷³ The EA and EIS conclude that air quality impacts on people in general, and environmental justice communities, would not be significant.¹⁷⁴ We concur.

90. The EA and EIS summarize the findings of the quantitative air quality modeling that was performed. With respect to the identification of “hot spots,” the individual air quality monitors that were chosen for use in the air quality model were selected to be representative of air quality in the vicinity of the project areas based on monitor location, data quality, and currentness of the data.¹⁷⁵ Iroquois states that monitors were selected to include a similarity of emissions sources impacting the monitor to the emissions sources of the project and similarity of land use surrounding the monitor and facility.¹⁷⁶ For certain pollutants Iroquois selected an ambient monitor that was in a more densely populated or industrial area than the project site; data from these monitors provide a conservative representation of air quality in the project area.¹⁷⁷

91. The air monitors that were selected for inclusion in the modeling analysis were approved for use in the model by the NYSDEC for the Athens and Dover Compressor

¹⁷¹ *Id.* at 53.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 17, 59.

¹⁷⁵ Data currentness refers to the availability of the most recent three complete years of quality-assured data. Data quality refers to the monitor being an approved state and local air monitoring station or similar subject to the quality assurance requirements in 40 C.F.R. pt. 58, app. A (2021).

¹⁷⁶ Iroquois April 14, 2020 Supplemental Filing at App. 9-C (Revised Resource Report 9).

¹⁷⁷ *Id.*

Stations. For the Brookfield Compressor Station, Iroquois used validated data published by the CTDEEP. Based on the methodology and justification used in selecting each background monitor for inclusion in the air quality modeling analysis, Commission staff concluded that Iroquois adequately and conservatively represented air quality in the project areas.¹⁷⁸ Based on the air quality modeling completed for the Athens, Dover, and Brookfield Compressor Stations, the EA and EIS find that although project operation would result in impacts on air quality, emissions from operation of the existing and modified compressor stations, in combination with existing air quality representative of project areas, would comply with the NAAQS, and would not result in significant impacts on air quality.¹⁷⁹ We concur.

92. The EPA commented on the EIS that it regulates HAPs, which are known to cause cancer and other serious health impacts.¹⁸⁰ The EPA states that it has established health benchmarks for HAPs to manage health risks of these pollutants in the outdoor air and that HAPs pose very localized air quality problems because risk is a function of the amount of exposure to a given chemical, the duration of exposure, and the proximity of the exposed individual.¹⁸¹ The EPA recommends the use of a quantitative risk assessment to properly characterize risk, which can then be used to determine whether the level of risk is unacceptable and would trigger the need for appropriate remediation actions, such as emissions reductions.¹⁸² The EPA also states that HAPs pose a risk of potentially disproportionately high and adverse impacts to communities with environmental justice concerns.¹⁸³

93. As discussed in the EA (which is incorporated by reference in the EIS), in addition to the air quality modeling analysis, Iroquois conducted a human health risk assessment (risk assessment) for the project.¹⁸⁴ The risk assessment evaluated potential exposure through inhalation and human health risks associated with current and future operational HAP emissions at each of the four project compressor stations. The risk assessment used

¹⁷⁸ EA at B-74.

¹⁷⁹ EIS at 59.

¹⁸⁰ EPA December 20, 2021 Comments at 9.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Iroquois April 14, 2020 Supplemental Filing (Revised Resource Report 9, which includes Iroquois' risk assessment).

conservative assumptions, in accordance with EPA's guidance on risk assessment,¹⁸⁵ to assess health risks to sensitive subpopulations of residents, such as children. This is intended to be a conservative estimate by assuming chronic exposure to maximum 5-year average concentrations of chemicals of potential concerns at each compressor station fence or property line throughout the residential tenure of adults (30 years) and children (6 years). The risk assessment also evaluates acute exposure and risk associated with short-term maximum emissions at the compressor station fence line. The risk assessment was developed using standardized EPA risk assessment guidance and was designed to overstate what any individual was likely to experience. The risk assessment concluded that current HAP emissions and those projected under the project are well below a level of health concern and do not pose an unacceptable chronic or acute risk to human health.¹⁸⁶ Based on Iroquois' risk assessment, we conclude that Iroquois has adequately evaluated the risk of HAPs on nearby populations, including environmental justice populations.

3. Environmental Analysis Conclusion

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

IV. Conclusion

95. The proposed project will enable Iroquois to provide up to 125,000 Dth/d of firm transportation service, 100% of the project's capacity, to Con Edison and National Grid, which we find sufficient to demonstrate a need for the project. Further, the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers and will have minimal impacts on the interests of landowners and surrounding communities. Additionally, as noted above, the project is an

¹⁸⁵ EPA, *The Risk Assessment Guidelines of 1986* (Aug. 1987), <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=30001GOF.txt>; EPA, *Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation Manual, Part A* (Dec. 1989), https://www.epa.gov/sites/production/files/2015-09/documents/rags_a.pdf; EPA, *Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities* (Sept. 2005), https://epa-prgs.ornl.gov/radionuclides/2005_HHRAP.pdf.

¹⁸⁶ Iroquois April 14, 2020 Supplemental Filing.

environmentally acceptable action. Based on the discussion above, we find under section 7 of the NGA that the public convenience and necessity requires approval of the Enhancement by Compression Project, subject to the conditions in this order.

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

97. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁸⁷

98. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and comments, and upon consideration of the record,

¹⁸⁷ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

The Commission orders:

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

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

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

(C) Iroquois' proposed incremental recourse rate and incremental fuel retention percentages are approved as the initial rates for transportation on the Enhancement by Compression Project, as modified herein.

(D) Iroquois shall keep separate books and accounts of costs attributable to the proposed incremental services, as described above.

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

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

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

Appendix Environmental Conditions

As recommended in the environmental assessment (EA) and final environmental impact statement (final EIS) and otherwise amended herein, this authorization includes the following conditions.

1. Iroquois Gas Transmission, LP (Iroquois) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA and EIS, unless modified by the Order. Iroquois must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Federal Energy Regulatory Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of Office of Energy Projects (OEP), or the Director's designee, **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Iroquois shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EIs' authority and have been or will be trained on the implementation of the

environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

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

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

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

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

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

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;

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

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

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

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- a. file a report with the Secretary, for review and written approval by the Director of OEP, or the Director's designee, on what changes are needed;
- b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
- c. confirm compliance with this requirement by filing a second full power load noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Iroquois Gas Transmission System, L.P.

Docket No. CP20-48-000

(Issued March 24, 2022)

GLICK, Chairman, *concurring*:

1. I believe that the record before us indicates that Iroquois Gas Transmission System's Enhancement by Compression Project is needed and in the public interest. On the question of need, the project is supported by a binding, 20-year precedent agreement for all 125,000 Dth/d of the project's capacity in order to serve unaffiliated local distribution companies in New York.¹ In my view, a project sponsor's precedent agreements with nonaffiliates for the use of a substantial portion of the project's capacity, particularly when serving local distribution companies, constitutes significant evidence of need for the project, which the protests do not rebut. I also believe that the project's benefits outweigh its adverse impacts. As a result, I believe that the project is in the public interest and therefore required by the public convenience and necessity under section 7(c) of the Natural Gas Act (NGA). I write separately, however, because today's order does not assess the significance of the project's GHG emissions on climate change.

2. In 2017, the U.S. Court of Appeals for the District of Columbia Circuit in *Sabal Trail*, concluded that the Commission is required to quantify and consider the reasonably foreseeable GHG emissions caused by its issuance of an NGA section 7 certificate.² Following *Sabal Trail*, the D.C. Circuit has repeatedly confirmed that the Commission must consider those GHG emissions and their impact on climate change in its review of new natural gas infrastructure, and that failing to do so puts the orders we issue at risk on judicial review.³

3. At times the Commission has raised concerns that it is difficult to assess significance due to the absence of a universally accepted scientific methodology to do so⁴

¹ *Iroquois Gas Transmission System, L.P.*, 178 FERC ¶ 61,200, at P 13 (2022).

² *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) ("*Sabal Trail*").

³ *See Food & Water Watch v. FERC*, No. 20-1132, --- F.4th ---, 2022 WL 727037, at *7-8 (D.C. Cir. Mar. 11, 2022); *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1325 (D.C. Cir. 2021); *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019).

⁴ *See, e.g.*, Final Environmental Impact Statement for Alaska LNG Project. Docket

and it is difficult to ascribe discrete physical impacts to the molecules of carbon dioxide caused by a particular project.⁵ But “universal acceptance” is not the standard to consider the significance of climate change.⁶ After all, the administration of NEPA is rife with judgment calls, and agencies necessarily must use the best tools and information at hand, caveating them as appropriate.⁷ In addition, the Commission does not hold other environmental impacts associated with natural gas infrastructure to the same high standards for considering significance. For example, the Commission routinely assesses the significance of impacts on resources as idiosyncratic and diverse as permafrost,⁸ “ephemeral and intermittent waterbodies,”⁹ visual resources,¹⁰ and old growth forests,¹¹ without clearly articulated, “objective” standards, much less ones enjoying universal acceptance.

No. CP17-178-000, at 4-1222 (Mar. 2020).

⁵ See, e.g., *Alaska Gasline Dev. Corp.*, 171 FERC ¶ 61,134, at P 216 (2020) (“Without either the ability to determine discrete resource impacts or an established target to compare GHG emissions against, the final EIS concludes that it cannot determine the significance of the project’s contribution to climate change.”).

⁶ *Alaska Gasline Dev. Corp.*, 171 FERC ¶ 61,134 at PP 19-20 (Glick, Comm’r, dissenting); *Tenn. Gas Pipeline Co., L.L.C.*, 170 FERC ¶ 61,142 at P 5 (2020) (Glick, Comm’r, dissenting in part).

⁷ See, e.g., *Sabal Trail*, 867 F.3d at 1374 (“[S]ome educated assumptions are inevitable in the NEPA process.”); *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014); *Spiller v. White*, 352 F.3d 235, 244 n.5 (5th Cir. 2003) (rejecting petitioner’s contention that the significance determination must be objective, factual, and quantitative and should not involve any qualitative judgment calls).

⁸ Final Environmental Impact Statement for Alaska LNG Project, Docket No. CP17-178-000, at ES-4 (Mar. 2020) (finding that the Project would result in “significant longterm to permanent impacts on thaw sensitive permafrost (about 6,218 acres)” and to “thaw stable permafrost (about 3,499 acres)”).

⁹ Environmental Assessment for Cheyenne Connector Pipeline Project, Docket No. CP18-102-000, at 26 (Dec. 2018).

¹⁰ *Texas LNG Brownsville LLC*, 169 FERC ¶ 61,130, at P 56 (2019).

¹¹ Final Environmental Impact Statement for Atlantic Coast Pipeline Project, Docket No. CP15-554-000, at ES-10, ES-12 (July 2017).

4. I concur because today's order does not rehash those same arguments on the difficulty of assessing climate impacts. Instead, it explains that the Commission is not making a determination on significance because this project will result in a net reduction of GHG emissions and also notes our now-draft policy statement, which proposed to establish a rebuttable presumption that a project causing 100,000 metric tons of CO₂e emissions would significantly contribute to climate change. Under the circumstances, I can support that conclusion.

5. Nevertheless, I am disappointed the Commission did not follow the lead of last year's bipartisan order in *Northern Natural*, where we explained that "there is nothing about GHG emissions or their resulting contribution to climate change that prevents us from making . . . [a] significance determination."¹² I would have applied *Northern Natural* here and would have concluded that the project's contributions to climate change is obviously not significant given that it will result in a *net reduction* in GHG emissions.

6. The EIS in this proceeding made significance determinations for the project's impacts on factors including soils, vegetation, and visual resources.¹³ These assessments include consideration of the number of affected acres of each resource, the duration of any such impacts, and any mitigation imposed by the project developer. Despite lacking any specific, objective, or universally accepted metric for measuring or evaluating these impacts, the Commission has no problem finding them less than significant.

7. As noted above, the courts have been crystal clear in explaining that the Commission must consider climate change in its siting decisions under NGA sections 3 and 7.¹⁴ I continue to believe that the best approach for the Commission is to establish a transparent, predictable framework for considering climate impacts in order to give project developers the certainty they need to build new energy infrastructure. The significance determination is a bedrock element of that approach in that it constitutes perhaps the most important single step in informing federal decisionmakers and the public of the environmental consequences of the proposed action, which, after all, is the whole purpose of NEPA.¹⁵

¹² *N. Nat. Gas Co.*, 174 FERC ¶ 61,189, at P 32 (2021).

¹³ Final Environmental Impact Statement, Docket No. CP20-48-000, at ES-3, 7-8, 10, 13-14 (Nov. 2021).

¹⁴ *Food & Water Watch*, 2022 WL 727037, at *7-8; *Birckhead*, 925 F.3d at 519; *Sabal Trail*, 867 F.3d at 1373-74.

¹⁵ *See, e.g., Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (explaining that one of NEPA's purposes is to ensure that "relevant information will be made available to the larger audience that may also play a role in both the

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For these reasons, I respectfully concur.

Richard Glick
Chairman

decisionmaking process and the implementation of that decision”); *Lemon v. Geren*, 514 F.3d 1312, 1315 (D.C. Cir. 2008) (“The idea behind NEPA is that if the agency’s eyes are open to the environmental consequences of its actions and if it considers options that entail less environmental damage, it may be persuaded to alter what it proposed.”).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Iroquois Gas Transmission System, L.P.

Docket No. CP20-48-000

(Issued March 25, 2022)

DANLY, Commissioner, *concurring in the judgment*:

1. I concur with the decision to grant the Natural Gas Act (NGA) section 7(c)¹ authorization requested by Iroquois Gas Transmission System, L.P. (Iroquois).² I write separately to express four points. As an initial matter, I note that in an order issued concurrently with this one, the Commission announces that it is “making the Updated [Certificate] Policy Statement and the Interim [Greenhouse Gas Emissions (GHG)] Policy Statement draft policy statements.”³ I agree with the Commission’s decision to not apply the Updated Certificate Policy Statement⁴ and the Interim GHG Policy Statement⁵ to this proceeding.

2. *First*, I disagree with the Commission’s determination that “emissions from the downstream combustion of the gas transported by the project are reasonably foreseeable emissions.”⁶ The facts here, like in *Food & Water Watch v. FERC*,⁷ involve adding capacity to provide incremental transportation service to a local distribution company (LDC). And I recognize that the court “concluded that the end use of the transported gas

¹ 15 U.S.C. § 717f(c).

² See *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (*Iroquois*).

³ *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197, at P 2 (2022) (Order on Draft Policy Statements).

⁴ *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Updated Certificate Policy Statement).

⁵ *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,108 (2022) (Interim GHG Policy Statement).

⁶ *Iroquois*, 178 FERC ¶ 61,200 at P 49.

⁷ *Food & Water Watch v. FERC*, No. 20-1132, --- F.4th ---, 2022 WL 727037 (D.C. Cir. Mar. 11, 2022).

is reasonably foreseeable.”⁸ Nonetheless, the court also stated that “[o]n remand, *the Commission remains free to consider whether there is a reasonable end-use distinction based on additional evidence, but it has not carried its burden before us at this stage,*” and “remand[ed] to the agency to perform a supplemental environmental assessment in which it must either quantify and consider the project’s downstream carbon emissions *or explain in more detail why it cannot do so.*”⁹ I am not convinced that the LDCs involved here and the discrete, known generators at issue in *Sierra Club v. FERC (Sabal Trail)*¹⁰ are similar enough that the *Sabal Trail* precedent directly applies. We have not yet acted on remand and, even according to the court, the question remains open. Additionally, as I have said before, *Sabal Trail*, which *Food & Water Watch* applies, is inconsistent with the Supreme Court’s holding in *Department of Transportation v. Public Citizen*.¹¹ My views are not idiosyncratic. Both the dissenting opinion in *Sabal Trail* and the Court of Appeals for the Eleventh Circuit agree.¹²

3. *Second*, I write to state that, while not fatal to this order’s durability, I would have explicitly repudiated *Northern Natural Gas Company*¹³ and reaffirmed the Commission’s prior position that “[w]ithout an accepted methodology, the Commission cannot make a finding whether a particular quantity of [GHG] emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change.”¹⁴ This is because, as the Commission has

⁸ *Id.* at *7.

⁹ *Id.* at *7, 8 (emphasis added).

¹⁰ 867 F.3d 1357 (D.C. Cir. 2017).

¹¹ 541 U.S. 752 (2004) (*Public Citizen*).

¹² *See* 867 F.3d at 1383 (Brown J., concurring in part and dissenting in part) (“Thus, just as FERC in the [Department of Energy] cases and the Federal Motor Carrier Safety Administration in *Public Citizen* did not have the legal power to prevent certain environmental effects, the Commission here has no authority to prevent the emission of greenhouse gases through newly-constructed or expanded power plants approved by the Board.”); *Ctr. for Biological Diversity v. U.S. Army Corps of Eng’s*, 941 F.3d 1288, 1299-1300 (11th Cir. 2019) (“[T]he legal analysis in *Sabal Trail* is questionable at best. It fails to take seriously the rule of reason announced in *Public Citizen* or to account for the untenable consequences of its decision.”).

¹³ *N. Nat. Gas Co.*, 174 FERC ¶ 61,189, at PP 29-36 (2021) (Danly, Comm’r, concurring in part and dissenting in part) (*Northern*).

¹⁴ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 67 (2018) (citation omitted).

stated, it is unable to connect a particular project's GHG emissions to discrete, physical effects on the environment.¹⁵ The Council on Environmental Quality (CEQ) has found similarly.¹⁶ And the Commission's now-draft Interim GHG Policy Statement¹⁷ does not alter these determinations.¹⁸

4. Moreover, there is no standard by which the Commission could, consistent with our obligations under the law, ascribe significance to a particular rate or volume of GHG emissions.¹⁹ The Commission's erstwhile attempt to establish its own significance threshold demonstrates just that. Finding no standard upon which they could properly rely, my colleagues simply picked a number—one which, I understand, was not offered in any of the more than 35,000 comments²⁰—and attempted to justify that arbitrary number with rationales that were either irrelevant to the issue of environmental harm or were not supported by the record.²¹

5. Project sponsors are now left wondering whether the Commission's departure from *Northern* is temporary, and if so, for how long. And while it would normally be prudent to plan for its return, how does one plan for a policy that creates a test with no standards?²² I suppose, given this certificate order, project sponsors at least now know

¹⁵ See, e.g., *Nat. Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145, at P 188 (2017).

¹⁶ See CEQ, *Draft [National Environmental Policy Act (NEPA)] Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions*, at P 3 (2010), <https://obamawhitehouse.archives.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf> (“it is not currently useful for the NEPA analysis to attempt to link specific climatological changes, or the environmental impacts thereof, to the particular project or emissions, as such direct linkage is difficult to isolate and to understand.”).

¹⁷ See Order on Draft Policy Statements, 178 FERC ¶ 61,197.

¹⁸ See Interim GHG Policy Statement, 178 FERC ¶ 61,108 (Danly, Comm'r, dissenting at P 22) (“And while it is not acknowledged at all in the Interim Policy Statement's procedural history, the Commission has repeatedly stated that ‘it cannot determine a project's incremental physical impacts on the environment caused by GHG emissions,’ and CEQ has made similar statements.”) (citations omitted).

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

²⁰ Interim GHG Policy Statement, 178 FERC ¶ 61,108 at P 19.

²¹ *Id.* (Danly, Comm'r, dissenting at PP 33-34).

²² See *Northern*, 174 FERC ¶ 61,189 (Danly, Comm'r, concurring in part and dissenting in part at PP 15-16); *id.* at P 16 (comparing the *Northern* test to “like posting a

that the Commission will not assess whether the project has a significant impact on climate change should the project result in a net reduction of GHG emissions.²³ Nor will the Commission calculate the Social Cost of Carbon from project emissions in those circumstances.²⁴ I cannot help but wonder if the Commission offers this lone island of certainty in a maneuver to encourage the development of a certain type of project or GHG mitigation plan.

6. *Third*, I write separately to express that I am sympathetic to Iroquois' request to recover Administrative and General (A&G) costs it states it will incur from providing the incremental service.²⁵ The Natural Gas Act requires the Commission to provide Iroquois a reasonable opportunity to recover project costs and earn a fair return on investment.²⁶ However, I agree that Iroquois has not met its burden to show that it will actually incur the costs from providing the incremental service.²⁷ In my view, Iroquois must show how calculating A&G costs using a percentage derived from dividing existing A&G costs by total gross plant is a reasonable methodology for determining the actual costs incurred from constructing and operating the Enhancement by Compression Project.²⁸

7. *Fourth*, it has been over two years since Iroquois filed its application;²⁹ nearly 18 months since the Commission issued an Environmental Assessment (EA) for the project;³⁰ and nearly 15 months after the requested action date that Iroquois stated was

speed limit sign with a question mark instead of a number, leaving it to the police officer to decide arbitrarily whether you were speeding”).

²³ *Iroquois*, 178 FERC ¶ 61,200 at P 56.

²⁴ *Id.* P 59.

²⁵ See *Iroquois Gas Transmission Sys., L.P.*, Response to Data Request dated Sept. 14, 2020, Docket No. CP20-48-000, at 1 of 3 (Sept. 21, 2020).

²⁶ See *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944).

²⁷ *Iroquois*, 178 FERC ¶ 61,200 at PP 24-25.

²⁸ See *Iroquois Gas Transmission Sys., L.P.*, Response to Data Request dated Sept. 14, 2020, Docket No. CP20-48-000, at 2 of 3 (Sept. 21, 2020).

²⁹ See *Iroquois Gas Transmission Sys., L.P.*, Abbreviated Application for a Certificate of Public Convenience and Necessity, Docket No. CP20-48-000 (Feb. 3, 2020) (Application).

³⁰ Commission Staff, Environmental Assessment for the Enhancement by Compression Project, Docket No. CP20-48-000 (Sept. 30, 2020).

necessary to ensure it had sufficient time to complete final engineering, long lead-time materials procurement, and construction of facilities.³¹ Iroquois and its customers have filed multiple requests for the Commission's prompt action.³²

8. One cannot help but wonder about the purpose for the Commission's delay. There was no need for the Commission to issue supplemental draft and final Environmental Impact Statements (EISs).³³ The D.C. Circuit has not stated that an EA is inadequate for the consideration of projects' GHG emissions.³⁴ The Commission could have quantified direct and downstream emissions and placed those emissions into context in an order.

³¹ See Application at 1 (listing December 31, 2020 as the requested action by date).

³² See, e.g., Consolidated Edison of New York, Inc. (Con Edison), Motion for Leave to Answer and Limited Answer, Docket No. CP20-48-000, at 2 (Jan. 28, 2022) (“[T]he Commission should not further delay its decision and should promptly approve the ExC Project.”); National Grid Gas Delivery Companies (National Grid), Comments, Docket No. CP20-48-000, at 1 (Dec. 17, 2021) (National Grid “urge[s] the Commission to act expeditiously to approve Iroquois Gas Transmission System, L.P.’s certificate application for the ExC Project.”); Con Edison, Comments, Docket No. CP20-48-000, at 2 (Apr. 20, 2021) (“Therefore, Con Edison again respectfully requests that the Commission take prompt action approving the ExC Project.”); National Grid, Supplemental Comments Docket No. CP20-48-000, at 2 (Apr. 9, 2021) (“A prompt decision from the Commission in the instant proceeding is appropriate.”); Iroquois Gas Transmission Sys., L.P., Request for Prompt Issuance of Certificate of Public Convenience and Necessity, Docket No. CP20-48-000, at 1 (Jan. 26, 2021) (“Iroquois respectfully that the Commission act promptly and issue the certificate for the ExC Project – if possible, by notational vote.”).

³³ See Commission Staff, Draft Environmental Impact Statement for the Enhancement by Compression Project, Docket No. CP20-48-000 (Jun. 11, 2021); Commission Staff, Final Environmental Impact Statement for the Enhancement by Compression Project, Docket No. CP20-48-000 (Nov. 12, 2021).

³⁴ The D.C. Circuit recently upheld the Commission's assessment of direct GHG emissions in an Environmental Assessment. See *Food & Water Watch v. FERC*, No. 20-1132, --- F.4th ---, 2022 WL 727037, at *9. Notably, the D.C. Circuit in *Food & Water Watch* does not require the preparation of an Environmental Impact Statement, but instead, on remand requires the Commission “perform a *supplemental environmental*

9. And there is no doubt that the Commission has delayed action on this and other certificates in order to issue the Updated Certificate Policy Statement and Interim GHG Policy Statement first.³⁵ My colleagues have claimed that those policy statements were necessary to provide a legally durable framework for certificate orders going forward.³⁶ And yet those policy statements are now in draft form,³⁷ they are no longer in effect, but here we are acting on certificate orders.

For these reasons, I respectfully concur in the judgment.

James P. Danly
Commissioner

assessment in which it must either quantify and consider the project's downstream carbon emissions or explain in more detail why it cannot do so." *Id.* at *8 (emphasis added).

³⁵ Commissioner Danly March 2, 2022 Letter to Senator Barrasso, Docket Nos. PL18-1-000, et al., at 5-7, <https://www.ferc.gov/news-events/news/commissioner-james-danly-letter-senator-barrasso>.

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

³⁷ *See* Order on Draft Policy Statements, 178 FERC ¶ 61,197, at P 2 ("Upon further consideration, we are making the Updated Policy Statement and the Interim GHG Policy Statement draft policy statements The Commission will not apply the Updated Draft Policy Statement or the Draft GHG Policy Statement to pending applications or applications filed before the Commission issues any final guidance in these dockets.") (citations omitted).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Iroquois Gas Transmission System, L.P.

Docket No. CP20-48-000

(Issued March 25, 2022)

CLEMENTS, Commissioner, *concurring*:

1. I concur with this order and write separately only to clarify why the Commission has declined to characterize the significance of the greenhouse gas (GHG) emissions associated with Iroquois Gas Transmission System, L.P. (Iroquois)'s request to construct and operate compression and gas cooling facilities at four existing compressor stations (Enhancement by Compression Project).¹
2. In *Sabal Trail*, the court said that the National Environmental Policy Act (NEPA) environmental impact statement (EIS) for a Commission-authorized project needed to include a discussion of the significance of GHG emissions that were an indirect effect of authorizing the project.² It should have been straightforward for the Commission to determine under NEPA³ that the Enhancement by Compression Project will have no significant adverse impacts on the climate given our conclusion that the project will likely result in a net reduction in greenhouse (GHG) emissions.⁴ I would have made that call but for the special circumstances surrounding issuance of this decision.
3. Today's order declines to label the GHG emissions here as significant or insignificant because we do not have consensus among Commissioners on whether and how to determine significance. Consequently, the Commission is taking public comment in Docket No. PL21-3-000 on these and related issues.⁵ I supported establishing a

¹ Order Issuing Certificate, 178 FERC ¶ 61,200, at P 56 (2022).

² *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*) (citing Council on Environmental Quality regulation implementing NEPA, 40 C.F.R. § 1502.16(b)).

³ 42 U.S.C. §§ 4331(a), 4332(2).

⁴ Order Issuing Certificate, 178 FERC ¶ 61,200 at PP 56-57.

⁵ *See* Order on Draft Policy Statements, 178 FERC ¶ 61,197, P 2 (2022); *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) (*Draft GHG Policy Statement*).

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100,000-ton per year CO₂e threshold for determining significance in the Commission's *Draft GHG Policy Statement* because it would provide a workable framework for considering GHG emissions and give clarity to stakeholders on when the Commission will prepare an environmental impact statement. But there may be other good approaches to determining significance. I am open to considering all reasonable suggestions for alternative approaches that may be identified through the public comments we are currently taking on the *Draft GHG Policy Statement*. I will continue to strive for clarity in our approach to considering significance.

4. After carefully weighing the Enhancement by Compression Project's benefits and its adverse impacts, including its potential effects on climate change, I have concluded that the project meets the public convenience and necessity standard under NGA section 7(e).⁶
5. For these reasons, I respectfully concur.

Allison Clements
Commissioner

⁶ 15 U.S.C. § 717f(e).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Iroquois Gas Transmission System, L.P.

Docket No. CP20-48-000

(Issued March 25, 2022)

CHRISTIE, Commissioner, *concurring*:

1. I concur with the order. I am entering essentially the same concurrence in this matter as in two other certificate cases that the Commission approves today.¹ The fundamental issues I address are substantially the same in all three cases.
2. “*Judges are not policymakers,*” says D.C. Circuit Court of Appeals judge and U.S. Supreme Court nominee Ketanji Brown Jackson.² I agree, and would add: judges *should* not be policymakers—certainly not on major questions of public policy, which in any liberal democracy worth the name are questions reserved to legislators elected by the people.
3. The nation’s response to climate change is obviously just such a major policy question. Reducing greenhouse gas (GHG) emissions because of their climate impact is a compelling national policy goal, but *how* the goal is pursued will affect the lives of literally all Americans because energy policy is also economic policy and national security policy. Whichever carbon policies are chosen will forcibly redistribute trillions of dollars, will affect the jobs of tens of millions of American workers, and will impact every American family’s ability to afford to heat their homes and pay their monthly power bills (and whether that power is reliable). The choice of carbon policies will determine whether thousands of communities in the energy-producing regions of this country are impoverished with no hope of recovering vitality in the lifetimes of their residents or their children. Carbon policies will affect even the country’s national security, as recent events in Ukraine and Europe illustrate.
4. So, determining these monumentally important questions of public policy is for elected legislators, not unelected judges, and not for unelected administrative agencies

¹ *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022); *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2022); *Iroquois Gas Transmission System, L.P.*, 178 FERC ¶ 61,200 (2022).

² See, e.g., Molly Christian, “Judges are not policymakers,” Supreme Court nominee Brown Jackson says,” *S&P Global Market Intelligence*, March 24, 2022.

such as this one, unless Congress has unambiguously given the agency clear authority and specific direction to implement a policy regarding GHG emissions and their impact on global climate change. Suffice it to say, Congress has not given this Commission the requisite specific authority or guidance.

5. It is highly likely that at least one, if not all, of these three certificates we approve today³ will be appealed, most likely to the D.C. Circuit, the forum of choice for those seeking to overturn FERC approvals of certificates for pipelines or to have them remanded on procedural grounds, delaying the projects and increasing their costs and already daunting uncertainties. As I noted in my dissent to the two certificate policy statements approved last month⁴ and suspended today,⁵ it is undeniable that there is a well-funded national campaign of legal warfare (“lawfare”) that seeks to achieve the *policy* goal of eliminating the use of natural gas by using administrative agencies and courts to prevent the construction of pipelines and related infrastructure, such as compressor stations, which are essential to transport natural gas from producers to consumers.⁶ This campaign does not need to win all its challenges to gas facilities;

³ *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022); *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2022); *Iroquois Gas Transmission System, L.P.*, 178 FERC ¶ 61,200 (2022).

⁴ *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Christie, Comm’r, dissenting); *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 178,61,108 (2022) (Christie, Comm’r, dissenting) (Christie Dissent). My dissent, identical in both orders, is also available online at: <https://www.ferc.gov/news-events/news/items-c-1-and-c-2-commissioner-christies-dissent-certificate-policy-and-interim>.

⁵ *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,197 (2022).

⁶ *See, e.g.*, Bloomberg Philanthropies, <https://www.bloomberg.org/environment/moving-beyond-carbon/> (“Launched in 2019 with a \$500 million investment from Mike Bloomberg and Bloomberg Philanthropies, Beyond Carbon . . . works . . . to . . . *stop the construction of proposed gas plants.*”) (last visited Feb. 8, 2022) (emphasis added); Sierra Club, <https://www.sierraclub.org/policy/energy/fracking>, (“There are no ‘clean’ fossil fuels. The Sierra Club is committed to *eliminating the use of fossil fuels*, including coal, *natural gas* and oil, as soon as possible”) (emphases added) (last visited Feb. 8, 2022); Natural Resources Defense Council, <https://www.nrdc.org/issues/reduce-fossil-fuels> (“Oil, *gas*, and other fossil fuels come with grave consequences for our health and our future.

simply by challenging permits in every available administrative and judicial forum, whether it wins or loses an individual case, it drives up the costs of even seeking a permit to construct a facility, thus deterring any future projects.⁷

6. Citing this national legal campaign against natural gas is relevant because it illustrates that the debates attendant to FERC's duties and authorities in certificate cases are really about policy, not law. Groups opposed to the use of natural gas and all fossil fuels certainly have the right under the First Amendment to advocate for such policies, but the decision to ban the use of natural gas or prevent the construction of any new natural gas facilities is a major question of public policy by any measure, and thus is a decision that must be made by the elected legislature. With that relevant context in mind, let me note the following specific to these cases.

7. With regard to the Commission's NEPA duties, in all three cases they have been performed to the standards the courts have set for this Commission. NEPA, as has been

. . . *NRDC is pushing America to move beyond these dirty fuels. We fight dangerous energy development on all fronts*") (emphases added) (last visited Feb. 8, 2022); Press Release, *NRDC Receives \$100 million from Bezos Earth Fund to Accelerate Climate Action* (Nov. 16, 2020), available at <https://www.nrdc.org/media/2020/201116> ("The Bezos Earth Fund grant will be used to help NRDC advance climate solutions and legislation at the state level, move the needle on policies and programs focused on *reducing oil and gas production*") (emphasis added) (last visited Feb. 8, 2022); Sebastian Herrera, *Jeff Bezos Pledges \$10 Billion to Tackle Climate Change*, Wall Street Journal (Feb. 17, 2020) ("Mr. Bezos . . . said the *Bezos Earth Fund* would help back scientists, activists, [*non-governmental organizations*"]") (emphasis added); see also, Ellie Potter, *Environmentalists launch campaign to ban gas from US clean energy program*, S&P Global Platts (Sep. 2, 2021) (quoting Collin Rees, U.S. Campaign Manager for Oil Change International, "Clean energy means *no gas* and no other fossil fuels, period.") (emphases added); Sean Sullivan, *FERC sets sights on gas infrastructure policy in 2022*, S&P Capital IQ (Dec. 31, 2021) (quoting Maya van Rossum, head of Delaware Riverkeeper Network, "we are not changing course at all: We continue to take on *every* pipeline, LNG, and fracked gas project as urgently as we did before, knowing we will have to *invest heavily to stop it . . .*") (emphases added).

⁷ Laurence Hammack, "Legal fights continue over the Mountain Valley Pipeline," *Roanoke Times*, Jan. 8, 2022 ("Even if this pipeline survives, opponents say their legal battle will not be a lost cause. 'You haven't seen another huge, several hundred mile pipeline proposed since Mountain Valley,' said [Gillian] Giannetti, [senior attorney with the Natural Resources Defense Council] . . . 'Developers know that a similar venture today would be met by "an army" of opposition,' she said.")

stated many times, is a procedural statute that requires the agency to fully inform itself and the public of the environmental consequences of its decisions. As the D.C. Circuit itself said in *Sabal Trail*, NEPA is “primarily information-forcing,” and courts should not “flyspeck” an agency’s environmental analysis.⁸ The Supreme Court has said that it also is “well-settled that NEPA does not mandate particular results, but simply prescribes the necessary *process* . . . NEPA merely prohibits uninformed—rather than unwise—agency action.”⁹ In all three cases herein both an Environmental Assessment (EA) and a much more costly and time-consuming Environmental Impact Statement (EIS) was performed. Regardless of whether conducting an EIS after the EA had already been performed was necessary or appropriate, there is no question here that the Commission has fulfilled its duties under NEPA. The EIS *was* done and it was done professionally by Commission staff exercising their special expertise.

8. In all three cases, the EIS included estimates of the quantity of GHG emissions that would be directly caused by the facility’s construction and operation.¹⁰ In the two pipeline cases, since both serve LNG export facilities, no estimate of downstream indirect impacts was required.¹¹ In the compressor case, the EIS estimated downstream GHG emissions as 2.41 metric tons per year.¹²

9. Now we come to one of the fundamental questions which will likely be relevant on appeal. Should or even *can* the Commission credibly characterize the *impact* of

⁸ See *Sierra Club v. FERC*, 867 F.3d 1357, 1367-68 (D.C. Cir. 2017) (*Sabal Trail*) (quoting *Nevada v. Dep’t of Energy*, 457 F.3d 78, 93 (D.C. Cir. 2006)).

⁹ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989) (citations omitted; emphases added).

¹⁰ *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022) at P 88; *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2022) at P 47. The Iroquois Enhancement by Compression Project’s EIS included estimates of emissions for the entire lifecycle of the project, from upstream to construction and transportation, to end use. *Iroquois Gas Transmission System, L.P.*, 178 FERC ¶ 61,200 (2022) at PP 49-50.

¹¹ *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022) at P 87; *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2022) at P 46. Despite not having been required, the information was still provided. See *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022) at P 72 & n.148; *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2022) at P 31.

¹² *Iroquois Gas Transmission, L.P.*, Docket No. CP20-48-000, Final EIS at 23 (Nov. 12, 2021).

estimated GHG emissions from a *single* facility on *global* climate change? And since there is no separate climate for Louisiana, Mississippi or Texas, nor even for the United States, there can only be an impact to consider on *global* climate. The answer to this question is self-evidently no, the Commission cannot credibly gauge the impact on the global climate from a single facility. The Commission can estimate a *quantity* of GHG emissions in terms of tonnage *directly* from a facility. That is within our wheelhouse, and it can and should be used to order mitigation of *direct* emissions. And to satisfy the D. C. Circuit's decision in *Appalachian Voices*,¹³ incorporating the *Sabal Trail* "reasonably foreseeable" requirement, the Commission can meet its NEPA duties by providing an upper bound estimate of the quantity in tonnage of indirect downstream GHG emissions.

10. But estimating a *quantity* of GHG emissions, direct or indirect, is fundamentally different from predicting the *impact* of that tonnage on *global* climate change or making a finding whether the impacts on global climate are "significant" or insignificant.¹⁴ Any such prediction or finding would have no intellectual rigor whatsoever and certainly should not be used to *reject* a natural gas facility that would otherwise be found needed to serve the public under the Natural Gas Act. And let's be honest: that is really the end game of those advocating for FERC to characterize a facility's GHG impacts on global climate. This is obviously true since FERC has no jurisdiction whatsoever over upstream or downstream actors and has no authority to order mitigation of downstream (or upstream) emissions. Thus, outright rejection of the facility will have to be among the remedies on the table if global climate impacts are found to be "significant."

11. To illustrate how unhinged from reality rejection of a certificate due to the alleged global climate impacts would be, consider that FERC has, of course, *no* jurisdiction over other countries which are also affecting climate change. For example, currently the power capacity of China's massive fleet of coal-fired generating stations is alone roughly *equal to the total installed generation capacity of the entire U.S. power system*, and China is moving forward with plans to expand that already huge coal fleet by another 25%, many of which are already under construction.¹⁵ Nor is China alone in continuing to expand,

¹³ *Appalachian Voices v. FERC*, 2019 WL 847199 (Feb. 19, 2019) (unpublished, per curiam).

¹⁴ *See Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022) (Glick, Chairman, concurring) at P 5.

¹⁵ *See, e.g.*, Kenneth B. Medlock III, *China's Coal Habit Will Be Hard to Kick*, BARRON'S, Oct. 6, 2021; *see also*, Amy Gunia, *China Is Planning to Build 43 New Coal-Fired Power Plants. Can It Still Keep Its Promises to Cut Emissions?* [ed.: No, it cannot and will not.], TIME (Aug. 20, 2021) ("Gunia"); *see also*, Michael O'Boyle, *China Doesn't Need Another Coal Power Plant*, FORBES (Aug. 18, 2021).

not retire, coal-fired generation. Other countries, including India, Vietnam and Indonesia, have plans to build more coal generation.¹⁶ Compared to the volume of climate-impacting GHG emissions continuously being produced by the coal fleets of China, India and other large consumers of power, any purported GHG impacts that can be ascribed to a single natural gas pipeline in the United States is, quite literally, *infinitesimal*.¹⁷

12. And that brings us to the central issue: Reading into the Natural Gas Act the power for FERC to reject a natural gas facility otherwise needed to serve the public, based on a purported impact of the facility on the global climate, is a public policy decision of immense magnitude. Telling FERC it has the authority, even the duty, to do so is a public policy decision of equally immense magnitude. It will affect the lives and livelihoods of tens of millions of American families and the country's energy, economic and national security. As Judge Brown Jackson said, "Judges are not policymakers." Nor should they be.

For these reasons, I respectfully concur.

Mark C. Christie
Commissioner

¹⁶ *Gunia, supra*, n. 15.

¹⁷ Nor does use of the artificial construct known as the "Social Cost of Carbon" provide any intellectual rigor or basis for assessing the impact on the global climate of a single facility, or of evaluating environmental impacts more broadly. In both of today's pipeline certificate cases the Social Cost of Carbon has been calculated using CEQ-EPA formulae and the information is provided. *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022) at P 93; *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2022) at P 52. For reasons I will not go into now, but save for later, these purported social carbon cost calculations are utterly devoid of legal, policy or economic validity. I concur with these orders because the Social Cost of Carbon is not used herein as the basis for our decisions in any of the cases.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Iroquois Gas Transmission System, L.P.

Docket No. CP20-48-000

(Issued March 25, 2022)

PHILLIPS and CHRISTIE, Commissioners, *concurring*:

1. We concur in the issuance of today's order granting authorizations under section 7 of the Natural Gas Act (NGA). We agree the public convenience and necessity requires approval and enter essentially the same concurrence in this case as in two other certificate cases that the Commission approves today.¹

2. We write separately to explain why we depart from *Northern Natural*, where the Commission stated that emissions for a project were not significant.² In *Northern Natural*, the Commission disclosed the yearly emissions volumes and the estimated contribution to national and state emissions estimates, and then stated that, based on this record, that the emissions were not significant.³ It is not clear how this determination was made or how a finding of "significance" would have affected our duties and authority under the Natural Gas Act.

3. In this case, we assessed the project emissions in accordance with the National Environmental Policy Act (NEPA),⁴ but do not have an analytical tool or framework to estimate the extent of those emission impacts' on the environment. At this time, neither the Council on Environmental Quality, the entity charged with issuing NEPA guidance, nor any other federal agency has established a threshold for what constitutes a "significant" GHG contribution from an individual project. We should continue to provide as much detail as possible in accordance with our NEPA requirements, but to the extent we make a determination that GHG impacts are significant or not – and an undue

¹ *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2022); *Tenn. Gas Pipe Line Co., L.L.C.*, 178 FERC ¶ 61,199 (2022).

² *See N. Nat. Gas Co.*, 174 FERC ¶ 61,189 (2021).

³ *Id.* at PP 34 - 36.

⁴ *See WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 (D.C. Cir. 2013) ("Because current science does not allow for the specificity demanded by Appellants, the [agency] was not required to identify specific effects on the climate in order to prepare an adequate EIS.").

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focus on drawing a bright line between “significance” and “insignificance” would appear to elevate form over substance -- we would like to identify the factors considered or otherwise explain our determination.

For these reasons, we respectfully concur.

Willie L. Phillips
Commissioner

Mark C. Christie
Commissioner

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