

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Gas Transmission Northwest, LLC

Docket No. CP22-2-001

(Issued April 16, 2024)

CLEMENTS, Commissioner, *dissenting*:

1. I dissent from today's order on rehearing<sup>1</sup> of the Commission's order issuing a certificate of public convenience and necessity to Gas Transmission Northwest, LLC (GTN) for its GTN Xpress Project.<sup>2</sup> I do so for three principal reasons. First, sworn affidavits that GTN filed in its pending rate case<sup>3</sup> both contradict GTN's answer to an important staff data request in the certificate proceeding and undermine key determinations in the Certificate Order for the project. GTN's rate case filing draws into serious question both the need for, and purported benefits of, the GTN Xpress Project. For reasons explained below, the Commission must reconsider the underlying certificate decision to meet its obligations under section 7 of the Natural Gas Act (NGA)<sup>4</sup> and the Administrative Procedure Act (APA),<sup>5</sup> as well as to conform with its own 1999 Certificate Policy Statement.<sup>6</sup> Second, the Commission's incomplete analysis of alternatives to the GTN Xpress Project contravened the National Environmental Policy

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<sup>1</sup> *Gas Transmission Northwest, LLC*, 187 FERC ¶ 61,023 (2024) (Rehearing Order).

<sup>2</sup> *Gas Transmission Northwest, LLC*, 185 FERC ¶ 61,035 (2023) (Certificate Order).

<sup>3</sup> Docket No. RP23-1099-000.

<sup>4</sup> 15 U.S.C. § 717f(e).

<sup>5</sup> 5 U.S.C. § 706(2)(A) (providing for agency action to be set aside where arbitrary, capricious, abuse of discretion, or otherwise not in accordance with law).

<sup>6</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (1999 Certificate Policy Statement).

Act (NEPA),<sup>7</sup> and therefore provided an inadequate basis for decision under the NGA. Specifically, the Commission arbitrarily rejected the no action alternative, and failed to meaningfully assess the alternative of a smaller sized project that would meet reduced demand for natural gas caused by state climate laws. Finally, I reject the Rehearing Order's assertion that the Commission is incapable of assessing the significance of greenhouse gas (GHG) emissions.<sup>8</sup>

#### Commission's Duty to Reconsider Project Need and Benefits Determinations

2. Contrary to the majority's view,<sup>9</sup> the Commission not only can, but must, revisit its NGA section 7 public convenience and necessity determination for the GTN Xpress Project because GTN submitted evidence in its rate case that fundamentally undermines the bases on which the Commission issued a certificate for the project. As a first principle, under the APA the Commission "has an affirmative duty to inquire into and consider all relevant facts."<sup>10</sup> It must act on the record before it, and if that record is insufficient, it must supplement it before acting.<sup>11</sup> Another basic legal principle is that the Commission has wide discretion over the procedures it employs to discharge its duties.<sup>12</sup> Indeed, the NGA expressly authorizes the Commission, before the administrative record is filed with the reviewing court, to "modify or set aside, in whole

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<sup>7</sup> 42 U.S.C. § 4321 *et seq.*

<sup>8</sup> *See* Rehearing Order, 187 FERC ¶ 61,023 at PP 115, 117-118.

<sup>9</sup> *See id.* at PP 9-10.

<sup>10</sup> *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608, 620 (2d Cir. 1965) (citing *Mich. Consol. Gas Co. v. FPC*, 283 F.2d 204, 224, 226 (D.C. Cir. 1960); *Isbrandtsen Co. v. United States*, 96 F. Supp. 883, 892 (S.D.N.Y. 1951), *aff'd* by an equally divided court, *A/S J. Ludwig Mowinckels Rederi v. Isbrandtsen Co.*, 342 U.S. 950 (1952); Friendly, *The Federal Administrative Agencies* 144 (1962); Landis, *The Administrative Process* 36-46 (1938)).

<sup>11</sup> *Id.* at 621; *see also R.R. Comm'n of Texas v. FERC*, 874 F.2d 1338, 1343 (10th Cir. 1989) (finding FERC had a duty to act only upon a complete record and acted correctly in requiring additional investigation to support a licensing decision); *Associated Gas Distribs. v. FERC*, 824 F.2d 981, 1037 (D.C. Cir. 1987) (noting FERC has a duty to develop an adequate record).

<sup>12</sup> *R.R. Comm'n of Texas*, 874 F.2d at 1343; *see also* NGA § 16, 15 U.S.C. § 717o ("The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act.").

or in part, *any* finding or order made or issued by it under the provisions of this chapter.”<sup>13</sup> As discussed below, GTN’s rate case filing makes clear that the Commission had a deficient record on project need and benefits when it issued the Certificate Order, leading us to reach erroneous conclusions on these fundamental issues. The Commission therefore should set the Certificate Order aside and reconsider its public convenience and necessity determination—this time after developing a complete record.

3. I disagree with the majority’s assertion that the Commission is jurisdictionally barred from considering the evidence from GTN’s rate case that the States submitted in their December 6, 2023, Supplemental Filing.<sup>14</sup> Although the Commission has been inconsistent in its treatment of the issue, there is ample Commission authority holding that, in “compelling circumstances,” the Commission may accept a supplement to a timely rehearing request after the 30-day rehearing period has expired.<sup>15</sup> For example, in one case the Commission found compelling circumstances and accepted an untimely supplemental filing because staff transmitted to the parties relevant letters from state and wildlife agencies after the 30-day rehearing period had expired.<sup>16</sup> In another, the Commission found compelling circumstances and allowed an untimely supplemental filing because the license order was mailed late to the parties, depriving them of half the

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<sup>13</sup> NGA § 19(a), 15 U.S.C. § 717r(a) (emphasis added).

<sup>14</sup> See Rehearing Order, 187 FERC ¶ 61,023 at P 9. Even if the States were barred from submitting the rate case information, the Commission has authority to consider it on its own initiative under sections 16 and 19(a) of the NGA, as discussed above. Moreover, under Rule 716, the Commission may reopen a proceeding *sua sponte* when “warranted by any changes in conditions of fact or law or by the public interest.” 18 C.F.R. § 385.716(c). Contrary to the majority’s conclusion, I demonstrate below that the rate case information contradicts the Commission’s core public convenience and necessity determination and therefore would “change the outcome of the proceeding.” See Rehearing Order, 187 FERC ¶ 61,023 at P 10 & n.29.

<sup>15</sup> See, e.g., *Streamlining Comm’n Procedures*, Order No. 530, FERC Stats. & Regs. ¶ 30,906, at 31,863 (1990) (cross-referenced at 53 FERC ¶ 61,313) (“Under compelling circumstances it may be appropriate for the Commission to grant requests to supplement rehearing material on a timely basis after the 30 days has expired.”); see also *Energie Group LLC*, 116 FERC ¶ 61,220, at P 7 & n.8 (2006); *Hydro Dev. Group*, 103 FERC ¶ 61,071, at P 13 (2003); *Upper Peninsula Power Co.*, 79 FERC ¶ 61,013, at 61,070 & n.5 (1997); *Ind. Mich. Power Co.*, 78 FERC ¶ 61,362, at n.5 (1997); *Fraser Papers, Inc.*, 78 FERC ¶ 31,346, at 62,476-62,477 (1997).

<sup>16</sup> *Hydro Dev. Group*, 103 FERC ¶ 61,071 at P 13.

30-day period for seeking rehearing of the order.<sup>17</sup> The circumstances here are different, but even more compelling. As explained below, the compelling circumstances in this case include (1) GTN's failure to supply the analyses that it later filed in its rate case when responding to a staff data request seeking the analyses, and (2) the centrality of the rate case information to the Commission's NGA section 7 public interest determination.

4. Throughout this proceeding, the States of Washington, California, and Oregon (together, States) and other participants have contended that the GTN Xpress Project is not needed, including because the States' laws restricting GHG emissions and encouraging non-fossil energy alternatives will substantially reduce demand for natural gas in GTN's service area.<sup>18</sup> On April 4, 2023, Commission staff propounded a data request to GTN requiring it to respond to the States' explanation in their Joint Protest and accompanying exhibits that "recent legislation" would substantially reduce consumption of natural gas.<sup>19</sup> Rather than substantively addressing the future effect of the relevant state laws, as the data request asked, GTN's unsworn response dismissed the States' analysis as "mere speculation."<sup>20</sup> The States promptly filed comments in the docket criticizing GTN's failure to respond.<sup>21</sup> It turned out that GTN actually had quite a lot to say on the subject, but not in this docket. Just a few months after filing its non-responsive answer to staff's data request, GTN submitted a voluminous set of sworn affidavits in its rate case contending that future demand for GTN's service is at serious risk because of the very same state laws referenced in staff's data request.

5. Although GTN asserted in its data request response that the effect of state laws was too speculative to be considered for purposes of the certificate proceeding, its witnesses said the opposite for purposes of supporting an increase in GTN's rates. For example, Anul Thapa, an expert witness from the Brattle Group, explained in his rate case testimony that GTN faces higher regulatory risk than peer pipelines because it

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<sup>17</sup> *Fraser Papers, Inc.*, 78 FERC ¶ 61,346 at 62,476-62,477.

<sup>18</sup> *See, e.g.*, Oregon Citizens' Utility Board Comment (Jan. 27, 2023); Rogue Climate Comments on Draft EIS (Aug. 22, 2022); Joint Motion to Intervene and Protest by States of Washington, Oregon, and California and Ex. A-C (Aug. 22, 2022) (Joint Protest); Joint Comments on Draft EIS by States of Washington, Oregon, and California (Aug. 22, 2022); Columbia Riverkeeper and Sierra Club Joint Comments (Feb. 22, 2022).

<sup>19</sup> *See* April 4, 2023, letter to David A. Alonzo from Scott C. Merritt (Data Request No. 1).

<sup>20</sup> GTN Response to Staff Data Request No. 1 (Apr. 18, 2023).

<sup>21</sup> Comment by Washington, Oregon, and California Regarding Gas Transmission Northwest's April 18, 2023 Data Response at 1, 3-4 (filed May 5, 2023).

operates in Washington and Oregon, which have mandatory decarbonization requirements that the witness assesses as “very high” and “high” risk for GTN, respectively.<sup>22</sup> Another expert witness, Alexander Kirk, performed an analysis demonstrating that GTN would have a truncated economic life “based on the significant projected reductions in natural gas consumption and transportation necessitated if the requirements of public authorities are to be met and due to competitive pressure from the declining cost of alternative energy, electrification, and battery storage.”<sup>23</sup> Mr. Kirk provided an over ten-page summary of the numerous federal, state, and local measures that would reduce demand for GTN’s services.<sup>24</sup> He also found that the potential renewable energy available in Washington, Oregon, and California is sufficient not only to displace all natural gas consumption within those states, but all *energy* consumption.<sup>25</sup> Similarly, Alexander Kearley, Manager of Strategy and Joint Ventures for TransCanada Pipeline Ltd., testified to the high natural gas “demand risk” GTN faces from federal, state, and local initiatives that promote renewable energy sources and aim to reduce use of natural gas.<sup>26</sup> This testimony supports the States’ position that the GTN Xpress Project is not needed and therefore does not satisfy the NGA section 7 public convenience and necessity standard.

6. The evidence GTN submitted in its rate case undermines the Commission’s public convenience and necessity determination for the GTN Xpress Project in two additional respects. First, Mr. Thapa testified that GTN’s contracts for over 40% of the pipeline’s capacity will expire by 2028.<sup>27</sup> Local distribution companies (LDCs) in California,

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<sup>22</sup> Prepared Direct Testimony of Anul Thapa, Ex. 10 at 28-29, Docket No. RP23-1099-000 (filed Sept. 29, 2023) (Thapa Testimony). Mr. Thapa’s analysis categorizes a state’s risk level based on the mandatory nature and stringency of its requirements. *See id.* at 27-28. Mr. Thapa explains that his analysis only considered states that GTN’s pipeline physically traverses and likely understates GTN’s risk because it omitted risk from California’s “aggressive decarbonization policies.” *Id.* at 29. He explains that California is a “major market for GTN” and has “some of the most stringent decarbonization policies in the U.S.” *Id.*

<sup>23</sup> Prepared Direct Testimony of Alexander Kirk, Ex. 40, Summary of Prepared Direct Testimony at para 2., Docket No. RP23-1099-000 (filed Sept. 29, 2023) (Kirk Testimony).

<sup>24</sup> *See id.* at 6-19.

<sup>25</sup> *Id.* at 26.

<sup>26</sup> Prepared Direct Testimony of Alexander Kearley, Ex. 3 at 26, Docket No. RP23-1099-000 (filed Sept. 29, 2023) (Kearley Testimony).

<sup>27</sup> Thapa Testimony at 20-21. Over 1.4 Bcf/day of contracted capacity will expire,

Oregon, and Washington together hold 41% of the expiring capacity.<sup>28</sup> Of course, according to Mr. Thapa, these are the very states whose decarbonization laws pose a high or very high risk to GTN because they require economy-wide reductions in GHG emissions, including from the LDCs holding the expiring contracts. Thus, it is entirely possible (if not likely) that the three shippers who signed precedent agreements could access this existing capacity to meet their transportation needs as the current capacity holders reduce their reliance on natural gas pursuant to state legal mandates. Although no GTN shippers released capacity when the open season for the GTN XPress Project was held in 2019, that only meant no excess capacity was available at that time. The key question is what existing pipeline capacity will be available to shippers in the *future* (*i.e.*, over the 30-plus year term of the capacity agreements). Based on GTN's rate case testimony, it appears the answer is a lot—and soon. Before deciding the GTN XPress Project was needed to meet the precedent agreement holders' needs, the Commission should have required GTN to explain whether their needs could be met with the existing capacity covered by the soon-to-expire contracts.<sup>29</sup>

7. Second, GTN's rate case testimony contradicts the Commission's finding in the Certificate Order that the GTN XPress Project would provide a "tangible benefit" to consumers by providing them access to relatively low-cost gas from Western Canada.<sup>30</sup> It turns out that purported benefit may be illusory. According to GTN witness Mr. Kearley, a variety of factors will cause the price of gas from Western Canada to *increase*, thereby making the gas less "economic" relative to gas from other areas and reducing GTN's "transportation value."<sup>31</sup>

8. Although the Rehearing Order criticizes the States for their delay in filing GTN's rate case testimony in this proceeding, the blame properly rests with this Commission for failing to require GTN to respond to staff's data request before issuing the Certificate Order.<sup>32</sup> The States present "compelling circumstances" for considering this testimony

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far more than the capacity covered by the three precedent agreements supporting the GTN Xpress Project.

<sup>28</sup> *Id.* at 21 fig. 6. Pacific Gas & Electric Co. has 26% of the expiring capacity, Portland General Electric Co. has 7%, and Puget Sound Energy Inc. has 8%. *Id.*

<sup>29</sup> I address the need for this analysis further in my discussion of alternatives below. *See infra* PP 26-27.

<sup>30</sup> *See* Certificate Order, 185 FERC ¶ 61,035 at P 36.

<sup>31</sup> *See* Kearley Testimony at 21-22, 25.

<sup>32</sup> As I explain below, the Commission has failed to implement the policy framework and procedures required to meet its obligation under the NGA to consider all

now and we should do so in accordance with our precedents allowing supplements to rehearing requests. But even if the States were somehow barred from filing the information, the Commission can and should consider GTN's rate case testimony on its own initiative. As I said at the beginning, the APA obligates the Commission to develop and act on a complete record. And the NGA demands that we grant a certificate only when required by the public convenience and necessity. To meet its statutory obligations, the Commission must consider GTN's rate case testimony.

9. This is not a "would be nice to have" situation. GTN's rate case testimony so undermines the foundations of the Certificate Order that it cannot rationally be sustained on rehearing. Section 7(e) of the NGA provides that the Commission shall issue a certificate authorizing the construction and operation of a proposed new jurisdictional natural gas facility only if it determines that the facility "is or will be required by the present or *future* public convenience and necessity; otherwise such application *shall be denied*."<sup>33</sup> As one court explained, "the public convenience and necessity for which regulatory agencies issue certificates are the convenience and necessity of the future.... Every new bus route, new airplane service, new radio station, new stock issue, new pipe line, new power project, and so on, seeks its permissive certificate upon the basis of future possibilities."<sup>34</sup> The Commission's decision in this case clearly turns on the longer term need for the GTN Xpress Project given the 30-plus year term of the project's three precedent agreements and the 47-year depreciation period the Commission authorized for the project. GTN simply has not met its burden of demonstrating the GTN Xpress Project will be needed in the *future* given that its own witnesses have testified in the company's rate case that (1) more than 40% of GTN's contracts for existing capacity will expire within four years, and (2) state laws so imperil future demand for GTN's services that it is entitled to a rate increase as compensation.<sup>35</sup>

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factors bearing on the public interest, including the effect of state laws. *See infra* P 20.

<sup>33</sup> 15 U.S.C. § 717f(e) (emphasis added).

<sup>34</sup> *City of Pittsburgh v. FPC*, 237 F.2d 741, 752 (D.C. Cir. 1956) (quoting *American Airlines, Inc. v. Civ. Aeronautics Bd.*, 192 F.2d 417 (D.C. Cir. 1951)).

<sup>35</sup> *See Mich. Consol. Gas Co. v. FPC*, 283 F.2d 204, 214 (D.C. Cir. 1960) ("[T]he applicant under § 7(c) for a certificate to commence service must bear the burden of proving that that public interest will be served."); *Mo. Interstate Gas, LLC*, 137 FERC ¶ 63,014, at P 161 (2011) ("In an NGA section 7(c) proceeding, the burden is on the applicant to show that its proposed pipeline acquisition is required by the public convenience and necessity."); *Tex. E. Transmission Corp.*, 95 FERC ¶ 61,367, at 62,388 (2001) ("[T]he burden was on the applicant, Texas Eastern, to show that its proposed construction and expansion is required by the public convenience and necessity."); *Boundary Gas, Inc.*, 21 FERC ¶ 61,114, at 61,322 (1982) ("The Commission has long

10. The Rehearing Order purports to apply the Commission’s 1999 Certificate Policy Statement in continuing to find the GTN Xpress Project is required by the public convenience and necessity.<sup>36</sup> However, the Commission’s myopic focus on precedent agreements and its reflexive dismissal of any other evidence of future need as too “speculative” run counter to the policy.<sup>37</sup> The 1999 Certificate Policy Statement provides that the Commission will “consider all relevant factors reflecting on the need for the project.”<sup>38</sup> These factors “might include, but would not be limited to, precedent agreements, *demand projections*, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.”<sup>39</sup> Necessary evidence “will usually include a market study.”<sup>40</sup> In calling for demand projections and market studies, the policy recognizes that it is the Commission’s job, however difficult, to make predictions in determining the *future* public convenience and necessity.<sup>41</sup> As discussed above, it is also the Commission’s obligation under the APA to consider all relevant information bearing on future need, not just precedent agreements.<sup>42</sup>

11. Rather than objectively considering the States’ evidence relating to future demand and GTN’s rate case testimony, the Rehearing Order unnecessarily ties the Commission’s

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held that there is an affirmative obligation on the part of an applicant to demonstrate a market for the gas in question.”).

<sup>36</sup> See Rehearing Order, 187 FERC ¶ 61,023 at P 38.

<sup>37</sup> By my count, the Rehearing Order applies the “speculative” label at least eleven times. See, e.g., Rehearing Order, 187 FERC ¶ 61,023 at PP 58, 82-83.

<sup>38</sup> 1999 Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,747. The policy in this respect adopts the Supreme Court’s interpretation of the NGA in *Atl. Refin. Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, 391 (1959) (holding the Commission must “evaluate *all* factors bearing on the public interest” (emphasis added)).

<sup>39</sup> 1999 Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,747 (emphasis added).

<sup>40</sup> *Id.* at 61,748. I explained the value a market study would have provided in my separate statement on the Certificate Order. See Certificate Order, 185 FERC ¶ 61,035 (Clements, Comm’r, concurring in part and dissenting in part, at P 2).

<sup>41</sup> I am admittedly tempted to quote the old saw that “it is difficult to make predictions, especially about the future.” But the Bluebook demands attribution, and I am loathe to join the unwinnable battle over who first said it.

<sup>42</sup> See *supra* P 2.



hands procedurally and then offers a grab bag of reasons for dismissing the evidence. None of those reasons are persuasive. For example, the Rehearing Order says the parties have not presented evidence that state laws have reduced demand for natural gas to date.<sup>43</sup> But the key question is not how these relatively new laws have affected current demand, but how they will affect *future* demand. Based on the evidence that the States submitted in this proceeding and that GTN filed in its rate case, the parties agree that the relevant laws are mandatory, will have economy-wide effect in each state, and threaten to substantially reduce future demand for natural gas in GTN's service area and thereby the demand for GTN's transportation capacity. Surely all these agreed facts are relevant to the central issue of project need.

12. The Rehearing Order further contends that the language used in the States' and Riverkeeper's projections evinces their "speculative nature."<sup>44</sup> One of the States' expert reports offends by projecting future energy demand in the region.<sup>45</sup> Of course, as discussed above, the 1999 Certificate Policy Statement specifically calls for the submission of "demand projections." The majority does not explain whether or how one could analyze future impacts without using language reflecting that these events have not yet transpired. Even worse, there is no explanation for the discrepancy in the majority's apparent acceptance of Cascade's and Intermountain's integrated resource plans at face value,<sup>46</sup> when they too project future demand for natural gas. It is fair to ask whether the majority applies a double standard in assessing the probative value of record evidence, crediting only the evidence that supports the public interest finding in the Certificate Order.

13. The Rehearing Order next determines that the effect state decarbonization laws in Washington, California, and Oregon will have on demand is not important because Intermountain, an LDC based in Idaho, has subscribed to over 50% of the GTN XPress Project's capacity and Idaho does not have decarbonization legislation.<sup>47</sup> Whatever its surface rhetorical appeal, this argument is unavailing because legislation in neighboring states will likely drive gas demand down regionally, freeing up capacity on GTN that Intermountain could tap in place of the GTN XPress Project.

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<sup>43</sup> Rehearing Order, 187 FERC ¶ 61,023 at P 58.

<sup>44</sup> *Id.* at P 58 & n.226.

<sup>45</sup> *Id.*

<sup>46</sup> *See id.* at P 57 & n.223.

<sup>47</sup> *Id.* at P 58. The Rehearing Order repeats this specious argument at P 83.

14. As the Energy Futures Report filed by the States explains, “any need for incremental capacity on a system needs to account for trends and patterns in total system consumption.”<sup>48</sup> The GTN XPress Project would increase GTN’s total system capacity by less than 5%, and the total regional gas pipeline capacity by approximately 1.5%.<sup>49</sup> Thus, in determining future need for the project, the Commission must account for the effect of state decarbonization laws and renewable energy initiatives on the 95% to 98.5% of the consumption and capacity in the *rest* of the gas system.<sup>50</sup> As the Energy Futures Report put it, one must “understand the size of the cake coming out of the oven before one can determine the ‘need’ for the ‘icing.’”<sup>51</sup> The report shows the cake is very large, and California is eating most of it. Specifically, natural gas consumption in the region is dominated by California (75%), followed by Washington (11%), Oregon (9%), and Idaho (5%).<sup>52</sup> Because Intermountain has a small sliver of the cake, it doesn’t need much icing. Indeed, Intermountain is unlikely to need any new capacity because, as GTN’s own rate case witnesses predict, the stringent decarbonization laws and renewable energy initiatives in Idaho’s neighboring states will drive down regional demand for gas and thereby demand for GTN’s existing gas transportation capacity.<sup>53</sup> The Energy Futures Report similarly projects a substantial decline in regional demand.<sup>54</sup> And the IHS Markit Report filed by GTN in this proceeding forecasts the same thing.<sup>55</sup> The APA

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<sup>48</sup> David G. Hill and Earnest White, GTN Xpress Project, A Critical Review of Need, Cost and Impacts at 10 (Aug. 15, 2022) (Energy Futures Report) (filed as Ex. C to States’ Joint Motion to Intervene and Protest (Aug. 22, 2022)).

<sup>49</sup> *Id.*

<sup>50</sup> The GTN XPress Project would increase the GTN pipeline system capacity and is not a proposal to build new or larger lateral pipelines connecting directly to the three shippers.

<sup>51</sup> Energy Futures Report at 10 (Aug. 15, 2022).

<sup>52</sup> *Id.* at 14.

<sup>53</sup> The same logic applies with respect to Tourmaline’s need for capacity since it plans to sell its gas in Western U.S. markets.

<sup>54</sup> Energy Futures Report at 14 (Aug. 15, 2022).

<sup>55</sup> IHS Markit, North American Natural Gas Long-Term Outlook at 50 (Aug. 2021) (IHS Markit Report) (filed in GTN’s Supplemental Response to FERC’s April 4, 2023 Data Request (May 15, 2023)) (projecting that in the U.S. West, total regional natural gas demand will fall to 7.4 Bcf/d in 2050, down by 3.6 Bcf/d from 2021. The decrease will be steady after 2026. The decline will be caused primarily by a steep drop

requires the Commission to engage with this evidence showing no new capacity is needed, rather than doubling down on what GTN's rate case testimony has shown to be a flawed need determination in the Certificate Order.

15. The majority's reasons for concluding that consideration of GTN's rate case testimony would not "compel a different result" are equally unpersuasive.<sup>56</sup> The majority first observes that GTN's sworn testimony is subject to further "assessment" in the rate case and finds it therefore would be premature to make any judgment about its "veracity and validity."<sup>57</sup> The majority once again appears to apply a double standard. On the one hand, it credits at face value GTN's *unsworn* statements in its certificate application and data request responses that support the need for, and benefits of, the GTN Express Project.<sup>58</sup> On the other hand, it rejects the same party's *sworn* testimony undercutting project need and benefits.<sup>59</sup> That is not reasoned decision-making.

16. The Rehearing Order next asserts that Mr. Thapa's testimony that precedent agreements do not mitigate all the risks to the pipeline he identified is "not unusual and does not apply in the context of determining project need."<sup>60</sup> Whatever point this puzzling statement seeks to make, it misses the relevant ones. Specifically, as discussed above,<sup>61</sup> Mr. Thapa's testimony establishes that contracts for more than 40% of GTN's existing capacity will expire in the next four years and may become available to the shippers who have subscribed to the GTN XPress Project, potentially eliminating any

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in power sector demand).

<sup>56</sup> Rehearing Order, 187 FERC ¶ 61,023 at P 78.

<sup>57</sup> *Id.* at P 81.

<sup>58</sup> *See, e.g., id.* at P 75 (crediting GTN's statement in its data request response that it "received overwhelming market interest" in the project during the open season); Certificate Order, 185 FERC ¶ 61,035 at P 21 (crediting GTN's statement in its certificate application that the project will enable local distribution companies to meet demand with "low-cost" natural gas).

<sup>59</sup> I emphasize that GTN's rate testimony is sworn under oath before a notary because that fact may subject the witness to potential *criminal* penalties for perjury under 18 U.S.C. § 1621 if the testimony is deliberately false. Moreover, it does not take a psychology degree to appreciate that swearing an oath helps focus a witness's attention on the accuracy of the sworn statement.

<sup>60</sup> Rehearing Order, 187 FERC ¶ 61,023 at P 82.

<sup>61</sup> *See supra* at PP 5-6.

need for the GTN Xpress Project. His testimony also supports the States' contention that their laws will reduce demand for GTN's services, which also undercuts the project's need case. Mr. Thapa's separate point that precedent agreements do not wholly mitigate a pipeline's risk is simply irrelevant to the project need issue.

17. The majority next dismisses Mr. Kirk's overall testimony as "too speculative," and asserts Mr. Kirk "does not fully explain whether there are any mandated mechanisms to implement [state GHG emissions reductions] goals."<sup>62</sup> This section of the Rehearing Order mischaracterizes Mr. Kirk's testimony, which discusses how *mandatory* state and local decarbonization requirements will reduce demand for natural gas in GTN's service area.<sup>63</sup> This is a prime example of failing to engage with relevant evidence, in violation of the Commission's duty under the APA.

18. In concluding its critique of GTN's rate case testimony, the Rehearing Order states "[w]e decline to override the independent judgment of Cascade, Intermountain, and Tourmaline, which thought it prudent to contract for the Project's capacity based on prevailing market forces."<sup>64</sup> Perhaps a reminder is needed that, under section 7 of the NGA, "the *Commission* is charged with the duty of protecting the ultimate consumer from 'exploitation at the hands of natural gas companies.'"<sup>65</sup> We do not have the luxury of outsourcing to shippers our statutory authority and responsibility to determine the public convenience and necessity.

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<sup>62</sup> See Rehearing Order, 187 FERC ¶ 61,023 at P 83.

<sup>63</sup> Contrary to the Rehearing Order's suggestion that Mr. Kirk testified only to states' aspirational "targets," he spoke to state *mandates* for decarbonization and renewable energy use. See, e.g., Kirk Testimony at 10-11 (discussing Washington state laws *mandating* that utilities be GHG neutral by 2030 and supply Washington customers with 100% renewable or non-emitting energy by 2045; explaining Oregon Renewable Portfolio Standard (RPS) *requiring* 50% of electricity Oregonians use come from renewable sources by 2040; describing California 100 Percent Clean Energy Act of 2018 setting an RPS that *requires* 60% of the state's electricity come from carbon-free sources by 2030 and 100% by 2045); *id.* at 16 (explaining that demand for transportation on GTN's system will be reduced because Washington's Climate Commitment Act *requires* covered businesses, including GTN, to acquire GHG emission allowances that will increase the cost of natural gas).

<sup>64</sup> *Id.* at P 84.

<sup>65</sup> *Mich. Consol. Gas Co. v. FPC*, 283 F.2d 204, 224 (D.C. Cir. 1960) (emphasis added) (quoting *FPC v. Hope Nat. Gas*, 320 U.S. 591, 610 (1944)).

19. The Rehearing Order repeatedly returns to GTN's precedent agreements to reaffirm the Certificate Order and reject the States' and Riverkeepers' arguments and evidence.<sup>66</sup> To be sure, precedent agreements are "significant evidence" of need, and I have voted for many certificate orders saying as much. However, where, as here, there is credible evidence undermining the probative value of precedent agreements, the Commission must look behind those agreements and consider that evidence in its public interest determination under NGA section 7.<sup>67</sup>

20. Overall, the Rehearing Order is striking for its dismissive approach toward the States. It is perplexing that the order's sole focus is on defending the Certificate Order, rather than objectively examining new evidence going to the heart of the Certificate Order's public interest determination. It is also surprising that there is no recognition that the States have the necessary information and expertise to interpret their own laws and explain how their implementation will affect demand for natural gas. Rather than reflexively rejecting the States' arguments and evidence, the Rehearing Order should use the States' input to facilitate the Commission's compliance with its own legal obligations. For example, the Rehearing Order says the Commission is "unable to determine whether a specific project's GHG emissions are consistent or inconsistent with state-wide goals or laws, given the many variables that bear upon that question."<sup>68</sup> The Commission cannot avoid its obligation under NEPA to determine consistency with state laws simply by decrying the complexity of considering "variables."<sup>69</sup> That is particularly so given that the Commission could readily fill the gap with the information the States already have

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<sup>66</sup> See, e.g., Rehearing Order, 187 FERC ¶ 61,023 at PP 54, 63, 67, 73, 75.

<sup>67</sup> See *Env't. Def. Fund v. FERC*, 2 F.4th 953, 975 (D.C. Cir. 2021) (vacating certificate order where Commission failed to look behind precedent agreement with affiliate and engage with evidence of self-dealing). Although the specific facts of the cited case differ from those here, the principle the case establishes is directly applicable. As in *Env't. Def. Fund*, there is credible evidence contradicting the need for the proposed GTN Xpress Project, and "FERC's failure to engage with this evidence did not satisfy the requirements of reasoned decisionmaking." *Id.*

<sup>68</sup> Rehearing Order, 187 FERC ¶ 61,023 at P 119.

<sup>69</sup> As the States correctly observe in their Rehearing Request, "NEPA regulations require an EIS to 'discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.'" States Rehearing Request at 98 (citing CEQ's regulation implementing NEPA, 40 C.F.R. § 1506.2(d)).

provided relating to inconsistency with their laws.<sup>70</sup> The Rehearing Order provides no explanation for the Commission's failure to do that, thereby violating the APA.<sup>71</sup>

21. For all the reasons explained above, the evidence contradicting the Certificate Order's public interest determination makes the order unsustainable.<sup>72</sup> Rather than waiting for a court to remand and potentially vacate the Certificate Order, the Commission should reopen the certificate proceeding, develop a complete record on the potential need for, and benefits of, the GTN Xpress Project, and objectively review that record. In accordance with the 1999 Certificate Policy Statement, the Commission should require GTN to provide a market study, along with a "demand projection" (perhaps in the form of a substantive answer to staff's April 4, 2023, data request seeking an analysis of the effects of state laws on demand).<sup>73</sup> These steps are essential to

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<sup>70</sup> The States explain the effect of the Projects' GHG emissions on their decarbonization and renewable energy laws in their Rehearing Request. *See* States Rehearing Request at 99-105.

<sup>71</sup> *See, e.g., SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943) ("[T]he orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained."); *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (quoting *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)) ("[A]n agency action will be set aside as arbitrary and capricious if it is not the product of 'reasoned decisionmaking.'").

<sup>72</sup> To state the obvious, had GTN answered staff's data request consistent with its rate case testimony, I would have voted against the fatally flawed Certificate Order. That is because the testimony shows, contrary to my understanding at the time I voted for the Certificate Order, that GTN *agrees* with the States that their laws and renewable energy initiatives will reduce demand for natural gas in GTN's service area and therefore reduce demand for capacity on GTN's system.

<sup>73</sup> Although the Rehearing Order fails to acknowledge it (*see* Rehearing Order, 187 FERC ¶ 61,023 at P 90), Riverkeeper correctly quotes the 1999 Certificate Policy Statement provision stating that "[i]f one of the benefits of a proposed project would be to lower gas or electric rates for consumers, then the applicant's market study would need to explain the basis for that projection." Riverkeeper Rehearing Request at 28 (quoting 1999 Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,748.). The Certificate Policy Statement goes on to warn that "[v]ague assertions of public benefits will not be sufficient." 1999 Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,748. Contrary to the Rehearing Order's suggestion, nothing in the policy statement says or implies that a precedent agreement substitutes for the market study in evidencing claimed lower consumer rates. Accordingly, if GTN continues to claim that consumers' cost of gas will

fulfilling the Commission's non-delegable duties under the APA and section 7 of the NGA.

22. Finally, it is important to recognize the lessons this case teaches. Since I first joined the Commission, I have advocated that we update the 1999 Certificate Policy Statement to account for the complexities of the modern energy industry and regulatory landscape. I have consistently criticized the Commission's over-reliance on precedent agreements and argued that we must probe more deeply into the issue of project need to assure our decisions advance the *public* interest, and not just the interests of private project sponsors and their customers. I have also urged the Commission to implement a policy framework and better procedures to assess the effect of state decarbonization laws and renewable energy initiatives on future demand for natural gas pipeline capacity.<sup>74</sup> The Commission took an important step in the right direction when it issued a draft revised certificate policy statement providing for a more in-depth assessment of need.<sup>75</sup>

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be reduced because the GTN XPress Project will provide access to lower-priced gas from Western Canada, it must demonstrate as much in a market study. Of course, that may prove impossible to do given that GTN's own witness testified in the pipeline's rate case that the price of gas produced in Western Canada will increase.

<sup>74</sup> See, e.g., *Transcon. Gas Pipe Line Co., LLC*, 182 FERC ¶ 61,006 (2023) (Clements, Comm'r, concurring, at P 8) ("With so much at stake, and so many variables affecting future demand for natural gas, the Commission's relatively superficial approach to evaluating project need will become increasingly untenable, both legally and practically. We should update our Certificate Policy Statement to provide for the full evaluation of *all* relevant information pertaining to need, including the effect of relevant federal, state, and local policies and programs on demand for natural gas to be transported by the proposed project. The Commission also should clarify that data requests, independent Commission staff analyses, and evidentiary hearings are appropriate tools to include in our need evaluation toolbox. In short, it is time for the Commission to implement policies and practices that reflect today's realities.").

<sup>75</sup> *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,107 (2022). As I explained at the time, "the policy statement provides for a full analysis of project need as a gating question, rather than a check-the-box exercise relying solely on the existence of precedent agreements. Since the issuance of the 1999 policy statement, the Commission's need inquiry has devolved into a superficial determination of whether the project sponsor has entered into precedent agreements. The new policy rectifies this deficiency. It sets forth a need determination framework that provides guidance to the project sponsor and other parties on the evidence the Commission will consider in objectively assessing project need. The framework allows for consideration of important reliability and other benefits a project may offer, while ensuring that factors weighing against claimed benefits, that are provided on the record, get considered." Allison

Since then, including in this case, I have continued to advocate that the Commission finish the job we started.<sup>76</sup> In the meantime, however, I have had to decide on many NGA applications for approval of pipeline and liquefied natural gas facilities. With growing concern about the thin administrative records presented to us, I nevertheless worked within the Commission’s existing policy and procedural framework in voting to approve applications—while continuing to advocate for a generic and durable reform to an outdated and increasingly indefensible approach. Unfortunately, coloring within those lines caused the Commission to issue a deeply flawed certificate order in this case. As discussed above, we should correct our errors by reopening the certificate proceeding for the GTN XPress Project. To avoid repeating these mistakes, the Commission should finalize an updated certificate policy statement and implement enhanced procedures allowing us to fully evaluate *all* factors that actually do bear on the public interest in 2024, including the effect of state laws and renewable energy initiatives.

### Deficient Alternatives Analysis

23. I also dissent from the Rehearing Order’s determination that the Final Environmental Impact Statement for the GTN XPress Project (EIS) satisfied the Commission’s obligations under NEPA.<sup>77</sup> For the reasons explained below, I agree with Riverkeeper and the States that the EIS adopted an impermissibly narrow definition of the project’s purpose and need. Moreover, the EIS failed to evaluate the no action alternative in any meaningful way, directly contravening NEPA. The EIS’s alternatives analysis also fell short by failing to consider whether a down-sized capacity expansion would meet any increased demand for natural gas in GTN’s service area. Because the Commission’s NGA section 7 authorization rested on an inadequate EIS, it cannot be

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Clements, Commissioner, Federal Energy Regulatory Commission, February 2022 Commission Meeting Opening Remarks (Feb. 17, 2022), <https://www.ferc.gov/news-events/news/february-2022-commission-meeting-opening-remarks-commissioner-allison-clements>.

<sup>76</sup> *E.g.*, Certificate Order, 185 FERC ¶ 61,035 (Clements, Comm’r, concurring in part and dissenting in part, at P 5) (“The Commission could readily address these deficiencies by adopting the need provisions of the draft revised Certificate Policy Statement issued in 2022.”); Allison Clements, Commissioner, Federal Energy Regulatory Commission, May 2022 Commission Meeting Opening Remarks (May 19, 2022), <https://www.ferc.gov/news-events/news/may-2022-commission-meeting-opening-remarks-commissioner-allison-clements> (“[A]s a matter of policy, I believe that the Commission should call for stronger evidence that a project is needed and will be built.”).

<sup>77</sup> *See* NEPA § 102(C)(iii), 42 U.S.C. § 4332(C)(iii) (requiring EIS to evaluate a reasonable range of alternatives, including no action alternative).



sustained.<sup>78</sup> Accordingly, the Commission should prepare a supplemental EIS with an alternatives analysis meeting NEPA's requirements, and then revisit its public interest determination under section 7 based on the supplemental EIS.

24. NEPA requires that an agency "[e]valuate reasonable alternatives to the proposed action," including "the no action alternative."<sup>79</sup> The alternatives must be "reasonable" in that they "meet the purpose and need for the proposed action,"<sup>80</sup> but the statement of purpose should not be so narrow as to "compel the selection of a particular alternative."<sup>81</sup> To ensure the appropriate alternatives are evaluated, the EIS must "specify the *underlying* purpose and need to which the agency is responding."<sup>82</sup> Although the purpose and need statement appropriately considers the applicant's purpose, the agency cannot define the purpose so narrowly that only the applicant's proposal will fulfill it.<sup>83</sup> Unfortunately, that is exactly what the EIS for the GTN Xpress Project did.

25. The EIS recognized that the underlying purpose of the GTN Xpress Project is to "serve the growing market demand [GTN's] system is experiencing."<sup>84</sup> However, it went on to adopt a narrow statement of purpose and need parroting GTN's own description: "to increase the capacity of GTN's existing natural gas transmission system by about 150 million standard cubic feet per day between its Kingsgate Meter Station in Idaho and its

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<sup>78</sup> See *Vecinos Para El Bienstar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1331 (D.C. Cir. 2021) (directing Commission to revisit NGA public interest determinations because EIS was deficient).

<sup>79</sup> 40 C.F.R. § 1502.14.

<sup>80</sup> 40 C.F.R. § 1508.1(z).

<sup>81</sup> *Conservation Law Found. v. Ross*, 374 F. Supp. 3d 77, 112 (D.D.C. 2019) (quoting *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 73 (D.C. Cir. 2011)); accord, *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997).

<sup>82</sup> 40 C.F.R. § 1502.13 (emphasis added).

<sup>83</sup> *Theodore Roosevelt Conservation P'ship*, 661 F.3d at 73; *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

<sup>84</sup> EIS at 1-1; see also Rehearing Order, 187 FERC ¶ 61,023 at P 100 ("[T]he purpose of the proposed Project is to increase the capacity of GTN's existing natural gas transportation system to provide necessary firm transportation service for growing market demand on its system.").

Malin Meter Station in Oregon.”<sup>85</sup> The EIS assumed, with no analysis whatsoever, that the 150 million standard cubic feet per day matched the underlying market demand the project was proposed to serve. Indeed, the EIS—and the majority in the Rehearing Order—indicate that only the Commission can address what the demand is and will be because only the Commission can decide project need.<sup>86</sup> Neither cites a shred of authority for the proposition that a Commission EIS cannot or should not analyze the existence or extent of the market demand a proposed project is intended to serve. That the Commission ultimately decides whether a project is needed provides no excuse for a deficient purpose and need statement in the EIS or for the resulting truncated analysis of alternatives.

26. Having accepted GTN’s narrow project definition, both the EIS and the majority conclude that the no action alternative is unacceptable because it would not increase capacity on GTN’s system.<sup>87</sup> Indeed, rather than evaluating the no action alternative as both the Council on Environmental Quality’s (CEQ) and the Commission’s own NEPA regulations require,<sup>88</sup> the EIS dismissed the no action alternative out of hand.<sup>89</sup> Though the States and other commenters advocated for it,<sup>90</sup> the EIS had no discussion of the

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<sup>85</sup> EIS at 3-2; GTN’s Resource Report 1 (“GTN proposes to increase the certificated capacity on the GTN system from the Kingsgate Meter Station to the Malin Meter Station, to up to 150,000 Dth/d and thus serve and meet the growing market demand that GTN’s system continues to experience, benefiting local communities and providing operational flexibility.”).

<sup>86</sup> See EIS at 3-1 to 3-2; Rehearing Order, 187 FERC ¶ 61,023 at P 101.

<sup>87</sup> EIS at 3-1 to 3-2; Rehearing Order, 187 FERC ¶ 61,023 at PP 102-103.

<sup>88</sup> The Commission’s regulations implementing NEPA provide that it will comply with CEQ’s NEPA regulations. 18 C.F.R. § 380.1. The Commission’s regulations also incorporate additional requirements, including the requirement for applicants to submit Resource Report 10 addressing alternatives. *Id.* § 380.12(a)(1). Resource Report 10 must discuss the no action alternative and “the potential for accomplishing the proposed objectives through the use of other systems and/or energy conservation.” *Id.* § 380.12(l)(1). GTN’s Resource Report 10 acknowledged that the use of alternative energy sources is an option to meet some of the short-term demand and long-term demand for energy in its market area. Resource Report 10 at 10-2. However, it concluded the no action alternative would not meet the project purpose since the purpose as defined by GTN was to increase the GTN pipeline’s capacity. *Id.*

<sup>89</sup> EIS at 3-1 (stating the no action alternative is “not considered in this EIS”).

<sup>90</sup> See Joint Comments on Draft EIS by States of Washington, Oregon, and California at 19-21 (Aug. 22, 2022); Comments of Columbia Riverkeeper on Draft

effect of State decarbonization laws and renewable energy initiatives on future demand for natural gas. Given GTN's testimony in the rate case essentially agreeing with the States that demand will be *reduced*, and that 40% of GTN's existing capacity may become available by 2028,<sup>91</sup> it is now clear that the EIS is fundamentally deficient for failing to fully evaluate the no action alternative. For all the reasons explained in the need section of this dissent, that alternative may fully satisfy the actual demand for natural gas and natural gas transportation capacity on GTN's system.

27. Depending on the outcome of a full analysis of future demand and available pipeline capacity, a smaller sized project than the one GTN proposed may be a reasonable alternative. In focusing solely "on impacts to environmental resources, not on economic issues,"<sup>92</sup> the EIS provided no useful information on this score. The Rehearing Order correctly observes that there is "nothing in the record that reflects how such a reduction in capacity would work."<sup>93</sup> But that is the fault of our own deficient NEPA analysis. The Commission should prepare a supplemental EIS that evaluates this potential alternative, as well as the no action alternative.

#### GHG Analysis

28. I also dissent from the Rehearing Order's assertion that the Commission is incapable of determining the significance of GHG impacts.<sup>94</sup> In my concurrence in *Transco*,<sup>95</sup> I explained the history of the language in Paragraphs 115, 117, and 118 of the Order, which has come to be known as the "*Driftwood* compromise."<sup>96</sup> In *Driftwood*, the majority suddenly adopted new language declaring that there are no methods for assessing the significance of GHG emissions, and particularly criticizing the Social Cost

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Environmental Impact Statement at 19 (Aug. 22, 2022); Rogue Climate Comments on the Draft EIS at 8-9 (Aug. 22, 2022); Wild Idaho Rising Tide Comments on GTN Draft EIS at 3-4 (Aug. 22, 2022).

<sup>91</sup> See *supra* PP 6, 9.

<sup>92</sup> Rehearing Order, 187 FERC ¶ 61,023 at P 101.

<sup>93</sup> *Id.* at P 108.

<sup>94</sup> See Rehearing Order, 187 FERC ¶ 61,023 at PP 115, 117-118.

<sup>95</sup> See *Transcon. Gas Pipe Line Co.*, 184 FERC ¶ 61,066 (2023) (Clements, Comm'r, concurring, at PP 2-3) (*Transco*).

<sup>96</sup> See *id.* (Phillips, Chairman, and Christie, Comm'r, concurring at PP 1-2).

of GHGs protocol.<sup>97</sup> I have dissented from this language in *Driftwood* and subsequent orders for two reasons: (1) it reflects a final Commission decision that it cannot determine the significance of GHG emissions, despite the fact the Commission has never responded to comments in the GHG Policy Statement docket<sup>98</sup> addressing methods for doing so; and (2) the language departs from previous Commission precedent without reasoned explanation, thereby violating the Administrative Procedure Act.<sup>99</sup> I dissent from Paragraphs 115, 117, and 118 of this Order for the same reasons.

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<sup>97</sup> See *Driftwood Pipeline LLC*, 183 FERC ¶ 61,049, at PP 61, 63 (2023) (*Driftwood*).

<sup>98</sup> Docket No. PL21-3.

<sup>99</sup> See *Driftwood*, 183 FERC ¶ 61,049 (Clements, Comm'r, dissenting in part at PP 2-3 & n.5); see also *E. Tenn. Nat. Gas, LLC*, 186 FERC ¶ 61,210 (2024) (Clements, Comm'r, dissenting in part at PP 2-3); *Transcon. Gas Pipe Line Co.*, 186 FERC ¶ 61,209 (2024) (Clements, Comm'r, dissenting in part at PP 2-3); *N. Nat. Gas Co.*, 186 FERC ¶ 61,064 (2024) (Clements, Comm'r, dissenting in part at PP 2-3); *Saguaro Connector Pipeline, LLC*, 186 FERC ¶ 61,114 (2024) (Clements, Comm'r, dissenting in part at PP 2-4); *Tenn. Gas Pipeline Co.*, 186 FERC ¶ 61,113 (2024) (Clements, Comm'r, dissenting in part at PP 2-3); *Transcon. Gas Pipe Line Co.*, 186 FERC ¶ 61,063 (2024) (Clements, Comm'r, dissenting in part at PP 2-3); *Columbia Gas Transmission, LLC*, 186 FERC ¶ 61,048 (2024) (Clements, Comm'r, dissenting in part at PP 2-4); *Transcon. Gas Pipe Line Co.*, 186 FERC ¶ 61,047 (2024) (Clements, Comm'r, dissenting at PP 8-9); *Tenn. Gas Pipeline Co.*, 186 FERC ¶ 61,046 (2024) (Clements, Comm'r, dissenting in part at PP 1-2); *ANR Pipeline Co.*, 185 FERC ¶ 61,191 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Transcon. Gas Pipe Line Co.*, 185 FERC ¶ 61,133 (2023) (Clements, Comm'r, dissenting in part at PP 2-4); *Transcon. Gas Pipe Line Co.*, 185 FERC ¶ 61,130 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Tex. LNG Brownsville LLC*, 185 FERC ¶ 61,079 (2023) (Clements, Comm'r, dissenting at PP 9-10); *Rio Grande LNG, LLC*, 185 FERC ¶ 61,080 (2023) (Clements, Comm'r, dissenting at PP 9-10); *Gas Transmission Nw., LLC*, 185 FERC ¶ 61,035 (2023) (Clements, Comm'r, concurring in part and dissenting in part at PP 7-8); *WBI Energy Transmission, Inc.*, 185 FERC ¶ 61,036 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Venture Global Plaquemines LNG, LLC*, 185 FERC ¶ 61,037 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Tex. E. Transmission, LP*, 185 FERC ¶ 61,038 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Trailblazer Pipeline Co.*, 185 FERC ¶ 61,039 (2023) (Clements, Comm'r, dissenting in part at PP 2-4); *Equitrans, L.P.*, 185 FERC ¶ 61,040 (2023) (Clements, Comm'r, dissenting in part at PP 2-4); *Port Arthur LNG Phase II, LLC*, 184 FERC ¶ 61,184 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Venture Global Calcasieu Pass, LLC*, 184 FERC ¶ 61,185 (2023) (Clements, Comm'r, dissenting in part at PP 2-4); *N. Nat. Gas Co.*, 184 FERC ¶ 61,186 (2023) (Clements,

For these reasons, I respectfully dissent.

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Allison Clements  
Commissioner

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Comm'r, dissenting in part at PP 2-3); *Tex. E. Transmission, LP*, 184 FERC ¶ 61,187 (2023) (Clements, Comm'r, dissenting in part at PP 2-4); *Equitrans, LP*, 183 FERC ¶ 61,200 (2023) (Clements, Comm'r dissenting at PP 2-3); *Commonwealth LNG, LLC*, 183 FERC ¶ 61,173 (2023) (Clements, Comm'r, dissenting at PP 5-8); *Rio Grande LNG, LLC*, 183 FERC ¶ 61,046 (2023) (Clements, Comm'r, dissenting at PP 14-15); *Tex. LNG Brownsville LLC*, 183 FERC ¶ 61,047 (2023) (Clements, Comm'r, dissenting at PP 14-15).