UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company Docket No. CP22-138-000

COMMENTS BY SIERRA CLUB
IN RESPONSE TO FERC REQUEST FOR COMMENTS ON ENVIRONMENTAL ISSUES

Sierra Club submits the following in response to the July 28, 2020 Request for Comment issued by the Federal Energy Regulatory Commission ("FERC" or the "Commission") on the environmental issues associated with the Northern Lights 2023 Expansion Project (the "Project") proposed by Northern Natural Gas Company ("Northern"). FERC has asked for public comments "on the scope of the issues to address in the environmental document, including comments on potential alternatives and impacts." Based on the information submitted by Northern to date and the filings FERC has made in the docket, Sierra Club is concerned that the Commission's environmental review of the Project will not be sufficiently robust to satisfy its obligations under the National Environmental Policy Act ("NEPA"). And absent an accurate and complete NEPA review, the Commissioners will lack the information necessary to assess the true costs and benefits of the Project in weighing whether the Project is in the public convenience and necessity under the Natural Gas Act.

Introduction

Although the Project involves construction of less than ten miles of pipeline, the Commission must recognize and analyze the broad array of potentially-significant environmental impacts that could result from construction and operation of the Project. Northern's plans include construction and operation of new pipeline facilities in six separate locations across six separate counties in Minnesota and Wisconsin as part of its broader system-wide expansion efforts. Construction would disturb about 255.4 acres and the Project will permanently affect 52.4 acres. Given the expansive footprint of the Project, we applaud the Commission's decision to undertake a full Environmental Impact Statement ("EIS"). We urge FERC to ensure that all reasonably foreseeable Project impacts are considered in the EIS in sufficient depth to allow the Commission to reasonably determine whether to authorize it under the Natural Gas Act.

The following comments focus on a few particular areas that the Commission must examine given the nature of the Project, but these comments are not meant to provide an exhaustive list of issues that must be included in the EIS. Other commenters have noted additional important items that FERC must analyze. For example, the Minnesota Department of Natural Resources ("MDNR") commented that there are a number of threatened and listed species in and near the Project areas, including Blanding's turtles, gopher snakes, and rusty patched bumble bees.[1] MDNR also noted that calcareous fens are known to exist near the Project's Willmar D Branch and Paynesville 2nd Branch Line locations. These rare and extremely important features are protected by Minnesota law and "can be affected by nearby activities or even those several miles away."[2] Further, MDNR concluded that one of the

[1] MDNR, Comments on Proposed Northern Lights 2023 Expansion Project, CP22-138-000, at 1 (June 16, 2022).
[2] *Id.* at 2.

Project's areas is located in a Wellhead Protection Area and Drinking Water Supply Management Area, heightening the need to thoroughly review the Project's potential to impact groundwater.[3] These potential impacts not only could be significant in their own right, but also highlight that it is critical that FERC conduct a broad review of the Project's potential impacts, including the reasonably foreseeable indirect and cumulative impacts that could result beyond the Project's footprint. In addition, the Environmental Protection Agency ("EPA") noted the need to identify environmental justice concerns and provide affected communities with an opportunity to provide input.[4] While these and other issues and concerns are not discussed in more detail below, they are of critical importance and must be adequately analyzed in the EIS.

<u>The Commission Is Obligated to Consider All of the Project's Reasonably Foreseeable Indirect Greenhouse Gas Emissions.</u>

NEPA requires that FERC consider all reasonably foreseeable impacts of the Project, including the Project's lifecycle greenhouse gas emissions. However, in its application, Northern fails entirely to address potential upstream greenhouse gas emissions. As EPA stated in its comments, "upstream [greenhouse gas] emissions from production are reasonably foreseeable."[5] Northern has not provided the Commission with any justification for why it has not calculated the Project's upstream emissions. However, to the extent that Northern claims that it does not have sufficient information on the source of upstream gas supplies, EPA has clearly stated that this is not a rational reason for failing to consider upstream emissions. Even if Northern lacks precise data on where the gas to feed its proposed increase in capacity will come from, "FERC may use generic estimates for upstream [greenhouse gas] emissions from natural gas production developed by the Department of Energy's National Energy Technology Laboratory if estimates tied to the regional production basins and extraction technologies are unavailable."[6] There is, therefore, no justification for the Commission to fail to calculate and assess upstream greenhouse gas emissions from the Project in the EIS.

<u>FERC Must Evaluate the Significance of the Project's Greenhouse Gas Emissions.</u>

NEPA also mandates that the Commission evaluate the significance of the impacts it assesses in an EIS. Contrary to the position taken by FERC in previous dockets, such as the 2018 decision cited by Northern in its application materials,[7] there are methods available to meaningfully evaluate the impacts of project-specific greenhouse gas emissions. Moreover, the fact that FERC is currently reviewing its approach to evaluating the significance of project-specific greenhouse gas emissions does not mean that the Commission can refuse to conduct that evaluation here and effectively treat the Project's emissions as if they will not exist.

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[3] *See id.*
[4] EPA, Project Scoping for the Proposed Northern Lights 2023 Expansion Project, CP22-138-000, at 5 (June 14, 2022) ("EPA Comments").
[5] *Id.* at 4.
[6] *Id.*
[7] Northern, Resource Report No. 9, Air and Nosie Quality, CP22-138-000, at 9-8 n.2 (Feb. 2022) (citing Order Issuing on Remand Reinstating Certificate and Abandonment Authorization, Florida Southeast Connection Pipeline Project, CP14-554-002 et al. (March 14, 2018)) ("RR 9").

FERC is well-aware that it cannot refuse to use the widely-accepted social cost of greenhouse gases tool without providing a rational explanation.[8] And EPA has made it abundantly clear here that the evaluation of the Project's greenhouse gas emissions can and must be done using the social cost of greenhouse gases.[9] EPA also has stated that FERC can and should further evaluate the significance of the Project's emissions by discussing them in the context of national and international reduction goals.[10] In addition, the Commission should assess the significance of the Project's emissions in the context of the other reduction goals, including those established under Minnesota's Next Generation Energy Act, a law that aims to reduce the state's emissions levels by 30% by 2025 and by 80% by 2050.[11] To date, Minnesota has not been on track to meet these goals[12] and FERC should consider how approving an increase in the state's emissions is consistent with the state's reduction policies.

Even using Northern's low emissions numbers that fail to include upstream emissions, it is clear that the greenhouse emissions that the Project will contribute over its life are significant. Using Northern's average load factor, its downstream emissions alone would result in social costs of over $4.1 million using a 5% discount rate and over $22.6 million using a 2.5% discount rate per year in the Project's initial years of operation alone.[13] Those number quickly climb to annual costs of over $5.6 million at 5% and over $26.5 million at 2.5% by 2030 and over $7.4 million at 5% and over $30.6 million at 2.5% by 2040. Assuming the Project is put in service in 2024 and operates for even ten years—a very conservative estimate given the lives of most pipelines—total costs for downstream emissions at an average load factor could easily reach anywhere from $52.1 million to $252.4 million, using a 5% and 2.5% average discount rate, respectively.[14] These figure do not include the social cost of the Project's operational methane emissions, construction emissions, or the Project's upstream emissions. And the cost of the Project's greenhouse gas emissions will continue to increase exponentially the longer it is in operation. These figures leave little doubt as to the extent of the harm the Project's lifecycle and lifetime greenhouse gas emissions will cause and must evaluated in the EIS and weighed in FERC's decision on whether to approve the Project.

<u>FERC Must Consider Specific Greenhouse Gas Emissions Mitigation Measures.</u>

Northern's application does not address specific mitigation measures that it might take to offset the Project's greenhouse gas emissions. FERC must ensure that it evaluates possible mitigation measures in the EIS so that it can consider whether to include conditions in Northern's Certificate of Public Convenience and Necessity should the Commission decide to approve the Project or determine that it must deny the application, because the Project's greenhouse gas emissions cannot be mitigated. Northern's application discusses its overall

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[8] *See also Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1329 (D.C. Cir. 2021) .
[9] EPA Comments at 4.
[10] *See id.*
[11] Minn. Stat. Chap. 216H.
[12] *See, e.g.*, Minnesota takes action on climate change, available at https://climate.state.mn.us/.
[13] Northern estimates the downstream emissions will total 298,056 metric tons per year at an average load factor. RR 9 at 9-10.
[14] These rough calculations are based on the social cost of carbon figures provided by the Interagency Working Group on Social Cost of Greenhouse Gases at 5 (Feb. 2021), available at https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.

efforts to reduce greenhouse gas emissions but provides no specific examples or calculations demonstrating the effect of those efforts or how those efforts are designed to offset the emissions that will result from the Project. Given that the Project is part of Northern's larger system, FERC should evaluate whether there are concrete projects Northern could undertake (e.g., electrifying existing gas-fired compressor stations) on its system to cut its greenhouse emissions by the amount the Project will contribute.

FERC Must Adequately Evaluate the No-Action Alternative.

In evaluating the no-action alternative, FERC must begin by defining the Project's purpose and need in sufficiently broad terms to avoid making its selection of Northern's preferred alternative inevitable. The Commission's responsibility under the Natural Gas Act is to ensure that the Project is in the *public* convenience and necessity.[15] FERC cannot fulfill that obligation if it is defining the Project's purpose and evaluating its costs only in terms of satisfying the needs of the private corporate entity proposing the project and the private corporate entities seeking to purchase capacity on the project. The Commission should define need in terms of what public interests and requirements the Project could potentially serve.

In addition, FERC must ensure that any rejection of the no-action alternative is based on accurate and complete information. Here, Northern has dismissed the no-action alternative in its application, in part because it claims that state-level energy conservation programs do not meet its private customers' demands.[16] But this assessment fails to consider a number of important elements that FERC must include in the EIS. First, the need for the project cannot just be assessed in terms of the current demand. Northern is seeking authorization to operate the Project for decades to come and the need for the Project must be evaluated across the same time frame. Massive investments are being made to decarbonize the U.S. economy, including under the recently-passed Inflation Recovery Act ("IRA"), that will have a profound effect on future demand in both the near and long-term. As is discussed above, Minnesota also has legally-enshrined goals to substantially slash its greenhouse gas emissions that are at odds with Northern's assumption that current demand will continue into the future. FERC must, therefore, take a critical view of Northern's attempts to reject the effect energy conservation programs will have when they are based solely on current demand levels and ignore likely future trends.

Second, Northern's exclusive focus on state-level programs ignores the federal incentives available to reduce demand for gas, as well as steps its customers could be taking themselves to obviate their need for additional capacity. Utilities across the country are making critical changes to their business models to reduce consumption of fossil fuels and address the climate change crisis, even when those changes are not being mandated or otherwise driven by state programs. FERC should ascertain whether Northern's customers can make changes to their distribution systems and operating practices to obviate the need for increased capacity and ensure that all potential incentives for decarbonizing are being considered before rejecting the no-action alternative.

[15] 15 U.S.C. § 717f(c).
[16] Northern, Resource Report No. 10, Alternatives, CP22-138-000, at 10-1–10-2 (Feb. 2022).

In addition, the EIS must undertake a significantly more detailed and reasoned assessment of other potential alternatives that might make the Project unnecessary and support FERC's adoption of the no-action alternative. Northern rejects the potential use of energy alternatives but focuses almost exclusively on energy generation, whereas the Project is purportedly, at least in part, going to serve residential needs.[17] It then dismisses the potential for transitioning to heat pumps to curb demand but does not appear to consider how incentives will make heat pump deployment more prevalent, particularly in the wake of the IRA. FERC must correct these deficiencies and make sure that it does not reject the no-action alternative before engaging in a meaningful analysis of the reasonable ways demand for gas can be reduced over time.

FERC Must Expand its List of Alternatives.

FERC has concluded that it will consider only the no-action alternative and slight route deviations in the EIS, but for similar reasons as are discussed in the preceding section, the Commission should evaluate alternative capacities for the Project. Particularly over time, the demand for the Project's gas will likely decrease and nowhere does Northern explain why the Project's full capacity is needed for decades or why the Project's full capacity is needed to meet all its purported goals. For example, could the Project's customers make system changes that, in combination with the financial incentives provided for under the IRA, might demonstrate that Northern's Project would meet demand and reliability needs at a lower capacity? Decreasing the volume of gas that can flow through the system, even by a smaller amount than the total, would decrease the Project's greenhouse gas emissions and thereby provide a more environmentally-friendly alternative that must be evaluated in the EIS. FERC should require that Northern provide additional information justifying to explain why full capacity is necessary in light of changing likely future demands.

NEPA Prohibits Segmentation and Requires a Robust Analysis of Cumulative Effects.

Northern has made it clear that the Project is part of "the umbrella of the Northern Lights project, a multi-year commitment to expand Northern's Market Area capacity…"[18] Although it claims that the Project is a "discrete stand-alone project," it does not explain what makes the Project discrete or why the impacts of the Project should be evaluated in isolation from its larger expansion efforts. Northern also does not justify why it could not have considered the Project at the same time as at least some of the other projects it lists in its application, particularly the relatively recent Northern Lights 2021 and at least some of the 23 projects Northern has constructed under a blanket certification. Nor does Northern properly evaluate the Project's full slate of environmental impacts in combination with the environmental impacts of its existing system and prior expansion projects. NEPA requires a thorough assessment of cumulative impacts that Northern's application materials fail to address, including by failing to assess the cumulative effects of the greenhouse gas emissions from the entire Northern Lights project. NEPA also prohibits segmentation and Northern has not demonstrated in its application why it

[17] *See id.* at 10-2–10-5.
[18] Application at 1.

should be permitted to segment the review of so many projects that it admits are all part of a singular expansion effort on the same system into smaller pieces.[19]

Respectfully submitted,

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[19] *See Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1314 (D.C. Cir. 2014).