

United States Court of Appeals for the Fifth Circuit

No. 24-60002
CONSOLIDATED WITH
No. 24-60197

United States Court of Appeals
Fifth Circuit

FILED

October 28, 2025

Lyle W. Cayce
Clerk

GAS TRANSMISSION NORTHWEST, L.L.C.,

Petitioner,

versus

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent,

CONSOLIDATED WITH

No. 24-60280

COLUMBIA RIVERKEEPER; ROGUE CLIMATE; STATE OF
WASHINGTON; STATE OF OREGON,

Petitioners,

versus

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent,

CONSOLIDATED WITH

No. 24-60354

STATE OF WASHINGTON; STATE OF OREGON,

Petitioners,

versus

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent.

Petition for Review of an Order of the
Federal Energy Regulatory Commission
Agency Nos. 185 FERC 61,035,
187 FERC 61,023, 185 FERC 61,035,
185 FERC 61,035

Before STEWART, DENNIS, and HAYNES, *Circuit Judges*.

CARL E. STEWART, *Circuit Judge*:

This case involves four parties, three administrative orders, two statutes, and one expansion of a natural gas pipeline. It also involves

24-60002
c/w Nos. 24-60197, 24-60280, 24-60354

replacements for three compressor units along the same pipeline.¹ For the reasons set forth below, we DENY each petition for review.

I

Central to this case are three portions of the regulatory regime that govern pipeline construction and maintenance: the Natural Gas Act, the National Environmental Policy Act (“NEPA”), and Regulation 2.55(b) of the Federal Energy Regulatory Commission (“FERC”).² We provide a summary of each and then discuss the specific factual and procedural history that has brought the parties’ petitions before us.

A

Pipeline companies face different requirements for expanding or building new pipelines than for replacing old pipelines. For new or expanding pipelines, the Natural Gas Act and NEPA define what the companies must do. For old pipeline replacements, Regulation 2.55(b) controls.

1

The Natural Gas Act provides FERC with exclusive jurisdiction over the transportation of natural gas in interstate commerce. *Sierra Club v. La. Dep’t of Env’t Quality*, 100 F.4th 555, 563 (5th Cir. 2024). Section 7 of the statute requires a company seeking to construct interstate pipeline facilities—including those seeking to increase capacity on existing pipelines—to first obtain a “certificate” from FERC. *PennEast Pipeline Co. v. New Jersey*, 594 U.S. 482, 489 (2021) (citing 15 U.S.C. § 717f(e)). FERC

¹ Compressor units are machines that increase the pressure of gas by reducing its volume, which enables a pipeline to transport more gas without enlarging its pipe.

² 15 U.S.C. § 717 *et seq.* (the Natural Gas Act); 42 U.S.C. § 4321 *et seq.* (NEPA); 18 C.F.R. § 2.55(b) (Regulation § 2.55(b)).

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

will issue that certificate if it finds that the proposed pipeline facility “is or will be required by the present or future public convenience and necessity.” 15 U.S.C. § 717f(e).

FERC reviews a § 7 certificate application under criteria set out in its Certificate Policy Statement (the “Policy Statement”),³ which “outlin[es] how it determines whether a proposed pipeline is or will be in the public convenience and necessity.” *City of Oberlin v. FERC*, 39 F.4th 719, 722 (D.C. Cir. 2022). The Policy Statement has three requirements. First, the applicant must be able to financially support the project without relying on subsidies from its existing customers. Policy Statement, 88 FERC at ¶¶ 61,745–46; *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1309 (D.C. Cir. 2015). Usually this results in a project being incrementally priced. *See Consol. Edison Co. of N.Y. v. FERC*, 315 F.3d 316, 320–21 (D.C. Cir. 2003). That means the project costs will usually be assigned to expansion customers rather than “rolled-in”—meaning added—to the pipeline’s total rate base and charged to all customers. Policy Statement, 88 FERC at ¶ 61,745; *Fairless Energy, LLC v. FERC*, 77 F.4th 1140, 1144 n.3 (D.C. Cir. 2023); *see also* 90 FERC at ¶ 61,391 (noting that the Policy Statement “changed [FERC’s] previous policy of giving a presumption for rolled-in rate treatment for pipeline expansions”); *Consol. Edison*, 315 F.3d at 320–21 (same).

At this stage, a party can also receive what FERC refers to as a “predetermination” that rolled-in rates will apply for the subsequent § 4 proceeding—at which permanent rates are set. 71 FERC ¶ 61,241, ¶ 61,915 (1995); *see Brooklyn Union Gas Co. v. FERC*, 190 F.3d 369, 372 (5th Cir. 1999). A “predetermination” is a rebuttable presumption in favor of rolled-in rates.

³ Certification of New Interstate Nat. Gas Pipeline Facilities, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2001).

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

FERC grants one if the § 7 applicant demonstrates that “the rate effect [of an expansion project] on existing customers is not substantial.” 71 FERC at ¶ 61,915; *Consol. Edison*, 315 F.3d at 320 (quoting the same); *see also N.Y. Elec. & Gas Corp. v. FERC*, 177 F.3d 1037, 1041 (D.C. Cir. 1999) (explaining that the presumption is rebuttable).

For the Policy Statement’s second requirement, FERC considers the extent to which the applicant has taken steps to minimize the project’s adverse effects on nearby landowners, pipelines, or other stakeholders. Policy Statement, 88 FERC at ¶ 61,745. If some adverse effects remain, FERC balances those effects against the project’s benefits. *Id.* “This is essentially an economic test” for the adverse effects side of the ledger. FERC will only proceed to analyze harm to environmental and other interests after considering whether the project’s “benefits outweigh the adverse effects on economic interests.” *Id.*⁴ FERC considers, however, a much more diverse set of benefits. These include meeting unserved demand, access to new natural gas supplies, lower costs to consumers, and increased reliability. *Id.* ¶ 61,748.

The third requirement is that a pipeline must conduct an “open season.” This is a period in which existing customers are provided an opportunity to relinquish their pipeline capacity. 90 FERC at ¶ 61,392. The open season ensures that a pipeline will not expand capacity if demand can be filled by existing customers giving up current capacity. *Id.*

⁴ As discussed below, other adverse impacts are later evaluated as required under NEPA. Although FERC “has long recognized” that the Natural Gas Act “requires that environmental consequences be taken into account” when it “determine[s] whether proposed facilities are required by the public convenience and necessity,” it does so “in a far less methodical and thorough manner” than does NEPA. Revisions to Auxiliary Installations, Replacement Facilities, and Siting and Maint. Regulations, 145 FERC 61154, at P 40 (2013).

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

After satisfying these three criteria, FERC determines the initial rate that expansion customers will be charged under the pipeline. It does so under its power to “attach to the issuance of the certificate . . . such reasonable terms and conditions as the public convenience and necessity may require.” 15 U.S.C. § 717f(e); *see Mo. Pub. Serv. Comm’n v. FERC*, 783 F.3d 310, 313 (D.C. Cir. 2015). Those § 7 rates “offer a temporary mechanism to protect the public interest until the regular rate setting provisions of” §§ 4 and 5 of the Natural Gas Act “come into play.” *Mo. Pub. Serv. Comm’n v. FERC*, 601 F.3d 581, 583 (D.C. Cir. 2010) (internal quotation marks and citation omitted); *see* 15 U.S.C. §§ 717c, 717d.⁵

The initial rates that FERC sets in § 7 proceedings are “meant only ‘to hold the line’ pending more extensive ratemaking proceedings under [§ 4].” *Gulf S. Pipeline Co., LP v. FERC*, 955 F.3d 1001, 1005 (D.C. Cir. 2020) (quoting *Atl. Ref. Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, 392 (1959)). Consequently, unlike rates set under §§ 4 and 5—which must be “just and reasonable”—initial rates set under § 7 must simply be in the “public interest.” *Mo. Pub. Serv. Comm’n*, 337 F.3d at 1068 (quoting 15 U.S.C. § 717c and citing *Atl. Ref. Co.*, 360 U.S. at 391). The “‘public interest’ standard of [§ 7] is less exacting than the ‘just and reasonable’ requirement of § 4.” *Id.* at 1070 (citing *Atl. Ref. Co.*, 360 U.S. at 390–91). Under § 7, longstanding FERC policy determines the rates for projects that expand capacity of existing pipelines. That policy looks to the pipeline’s most recent

⁵ Sections 4 and 5 “come into play” after certified projects are already moving natural gas in interstate commerce. *Mo. Pub. Serv. Comm’n*, 601 F.3d at 583. Pipelines propose new rates under § 4 and have the burden to show that those rates are “just and reasonable.” *Transcon. Gas Pipe Line Corp. v. FERC*, 518 F.3d 916, 918, 923 (D.C. Cir. 2008); 15 U.S.C. § 717c. Under § 5, FERC—upon its own initiative or complaint by others—may change a pipeline’s existing rates if the proponent establishes that (1) the pipeline’s existing rates are not just and reasonable and (2) the new proposed rates are just and reasonable. *Transcon. Gas Pipe Line Corp.*, 518 F.3d at 918, 920–21; 15 U.S.C. § 717d.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

cost-of-service rate determinants established in a past § 4 proceeding. *Gulf S.*, 955 F.3d at 1007, 1013, 1015.

2

“NEPA is a purely procedural statute” *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 145 S. Ct. 1497, 1507 (2025). It establishes steps that an agency must take to ensure that the environmental impacts of “major federal actions” are “adequately identified and evaluated.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349–50 (1989); 42 U.S.C. § 4332(C). FERC’s certification of a pipeline expansion project under § 7 is a “major federal action” that triggers NEPA. *Sierra Club v. FERC*, 38 F.4th 220, 226 (D.C. Cir. 2022). Thus, independent of any requirements under the Natural Gas Act, NEPA requires FERC to “evaluate” an expansion project’s “environmental impact” before issuing a § 7 certificate. *Id.* So long as FERC conducts that evaluation, however, NEPA “does not mandate particular results.” *Seven Cnty.*, 145 S. Ct. at 1510; see *Citizens for Clean Air & Clean Water in Brazoria Cnty. v. Dep’t of Transp.*, 98 F.4th 178, 189 (5th Cir. 2024).

As part of its evaluation, FERC must prepare an “environmental impact statement[]” (an “EIS”) that analyzes if a proposed action will “significantly affect[] the quality of the human environment.” *Robertson*, 490 U.S. at 349–50 (quoting 42 U.S.C. § 4332(C)). The statement must “discuss the purpose and need of the proposed action, address reasonable alternatives, and consider the impacts of those alternatives.” *Brazoria*, 98 F.4th at 189. These requirements have historically been fleshed out under “regulations promulgated by the Council on Environmental Quality” (“CEQ”) and “adopted by” FERC in 18 C.F.R. § 380.1. *Food & Water Watch v. FERC*, 104 F.4th 336, 341 (D.C. Cir. 2024). Those regulations have required

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

agencies to consider “connected actions” in a single NEPA review. 40 C.F.R. §§ 1501.9(e)(1), 1502.4(a) (2022).⁶

3

For existing pipeline projects that have already been authorized under § 7, § 2.55(b) of FERC’s regulations provides automatic authorization for “replacement of existing facilities” that “will soon become physically deteriorated or obsolete.” 18 C.F.R. § 2.55(b)(1). To qualify, the pipeline replacement must: (1) “not result in a reduction or abandonment of service”; (2) “have a substantially equivalent designed delivery capacity”; (3) “be located in the same right-of-way or on the same site as the [existing] facilities being replaced”; and (4) “be constructed using the temporary work space used to construct the existing facility.” *Id.* § 2.55(b)(1)(i)–(ii).

Pipeline companies typically do not need to provide FERC with prior notice before constructing § 2.55(b) replacement facilities. *See id.* § 2.55(b)(2). But if the replacement costs exceed certain annual limits, the company must file advance notice 30 days before starting construction. *Id.* § 2.55(b)(1)(iii) & (b)(2)(i).

FERC’s NEPA regulations generally exempt § 2.55(b) replacements from environmental review. 18 C.F.R. § 380.5(b)(1).⁷ The agency’s rationale

⁶ Effective April 11, 2025, CEQ has published an interim final rule that removed all its regulations implementing NEPA. *See* 90 Fed. Reg. 10610 (Mar. 14, 2025). Given that no party has raised CEQ’s actions, however, we proceed under the assumption that FERC must still consider connected actions in its EIS. *See SEC v. Recile*, 10 F.3d 1093, 1096 (5th Cir. 1993) (per curiam) (“[I]ssues not raised at all are [forfeited].”); *see also Rollins v. Home Depot USA, Inc.*, 8 F.4th 393, 397 (5th Cir. 2021).

⁷ They are not categorically excluded from such review, however. For high-cost projects that FERC requires 30-day advance notice of repairs, it considers whether extenuating circumstances warrant further environmental review. *See* Order No. 790, 145 FERC ¶ 61,154 at P 41 & n.31.

24-60002
c/w Nos. 24-60197, 24-60280, 24-60354

for doing so is that the work is “limited by the terms and locations delineated in the original construction certificate” and “must be constructed within the previously authorized” work areas that FERC has already reviewed for their environmental impact. Order No. 790, 145 FERC ¶ 61,154 at PP 7, 17. Further, any additional impact coming from the replacement work itself should be insignificant because § 2.55(b) projects “should only involve basic maintenance or repair to relatively minor facilities.” Order No. 603-A, 64 Fed. Reg. 54,522 at 54,524 (Oct. 7, 1999).

B

This case arises out of Gas Transmission NW, LLC’s (“GTN”) replacement of, and eventual increase in capacity relating to, three compressor units. Those units are for its natural gas pipeline system to transport natural gas from Western Canada to Washington, Oregon, and California. *See Gas Transmission NW, LLC*, 185 FERC ¶ 61,035 at PP 2, 23 (2023) (“Certificate Order”), *on reh’g*, 187 FERC ¶ 61,023 (2024) (“Rehearing Order”), *on further reh’g*, 187 FERC ¶ 61,177 (2024) (“Second Rehearing Order”).

In November 2019, GTN announced the GTN Xpress Project. It told investors that the project would increase the capacity of its pipeline by both replacing existing compressors with larger models and completing other work.⁸ It stated that the “reliability and [] replacement work” would account for “more than three-quarters of the total cost,” which it “expected to recover in recourse rates.”

⁸ In their briefing, Washington and Oregon (the “States”) point to a document referring to a “Phase I” and “Phase II” of the project. To portray the replacements and expansion as one project, they say that the replacements “appear[] to have been ‘Phase I.’”

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

Four months later, GTN filed § 2.55(b)(1) notices with FERC to state that it intended to replace compressor units at three compressor stations. As GTN explained, its current compressor units at those stations were installed in the early 1970s and needed to be replaced to prevent potential reliability risk. It then stated that it would replace each compressor with a “Solar Titan 130 gas turbine compressor unit.” Although the newer Solar Titan compressors would have the ability to operate at a higher capacity than the aging 1970s units, GTN planned to install operational controls to ensure that they would not. Putting that aside, however, GTN explained that the Solar Titans were the right choice. The model “was the nearest reliable size available to the unit being replaced,” “w[ould] provide greater system reliability, flexibility and security to existing shippers through an efficient modification of existing facilities,” and would provide “maintenance and operational efficiencies.” According to GTN, these replacements would therefore not result in any reduction or abandonment of service to existing shippers (the “Existing Shippers”), as required by 18 C.F.R. § 2.55(b)(1)(i).

FERC then issued a one-page report for each of GTN’s replacement compressor notices. The reports confirmed that the described replacements met § 2.55(b)’s requirements and that no further environmental review was needed. The Solar Titans then went into service in October and November 2021.

That same October, GTN filed a § 7 application to expand capacity at the three compressor stations. It explained that the planned expansion was in response to rising demand for natural gas in the Pacific Northwest and the need for an alternative supply of natural gas due to declining production from Rocky Mountain supply basins. GTN then noted that it had held a binding open season for the Existing Shippers from July to September 2019. It had received no offers from them to turn back their already contracted-for transportation capacity.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

GTN had found three unaffiliated buyers for the entire expanded capacity (the “Expansion Shippers”). It stated that the proceeds from these three purchasers would cover the estimated \$75.1 million in expansion costs without subsidization by Existing Shippers. In that cost estimate, however, GTN did not include the \$251 million that it had already spent to replace its compressors with the Solar Titans.

GTN also requested that FERC grant a predetermination for its next § 4 rate proceeding that it could roll the expansion project’s \$75.1 million in costs into its existing rates. In support of that request, GTN explained that the project’s projected revenues exceeded its estimated cost-of-service. Again, however, it excluded from that estimate the costs to replace its older compressors with the Solar Titans. GTN justified that exclusion with its assumption that it would continue to be able to roll those replacement costs into the rates for Existing Shippers. To support that assumption, it reasoned that “re-allocat[ing]” the replacement costs to Expansion Shippers “would create a massive windfall for [E]xisting [S]hippers.” According to GTN, that windfall would allow Existing Shippers to “reap the pricing and efficiency benefits” from the expansion project lowering rates for all shippers without paying for “the replacement units that were installed to benefit ‘[E]xisting [S]hippers.’”

FERC then worked on its response. Consistent with its NEPA obligations, it prepared an EIS for the expansion project after a notice and comment period. The final statement examined the project’s effects across several environmental factors, including geological resources, natural hazards, soils, water resources, vegetation, wildlife, protected species, environmental justice, cultural resources, visual resources, land use, air quality, noise, climate change, reliability and safety, and cumulative impacts. Except in one instance not relevant to this case, the statement concluded that “approval of the [p]roject would not result in significant environmental

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

impacts” because “the [p]roject facilities would be located within the fenced boundaries of existing compressor stations or abutting an existing compressor station.” The statement also discussed alternatives to approving the proposed project, including a “no-action” alternative. After review, those alternatives were ultimately rejected because they (1) failed to meet the project’s stated purpose and objectives, (2) were technically or economically impractical, or (3) did not provide a significant environmental advantage over the project as proposed.

FERC’s EIS declined to consider the § 2.55(b) compressor replacements as part of the expansion project. It reasoned that the replacements were not “connected actions” to the expansion under NEPA. It then did the same for its analysis under § 7 of the Natural Gas Act.

FERC then issued GTN its § 7 certificate to proceed with the expansion project. It declined GTN’s request, however, for a predetermination that it may roll in the project costs to its base rates in a future § 4 proceeding.

C

Washington and Oregon (the “States”), Columbia Riverkeeper and Rogue Climate (“Riverkeeper”), and GTN all sought rehearing of FERC’s Certificate Order. GTN went first. It challenged FERC’s decision to deny it a predetermination of rolled-in rates, claiming that the compressor replacements were already “reflected in GTN’s existing rates.” The States then sought leave to answer GTN’s request for rehearing. They argued that (1) the costs of GTN’s earlier § 2.55(b) replacements should be included in the § 7 initial rate charged to Expansion Shippers, (2) the replacement compressors should not have been approved under § 2.55(b) in the first place, and (3) FERC should not have used the depreciation rate from GTN’s most recent § 4 proceeding to calculate the § 7 rate for the expansion

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

project. Riverkeeper then filed a separate petition for rehearing. It focused on NEPA, challenging (1) the Certificate Order's treatment of the no-action alternative, (2) its failure to consider GTN's replacement compressors a "connected action," and (3) its failure to adequately analyze the expansion project's safety risks.

In a 2–1 divided panel, FERC denied all three requests. After that denial, the States filed a new request for rehearing of the Rehearing Order which FERC also denied.

GTN then petitioned this court for review, again challenging FERC's denial of a predetermination for rolled-in rates.⁹ Two days later, Riverkeeper petitioned for review in the D.C. Circuit, challenging FERC's certification of the expansion project. *See Columbia Riverkeeper v. FERC*, No. 24-1002 (D.C. Cir. Jan. 4, 2024). The States subsequently filed another petition for review in the D.C. Circuit, which that court consolidated with Riverkeeper's petition. *See Washington v. FERC*, No. 24-1025 (D.C. Cir. Feb. 12, 2024).

The three petitions were referred to a Judicial Panel of Multidistrict Litigation (the "JPML") under 28 U.S.C. § 2112(a)(3). *See In re FERC*, 730 F. Supp. 3d 1366 (J.P.M.L. 2024). The JPML held that only GTN's petition was filed in time to qualify for § 2112(a)(3)'s multi-circuit lottery procedures. *Id.* at 1369–70. So GTN won the lottery by default. The JPML held that all challenges to the expansion project should be consolidated in the Fifth Circuit, where GTN had filed its petition. *Id.* at 1370. Per the JPML's order,

⁹ This circuit was an appropriate venue for GTN to file because its principal place of business is in Houston, Texas. *See* 15 U.S.C. § 717r(b) (permitting parties aggrieved by a FERC order to seek judicial review "in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located *or has its principal place of business*, or in [the D.C. Circuit]" (emphasis added)).

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

FERC then filed its record with this court, triggering § 2112(a)(5)'s requirement that all related petitions “shall” be “transfer[red]” here.

Attempting to get back to the D.C. Circuit, the States moved for this court to dismiss GTN's petition for review. They claimed that GTN lacked standing and that its petition was unripe. Consequently, they requested that this court to transfer the remaining petitions back to the D.C. Circuit. A divided panel (the “Motions Panel”) denied GTN's motions without opinion, leaving more fulsome treatment of standing and ripeness to the eventual merits panel.¹⁰

One week later, the plot thickened. GTN entered into an agreement in principle with the Existing Shippers. That agreement was part of a settlement to resolve all issues in a then-ongoing, separate § 4 rate-setting proceeding. Nonetheless, it focused in part on the possibility that FERC would—in a future rate-setting proceeding—reallocate some of this case's replacement-compressor costs to the expansion project. If that happens, then the agreement “cap[s]” that reallocation at \$50 million. *Gas Transmission NW LLC*, 188 FERC ¶ 63024, at P 30 (2024).¹¹ In other words, the Existing Shippers effectively agreed to indemnify GTN (and, by extension, the Expansion Shippers) for any § 2.55(b) replacement costs beyond \$50

¹⁰ Although the Motions Panel denied the motions to dismiss, as opposed to carrying them with the case, its determinations do not bind us. *See Tex. Democratic Party v. Abbott*, 978 F.3d 168, 176 (5th Cir. 2020) (“[O]pinions and orders of a panel with initial responsibility for resolving motions filed in an appeal are not binding on the later panel that is assigned the appeal for resolution.” (citation omitted)); *EEOC v. Neches Butane Prod. Co.*, 704 F.2d 144, 147 (5th Cir. 1983) (“A denial by a motions panel of a motion to dismiss for want of jurisdiction . . . is only provisional.”).

¹¹ The States and Riverkeeper filed an earlier petition with this court to contend that GTN's petition is now moot due to the agreement in principle. A second motions panel denied that petition.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

million.¹² GTN has also since entered into new contracts with each Expansion Shipper.

After reaching these agreements with the Existing and Expansion Shippers, GTN completed the expansion project. It is now fully operational.

II

Before reaching the merits of the parties' petitions, we first consider two threshold questions: Does GTN have standing to bring its petition, and is that petition ripe. We hold that GTN has satisfied both requirements.

A

"Like a plaintiff who files a complaint, a petitioner who seeks review of agency action 'invok[es] federal jurisdiction' and therefore 'bears the burden of establishing' standing." *Ctr. for Biological Diversity v. EPA*, 937 F.3d 533, 536 (2019) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)). To satisfy Article III standing, a petitioner must show that (1) it has suffered an "injury in fact," (2) the injury "was caused or likely will be caused" by the respondent, and (3) the injury is likely to be "redressed by the requested judicial relief." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). Unlike ripeness and mootness, standing is measured "at the time of the action brought." *Grupo Dataflux v. Atlas Glob. Grp.*, 541 U.S. 567, 570 (2004). For petitions to this court challenging an agency action, that is when the petitioner "seeks review of agency action." *Ctr. for Biological Diversity*, 937 F.3d at 536.

"[T]he first and foremost of standing's three elements" is injury in fact. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338–39 (2016) (citation modified).

¹² As explained, the replacement costs totaled \$251 million, far more than the \$50 million cap.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

“To establish injury in fact, a plaintiff must show that [it] suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Id.* at 339 (quoting *Lujan*, 504 U.S. at 560). To challenge a FERC decision, “[t]he order must ‘definitively’ affect the petitioner’s rights and . . . cannot be altered by subsequent administrative action.” *Gulfport Energy Corp. v. FERC*, 41 F.4th 667, 676 (5th Cir. 2022) (citing *Brooklyn Union Gas*, 190 F.3d at 373).

“The second and third standing requirements—causation and redressability—are often ‘flip sides of the same coin.’” *All. for Hippocratic Med.*, 602 U.S. at 380 (quoting *Sprint Commc’ns Co. v. APCC Servs., Inc.*, 554 U.S. 560 n.1 (2008)). To satisfy causation, the respondent’s alleged conduct need not be the sole cause of the petitioner’s injuries. It only needs to be “among” the significant contributors. *Book People, Inc. v. Wong*, 91 F.4th 318, 333 (5th Cir. 2024) (quoting *K.P. v. LeBlanc*, 627 F.3d 115, 123 (5th Cir. 2010)). To satisfy redressability, a petitioner must show “an injury to [it]self that is likely to be redressed by a favorable decision.” *Simon v. E. Ky. Welfare Rts. Org.*, 26 U.S. 426, 38 (1976).

In their joint intervenor brief, the States and Riverkeeper first argue that GTN has failed to establish an injury-in-fact. They reason that FERC’s orders denying predetermination of rolled-in rates do not change what GTN can charge Existing or Expansion Shippers. That can only happen at the ensuing § 4 rate case. *See Ala. Mun. Distrib. Grp. v. FERC*, 312 F.3d 470, 473 (D.C. Cir. 2002) (holding that customers lacked standing in part because their rates would not change until after a § 4 rate case). According to the joint intervenors, injury from that potential future § 4 determination declining to roll in rates is too speculative.

Then, the States and Riverkeeper argue that any voluntary actions that GTN took to mitigate added uncertainty from the lack of a

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

predetermination do not give it standing. Those actions included delaying construction and negotiating settlements with Existing and Expansion Shippers. The joint intervenors list three reasons why these actions do not pass muster for standing. The first two relate to injury and the last relates to causation. First, GTN's voluntary response to a possible risk of loss is not a cognizable injury because the potential loss was not "certainly impending." *Clapper v. Amnesty Int'l*, 568 U.S. 398, 402 (2013); *see also Glass v. Paxton*, 900 F.3d 233, 242 (5th Cir. 2018) (holding insufficient even a "reasonable probability" of harm resulting from "objectively understandable and reasonable" reactions to the challenged actions of the defendant).

Second, even if those self-imposed injuries could suffice for standing purposes, the States and Riverkeeper contend that GTN never met its burden to show those injuries existed at the time GTN filed its petitions.¹³ *Pederson v. La. State Univ.*, 213 F.3d 858, 870 (5th Cir. 2000). At those times, the joint intervenors claim that GTN repeatedly announced that it would begin construction in April 2024. They say that only after they filed their motion to dismiss did GTN change its tune. Then, GTN asserted that it "currently determined" to delay construction and would "now attempt to . . . re-negotiate" its rates with Expansion Shippers.

Third, the joint intervenors contend that GTN's claimed injuries do not stem from FERC's decision to deny a predetermination. Instead, they claim, they stem from uncertainty as to whether FERC would ultimately roll in rates to Existing Shippers in an upcoming § 4 rate case. GTN's settlement with Existing Shippers—according to the States and Riverkeeper—thus

¹³ GTN technically filed two petitions for review: on January 2, 2024 and April 19, 2024. The first sought review of the Certificate Order and the second sought review of the Rehearing Order.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

resolved GTN's injuries by removing that uncertainty, even though the company still lacks a presumption of rolled-in rates.

We disagree with each of these points and conclude that GTN has met its burden to demonstrate standing. To start, financial harm from increased transaction costs and the lost revenue from construction delays—totaling \$1.3 million per month—are cognizable injuries. *See Young Conservatives of Tex. Found. v. Smatresk*, 73 F.4th 304, 309 (5th Cir. 2023). As further evidence of injury, GTN provided an affidavit discussing the Expansion Shippers' increased leverage in renegotiations and GTN's diminished "market competitiveness." *See Legacy Cmty. Health Servs.*, 881 F.3d at 367; *Clinton*, 524 U.S. at 433 (1998).

The States' and Riverkeeper's responses do not adequately address the immediacy of these injuries. The pair are correct that a voluntary response to a possible risk of loss is not a cognizable injury. *See Clapper*, 568 U.S. at 402. But FERC's orders ultimately left GTN with little choice other than to take at least some of the steps it did or to cancel the pipeline project altogether. Such a Hobson's choice is really none at all. That means that this is not a case where injury stems from mere delay, but from putting the viability of the core project itself into question. *See LeBlanc*, 627 F.3d at 122.

GTN has also demonstrated causation and redressability. As to causation, it shows that the FERC orders were a contributing cause to the financial injuries it establishes. *See Book People*, 91 F.4th at 333. The States' and Riverkeeper's arguments to the contrary fail to address this point because they speak only to events that occurred after GTN filed its petition. *See Grupo Dataflux*, 541 U.S. at 570. As to redressability, a favorable decision from this court would "lessen" GTN's injuries by removing the pending costs that will be associated with its burden to establish rolled-in rates at the

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

upcoming § 4 rate case. *See Inclusive Cmtys. Proj., Inc. v. Dep't of Treasury*, 946 F.3d 649, 655 (5th Cir. 2019).

Finally, GTN was not too late to file its declaration in support of standing at the start of the petition and throughout the case. A petitioner carries a burden of production for standing similar to that required at summary judgment. *Shrimpers & Fishermen of RGV v. Tex. Comm'n on Env't Quality*, 968 F.3d 419, 423 (5th Cir. 2020) (per curiam) (explaining that in direct review of agency action, petitioners must support their claim to standing with record evidence). That required evidence, however, can be filed alongside the petitioner's response to a motion to dismiss. *Sierra Club*, 292 F.3d at 900–01. Because GTN filed its affidavit in its response to the joint intervenors' motion to dismiss, it was timely in doing so. *See id.*¹⁴

For these reasons, GTN had standing to challenge FERC's decision to deny it a predetermination of rolled-in rates. *See All. for Hippocratic Med.*, 602 U.S. at 380.

B

Next, we consider whether GTN's petition is ripe for review. *See Energy Transfer Ptrs. v. FERC*, 567 F.3d 134, 139 (5th Cir. 2009). Whether an agency action is ripe depends on the “fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” *Id.* at 139 (quoting *Abbott Lab'ys v. Gardner*, 387 U.S. 136, 149 (1967)). Both elements are required. *Texas v. United States*, 497 F.3d 491, 498 (5th Cir. 2007) (citation omitted). Even if a case was ripe when filed, “[i]ntervening events relevant to the ripeness inquiry should be considered and may be

¹⁴ Additionally, the record evidence that the States and Riverkeeper cite fails to show that GTN only sought to delay construction to manufacture standing after the pair filed their motion to dismiss.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

determinative.” *Am. Motorists Ins. Co. v. United Furnace Co., Inc.*, 876 F.2d 293, 302 n.4 (2d Cir. 1989); see *DM Arbor Ct., Ltd. v. City of Houston*, 988 F.3d 215, 219 (5th Cir. 2021) (explaining that “ripeness is peculiarly a question of timing”); WRIGHT & MILLER, 13B FED. PRAC. & PROC. JURIS. § 3532.7 (3d ed. 2025) (stating that ripeness “should be decided on the basis of all the information available to the court,” including “intervening events that occur after decision in lower courts”).

To satisfy the hardship prong, “the administrative action” must create “a situation in which primary conduct is affected” so that its impact is felt “immediately by those subject to [the action] in conducting their day-to-day affairs.” *Toilet Goods Ass’n v. Gardner*, 387 U.S. 158, 164 (1967). “[M]ere uncertainty” regarding the validity of an agency’s future action is not “real hardship,” even if that uncertainty looms over the petitioners’ private contract negotiations. *Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 811–12 (2003). Still, only “some degree of hardship” is required. *Cochran v. SEC*, 20 F.4th 194, 212 (5th Cir. 2021) (en banc), *aff’d and remanded sub nom. Axon Enter., Inc. v. FTC*, 598 U.S. 175 (2023) (quoting *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 545 (5th Cir. 2008)). This hardship can be “adverse effects of a strictly legal kind.” *Ohio Forestry Ass’n, Inc. v. Sierra Club*, 523 U.S. 726, 733 (1998).

“Generally, issues are fit for judicial decision if ‘any remaining questions are purely legal ones; conversely, a case is not ripe if further factual development is required.’” *Cochran*, 20 F.4th at 212 (quoting *Roark & Hardee*, 522 F.3d at 545). However, even a purely legal question may be inappropriate for review if the “challenged agency action [does not] constitute[] [a] ‘final agency action’ within the meaning of the [APA].” See *Pennzoil Co. v. FERC*, 742 F.2d 242, 244 (5th Cir. 1984) (stating that “[e]ven were we to concede that the issues . . . present purely legal questions, we are not persuaded that review would be appropriate at this time” because

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

“FERC has not yet made a final determination on the two issues which are at the heart of the present controversy”); *Energy Transfer Ptrs.*, 567 F.3d at 139–40 (same).¹⁵

The States and Riverkeeper argue that GTN’s challenge to FERC denying it a predetermination is unripe. They point to GTN having already negotiated its price with the Expansion Shippers for the pipeline’s added capacity. In turn, the States and Riverkeeper argue that the outcome of the next § 4 rate case would have been uncertain even if FERC had granted GTN a predetermination. *N.Y. Elec. & Gas Corp.*, 177 F.3d at 1041. Thus, they contend that GTN’s alleged hardship stems not from lacking a predetermination, but from the uncertainty over the future § 4 rate case’s final outcome.

Second, there is GTN’s claimed hardship from having to delay construction due to the increased risk from not having a predetermination. The States and Riverkeeper respond that the harm from this uncertainty “no longer exists.” They make several arguments to this effect, but we find them each unpersuasive.

We are unpersuaded by the States’ and Riverkeeper’s arguments. Take the hardship prong to start. Notwithstanding the joint intervenors’ contentions to the contrary, GTN’s claims are not predicated on added uncertainty from lacking the predetermination. They instead stem from certain effects on negotiations and construction delays. *See Nat’l Park Hosp.*

¹⁵ That said, the Natural Gas Act does not directly limit our review to “final agency action[s],” as is the default rule under the APA. *Contrast* 5 U.S.C. § 704, *with Midship Pipeline Co. v. FERC*, 45 F.4th 867, 872 (5th Cir. 2022) (“Our court has long recognized that [the Natural Gas Act] does not require that an order be a ‘final’ one; rather, the inquiry is whether a party has been ‘aggrieved’ by an order of [FERC].” (quoting *Energy Transfer Ptrs.*, 567 F.3d at 139)).

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

Ass'n, 538 U.S. at 811–12. The agreement in principle with Existing Shippers does not change this fact. GTN still has a \$50 million stake in the outcome of this proceeding. Thus, it has shown “some degree of hardship.” *See Cochran*, 20 F.4th at 212.

Same too for GTN’s second claim: whether FERC acted unreasonably by discounting GTN’s data showing that “the revenues to be generated” by the expansion project “are expected to exceed the costs.” True, “set[ting] rolled-in rates” presents “a difficult issue of fact” that FERC plans to address in an upcoming § 4 rate case. *See Algonquin Gas Transmission*, 948 F.2d at 1313. But GTN is not challenging the ultimate rates; it is challenging FERC’s decision not to grant it a predetermination in favor of those rates. GTN says FERC only based that decision on two, undisputed facts: that (1) the project will “involve the removal of horsepower restrictions” and (2) “a portion of the horsepower from the replacement units will be used to support” the project.¹⁶ Thus, additional factual development would not help the panel decide GTN’s narrow challenge.

The FERC orders are also final as to denying GTN’s request for a predetermination. Although FERC did not make a final determination whether the Expansion Shippers’ rates will receive rolled-in treatment, it did determine that GTN would not receive a presumption to that effect.

The cases that the States and Riverkeeper cite in response are distinguishable. In *Tennessee Valley Municipal Gas Ass’n v. FERC*, the challenger’s petition was unripe because FERC needed to develop a record that “fully explore[d]” additional facts for the court to address its claims.,

¹⁶ In its Certificate and Rehearing Orders, FERC has already ruled on whether the costs of the replacement compressors appear to be in existing rates that the States and Riverkeeper raise—the potential third fact that the States and Riverkeeper raise.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

140 F.3d 1085, 1088 (D.C. Cir. 1998) (citation omitted). And in *Brooklyn Union*, we held that—unlike here—FERC’s position was “uncertain[]” as to crucial questions of fact. *See* 190 F.3d at 374 (“Questions of whether . . . [a preliminary FERC order] is ripe for review are often nestled in clusters of fact and circumstance unique to the case.”).¹⁷ On the other hand, we have since held ripe a challenge to a FERC order that “requir[ed] an ALJ to make a definitive finding” as to who should bear certain costs associated with a new pipeline. *See Midship Pipeline Co. v. FERC*, 45 F.4th 867, 873–74 (5th Cir. 2022) (noting as support that the petitioner’s challenge “require[d] no additional factual development” (quoting *Gulfport Energy*, 41 F.4th at 679)).

To be sure, for ripeness purposes we have “perceive[d] a difference between a challenge to [FERC’s] final regulations that apply to all in a regulated industry after notice and hearing and a challenge to a[] [FERC] order requiring an evidentiary hearing in a particular case.” *Energy Transfer Ptrs.*, 567 F.3d at 142–43 (holding unripe a challenge to FERC’s decision to deny a party’s “motion for summary disposition”). But that case concerned an “Order Establishing Hearing,” which—like the orders in *Tennessee Valley* and *Brooklyn Union*—stressed “that there are genuine issues of fact material to the decision” that “require a hearing before an ALJ.” *See id.* at 137. Again, not so here. *See Midship Pipeline Co. v. FERC*, 45 F.4th at 873–74 (distinguishing *Energy Transfer Ptrs.*, 567 F.3d at 141–42). For that and the

¹⁷ *See also Brooklyn Union*, 190 F.3d at 375 (clarifying that “we need not conclude that” FERC orders denying a presumption of rolled-in rates “are never immediately [ripe], and we do not” make that conclusion).

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

above reasons, GTN’s petition is ripe for review. *See Texas*, 497 F.3d at 498.¹⁸

* * *

In sum, GTN has standing and its petition is ripe for review. *See All. for Hippocratic Med.*, 602 U.S. at 380; *Texas*, 497 F.3d at 498. We therefore retain jurisdiction to reach that petition’s merits, as well as the merits raised in the States’ and Riverkeeper’s own petitions. *See In re FERC*, 730 F. Supp. 3d at 1370.

III

We now set out the applicable standards of review for the petitioners’ claims. Under the Natural Gas Act and the Administrative Procedure Act (the “APA”), this court reviews FERC’s findings of fact to ensure that they are “supported by substantial evidence.” 15 U.S.C. § 717r(b); 5 U.S.C. § 706(2)(E). “Substantial evidence is less than a preponderance of the

¹⁸ The States and Riverkeeper also satisfy the standing and ripeness requirements in their own petitions for review. The States have standing because the Expansion Shippers seek to provide natural gas to customers within the States’ borders. *See Pac. Gas & Elec. Co. v. FERC*, 106 F.3d 1190, 1194–96 (5th Cir. 1997). The Expansion Shippers also risk “contribut[ing] to [] pollution” within the States’ borders in a way “that impairs” their interests. *See Sierra Club v. Cedar Point Oil Co.*, 73 F.3d 546, 556–58 (5th Cir. 1996) (emphasis omitted). For its part, Riverkeeper has associational standing. *See Texans United for a Safe Econ. Educ. Fund v. Crown Cent. Petroleum Corp.*, 207 F.3d 789, 792 (5th Cir. 2000). It is an organization both headquartered and with members in Oregon. One member’s home of fifteen years is just a few blocks from GTN’s pipeline. *See Massachusetts v. EPA*, 549 U.S. 497, 518 (2007) (holding that only one member of an association needs to have standing for a case to proceed).

Separately, both petitions are ripe. They each challenge FERC’s final decision under § 7 to approve the expansion project—meaning no further factual development is required. *See Cochran v. SEC*, 20 F.4th 194, 212 (5th Cir. 2021) (en banc). They also claim immediate hardship from the expansion project going into effect for the same reasons that they demonstrate adequate injury for standing. *See Toilet Goods Ass’n v. Gardner*, 387 U.S. 158, 164 (1967).

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

evidence, but more than a scintilla.” *BP Am., Inc. v. FERC*, 52 F.4th 204, 213 (5th Cir. 2022).

This court reviews FERC’s other determinations to ensure that they are not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Under that standard, we “simply ensure[] that the agency . . . has reasonably considered the relevant issues and reasonably explained the decision.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). FERC’s “choices in regulating rates, tariffs, and related practices involve technical issues within its purview that are entitled to great deference.” *El Paso Elec. Co. v. FERC*, 832 F.3d 495, 503 (5th Cir. 2016). So too is FERC’s interpretation of its “prior orders.” *Pac. Gas Transmission Co. v. FERC*, 998 F.2d 1303, 1308 (5th Cir. 1993). Still, an agency cannot “entirely fail[] to consider an important aspect of the problem [or] offer[] an explanation for its decision that runs counter to the evidence before the agency.” *Id.*

We also apply the arbitrary-and-capricious standard to NEPA challenges. *Brazoria*, 98 F.4th at 189–90. Nonetheless, “[t]he bedrock principle of judicial review in NEPA cases can be stated in a word: Deference.” *Seven Cnty.*, 145 S. Ct. at 1515. “Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness.” *Id.* at 1513; *see also Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (“Inherent in NEPA . . . is a rule of reason.”). The court’s role is “simply to ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary or capricious.” *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97–98 (1983). Even then, “if an EIS falls short in some respects, that deficiency may not necessarily require a court to vacate the agency’s ultimate approval of a

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

project, at least absent reason to believe that the agency might disapprove the project if it added more to the EIS.” *Seven Cnty.*, 145 S. Ct. at 1514.

IV

We now consider GTN’s claims that FERC arbitrarily and capriciously denied its request for a predetermination of rolled-in rates. Again, we find that FERC did not err.

“Pipelines generally have two ways to ‘allocate the costs associated with new or expanded facilities.’” *Fairless Energy*, 77 F.4th at 1144 n.3 (quoting *Consol. Edison*, 315 F.3d at 320). First, “[t]he pipeline may roll in these costs, by distributing additional charges among all customers of the pipeline system.” *Id.* (quoting *Consol. Edison*, 315 F.3d at 320) (internal quotation marks omitted); see *Brooklyn Union*, 19 F.3d at 372 (stating the same). “Alternatively, the pipeline may charge an incremental rate to the customers who are solely expected to benefit from the improved facilities.” *Fairless Energy*, 77 F.4th at 1144 n.3 (citing *Consol. Edison*, 315 F.3d at 320); see *Brooklyn Union*, 19 F.3d at 373 (stating the same).

As discussed, a § 7 applicant must be able to financially support the project without relying on subsidies from existing customers. Policy Statement, 88 FERC at ¶¶ 61,745–46; *Myersville Citizens*, 783 F.3d at 1309. That requirement usually leads FERC to require incremental pricing—meaning that it only incorporates expansion costs into expansion customers’ rates—not rolled-in pricing. Policy Statement, 88 FERC at ¶ 61,745; *Consol. Edison*, 315 F.3d at 320 (explaining that, in adopting the Policy Statement, FERC “decided to develop a new policy that de-emphasized rolled-in rates”).

Nonetheless, at a § 7 proceeding a pipeline company can request a predetermination for the ensuing § 4 rate case that rolled-in rates will apply. 71 FERC ¶ 61,241, ¶ 61,915 (1995); see *Brooklyn Union*, 19 F.3d at 372. FERC

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

grants a predetermination if the § 7 applicant demonstrates that “the rate effect [of an expansion project] on existing customers is not substantial.” 71 FERC at ¶ 61,915; *Consol. Edison*, 315 F.3d at 320 (quoting the same); see *E. Tenn. Nat. Gas, LLC*, 186 FERC ¶ 61,210 at P 45 (2024) (explaining that FERC will only grant a predetermination if the company demonstrates that “the construction and operation of new facilities will not result in existing customers subsidizing the expansion”).

Here, GTN claims that FERC arbitrarily and capriciously denied its request for a predetermination to roll in rates. Its argument is twofold. The first part focuses on the § 2.55(b) replacement costs. GTN highlights that an implication of FERC’s denial is that a portion of the § 2.55(b) replacement costs—which were already reflected in the Existing Shippers’ rates—could potentially be reallocated to Expansion Shippers in the expansion project’s upcoming § 4 proceeding. Denying a predetermination in this circumstance, GTN insists, is therefore a departure from longstanding policy to presumptively grant rolled-in rate treatment for § 2.55(b) replacements. GTN cites three FERC orders to demonstrate this policy’s existence. See *Paiute Pipeline Co.*, 104 FERC ¶ 61,078 at P 31 (2003) (stating that replacement facilities constructed “under [§] 2.55 . . . qualify for a presumption in favor of rolled-in pricing.”); *Dominion Transmission, Inc.*, 129 FERC ¶ 61,048 at P 26 (2009) (reaffirming the same); *ANR Pipeline Co.*, 171 FERC ¶ 61,233 at PP 21, 32 (2020) (same). GTN also instructs us that the policy is intuitive. It believes so because facilities approved under § 2.55(b) are “constructed to improve the reliability of service to existing customers or to improve service by replacing existing capacity.” *E. Tenn. Nat. Gas, LLC*, 186 FERC ¶ 61,210 at P 45). GTN reasons that FERC’s policy should specifically apply here because the § 2.55(b) replacements have been completed and went into service two years before FERC certified the expansion project under § 7.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

GTN then notes that FERC's Rehearing Order had a meager response to the three cases it cited. All FERC said, according to GTN, was that the agency has a "general[]" policy of allocating replacement costs between existing shippers and expansion shippers when the "proceedings" involve both replacements and expansions. But GTN responds that nowhere in the proceedings for the expansion project did FERC acknowledge the more specific policy that the company hinges its argument on. Thus, in GTN's view, FERC's departure from that specific policy in this case is arbitrary and capricious. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (holding that an agency must "display awareness that it is changing position"); *Jupiter Energy Corp. v. FERC*, 407 F.3d 346, 349 (5th Cir. 2005) (holding that FERC must "supply a reasoned analysis for any departure from other agency decisions") (quotation omitted).

GTN then moves to its second argument, which focuses on the interplay between the replacement and the expansion costs. The company contends that—even ignoring FERC's specific § 2.55(b) policy—the agency arbitrarily and capriciously denied a predetermination of rolled-in rates. GTN points to a separate, more general FERC policy for support. That policy, GTN tells us, considers rolled-in rate treatment appropriate for facilities constructed to improve the reliability of service to existing customers or to improve service by replacing existing capacity. *See E. Tenn. Nat. Gas*, 186 FERC ¶ 61,210 at P 45. Because the replacement compressors "improve the reliability of service to existing customers," rolled-in treatment for GTN's pipeline was purportedly appropriate.¹⁹

¹⁹ As GTN observes, there is no dispute that the expansion project's revenues would exceed its costs if the replacement costs could continue to be rolled into the base rates charged to Existing Customers. Thus, a predetermination of rolled-in rates would be appropriate under the policy that GTN alleges to exist.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

GTN contends that FERC's two justifications to the contrary are unreasonable. One was that the expansion project involved removal of the artificial capacity restrictions that GTN placed on the compressor units when it initially installed them under § 2.55(b). For this, GTN notes that it explained to FERC that lifting artificial capacity restrictions cannot support charging an incremental rate to Expansion Shippers. That is because removing those restrictions "in no way increases the costs that GTN incurred in order to implement the replacements." Thus, from GTN's perspective, allocating the replacement costs to the Expansion Shippers would violate "FERC's foundational cost-causation principle." That principle, GTN instructs us, requires costs to be allocated "to those who cause the costs." *El Paso Elec.*, 76 F.4th at 361. Applying that principle here, GTN concludes that the software modifications required to remove the capacity restrictions may not be used to allocate additional costs to Expansion Shippers. *See ANR Pipeline*, 171 FERC ¶ 61,233 at PP 4, 21 (rolling in rates for aspects of an expansion project, even though those aspects included lifting artificial capacity restrictions on a replacement compressor unit).²⁰ GTN claims that FERC never responded to this point. *See Mexican Gulf Fishing Co. v. U.S. Dep't of Commerce*, 60 F.4th 956, 973 (5th Cir. 2023) (holding that an agency acted unreasonably because it "did not address the issue at all").

FERC's other justification was that a portion of the replacement capacity would be used to support the expansion project. In response, GTN highlights its explanation to FERC that the Solar Titan replacement units were the "only units that allowed GTN to meet its existing service

²⁰ As stated, GTN estimated that the expansion project cost \$75.1 million, which did not include the § 2.55(b) replacements costs. Those costs come from GTN adding a fourth compressor not at issue in this case and performing ancillary work at the other three compressor stations. GTN does not list software modifications as a cost.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

obligations.” On that basis, the company maintains that FERC policy and precedent demonstrate that the full costs of those replacement units should be borne by all shippers via rolled-in rate treatment, not solely Expansion Shippers through an incremental rate increase. Thus, GTN concludes that FERC’s justification violates the agency’s well-established policy that expansion shippers should not be allocated costs associated with replacement facilities simply because those shippers use the facilities’ compressor capacity. *See Transcon. Gas Pipe Line Co.*, 161 FERC ¶ 61012 at P 61 (“[FERC] generally does not allocate any existing plant costs to an incremental rate, despite the fact that service to the expansion shippers requires use of existing plant.”) (collecting sources).

We disagree with GTN and think that FERC did not act arbitrarily and capriciously by denying GTN’s predetermination request. To start, GTN overreads FERC’s precedent to state that the agency has a policy to presumptively grant predeterminations for § 2.55(b) replacements. The past FERC orders that GTN cites as support are each distinguishable. They all either (1) divided the capacity for the replacement units between existing and expansion customers, or (2) involved in-kind replacement units of similar capacity.²¹ Neither is true here. First, the expansion project’s additional capacity is already fully allocated to Expansion Suppliers via the thirty-year precedent agreements. Therefore, none of that capacity will go to Existing Shippers. *See El Paso Elec.*, 76 F.4th at 357 (holding that the “cost causation” principle requires costs to be allocated to those that benefit). Second, the Solar Titans provide an approximately 6,000-horsepower increase from the

²¹ *See Transcon. Gas Pipe Line Co.*, 185 FERC ¶ 61,130 at P 62 (2023) (dividing cost of more powerful compressors between existing and expansion customers based on percentage of capacity used); *Paiute Pipeline Co.*, 104 FERC ¶ 61,078 at P 27 (2003) (referring only to “in-kind replacement[s]”); *Dominion Transmission*, 129 FERC ¶ 61,048 at P 27 (same).

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

old units. These are not in-kind replacements. *See Transcon. Gas Pipe Line Co.*, 182 FERC ¶ 61,130 at PP 43–44 (2023).

GTN also overreads FERC precedent for the second policy it cites: that rolled-in rate treatment is always appropriate for facilities constructed to improve the reliability of service to existing customers or to improve service by replacing existing capacity. *See E. Tenn. Nat. Gas*, 186 FERC ¶ 61,210 at P 45). Here too, the past FERC orders that GTN cites are distinguishable. Those orders did not involve rolling costs of excess, unused replacement capacity into existing rates, which would occur if GTN rolled in its rates here. *See S. Nat. Gas Co.*, 83 FERC ¶ 62,168 (1998); *Paiute Pipeline*, 104 FERC ¶ 61,078 at P 27; *Dominion Transmission*, 129 FERC ¶ 61,048 at P 26–27; *ANR Pipeline*, 185 FERC ¶ 61,191 at PP 32, 38 & nn.65–66.

Further to this point, GTN accumulated far greater excess capacity than necessary to replace its old compressors. As the States and Riverkeeper observe, there was a smaller-sized compressor replacement that GTN could have chosen to meet virtually all the Existing Shippers' energy demands. But GTN nonetheless chose the much larger Solar Titans without seeking to allocate that excess cost to the Expansion Shippers. It is true, as GTN notes in its Reply Brief, that this smaller-sized alternative unit would have also increased compressor capacity. But it would have only done so by approximately 1,600 horsepower, a fraction of the approximately 6,000 horsepower increase from the Solar Titans.

To be sure, it is possible that GTN can provide a suitable explanation as to why so much more power was needed for Existing Shippers only. But it will need to provide that explanation in a § 4 rate case without a predetermination putting a thumb on the scale in its favor. FERC did not act arbitrarily and capriciously by agreeing with that conclusion. *See El Paso Elec.*, 832 F.3d at 503; *Pac. Gas Transmission Co.*, 998 F.2d at 1308.

24-60002
c/w Nos. 24-60197, 24-60280, 24-60354

V

With respect to § 7 of the Natural Gas Act, the States first press arguments that FERC erred in finding that the expansion project is in the “public convenience and necessity.” *See* 15 U.S.C. § 717f(e). They then contend that even if it were, FERC also erred in how it set the initial rates for Expansion Suppliers. *See Gulf S.*, 955 F.3d at 1007, 1013, 1015.²² We see no error in either determination.

A

As explained, FERC will issue a § 7 certificate permitting a pipeline expansion to go forward if it finds that the proposed pipeline facility “is or will be required by the present or future public convenience and necessity.” 15 U.S.C. § 717f(e). To make that determination, it uses the criteria set out in the Policy Statement. *City of Oberlin*, 39 F.4th at 722; *see generally* Policy Statement, 88 FERC at ¶ 61,227. Again, the Policy Statement’s three criteria are as follows. First, the applicant must be able to financially support the project without relying on subsidies from existing shippers. Policy Statement, 88 FERC at ¶¶ 61,745–46; *Myersville Citizens*, 783 F.3d at 1309. Second, FERC considers the extent to which the applicant has taken steps to minimize the project’s adverse economic effects on nearby landowners, pipelines, or other stakeholders; it then balances those effects against the project’s benefits. Policy Statement, 88 FERC at ¶ 61,745. Those benefits might include meeting unserved demand, access to new supplies, lower costs to consumers, and increased reliability. *Id.* at ¶ 61,748. Third, the pipeline must conduct an “open season.” 90 FERC at ¶ 61,392.

²² Riverkeeper incorporates by reference the States’ arguments.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

Critical to the States' challenges is step two. Any relevant evidence could be presented to support a project's public benefits. But precedent agreements, which are long-term contracts for a proposed pipeline or expansion project's added capacity,²³ "always will be important evidence of demand for a project." *Id.*; see *Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 114 (D.C. Cir. 2022) ("Precedent agreements are important, and sometimes sufficient, evidence of market need for a pipeline project." (citations omitted); *Food & Water Watch*, 104 F.4th at 347 (holding the same, "especially between unaffiliated entities"). Indeed, FERC "will not look beyond them to assess need by other means unless there is credible, contrary evidence discounting their probative value." *Transcon. Gas Pipe Line Co.*, 190 FERC ¶ 61,048 at P 29 (2025); see also *Del. Riverkeeper*, 45 F.4th at 114 (explaining that FERC ordinarily need not "look[] beyond the market need reflected by the applicant's existing contracts with [expansion] shippers") (quoting *Minisink*, 762 F.3d at 111 n.10)). If a pipeline secures precedent agreements for an expansion project's entire capacity, FERC's decision to grant a § 7 certificate is supported by "substantial evidence" under the APA. *Myersville Citizens*, 783 F.3d at 1310–11.

It is also FERC policy to disregard costs associated with existing capacity when evaluating an expansion project. *Tex. E. Transmission, LP*, 165 FERC ¶ 61,132 at P 19 (2018). Consequently, the costs of earlier § 2.55(b) replacement projects are generally borne by existing shippers. *Tenn. Gas Pipeline Co.*, 144 FERC ¶ 61,219 at P 15 (2013).

The States argue that FERC erred under these standards for three reasons. They contend that the agency (1) arbitrarily and capriciously

²³ As will be discussed below, GTN's contracts with the Expansion Shippers are precedent agreements.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

deferred certain questions regarding cost for determination at a future § 4 rate case and treated GTN's precedent agreements with Expansion Shippers as dispositive, (2) arbitrarily and capriciously considered segmented costs from the compressor replacements in the earlier § 2.55(b) approval, and (3) ignored conflicting evidence that the States provided in their supplement, thereby making a decision unsupported by substantial evidence.

The first of these reasons contains three arguments. To start, the States argue that FERC arbitrarily and capriciously concluded that it could postpone, to a future rate case, its finding as to what the costs of the expansion project would be. This was despite the agency being presented evidence that doing so would ignore important aspects of § 7's public-need analysis and would harm future consumers. The States say that FERC never addressed whether "existing customers [would] subsidize the [e]xpansion if [its] cost excludes all the costs to upgrade GTN's compressors" under the § 2.55(b) replacement project. Nor did it address whether it is "appropriate to postpone recovery of expansion costs until after the precedent agreements expire, when the undisputed evidence shows there will not be demand sufficient to pay those costs." They note that FERC acknowledged both points may "result in existing customers subsidizing the [expansion]" in violation of the Policy Statement's threshold criteria. Policy Statement, 88 FERC at ¶¶ 61,745–46.

Next, the States argue that FERC's failure to resolve these questions infects its finding of market need based on the Expansion Shippers' precedent agreements. The States say FERC cannot postpone answering either of these first two questions until a future § 4 rate case. They reason that the agency must offer a "reasoned explanation" for not evaluating a cost premium in the § 7 proceeding. *Mo. Pub. Serv. Comm'n*, 601 F.3d at 587; *El Paso Elec. Co. v. FERC*, 76 F.4th 352, 366 (5th Cir. 2023) (holding that agencies "cannot play the administrative law shell-game of offering future

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

rulemaking as a response to a claim of agency illegality.” (cleaned up)). Instead, the States contend that FERC only justified its decision to defer consideration with two observations: that the compressor replacement costs “appear to be in existing rates,” and that, if the agency allocated some compressor costs to the expansion project, GTN would recover those costs twice: once from expansion customers and once from existing customers. The States deem this explanation “irrational.”

The States’ final argument in support of its first reason that FERC erred is that FERC never considers the expansion project’s effect on future customers. If demand for the expanded pipeline does not exist after the Expansion Shippers’ 30-year precedent agreements expire, the States posit that GTN will have to drastically raise rates to recover its costs. Purportedly, FERC therefore “entirely failed to consider an important aspect of the problem” before it. *Motor Vehicle Mfrs. Ass’n v. State Farm*, 463 U.S. 29, 43 (1983).

For the States’ second reason that FERC erred, they argue that FERC arbitrarily concluded that the § 2.55(b) compressor replacements were not part of the expansion. For that reason, they maintain that the agency arbitrarily relied solely on the Expansion Suppliers’ precedent agreements to conclude that demand for the project was met. They then contend that we should set aside FERC’s conclusion under § 2.55(b) that the compressor replacements were justified under the regulation. They reason that FERC’s decision is not a lawful interpretation of the regulation and, even if it were, it arbitrarily deviates from the agency’s past interpretations.

For the States’ third reason that FERC erred, they claim that FERC erroneously concluded that it was legally barred from considering the States’ supplement. The evidence in that supplement came from GTN’s § 4 rate filing in a parallel docket. *See Air Prod. & Chemicals, Inc. v. FERC*, 650 F.2d

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

687, 697 (5th Cir. 1981) (holding that “[i]t is not the law that an agency may never rely on data in its files, or on public information, in rendering a decision” and that “agency decisions often will rest on official notice of material facts not appearing in the record evidence”). The States point out that FERC could (and did) consider GTN’s own citation to evidence in the same parallel § 4 rate filing. It only inconsistently refused to consider the States’ evidence.

We conclude that the States fail to demonstrate error in their myriad arguments. Starting with the first reason, FERC may treat as conclusive that GTN has contracted with Expansion Shippers for the entire expanded capacity for over thirty years. *See Myersville Citizens*, 783 F.3d at 1310–11. True, the States point to questions that FERC has not conclusively addressed. But § 7 certificate proceedings are meant only “to hold the line awaiting adjudication of a just and reasonable rate.” *See Gulf S.*, 955 F.3d at 1013–14 (quotation omitted). Thus, FERC did not act arbitrarily and capriciously by deferring further factual analysis of those issues to more fulsome § 4 rate-setting procedures. *See id.*

FERC is also correct that this case does not concern whether the agency erred in approving the compressor replacements under § 2.55(b). Instead, we are only reviewing the agency’s decisions in the § 7 certificate proceeding. At the time of that proceeding, the replacements were already approved to run up to the old compressors’ capacity. That is true notwithstanding that—as the States retort—FERC’s earlier decision under § 2.55(b) affects the outcome of the § 7 certificate proceeding. If the States take issue with the § 2.55(b) decision, they should have challenged that approval directly. *See Tenn. Gas Pipeline Co.*, 163 FERC ¶ 61,190 at P 48 & n.99 (2018) (citing *ANR Pipeline Co.*, 128 FERC ¶ 61,183 at P 44 (2009) (“The appropriate forum for making allegations that a pipeline may have

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

violated its tariff or other rules and regulations not relevant to a specific certificate proceeding is a complaint proceeding.”)).²⁴

Lastly, FERC did not err by declining to consider the States’ supplement.²⁵ As stated, the agency can ordinarily treat precedent agreements as determinative for § 7 purposes. *See Myersville Citizens*, 783 F.3d at 1310–11; *Gulf S.*, 955 F.3d at 1013–14. Those agreements, and the further evidence that FERC considered to demonstrate need, provide a sufficient counterweight to the States’ supplement. For that reason, FERC’s factual finding of “public convenience and necessity” is supported by substantial evidence. *See* 15 U.S.C. § 717f(e); *Myersville Citizens*, 783 F.3d at 1310–11.

B

After FERC decides to certificate a project under § 7, it determines the initial rates that the pipeline company will charge its new customers. As mentioned, longstanding FERC policy is to use existing pipelines’ most recent cost-of-service rate determinants established through a § 4 proceeding. *Gulf S.*, 955 F.3d at 1007, 1013, 1015. One of those determinants is the depreciation rate. *Id.*²⁶ The policy includes consideration of rates

²⁴ We therefore do not address whether FERC’s original approval of the replacement compressors was proper under § 2.55(b).

²⁵ To be sure, FERC had jurisdiction to consider the supplement as timely if it wanted. The States were using the evidence in that supplement to contest the Rehearing Order (which was filed less than 30 days earlier), not the Certificate Order (which was filed over 30 days earlier). *See* 15 U.S.C. § 717r(a) (requiring a party to “apply for a rehearing within thirty days after the issuance” of the order in question); *Williston Basin Interstate Pipeline Co. v. FERC*, 475 F.3d 330, 335 (D.C. Cir. 2006).

²⁶ Depreciation rate is the amount charged to suppliers to cover the loss not restored by current maintenance due to the factors that ultimately cause retirement of the pipeline. *Gulf S.*, 955 F.3d at 1015.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

determined through what are called “black box” settlements. Under those settlements, the pipeline company and its customers “agree to rates without identification or attribution of costs or adjustments for any particular component of those rates.” *Id.* Black box settlements can and sometimes do specify the depreciation rate. *Transcon. Gas Pipe Line Co.*, 124 FERC ¶ 61,160 at P 9 & n.5 (2008).

The States argue that FERC arbitrarily and capriciously calculated the expansion project’s depreciation rate based solely on its policy to use the rate from the pipeline’s last § 4 proceeding. FERC, they say, ignored “undisputed record evidence” that the demand for natural gas will significantly decrease over time. The States contend that this decrease matters because the expansion project has a projected 47-year lifecycle.

The States then observe that FERC adopted its depreciation-rate policy in a prior adjudication. For that reason, they point to Fifth Circuit precedent requiring the agency to “substantiate[] the application of its policy” to this case, “either through the development of specific facts or by making a reasoned explanation.” *See Fla. Gas Transmission Co. v. FERC*, 876 F.2d 42, 45 (5th Cir. 1989). They claim that FERC did not meet this standard by merely stating that case-by-case review of depreciation rates “may cause undue delay.” *See Tennessee Gas Pipeline Co.*, 169 FERC ¶¶ 61,230, 62,832 (2019). Next, the States cite other cases where FERC did not apply its policy. They use this as evidence to warn us that the agency has been acting arbitrarily and inconsistently. *See Wyo. Interstate Co.*, 119 FERC ¶ 61,251, 62,416 (2007); *Gulf S.*, 955 F.3d at 1015; *Equitrans, L.P.*, 153 FERC ¶ 61,381, at P 17, 27, 31 (2015); *Tenn. Gas Pipeline Co.*, 169 FERC ¶ 61,230 at P 34 (2019).

To conclude, the States claim that the depreciation rate which FERC adopted is “flatly and overwhelmingly contradicted by [the record]

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

evidence.” *MCR Oil Tools, LLC v. U.S. Dep’t of Transp.*, 110 F.4th 677, 698 (5th Cir. 2024). After the States brought this to FERC’s attention, they say it irrationally responded that “the States provide no evidence to support [FERC] deviating from its policy.”

We see no error in FERC’s reasoning. The agency did not act arbitrarily and capriciously by applying its established policy to determine the depreciation rate. Nor did it fail to justify applying that policy to this case. *See Tenn. Gas*, 169 FERC at P 34. As the States acknowledge, FERC explained that case-by-case review of depreciation rates “may cause undue delay.” FERC also noted that a more in-depth analysis is unnecessary for setting initial rates under § 7, which merely “hold the line” until rates are adjudicated in more detail under §§ 4 or 5. *See Gulf S.*, 955 F.3d at 1013–14.

As for the cases that the States cite where FERC did not apply its depreciation-rate policy, each concerned purpose-built projects for specific customers. For that reason, those cases’ past § 4 proceedings concerned an inapposite set of customers, meaning that a comparison to them would have been irrelevant. *See Wyo. Interstate*, 119 FERC at ¶ 62,416; *Gulf S.*, 955 F.3d at 1015; *Equitrans, L.P.*, 153 FERC at P 17, 27, 31; *Tenn. Gas*, 169 FERC ¶ 61,230 at P 34 (2019). Completely different from here.

* * *

In sum, FERC did not err under the Natural Gas Act by certificating the expansion project or applying its longstanding policy to set initial rates. *See City of Oberlin*, 39 F.4th at 722; *Gulf S.*, 955 F.3d at 1007, 1013, 1015.

VI

Under NEPA, Riverkeeper contends that FERC acted arbitrarily and capriciously three times over. First, it claims that FERC failed to properly consider the implications of “a no action alternative.” 42 U.S.C.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

§ 4332(C)(iii). Second, it claims that FERC erroneously failed to consider the § 2.55(b) replacement compressors as a “connected action” to the expansion project. *See Food & Water Watch v. FERC*, 28 F.4th 277, 291 (D.C. Cir. 2022); *Fath v. Tex. DOT*, 924 F.3d 132, 137 (5th Cir. 2018). Third, it claims that that FERC failed to adequately consider the expansion project’s risks to “public health or safety.” *See Indigenous Peoples of Coastal Bend v. U.S. Army Corps. of Eng’rs*, 132 F.4th 872, 892 (2025) (quotation omitted).²⁷ For the reasons we now discuss, each of these decisions fall within the “broad zone of reasonableness” that courts must afford agencies implementing NEPA. *See Seven Cnty.*, 145 S. Ct. at 1513.

A

NEPA requires agencies to discuss “a reasonable range of alternatives to the proposed agency action” in an EIS. 42 U.S.C. § 4332(C)(iii). Reasonable alternatives only are those “that are technically and economically feasible” and “meet the purpose and need of the proposal.” *Id.* Thus, “NEPA only requires the consideration of ‘alternatives relevant to the applicant’s goals.’” *Brazoria*, 98 F.4th at 195 (quoting *City of Shoreacres v. Waterworth*, 420 F.3d 440, 450–51 (5th Cir. 2005)); *see also Healthy Gulf v. FERC*, 107 F.4th 1033, 1044 (D.C. Cir. 2024). “Put another way, the EIS should only identify ‘alternatives to a project which would reduce environmental harm while still achieving the goals to be accomplished by the proposed action.’” *Brazoria*, 98 F.4th at 195 (quoting *S. La. Env’t Council, Inc. v. Sand*, 629 F.2d 1005, 1017 (5th Cir. 1980)). The applicant—not the agency—defines what its project’s goals are. *Id.*; *Shoreacres*, 420 F.3d at 451.

²⁷ The States incorporate by reference Riverkeeper’s arguments.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

Still, the agency must include “an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative.” 42 U.S.C. § 4332(C)(iii); *Shoreacres*, 420 F.3d at 450. The no-action alternative is not a do nothing alternative. For example, an agency “may consider the reasonably foreseeable development that would result if the project did not exist.” *Brazoria*, 98 F.4th at 195.

Riverkeeper argues that FERC failed to include the mandatory no-action alternative in the expansion project’s EIS. Instead, the agency merely said that it “is not a reasonable alternative because it does not meet the purpose of the Project; and is therefore, not considered in this [EIS].” Riverkeeper contends, however, that the no-action alternative serves a different and crucial purpose than the other alternatives that FERC must consider. Specifically, it serves as a “baseline against which the proposed action and its alternatives may be measured.” *Ctr. for Biological Diversity v. U.S. Dep’t of the Interior*, 72 F.4th 1166, 1185–86 (10th Cir. 2023). Accordingly, Riverkeeper maintains that FERC provided no meaningful explanation for its omission, notwithstanding Riverkeeper and the Environmental Protection Agency repeatedly urging the contrary during the notice and comment process. Instead, Riverkeeper says, FERC merely repeated its statement that it would not consider a no-action alternative at all because it did not meet the “purpose and need” for the Project. And although FERC claims to have gleaned by implication that the environmental effects of the project merely would not occur if no action were taken, Riverkeeper argues that the agency’s lack of direct research does not create an adequate baseline.

Then, in the Certificate Order adopting the EIS, Riverkeeper claims that FERC pivoted. The Order states that “the no-action alternative would result in fewer environmental impacts than the proposed project.” Riverkeeper observes that this is the first time that FERC mentioned such a

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

conclusion, and it claims that the agency does not define the “no-action alternative” it mentions, let alone discuss and consider it in the EIS. FERC’s purported about-face was also a focus of Riverkeeper’s rehearing request. But FERC never corrected its alleged error in the Rehearing Order, according to Riverkeeper. It argues that FERC merely reiterated that it had “evaluated a no-action alternative” and “appropriately limited its consideration of alternatives to those that would further the Project’s purpose.”

For these reasons, Riverkeeper concludes that FERC acted arbitrarily and capriciously by refusing to consider a no-action alternative.

We disagree. “[W]hether a particular report is detailed enough in a particular case itself requires the exercise of agency discretion.” *Seven Cnty.*, 145 S. Ct. at 1512. That discretion “should not be excessively second-guessed by a court.” *Id.*

In *Seven County* the agency’s EIS “noted, but did not fully analyze, the potential effects” for which the petitioners sought more fulsome treatment. Slip op. at 4. So too here. FERC explained in both the draft and final EISs that the “no action” alternative would result in the expansion project not taking place. The most likely outcome would then be that the environmental consequences of that project would not have occurred. FERC then provided a resource-by-resource environmental analysis that describes both (i) the existing state of each resource, *i.e.*, the no-action alternative, and (ii) how the project would impact that status quo.

In response, Riverkeeper in part argues that because “[t]he obligation to consider the ‘no action’ alternative arises directly from statute,” failure to consider it whatsoever would fall outside of outside FERC’s powers. That failure, according to Riverkeeper, would not be a discretionary judgment call but a question of statutory interpretation. *See* 42 U.S.C. § 4332(C)(iii); *see*

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

also Seven Cnty., 145 S. Ct. at 1511 (citing *Loper Bright Enters. v. Raimondo*, 603 U. S. 369, 391–92 (2024) to distinguish the *de novo* review that courts use to consider an agency’s definition of a statutory term from the “substantial discretion” that they must provide it “to assess what facts are relevant . . . in a particular case itself”). But as we have already explained, in this case FERC considered the “no action” alternative. Although it did not provide much detail, “a difference may exist between what an agency should do as a matter of good policy and best practices under NEPA, and what a reviewing court may subsequently order an agency to do under NEPA.” *See Seven Cnty.*, slip op. at 20. Thus, FERC’s discretionary conclusion falls well within the “broad zone of reasonableness” that *Seven County* requires this court to provide. *See id.* at 1517–18.

B

“The textual focus of NEPA is the ‘proposed action’—that is, the project at hand.” *Seven Cnty.*, 145 S. Ct. at 1512 (quoting 42 U.S.C. §4332(2)(C) (2018)). Agencies consider “connected actions” that are a part of that “proposed action” in a single NEPA review. *Food & Water Watch*, 28 F.4th at 281, 291; *see also Fath v. Tex. DOT*, 924 F.3d 132, 137 (5th Cir. 2018) (“Agencies generally should not ‘segment,’ or ‘divide artificially a major Federal action into smaller components to escape the application of NEPA to some of its segments.’” (quoting *Save Barton Creek Ass’n v. Fed. Highway Admin.*, 950 F.2d 1129, 1140 (5th Cir. 1992) (per curiam))). “In analyzing those scope questions, . . . agencies possess discretion and must have broad latitude to draw a ‘manageable line.’” *Seven County*, slip op. at 11–12 (quoting *Pub. Citizen*, 541 U.S. at 767).

To be sure, a “gray area” exists when another project is “interrelated and close in time and place to the project at hand.” *Seven Cnty.*, 145 S. Ct. at

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

1517.²⁸ “Even in those circumstances, however, a court’s review still must remain deferential.” *Id.* Consequently, “even if the reviewing court in such a case might think that NEPA would support drawing a different line, a court should defer to an agency so long as the agency drew a reasonable and ‘manageable line.’” *Id.* (quoting *Pub. Citizen*, 541 U.S. at 767).

Riverkeeper argues that FERC should have considered the § 2.55(b) replacement compressors as a “connected action” to the expansion project. Riverkeeper notes that it and others urged FERC to do so during the NEPA review process and that it did the same in its rehearing request. It then maintains that—notwithstanding FERC’s purportedly conclusory claims to the contrary in the Rehearing Order—the agency made no effort to explain how the expansion project has “independent utility” without the compressor upgrades. FERC simply pointed out that the compressor replacements were approved under § 2.55(b). To Riverkeeper, however, the record made clear that the compressor replacements were “important” to assessing the impacts of the project as a whole and excluding them foreclosed consideration of potentially viable alternatives.

We conclude that these arguments fall flat in the wake of *Seven County*. FERC drew a “manageable line” by adhering to its own settled and

²⁸ For this reason, other circuits have in the past determined whether actions are “connected actions” by looking to their “degree of physical and functional interdependence, and their temporal overlap.” *Food & Water Watch*, 28 F.4th at 291; *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1311 (D.C. Cir. 2014); see also *Lowman v. FAA*, 83 F.4th 1345, 1360–61 (11th Cir. 2023); *Twp. of Bordentown v. FERC*, 903 F.3d 234, 248–49 & n.9 (3d Cir. 2018). But the Supreme Court in *Seven County* has since warned against taking this approach when an agency draws a “manageable line.” *Seven Cnty.*, 145 S. Ct. at 1513 (quoting *Pub. Citizen*, 541 U.S. at 767). As the Court observed, “[s]ome courts have strayed” when determining the scope of the action under review “and not applied NEPA with the level of deference demanded by the statutory text and [Supreme Court] cases.” *Id.*

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

longstanding policy that exempts § 2.55(b) replacement facilities from additional environmental review. *See Seven Cnty.*, 145 S. Ct. at 1517. Similar to the agency in *Seven County*, FERC concluded here that the § 2.55(b) replacements and the expansion project “are not two phases of a single action, but separate, independent projects.” *See id.* at 1518. From that conclusion, it stated that the replacement compressors “need not be considered part of the proposed action assessed in the EIS.” *See id.* (internal quotation omitted). This was a reasonable and “manageable line” that FERC adopted to avoid triggering an unnecessary level of review for facilities that it had already determined will not have significant environmental effects. *Id.* at 1517. That determination was “[a]bsolutely correct” as far as this court is concerned. *Id.* at 1518.²⁹

C

NEPA also requires federal agencies to “consider significant adverse impacts that are reasonably foreseeable.” *Brazoria*, 98 F.4th at 191 (internal quotation marks and citation omitted). This includes “the degree to which the proposed action affects public health or safety.” *Indigenous Peoples of Coastal Bend v. U.S. Army Corps. of Eng’rs*, 132 F.4th 872, 892 (2025) (cleaned up). While the agency must “give more than a broad overview” when analyzing that effect, it need not “document every particle of knowledge that an agency might compile.” *Env’t Def. Fund v. Corps of Eng’rs of U.S. Army*, 492 F.2d 1123, 1136 (5th Cir. 1974). It only needs to “analyze[] potential effects and risks” in “situations that the agency considered

²⁹ Riverkeeper also points out “that FERC does not deny that the two phases of the expansion are ‘interdependent,’ and even acknowledges it explicitly.” True enough. But *Seven County* explained that “[a]n agency need not assess the environmental effects of other separate projects simply because those projects (and effects) might not materialize but for the project at hand.” *Seven Cnty.*, 145 S. Ct. at 1517. The Court then put it more plainly: “Simply stated, a court may not invoke but-for causation” in this context. *Id.*

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

reasonably foreseeable” and “offer[] an in-depth assessment of such adverse effects.” *Brazoria*, 98 F.4th at 191.

Riverkeeper’s position is that FERC waived off many safety concerns raised by the Environmental Protection Agency, Riverkeeper, the States, and other commenters.³⁰ FERC allegedly did not meaningfully address any of these concerns, provide any additional analysis of safety risks, or provide a reasoned and lawful explanation for not doing so. Instead, Riverkeeper contends that FERC’s EIS and Certificate Order both point to GTN’s “continued compliance” with minimum federal safety standards. FERC then summarily concludes, purportedly without analysis, that “the [expansion p]roject facilities would be modified, installed, and operated safely.” Riverkeeper then argues that FERC compounded its error when the rehearing petitions raised this lack of analysis. According to Riverkeeper, FERC’s response erroneously maintained that (a) it had no duty to consider the issues because safety is regulated by the Department of Transportation, (b) there was no probative value in considering GTN’s parent company’s safety record or other accidents on pipelines that the company managed, and (c) it did in fact consider the issue carefully in its EIS.

Riverkeeper claims that FERC’s treatment of these issues was arbitrary and capricious. It cites a laundry list of reasons why. With respect to FERC’s argument that the safety concerns of GTN’s parent are not within the agency’s remit, Riverkeeper insists that NEPA itself commands otherwise. *Sierra Club v. Morton*, 510 F.2d 813, 819 (5th Cir. 1975) (describing

³⁰ These concerns included discussions surrounding pipeline segments that were in “high consequence areas;” “major root causes of events that may cause incidents;” “corrosion prohibitors;” “shutdown and spill response mechanisms;” the “safety risks and incident history of GTN and its parent company”; the greater amount of methane in a higher pressure pipeline” risking a “larger ‘blast zone’ in the case of explosion”; and the risks of wildfires triggered by a pipeline incident.

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

NEPA as “compelling consideration of any and all types of environmental impact of federal action”). As to FERC’s defense that it relied on the Department of Transportation’s expertise, Riverkeeper points out that the record contains no comment from that agency—or any of its subagencies—about the expansion project. Nor did FERC even request one. Riverkeeper then observes NEPA’s requirement that “[p]rior to making any detailed statement, the head of the lead agency *shall* consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.” 42 U.S.C. § 4332(C) (emphasis added). Third, Riverkeeper says that FERC applied the incorrect standard when it decided not to issue a supplemental EIS considering its purported errors. Fourth, Riverkeeper argues that FERC’s decision is internally inconsistent because, after disclaiming in its EIS any responsibility to assess the safety issues at all, FERC claims in the Certificate Order to have fully analyzed the expansion project’s potential safety and reliability impacts. Finally, Riverkeeper claims that FERC’s disregard of the probative value attached to failures on pipelines managed by GTN’s parent company cannot be squared with the record.

Again, Riverkeeper’s arguments run headfirst into *Seven County*. An EIS “invariably” entails “a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry.” *Seven Cnty.*, 145 S. Ct. at 1513. As stated, those choices are all entitled to “substantial deference” and merely must “fall within a broad zone of reasonableness.” *Id.* Here, the EIS discussed the incremental safety risks of the expansion project. It then explained why those risks were mitigated by the Department of Transportation’s safety standards and the compressor stations’ remote locations. Although NEPA requires agencies to “consult with” other agencies as appropriate, 42 U.S.C. § 4332(2)(C)(v), *Seven County* confirms that the extent of those consultations falls within FERC’s discretion, *see*

24-60002

c/w Nos. 24-60197, 24-60280, 24-60354

Seven Cnty., 145 S. Ct. at 1512. For that reason, FERC did all that NEPA required by citing the Department of Transportation's standards, requiring GTN to follow them, and requiring it to complete all necessary consultations with that agency.

* * *

In sum, FERC did not act arbitrarily and capriciously under NEPA by adopting its EIS and approving the expansion project. *See id.* at 1518.

VII

In sum, FERC did not err by granting GTN a § 7 certificate for the expansion project or by denying it a predetermination of rolled-in rates. This court has jurisdiction to reach those questions because GTN has standing and its petition is ripe. We therefore DENY GTN's, the States', and Riverkeeper's petitions for review.