

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Certification of New Interstate Natural Gas
Facilities**)
)

Docket No. PL18-1-000

**COMMENTS OF THE NATURAL GAS SUPPLY ASSOCIATION
IN RESPONSE TO NOTICE OF INQUIRY**

Pursuant to the Commission’s Notice of Inquiry (“NOI”) in the referenced proceeding,¹ the Natural Gas Supply Association (“NGSA”) respectfully submits the following comments in response to the Commission’s review of its currently effective policy statement on the certification of new natural gas transportation facilities. For the reasons discussed below, NGSA supports the Commission retaining its current policy, which continues to achieve FERC’s stated goals of “foster[ing] competitive markets, protect[ing] captive customers, and avoid[ing] unnecessary environmental and community impacts while serving increasing demands for natural gas.”² Given the fundamental role that natural gas plays in supporting and enhancing electric reliability and resiliency, now is the time to eliminate unnecessary hurdles to pipeline approvals. Therefore, as the Commission conducts its review of its current certificate policy, it should focus on suggested improvements that would increase the efficiency of the permitting process and find ways to ensure that the process is coordinated, predictable and transparent.³

¹ *Certification of New Interstate Natural Gas Facilities*, 163 FERC ¶ 61,042 (2018) (“NOI”).

² Policy Statement, 88 FERC at 61,743.

³ See Executive Order No. 13807, 82 Fed. Reg. 40,463 (Aug. 15, 2017).

I. Executive Summary

NGSA agrees with the Commission that it is good governance to take a fresh look at older policies to determine whether they are still working effectively and if any changes are needed to improve efficiency. It is a testament to the 1999 Policy Statement on Certification of New Interstate Natural Gas Facilities⁴ (“Policy Statement”) that, even with dramatic changes in the natural gas market, the Policy Statement has proved it can stand the test of time. It provides the Commission with the flexibility it needs to appropriately balance the public benefits against any potential adverse consequences to determine if the proposed project is in the public interest. Given that the current Policy Statement was developed as “guidance,” it allows for the evaluation of the issues being explored in individual certificate proceedings and does not warrant an overhaul of the Commission’s framework for assessing pipeline projects.

In a recent FERC oversight hearing, NGSA was encouraged by Chairman McIntyre’s remarks that he has “no interest in initiating a review of our gas certificate policy area for the purpose of slowing anything down.”⁵ However, the Commission should be wary of suggestions that are merely intended to hinder the development of new infrastructure and, ultimately, the supply of natural gas. Under the Natural Gas Act (“NGA”), FERC is not charged with providing a preference for one fuel source over another. Therefore, the FERC certificate policy review is not the appropriate forum for natural gas opponents to insert themselves for the sole purpose of impeding the ability to build new pipeline projects needed to reliably serve natural gas customers.

⁴ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (“Policy Statement”).

⁵ Remarks of FERC Chairman Kevin J. McIntyre, U.S. Senate Energy and Natural Resources Committee, Oversight Hearing (June 19, 2018).

Under the existing certificate policy, project sponsors already go through an extensive process in which many spend years and significant amounts of money working through the Commission's certificate approval process that begins well in advance of filing an application at FERC and continues well after a certificate of public convenience and necessity is granted. In addition to FERC's review process, project sponsors spend time meeting and negotiating with landowners, ensuring adequate project funding, preparing for extensive environmental review and community outreach and working with the multitude of other states and agencies that also have input in the approval process. Certainly, we need to make sure that the approval process is a rigorous one in which the costs and benefits are closely examined, but it should not be designed to create obstacles that deter continued investment in pipeline infrastructure needed to reliably serve the needs of this country. On balance, the Policy Statement has supported adequate infrastructure to meet demand without creating unnecessary capacity.

II. Interest of NGSA

Founded in 1965, NGSA represents integrated and independent energy companies that produce, transport and market domestic natural gas and is the only national trade association that solely focuses on producer-marketer issues related to the downstream natural gas industry. NGSA's members trade, transact and invest in the U.S. natural gas market in a range of different manners. NGSA members transport and/or supply billions of cubic feet of natural gas per day on interstate pipelines and could be greatly impacted by the outcome of this proceeding.

NGSA encourages the use of natural gas within a balanced national energy policy and supports the benefits of competitive markets. NGSA has consistently advocated for well-functioning natural gas markets, policies that support market transparency, efficient nomination and scheduling protocols, just and reasonable transportation rates, non-preferential terms and conditions of transportation services and the removal of barriers to developing needed natural

gas infrastructure. NGSA has a long-established commitment to ensuring a public policy environment that fosters a growing, competitive market for natural gas. NGSA also supports a balanced energy future; one which ensures a level playing field for all market participants and eliminates inappropriate regulatory barriers to supply.

III. Comments

A. Access to abundant natural gas provides the United States with economic and environmental benefits.

The natural gas industry supports a dynamic market that serves multiple uses including power plants, local gas utilities, LNG facilities, factories and other industrial users. Pipeline infrastructure enables the reliable delivery of natural gas to serve these customers and to provide numerous economic and environmental benefits for consumers. Fortunately, our nation has abundant natural gas resources that are both clean and affordable. Since 2010, production has grown 26%, with government forecasts calling for production to reach a record-setting 81 billion cubic feet per day this year.⁶ Furthermore, the natural gas industry is committed to environmental stewardship and has a proven track record of reducing methane emissions. Government data shows that methane emissions from onshore and offshore production have declined by 10 percent between 2005 and 2016, while total gas production increased by 47 percent during the same timeframe.⁷ Access to abundant domestic natural gas has given U.S. industrial companies a competitive advantage over their global competition, leading to the resurgence of gas-intensive manufacturing in the United States. Plentiful natural gas also means

⁶ See U.S. Energy Information Administration (“EIA”), Short-Term Energy Outlook (July 2018), <https://www.eia.gov/outlooks/steo/>.

⁷ See U.S. Environmental Protection Agency, *Inventory of Greenhouse Gas Emissions and Sinks 1990-2016* (2018), https://www.epa.gov/sites/production/files/2018-01/documents/2018_complete_report.pdf.

lower household energy bills, lower overhead costs for businesses, and lower costs for consumer products as diverse as clothing and fertilizer. This is in addition to the enormous tax and revenue base generated by natural gas production, which employs millions of people in the United States, and indirectly supports the jobs of millions more. In addition to growth from LNG exports and industrial demand, demand from the power sector has also increased, driven by natural gas's low carbon emissions, retirements of older inefficient plants, and the comparatively low cost and small footprint of natural gas-fired power plants.

Consumers cannot realize the economic and environmental benefits that the abundance of domestic natural gas can provide if infrastructure is not developed to integrate new and/or growing supply basins with new and/or growing demand centers. Imposing rigid requirements or a higher threshold for permitting infrastructure can delay projects, add unnecessary costs, disincentivize investment in future projects and lead to reduced local and/or state taxes that benefit local residents. Below we discuss some of the unintended impacts of placing more regulatory hurdles to building needed pipeline infrastructure.

B. Ensuring adequate pipeline infrastructure is essential for electric grid reliability and resiliency.

As demand for natural gas-fired generation is forecasted to grow, power market operators and generators need certainty that the infrastructure can keep pace with their increasing demand.⁸ The Commission, along with the energy industry, Regional Transmission Operators/Independent System Operators (“RTOs/ISOs”) and the current Administration, has initiated a proceeding focused on grid resilience.⁹ Throughout this process, all stakeholders share a common goal:

⁸ EIA Annual Energy Outlook 2018, at 70, <https://www.eia.gov/outlooks/aeo/pdf/AEO2018.pdf>.

⁹ See *Grid Reliability and Resilience Pricing and Grid Resilience in Regional Transmission Organizations and Independent System Operators*, 162 FERC ¶61,012 (2018).

ensuring a reliable and resilient electric grid. Having sufficient pipeline capacity to serve customer demand is a significant component of maintaining the reliability of the electric grid. If the Commission were to revise the Policy Statement and impose a higher threshold to the pipeline certificate process, this could adversely impact the ability to have sufficient capacity in place to serve gas-fired generation needs and reduce the level of flexibility they often rely upon as their demand varies throughout the day.

The potential consequences of additional hurdles to new infrastructure is not imaginary: the New England region is already facing challenges due to lack of sufficient gas pipeline infrastructure. Despite several proposed projects in the region with secure customer commitments, pipeline development to New England has been stalled, leaving the region with some of the highest fuel prices in the country and concerns about meeting peak electricity needs. We should be exploring ways to help alleviate New England's concerns associated with a lack of pipeline infrastructure to serve generation during peak period rather than inserting more obstacles in the pipeline permitting process.

C. Revising the policy statement could have unintended consequences for competitive markets and states' clean energy objectives.

Another potential consequence of imposing a higher threshold to building gas infrastructure is the impact it could have on competitive market solutions for bolstering grid reliability. In these recent grid resilience proceedings, the Commission, as well as RTOs/ISOs, have emphasized their preference for preserving competitive markets versus propping up particular fuel sources. However, if there are additional barriers to permitting needed infrastructure, particularly in regions with insufficient pipeline infrastructure, it could insert a greater level of market uncertainty and inadvertently tip the scales against pipeline infrastructure, even if it is the most cost-effective solution for the region. This in turn could have the

unintended effect of RTOs/ISOs proposing out-of-market solutions to ensure system reliability instead of relying on market solutions that may have signaled pipeline development.

Moreover, natural gas's attributes – including its low carbon footprint, abundant supply, and low price – are helping states meet their clean energy objectives. Due to their economic and environmental advantages, natural gas combined-cycle plants are replacing older plants with higher carbon emissions, with the added benefit that these gas-fired plants also provide reliable back-up and quick ramping-up capabilities for intermittent solar and wind resources. These characteristics of natural gas are bringing benefits to consumers, including reliable, cleaner energy at a lower cost. FERC should not impose additional permitting obstacles to needed pipeline infrastructure that will allow natural gas to assist in bringing new renewable resources online.

D. The Policy Statement adequately addresses the topics raised in the Commission's NOI and affirms that the current framework is still sound.

- i. Retaining a flexible approach allows the Commission to consider a project's need on a case-by-case basis.*

NGSA supports the Policy Statement's methodology for determination of need, which provides a high level of flexibility to the Commission in its review of an application. In its 1999 Policy Statement, the Commission greatly expanded the public benefits that a pipeline could show in the record to establish that a proposed project would be in the public convenience and necessity. These public benefits are diverse and could include: meeting unserved demand; eliminating bottlenecks; need for access to new supply basins; lower costs to consumers; providing new interconnects that improve the interstate grid; providing competitive alternatives; increasing electric reliability and advancing clean energy objectives.¹⁰ The breadth of these

¹⁰ Policy Statement, 88 FERC at 61,748.

options underscores the Commission's understanding of the natural gas industry and its long-standing commitment to market fundamentals. In addition to stating the benefits in a project application, applicants can present relevant evidence, as appropriate, to support the project's benefits. Because the need for natural gas infrastructure is multipurpose – one market may need additional pipeline capacity to serve new manufacturing plants, while another region may need more capacity to lower consumers home heating prices – the Commission must retain its flexible framework so that the market can signal where investments in infrastructure should be made.

The Commission has long acknowledged that a mandated one-size-fits-all approach, bright line test or standard (which would create a higher threshold for public need) would not take into account the different interests or benefits that each proposed project offers, nor would it be flexible enough for each case. Instead, the sliding-scale approach effectively balances benefits versus adverse impacts by naturally creating a higher threshold: the more adverse impact a project would have on a particular interest, the greater the showing of public benefits is required. We agree this flexible approach works well and that imposing more stringent standards has not worked in the past. For example, the Commission moved away from its initial policy of requiring an applicant to present contracts for a specific percentage of the new capacity since it no longer reflected the reality of the natural gas industry's structure. Given that the natural gas industry and its customer base have become more dynamic, we urge the Commission to continue to support a flexible approach towards presenting evidence regarding the showing of public benefits.

- ii. *Precedent agreements are binding contracts that represent strong and objective evidence of public need for a pipeline project.*

FERC has historically relied on precedent agreements as an indicator for market need and for good reason: they unequivocally establish binding customer commitments for capacity at the

early stages of a project, with long-term financial commitments from shippers. NGSAs agree that this approach provides the most objective and straight-forward evidence for determining whether a project is in the public interest. Financial commitments by private customers through firm service agreement demand charges are a crucial step for ensuring a project is financially viable and that there is a future market for the new capacity. The terms of precedent agreements vary; however, they establish transparent, binding contract terms including the duration of the commitment (often 10 to 15 years) and details of the service provided.

Project applications filed by pipeline companies that are either fully or nearly fully subscribed demonstrate that the market is functioning properly -- gas customers are signaling that more capacity is needed to meet demand for service. In addition to identifying precedent agreements, many applicants include studies that provide evidence of market growth.¹¹ Thus, the Commission's reliance on precedent agreements signals it is using the strongest, most objective evidence available to determine whether a project is in the public interest.

Moreover, pipeline projects are either funded privately or through project financing, with neither the federal/local governments nor consumers bearing the financial costs of a project. Thus, executed precedent agreements, regardless of whether made by an affiliate, attest to the financial viability of a project. A precedent agreement between a pipeline and the shipper(s) is *binding*. Taking a look "behind" or "beyond" the precedent agreement does not change the contractual terms being applied and the party, regardless of affiliation, is taking on a substantial financial risk. As a safeguard, should a gas shipper have concerns with an affiliate sponsoring a pipeline contract, the shipper can file to intervene at FERC to request that FERC take a closer

¹¹ For example, the EIA models projections of energy markets through 2050 by incorporating energy supply, demand and prices, technological progress and energy policies, which gives industry a view of anticipated future growth.

look. FERC already has the authority and responsibility to investigate any allegations of undue discrimination with respect to a pipeline favoring an affiliate. This safeguard strikes the right balance between regulation and letting the market work. FERC should honor the sanctity of contracts and should not second guess a business decision between private parties.

iii. Natural gas producers' contracts for capacity enable access to new markets and lower energy prices for consumers.

The Marcellus and Utica shale revolutions of the mid-2000s, along with technological advancements in drilling, provided a new, abundant and affordable supply of natural gas for consumers that were historically served from other traditional supply basins. To give consumers access to these new geographically-diverse and widely-dispersed supply basins, natural gas producers have stepped up by increasingly contracting for capacity that moves their gas from the supply region to liquid trading points. These “supplier-push” pipeline projects allow the markets to determine an efficient market center for participants to transact, and ultimately serve customers with an economical, reliable supply of energy. Put simply, based on their analysis and understanding of supply/demand market fundamental indicators, producers and other market participants fully took on the long-term financial risk of the project to “push” the supply to a desired market.

While market studies may provide an initial indication of the supply basin growth and/or markets needing additional infrastructure, the expected end use of the pipeline project bringing gas to market should not change how the Commission determines need. This is especially true given the dynamic nature of markets that provide new market signals as supply basins emerge and/or new markets develop. These dynamics have led to flow pattern changes, shifts in directional flows and changed the traditional ways in which gas is being delivered. Today, pipelines and infrastructure originally developed to move volumes south to north and west to

east, are now utilized to flow north to south and east to west. The changing directional flows of even relatively new infrastructure, such as the Rockies Express Pipeline, are an example of the change in market dynamics that has shifted the end use of this capacity from Northeast markets to Midwest markets in a relatively short time.

Adding uncertainty to the certificate application process, particularly based on attempting to “map” what market the pipeline will serve, could impact timing of producers’ investments, lower available supply and raise costs for consumers. Since the beginning of the shale revolution, producers and suppliers have committed billions of dollars supporting infrastructure development. If producers and suppliers do not see a reasonable market for their gas, they will not allocate capital to develop the resource. There is significant value in natural gas producers and shippers investing in supply push pipelines and NGSAs encourages the Commission to continue allowing market forces to signal how that investment should be made.

- iv. Regional reviews do not take into account the interests or benefits of individual pipeline projects and competition.*

Under the current policy statement, FERC appropriately upholds market fundamentals by reviewing projects on an individual basis and letting the market determine winners and losers for competing projects. Even if multiple projects are proposed in the same region, each has its own market need demonstrated through market support via binding precedent agreements prior to reaching the certificate filing milestone. Such competition between projects is a win-win for consumers. Regional competition between pipelines “enhance[s] the effective and efficient transportation of natural gas at competitive prices, [and] they ‘provide much needed security and reliability by providing a second facility to access supply in the event something happens to

either of the pipeline facilities.’’¹² Further, court precedent also recognizes the benefits of competition within the industry, particularly if a new pipeline project is entering the market where there is a regionally dominant pipeline company that may also propose a new project:

“Congress, the Supreme Court, and this court have concurred in the belief that competition has a role to play in the natural gas industry. . . . Even limited competition would seem to encourage suppliers of natural gas to become more aggressive in proposing new rates and services, and thereby increase the effectiveness of regulation by the Commission.”¹³

The adoption of regional reviews for pipeline projects that are proposed in the same region would undermine the market without any added value to the Commission’s decision-making process or to consumers. As discussed earlier, companies do not build pipeline projects with just a hope there is customer or market support. Pipelines and potential shippers typically utilize regional market analysis and evaluate project risks prior to executing binding precedent agreements that are indicative of binding obligations of each party. Also, project sponsors must show the benefits the project would achieve in order for FERC to make a determination that it is in the public interest. Given the factors that customers weigh before financially committing to a project and the benefits of competition in the industry, the Commission should not second guess a determination of one project’s viability over another if they are both supported by binding precedent agreements.

Finally, federal law does not allow FERC to mandate new projects or engage in planning the development of natural gas capacity.¹⁴ Instead, under the NGA, it is the applicant’s decision

¹² *Cheyenne Connector, LLC*, Docket No. CP18-102-000, “Motion for Leave to Answer and Answer of Cheyenne Connector, LLC to Comments of Colorado Interstate Gas Co., L.L.C.,” at 26-27 (filed April 24, 2018) (quoting *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 56 (2002)).

¹³ *N. Natural Gas Co. v. Fed. Power Comm’n*, 399 F.2d 953, 969-70 (D.C. Cir. 1968).

¹⁴ *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233, at P 18 (2018).

to request project approval. Thus, it is inconsistent with the NGA for regulators to pick winners and losers in the market.

- v. *Relying just on existing infrastructure or alternative fuel sources in lieu of new gas infrastructure is not the reality of the electric grid.*

The Commission has asked if it should consider greater use of existing pipeline infrastructure or the reliance on other energy sources to meet future demand for electricity generation in lieu of a proposed project. Similar to regional reviews, this would be second-guessing the market. Also, by showing a willingness to enter into binding precedent agreements, the market is demonstrating that there is demand for increased capacity. In these circumstances, attempting to replace that expected need with another type of generation would be showing a preference for one energy source over another in an attempt to influence the overall fuel mix. This is not the role of the Commission.

In 2017, wind and solar accounted for 8 percent of the grid's electricity generation. EIA forecasts that in 2040, wind and solar are together expected to provide 19 percent of the electricity generation to the grid. While this is significant growth, it also illustrates that natural gas will continue to play a key role in meeting future demand for electricity. Further, as more intermittent resources are integrated into the grid, many are dependent on having a flexible, fast-ramping resource, such as natural gas combined-cycle plants, to provide back-up generation. California's "duck" demand curve exemplifies the necessity of adequate natural gas

infrastructure in order to keep the lights or air conditioning on once the sun sets and demand peaks. Regulators must be pragmatic and realistic when assessing the infrastructure needs of the grid.

vi. Consideration of eminent domain should be done on a case-by-case basis.

In the NOI, FERC is considering adjusting how it considers the level of eminent domain exercised by a project sponsor in its review of project applications. No definitive threshold is needed when considering the use of eminent domain because the current policy statement appropriately considers eminent domain and landowner issues on a case-by-case basis. FERC's sliding scale approach of weighing both potential adverse impacts to landowners and the public benefits of a new pipeline ensures both sides are given equal weight. Further, FERC states that as a recent practice, its analysis considers eminent domain issues twice: first, in the context of the Policy Statement assessment focusing on economic impacts; and then for a second time, in the environmental review where FERC may now look at the impact on property values, community development, employment, tax revenue, and disadvantaged populations.¹⁵ These practices exceed what is expressly required in the NGA, underscoring how the Policy Statement's framework is responsive to issues as they arise. Also, the authority provided by the Natural Gas Act to rely on eminent domain is a significant project benefit given that it ensures that a few landowners cannot veto a project that has demonstrated significant need.

vii. No additional steps during the environmental review are needed because FERC's process is rigorous and comprehensive.

The process FERC undertakes for environmental reviews is robust and thorough; at a high-level it includes preparing an environmental assessment or environmental impact statement

¹⁵ See NOI at P 30.

(“EIS”), conducting scoping meetings to determine environmental issues, issuing data requests, opening comment periods for draft EIS review both with cooperating agencies and public stakeholders, route modifications and finalizing the EIS.¹⁶ In addition to concurrent reviews from other applicable agencies, applicants must also submit environmental reports that consider environmental impacts (on water, plants, and wildlife), cultural resources, socioeconomics, soils, geology, aesthetic resources, and land use. Further, projects that opt to utilize the pre-filing process also engage in early outreach with stakeholders, which can result in route modifications, and early Commission review of environmental resource reports, siting concerns and needed mitigation plans. Given the thoroughness of FERC’s environmental review process, NGSA finds the extensive steps FERC takes and its level of stakeholder engagement to be more than adequate when evaluating whether a pipeline project is in the public interest.

viii. Speculative analysis of upstream impacts is outside of the scope of what is required of the Commission.

NGSA is not persuaded by arguments that FERC should revise the Policy Statement to consider upstream impacts, which is outside of its statutory obligations and beyond its requirements under NEPA. The Council on Environmental Quality (“CEQ”) states indirect impacts “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”¹⁷ Quantifying upstream activities, such as an increase in natural gas production based a particular project, would not be a reasonably foreseeable indirect effect of the pipeline project because it is not known where, when, and what volume of natural gas might be

¹⁶ See *Interstate Natural Gas Pipelines: Process and Timing of FERC Permit Application Review*, Congressional Research Service (Jan. 16, 2015), <https://fas.org/sgp/crs/misc/R43138.pdf>.

¹⁷ See CEQ regulations regarding indirect impacts, 40 C.F.R. § 1508.8(b) (2018).

produced across the lifetime of the pipeline, much less what proportion of that production would be induced by the pipeline itself. Often volumes that may flow on a new project could simply be a re-direction of existing flows and/or offset by another natural reservoir decline. Flows on a new project that may offset longer haul paths from more remote supply basins may lead to greater transmission flow efficiencies with reduced environmental impacts. Thus, any analysis attempting to do so would be too speculative to rely upon and does not advance the Commission's goal of well-reasoned decision making. Further, under the NGA, FERC lacks jurisdiction over natural gas development and production activities. State agencies and the Bureau of Land Management are better positioned to address any effects of production because those agencies are tasked with regulating upstream natural gas and will have accurate information related to drilling activity.

In a recent order denying rehearing for the Dominion New Market Project, the Commission correctly points out that there is no court precedent, statutory provision, or legislative history that requires the Commission to evaluate environmental impacts beyond what is required by NEPA. The Commission also reaffirmed the scope of its obligations under NEPA and the factors that it considers under NGA section 7(c). Specifically, the Commission asserts that it will no longer prepare upper-bound estimates of the upstream production and downstream use of natural gas that are neither cumulative nor indirect impacts of a proposed pipeline project.¹⁸ However, the Commission remains committed to analyzing upstream and downstream effects when those effects are sufficiently causally connected to and are reasonably foreseeable effects of building a pipeline as contemplated by CEQ's regulations.¹⁹ Clarification of the

¹⁸ See *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 44 (2018).

¹⁹ *Id.*

Commission's responsibilities under NEPA is not a shift in policy or a trimming of its environmental reviews, it merely adds transparency and confirms that the Commission will not engage in speculative analysis or provide environmental impacts estimates that lack meaningful data on the proposed project itself. NGSAs support the Commission's assertion and believe that providing general estimates as worst-case scenarios can be misleading as discussed in greater detail below.

For the brief time the Commission did provide additional environmental analysis in its certificate orders, this expansion of their review occurred outside of this current proceeding to review the Policy Statement. Thus, going back to its long-standing approach for analyzing emissions was simply staying the course and not a departure from the current Policy Statement.

With respect to analyzing downstream greenhouse gas ("GHG") emissions, some commenters incorrectly point to the United States Court of Appeals for the D.C. Circuit decision in *Sierra Club v. FERC* regarding the Southeast Market Pipelines Project, misinterpreting it as a broad directive for FERC.²⁰ Quite the opposite, the court's decision is narrow in scope and should not be interpreted to apply to all pipeline project applications. The merits of this particular court case are specifically related to the fact that the project proponents had identified the end-use customers of the gas (four power plants) that would use the proposed Sabal Trail project. Thus, the Commission could analyze the downstream effects of the pipeline project, however this is often not the case.

²⁰ See *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233.,

- ix. *Consideration of the significance of indirect impacts is arbitrary at best and can provide misleading information related to climate change.*

There is no methodology, scientific standard, federal or international policy for ascribing significance to GHG emissions. Therefore, it is not possible for the Commission to include this as a consideration and any attempt to deny a pipeline certificate would be arbitrary and inappropriate. Absent a change in NEPA or the NGA, the Commission should not implement new policies or tools that are not evidence based and that are outside the scope of the Commission's jurisdiction.

- x. *FERC should enhance coordination between the multiple parties involved in the permitting process.*

As discussed above, NGSAs support FERC's current Policy Statement and believe the guidance sufficiently addresses the topics raised in the NOI, but there is room for improvement in terms of ensuring the review process is not delayed. While FERC typically reviews projects without undue delay, the approval process for permits required by other federal agencies and states have slowed or effectively vetoed a pipeline certificate approved by FERC.²¹ Given that FERC is the lead agency under NEPA and Executive Order 13807, we encourage FERC to be more assertive in ensuring that other cooperating agencies and states are fulfilling their roles in a timely and effective manner. For example, states have used their 401 Water Certification authority under the Clean Water Act to indefinitely delay or stop the construction of pipeline projects despite the pipeline having its certificate order. States participate in the environmental review during the certificate process and they do not have the authority to use Section 401 to

²¹ See FERC's answers to the U.S. Senate Energy and Natural Resources Committee Oversight Hearing held on June 12, 2018.

reconsider issues outside the narrow scope of water quality issues under the Clean Water Act.²² Because states are effectively vetoing a federally approved project, we urge FERC to set proper boundaries to the extent permitted. In instances in which 401 Water Certifications are delayed, if a pipeline applicant seeks FERC assistance to address whether the project can move forward, we encourage FERC to take swift action to grant a waiver when appropriate.

IV. Conclusion

Given the flexibility and enduring principles the 1999 Policy Statement is founded on, NGSA supports the Commission retaining its current approach for the certification of natural gas transportation facilities. We believe the guidance provided in the Policy Statement will continue to provide a viable framework as industry adapts and evolves. We urge the Commission not to impose any additional hurdles or higher thresholds to permitting pipeline infrastructure, which can have unintended consequences for the electric grid and consumers.

Respectfully submitted,

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²² New York State DEC denied Millennium's Valley Lateral project based on the grounds that FERC did not account for the GHG emissions and impact on climate change. This is outside the scope of a states' role of issuing a 401 water certification under the Clean Water Act.