UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Reliability Technical Conference) **Docket No. AD21-11-000**

POST-TECHNICAL COMMENTS OF THE NATURAL GAS SUPPLY ASSOCIATION

Pursuant to the Federal Energy Regulatory Commission's ("FERC") Notice Inviting Post-Technical Conference Comments ("Notice"), issued on January 7, 2022,[1] the Natural Gas Supply Association ("NGSA") respectfully submits the following comments. On September 30, 2021, FERC staff convened its annual Commissioner-led Reliability Technical Conference ("September 30th Conference) to discuss policy issues related to the reliability of the Bulk-Power System, and subsequently invited all interested persons to file post-technical conference comments to address the questions raised in its notice and, if they wish, to address any other issues raised during the technical conference.

Given that a number of the questions posed in the Notice reference Winter Storm Uri and issues raised in the FERC-North American Electric Reliability Corporation ("NERC") report entitled, "The February 2021 Cold Weather Outages in Texas and the South Central United States" ("FERC-NERC Final Report"),[2] NGSA would like to take this opportunity to provide our perspective on a number of the recommendations made at the September 30th Conference as well as in the FERC-NERC Final Report.

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[1] Federal Energy Regulatory Commission, *Reliability Technical Conference*, 2022, Docket Number AD21-11-000, Washington DC: Jan. 7, 2020.

[2] Federal Energy Regulatory Commission et al., *FERC – NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South- Central United States* (FERC, November 2021).

I. Executive Summary

NGSA appreciates and supports FERC's efforts to ensure reliability and we are committed to working with the Commission and other stakeholders to enhance reliability in both the natural gas and power industries. While opinions may vary on what approaches are the best to ensure reliability, it is in everyone's interest to keep the lights on.

As exemplified in comments at the September 30th Conference as well as the FERC-NERC Final Report, the energy industry and policymakers are at a crossroads in which pivotal policy and investment decisions must be made to set our country on a course of transitioning to a lower emission energy future without compromising grid reliability. NGSA is optimistic that this can be achieved with careful planning based on solid unbiased data and focusing on the most pressing issues that provide the foundation for success. We believe the fundamental issues supporting reliability of natural gas generation are (1) ensuring adequate natural gas infrastructure is in place to (a) accommodate power demand and (b) provide the flexibility generators require, and (2) finding new ways to appropriately assess and value reliability in organized markets that will support investment in a portfolio of reliable natural gas services. Without improving and solidifying this foundation, other gas-electric improvements are likely to produce only marginal incremental benefits at best.

FERC and NERC Staff's exemplary work of identifying the causes of outages during Winter Storm Uri in the FERC-NERC Final Report provides a good starting point for determining what issues require immediate attention. We look forward to working with the Commission, other regulators and industry participants on the recommendations made in the FERC-NERC Final Report and to explore more fully and thoughtfully potential solutions that will bolster reliability in both the natural gas and power industries. In the following sections, NGSA provides its

perspective on what we see as the most important actions that are needed as regulators and industry explore ways to enhance reliability in both the natural gas and power industries. In these comments, NGSA asks the Commission to:

(1) Direct the development of a factual unbiased analysis that can be relied upon to assess reliability outcomes accurately and to make the appropriate policy choices.
(2) Work with all participants in the gas-electric stakeholder forum to prioritize the most pressing issues and thoroughly and thoughtfully assess the potential impacts of various proposals on costs, other customers, or the functioning of the natural gas and power markets.
(3) Prioritize addressing the fundamental disconnect between generators financial risk associated with fuel procurement and ensuring sufficient gas infrastructure is in place to effectively serve power markets.
(4) With state regulators' participation, include an assessment of issues customers experienced with intrastate pipelines during Winter Storm Uri as a topic at the gas-electric stakeholder forum to determine if further actions by the appropriate regulatory authorities are warranted.
(5) Gather sound data that helps policymakers assess whether there is a need for federal authority to impose national weatherization standards for gas infrastructure, including Commission outreach to the proper state officials or NARUC.

II. With Natural Gas Playing a Vital Role in Supporting a Reliable Grid Through the Energy Transition, NGSA is Committed to Doing Our Part to Enhance Reliability and Lower Emissions.

NGSA's members are leaders in transitioning to a reliable and low-emissions energy future by investing billions of dollars in new technologies and practices to continue the momentum of innovation. Since 2006, switching to natural gas in the electric power sector has helped reduce CO_2 by nearly 3.4 billion metric tons in the United States which equates to a savings of 58% more than what has been achieved during the same time frame by all zero-carbon emission sources.[3] Our members have committed to reaching net zero emission by 2050 and supported the U.S. rejoining

[3] U.S. Energy Information Administration, "U.S. Energy-Related Carbon Dioxide Emissions, 2019", *Environment*. Sept. 20, 2020, https://www.eia.gov/environment/emissions/carbon/archive/2019/.

the Paris Agreement.[4] In 2020, NGSA publicly announced its members' commitment to achieving significant methane mitigation.[5] NGSA's member companies have been instrumental in developing new technologies to better detect and prevent methane emissions and to build on our industry's existing record of substantially reducing carbon emissions in the atmosphere.

Our members are actively developing new emerging technologies such as Carbon Capture, Utilization, and Storage (CCUS) and hydrogen to meet energy demand while reducing emissions.[6] In their pursuit of lower GHG emissions, several of our member companies have developed and launched CCUS techniques and technologies, ranging from sustainable CCUS hubs for the natural gas industry and beyond to fuel treatments that reduce emissions from wellhead to end use. In fact, through NGSA members' commitments to the Oil and Gas Climate Initiative, its Climate Investments group has been able to invest billions across the globe to identify and produce the best CCUS solutions. NGSA's members are at different phases of hydrogen development, yet all see the fuel as an important part of the energy mix moving forward. Some members are already utilizing the fuel in pilot power plants to help reduce CO2 emissions by four million tons a year. Additionally, our members are partnering with certification providers to provide customers with certified or responsibly sourced natural gas.

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[4] Natural Gas Supply Association, "Reaching Climate Goals with Natural Gas and LNG," Fall, 2021, https://www.ngsa.org/wp-content/uploads/sites/3/2021/10/Reaching-Climate-Goals-with-Natural-Gas-LNG-Fall-2021.pdf.

[5] Natural Gas Supply Association, "Methane Principles," Oct. 5, 2020, https://www.ngsa.org/wp-content/uploads/sites/3/2020/10/10.5.2020-Addressing-Methane-Emissions-Essential-Says-NGSA.pdf.

[6] Natural Gas Supply Association, "NGSA Members are Innovating for a Clean Energy Future for All", Fall, 2021, https://www.ngsa.org/wp-content/uploads/sites/3/2022/02/NGSA-Members-Are-Innovating-for-a-Clean-Energy-Future-for-All.pdf.

NGSA was the first natural gas trade association to advocate for national carbon pricing; and we continue to believe that a well-designed carbon price is the most efficient way to reduce emissions, as it provides the right incentives for everyone – energy producers and consumers alike – to play their part in reducing emissions, including the development of new clean energy technologies. While NGSA has a strong preference for a national economy-wide carbon pricing program, we understand that states are moving forward to meet their clean energy targets. We further recognize that the most effective way for states to achieve their individual targets while still maintaining competitive wholesale market structures, is through broad regional or state carbon pricing programs. Carbon pricing gives all resources the ability to contribute to lower emissions, which is an essential component to maintaining grid reliability during a transition to a lower carbon energy future.

As numerous parties accurately pointed out at the September 30th conference, natural gas remains a critical part of the energy mix for the foreseeable future. With a well-functioning, highly competitive market, natural gas producers are quick to respond to market signals that induce more investment in exploration, development, and production of this country's abundant natural gas supplies. Until new alternative energy technologies are readily and economically available and scaled for widespread application, natural gas will continue to play a critical role in supporting power markets as more intermittent resources are integrated onto the grid. At the conference, Jim Robb, President and CEO of NERC, stated, "Until storage technology is fully developed and deployed and scaled -- and that's probably decades from now, natural gas is going to remain the balancing resource of choice." Additionally, he stated, "[W]e need to acknowledge that electric reliability is increasingly dependent on the gas system and ask whether enough investment is being

made into the reliability and security of that critical infrastructure." [7] Similarly, former FERC Commissioner LaFleur stated, "[n]atural gas generation is the most controllable balancing resource we have."[8]

III. The September 30th Conference Revealed a Need for a Consensus-based Unbiased Study that Accurately Models the Reliability Impacts of Various Transition Timeframes.

At the September 30th conference, it became apparent that there is a significant disconnect in views of how the U.S. should approach the transition to lower emissions. As highlighted above, Jim Robb and Cheryl LaFleur expressed their views that the transition should recognize the key role natural gas must play as a partner to renewables to help manage intermittency and promote reliability. California is a good example of setting aggressive decarbonization goals without fully recognizing the reliability consequences. After the August 2020 heat wave, California issued an emergency declaration of power shortages and ordered the expeditious approval of emergency gas generation to meet demand.[9] Also, outside of the September 30th conference, unbiased experts charged with managing reliability have expressed some concerns about the current pace of transition. [10]

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[7] Federal Energy Regulatory Commission, *Reliability Technical Conference*, 2022, Docket Number AD21-11-000, Washington DC: Jan. 7, 2020: 19.
[8] Ibid., 73.
[9] Mark Chediak and Naureen Malik, "California to Build Temporary Gas Plants to Avoid Blackouts," *Bloomberg Green*. Bloomberg, Aug. 19, 2021, https://www.bloomberg.com/news/articles/2021-08-19/california-to-build-temporary-gas-plants-to-avoid-blackouts.
[10] Additional examples include:

(1) "Ahead of winter 2021-2022, we have communicated how natural gas pipeline constraints, coupled with global supply chain issues related to deliveries of oil and liquefied natural gas (LNG), are placing New England's power system at heightened risk. In raising these issues, we are trying to raise awareness of this risk, so the public is prepared given the supply dynamics this winter." Gordon van Welie, "Letter to Commissioner Katie Dykes," ISO New England, Dec. 23, 2021, 2. https://www.iso-ne.com/static-assets/documents/2022/01/isone_ct_deep_combined_ltrs.pdf.

(2) "Gordon Van Welie the President and CEO of ISO-NE said in his letter that he 'supports the transition to renewable energy but it's not happening fast enough. The clean energy transition is a long journey, and we cannot escape the reality that the region will be reliant on much of the existing fleet, and the fuels they utilize, for many years to come. These are not hypotheticals.'" Bruce Mohl, "Close calls as region's power grid walks a

The counter view that natural gas should not be part of the transition and should be replaced as soon as possible fails to recognize its continuing importance for the foreseeable future as a balancing resource needed for reliability, particularly as we increase reliance on intermittent resources. The divergent perspectives on the pace and progression of transition to a lower emission energy future have unfortunately become too political in some instances. Regardless of politics, none of us can afford to lose sight of the need to assess the facts and collaborate on solutions as we chart a course toward a lower emissions future. Factual unbiased data, not politics, should be the driving force of determining how we proceed. There is too much at stake to get this wrong.

NGSA supports an aggressive transition, but the pace of that transition should be carefully assessed based on sound data. One thing we all should agree on is that we need factual unbiased analysis that can readily be relied upon to more accurately assess reliability outcomes and to make the appropriate policy choices.[11] We recommend that FERC ask NERC or regional operators to bring together experts representing all viewpoints to develop a central model that incorporates unbiased inputs that are based on realistic assumptions about future technological advances at a reasonable cost that can effectively replace the ramping capabilities that natural gas generation provides today in power markets. To estimate model inputs more accurately, the group should

tightrope," CommonWealth, Feb. 1, 2022. https://commonwealthmagazine.org/energy/close-calls-as-regions-power-grid-walks-a-tightrope/.

(3) "With the intermittency of renewables and the electrification of the economy, substantial clean energy and dispatchable resources, some with yet to be developed technology, over and above the capacity of all existing fossil resources that will be replaced, will be required to maintain reliability in the transition to meeting CLCPA requirements." New York State Reliability Council, "Reliability Challenges in Meeting CLCPA Requirements", Presentation: Climate Action Council, Aug. 2, 2021. 2.

(4) The New York State Reliability Council in a letter to the New York State Legislature asked the legislature to have a reliability exemption for required closure of New York City peaker plants.
Mayer Sasson, "Letter to Senator Jabari Brisport and Assemblyman Robert Carroll," New York State Reliability Council, March 29, 2021.
https://www.nysrc.org/PDF/Documents/NYSRC%20Final%20Comments,%204816-7467-5939.pdf.

[11] The most effective policy paths are those that improve market signals through market design enhancements that will provide the incentive to achieve the desired outcomes.

consult those with expertise on what is the realistic time horizon for enabling technologies required to support a fundamental change in the resource mix. Once a central model that incorporates realistic assumptions is developed, it could then be used as an integral part of reliability planning and a template for regional assessments, helping states and regions accomplish their own individual climate targets in a reliable manner. Alternatively, if a comprehensive model is not feasible, the participants could assess whether studies already exist that provide reasonable, unbiased, and balanced results.

IV. Although the FERC-NERC Final Report Fails to Clearly Delineate the Underlying Causes Associated with Natural Gas Fuel Issues, It Provides a Solid Framework for Taking Concrete Actions to Address Reliability Vulnerabilities.

The FERC-NERC Final Report was an impressive undertaking by FERC and NERC, and provides the public, industry, as well as other public officials and regulators with a very thorough fact-finding assessment of the underlying causes of the outages that occurred during Winter Storm Uri. Given the vast number of issues experienced by all generation resources as well as natural gas facilities during that time, synthesizing such an extensive amount of data was no small feat. NGSA supports the FERC-NERC Final Report's recommendation to hold a gas-electric stakeholder forum ("Gas-Electric Stakeholder Forum") that brings together all relevant parties to flesh out various proposals and more fully develop a plan for implementing concrete actions. We look forward to participating in the upcoming stakeholder forum as well as any other efforts that may be initiated to follow through with recommendations made in the FERC-NERC Final Report.

The FERC-NERC Final Report found that 44% of the outages were attributable to generator freezing and that 27% of the total outages were attributable to natural gas fuel supply issues (composed of production declines, contracting issues and other issues such as low

pressure).[12] We understand that it can be difficult to delineate the specific components of what constitutes the 27% of natural gas fuel issues between actual production declines and contracting issues because it is not always possible to attain that level of granularity from market participants. However, combining contract issues with physical declines in production masks the overall impact of these two very distinct issues during Winter Storm Uri. For the results of the FERC-NERC Final Report to be most useful for regulators and industry, it is important to drill down on the actual causes that need to be addressed.

Additionally, the inability to distinguish between contract issues and production declines improperly characterizes a customer contracting issue as a "natural gas fuel supply issue" when it is not. A customer relying upon interruptible purchase contracts has effectively taken a risk that surplus supply would be available or that they would not be required to run during an extreme weather event, both of which are extremely unlikely.[13] Firm contracting helps to significantly eliminate this risk. Thus, including contract issues as a "Natural Gas Fuel Issue" is the equivalent of finding an airline at fault when a standby passenger is not allowed to board a fully sold-out flight (during peak holiday travel). This is an unacceptable risk when reliability is at stake.

While the FERC-NERC Final Report does not include sufficiently detailed contract data that would allow for a precise breakdown between contract issues and production declines, it is possible to approximate this delineation using data from Figure 103 on page 204, which shows the types of contracting practices (commodity/sales and transportation) used by the 357 gas-fired generators that experienced "natural gas fuel supply issues." Examination of the commodity sales

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[12] Federal Energy Regulatory Commission et al., *FERC – NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South- Central United States* (FERC, November 2021): 15, 173.

[13] Interruptible transportation that has already been confirmed by the pipeline is the one exception. During a force majeure (or emergency) event applicable to firm pipeline customers, curtailment by interstate pipelines is based on the transportation contract in place, in which case, interruptible transportation contracts that are already confirmed are curtailed first. However, interruptible transportation that was not available and never confirmed is not a curtailment of service.

contracting practices on this chart reveals that 25.5% of those generators had all interruptible (non-firm) purchase contracts. If one makes a reasonable assumption that those generators with only interruptible purchase contracts did not receive fuel due to a contract issue, at a minimum, contracting issues would constitute 25.5% of the natural gas fuel issues, resulting in production declines being the remaining 74.5% -- thereby reducing production declines to 20% and contracting to 7% of total outages.[14]

Additionally, page 175 of the FERC-NERC Final Report states that power loss caused 23.5% of the decline in production. Since power loss is outside the control of a producer, we also removed power loss from being associated with production decline outages, thus making production declines responsible for, at most, 15.4% of total outages – a third of the level of outages associated with generator freezing, which constituted 44%.

Natural gas generation is the largest component of ERCOT's resource mix accounting for 42% of its energy in 2021. Consequently, it is not surprising that gas generation disruptions had the largest impact on the system during Winter Storm Uri.[15] In addition to gas-related disruptions, we cannot ignore the performance of other resources given that the resource mix will not remain static. As intermittent resources become an increasingly larger part of the resource mix, their performance will have a larger impact during major disruptive events.[16] For instance, the FERC-NERC Final Report states that while ERCOT expected 7,070 MW of wind to be available during winter peak, during the load shed period, 3,100 MW were available on average and wind energy dropped to 500 MW at one point.[17] While wind performance did not have a significant impact

[14] While we could easily argue that the non-firm portion of the mixed portfolio was most likely the basis for the lack of fuel, to be conservative, we decided to assume all the mix/unknown portion were due to firm cuts.
[15] ERCOT, "2021 Demand and Energy Report", Jan. 7, 2022. 2021 Demand and Energy Report.
[16] ERCOT, "2021 Demand and Energy Report", Jan. 7, 2022. 2021 Demand and Energy Report.
[17] Federal Energy Regulatory Commission et al., *FERC – NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South- Central United States* (FERC, November 2021): 181.

overall during Winter Storm Uri due to lower expectations for wind during that timeframe, wind's performance cannot be ignored given that wind comprised nearly 25% of the energy produced in ERCOT in 2021 and that percentage is likely to grow. For this reason, we support the FERC-NERC Final Report's recommendation for planning coordinators to reevaluate how to appropriately value wind generation capacity as well as how wind is included in the calculation of the winter reserve margin.[18]

V. The FERC-NERC Final Report's Recommended Gas-Electric Stakeholder Forum is the Appropriate Venue Where Parties Can Prioritize and Thoroughly Assess Potential Solutions to Issues Experienced During Winter Storm Uri.

Key Recommendation 7 in the FERC-NERC Final Report states that FERC should consider establishing a stakeholder forum to identify concrete actions to improve the reliability of the natural gas infrastructure system necessary to support the Bulk Electric System. That forum would include representatives of state legislatures and/or regulators with jurisdiction over natural gas infrastructure, in cooperation with FERC, NERC and the Regional Entities, and with input from the Balancing Authorities and natural gas infrastructure entities (including all segments of the industry). Further, the recommendation states that, "Ideally, the forum participants will produce one or more plans for implementing the concrete actions, with deadlines, which identify the applicable entities with responsibility for each action." Recommendation 7 provides an exhaustive list of potential topics that the stakeholder forum could include but makes clear that "[t]he Team is not advocating for the specific implementation of any specific action on any of these topics…."[19]

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[18] "Planning Coordinators should revisit how much wind generation should be considered as capacity and included in winter reserve margin calculations and projections." Federal Energy Regulatory Commission et al., *FERC – NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South- Central United States* (FERC, November 2021). 210.

[19] Ibid., Footnote 299.

As noted above, NGSA supports this recommendation to establish a Gas-Electric Stakeholder Forum because we believe it will allow participants to prioritize the most pressing issues and to assess how potential actions may directly address specific problems as well as assess the broader long-term implications of potential actions to enhance reliability. While we do not believe all the topics listed as examples to discuss at the forum are appropriate solutions, we are confident that a full discussion will result in rational assessments of various proposals and help identify the most pressing issues that should be prioritized. We are encouraged that the FERC-NERC Final Report recognized that the forum participants should look to both the gas and power side for changes that will enhance gas generators' ability to rely on natural gas.

Understandably, there is tremendous pressure to take immediate action to mitigate reliability risks and prevent another occurrence of widespread outages like those caused by Winter Storm Uri. Yet, the rush to act should not translate into imposing measures that have not been assessed thoroughly and thoughtfully in terms of their potential impacts on costs, other customers or the functioning of the natural gas and power markets. Absent full consideration of the intended benefits and potential impacts, such actions could inadvertently hinder rather than bolster reliability as intended.[20] Also, it is important to narrow the focus by prioritizing the most pressing issues based on the actual problems experienced during Winter Storm Uri rather than expending time on periphery items that could slow action in areas that require immediate attention.

[20] Markets maximize flexibility and responsiveness, which are the keys to reliability. Conversely, reducing that flexibility and responsiveness can profoundly harm reliability. Competition in natural gas markets has achieved remarkable results in the diversity of the natural gas supply chain -- a critical component of reliability. When there is a need to adjust to changing conditions and market demand, accurate price signals encourage more investment in new supply, pipeline infrastructure, and storage.

VI. Prioritize the Most Pressing Issues: Finding Ways to Lessen Financial Risk of Advance Fuel Procurement by Generators and Ensuring Adequate Infrastructure to Meet Generation Needs.

Gas-electric coordination is often miscast as us versus them. With power generation being the largest consuming sector of natural gas, accounting for 38% of gas consumption in 2020, our ability to effectively serve our power customers is important to use.[21] If there is market demand, we will do whatever is feasible to enhance our services, within our physical and contractual limitations, to find ways to better accommodate power market requirements. Since most of the natural gas consumption comes from markets other than power, our other customers also remain a priority, with no one segment of our customer base controlling or unfairly allocating costs to others. Therefore, any gas-electric coordination discussions must ensure that the other 62% of our customer base is not adversely impacted since they too depend on the reliability of natural gas deliveries to meet their critical needs.

"Gas-electric coordination" is often used ambiguously to refer to a variety of gas-electric issues, yet most misalignment and lack of coordination among the natural gas and electric industries are a consequence of one fundamental disconnect, which must be tackled first if we intend to achieve real progress on improving gas-electric coordination. Until this fundamental disconnect is addressed, opportunities to do more in the name of gas-electric coordination will be limited to only incremental enhancements on the margin that will not significantly enhance levels of service to power generators or better accommodate their load profiles. This fundamental disconnect is as follows:

(1) **Market Design Changes to Place More Value on Reliability**. Current market design in organized markets often results in a disincentive for advance contracting and

[21] U.E. Energy Information Administration. "Natural Gas Explained," Dec. 27, 2021, https://www.eia.gov/energyexplained/natural-gas/use-of-natural-gas.php.

purchases of natural gas, which runs counter to what is required to ensure reliability. In organized power markets, generators face uncertainty about whether they will run until regional operators dispatch them. Consequently, generators often find it difficult to take on the financial risk of procuring their fuel in advance when they are unsure about whether they will need that fuel and whether they will be able to recover fuel-related costs. In many instances, generators continue to rely on interruptible transportation and supply contracts (that are only available when the gas system has surplus), and day-of gas purchases that expose them to the more volatile spot market.[22]

a. **Possible Solutions**: Developing market design changes in organized power markets that can help to mitigate the financial risk associated with advance fuel procurement and contracting by gas generators by placing more value on reliability, such as allowing multi-day commitments ahead of anticipated extreme weather events.[23]

(2) **Ensuring Adequate Gas Infrastructure to Support Power Market Requirements.** Natural gas producers' and pipelines' primary mission is to sell their product and they are willing to sell to anyone that is willing to contract for their gas supply or pipeline capacity. Yet pipeline capacity and daily production levels are limited to what can be operationally achieved. As demand grows, pipelines are becoming increasingly capacity-constrained and fully subscribed by firm shippers. Thus, absent the addition of

[22] There are a variety of ways that generators, utilities, and industrial users – our customers – can choose to purchase their natural gas. Generally, natural gas customers purchase their natural gas through a portfolio of products including prearranged contracts set at a pre-determined fixed price or indexed to an agreed variable, along with buying some supply in the daily spot market, where availability and price fluctuate in response to weather and the availability of infrastructure capacity and storage. The bulk of transactions are made in advance on a monthly basis – as much as 90%, with only a small percentage of overall sales occur in the spot market.

[23] PJM and Dominion Energy have raised this issue on PJM's new Senior Task Force on Gas-Electric Issues, and we hope will be seriously considered and addressed as part of that initiative.

capacity, particularly storage, the ability to provide service and added flexibility to power customers diminishes.

a. **Possible Solutions**: Ensuring adequate pipeline capacity and storage are in place to serve generation load reliably and flexibly; examine ways that will encourage adequate contractual commitments from generators that will provide the financial underpinning for capacity expansions when needed; explore various compensation options; finding ways to ensure that needed infrastructure to support electric reliability is not delayed.

Fortunately, FERC and NERC recognized the importance of these central issues in the FERC-NERC Final Report and has suggested exploring ways to improve generator procurement and ensuring adequate gas infrastructure, including storage. Both issues are deserving of immediate attention and are discussed in greater detail in the following two sections.

a. Consideration of Design Changes in Organized Markets

At a meeting last year, PJM presented a problem statement, which precipitated the creation of its most recent Senior Task Force on Gas-Electric Coordination. According to the problem statement, the primary problem with market design issues is as follows:

> "Under the current wholesale electric market design, the risk/reward that Market Participants with gas generators face discourages fuel procurement at the very time generation is most needed. As need and gas costs rise, the profit margins of Market Participants with gas generators fall, often going negative. At extreme prices, there may even be corporate limitations that prevent fuel purchases altogether (authorization protocols, cashflow requirements, etc.). Also, market design limitations can create perverse generator behavior with respect to the way they use their dual fuel capability. Generators

that can maximize profits (or limit losses) will have incentive to burn limited backup fuel resources as gas procurement risk/reward falls. Often this results in backup fuel consumption well in advance of peak weather or need."[24]

NGSA is encouraged that PJM has shown a willingness to explore solutions to this critical issue and we encourage other RTOs to take similar steps. Not only does current market design in organized markets discourage fuel procurement "at the very time" it is most needed, but it also discourages procurement "in advance" of when it is needed, which is optimally when most procurement should take place.

Notably, vertically integrated utilities and local distribution companies do not experience the same disincentive to procure fuel and, as a result, do not face the same level of reliability risk that we see in organized markets. Specifically, vertical utilities and LDCs (that have obligation to serve) do not face the same level of exposure because they typically have the ability to invest in an expansive portfolio of long-term firm contracts and storage that support the level of reliability they require. Not only do advance contractual arrangements support reliability, but they also help to avoid or minimize the need to purchase large amounts of natural gas in the more volatile spot market. In fact, most gas customers buy gas in the monthly cash market, resulting in a small percentage of gas purchased in the daily spot market, which tends to fluctuate more widely based on market conditions.[25] Organized markets should strive to replicate these practices through market design changes that value reliability and provide market signals that incentivize enhanced generator procurement practices.

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[24] PJM Markets & Reliability Committee Meeting, Aug. 25, 2021. https://pjm.com/-/media/committees-groups/committees/mrc/2021/20210825/20210825-item-05-2-natural-gas-and-electric-markets-problem-statement.ashx.

[25] Richard Smead, "Weather Resilience in the Natural Gas Industry: The 2017-18 Test and Results", *RBN Energy,* Aug. 3, 2018: 17. https://drive.google.com/file/d/1gdyLshGFbAOLERXpf4Ss-IemFTfNmUV5/view.

In contrast, while there have been efforts made, such as pay for performance programs, market designs in organized markets have yet to place a sufficient value on reliability that encourages similar best practices relied upon by LDCs and vertically integrated utilities. Therefore, RTOs should examine market design changes that can properly value reliability and lead to more reliable generator contracting and procurement practices. While this may appear to be a difficult or expensive undertaking when viewed in isolation, it should be evaluated in the broader context of the benefits derived from avoiding costly and damaging power outages, as well as the potential year-around cost savings from avoiding gas supply procurement at times of peak demand.

NGSA supports recommendations in the FERC-NERC Final Report, such as Recommendations 1.G and 8, that give regional operators greater insight into the types of contracts gas generators have so they have a more accurate understanding of potential vulnerabilities that may exist due to contracting practices. However, actions to improve an operator's awareness should be limited to informational gathering rather than mandating generator procurement practices that might impair a generator's ability to participate in the competitive market. Our preference is for regional operators to seek market-based solutions to encourage more reliable contractual commitments.

b. Ensuring Adequate Gas Infrastructure, Including Storage, to Reliably Serve Gas Generation Should Be a Top Priority for the Gas-Electric Stakeholder Forum – Not Delayed for Further Study.

In the FERC-NERC Final Report, Section VII, recommends a number of issues for further study. In that section, Staff recommends federal and state entities consider market/public funding to finance the infrastructure (e.g., pipeline or storage expansion) necessary to provide additional firm transportation capacity, because many existing pipelines were financed and constructed to

serve Local Distribution Companies and may not have sufficient additional firm capacity.[26] Instead of categorizing this as an issue that warrants further study, NGSA urges the Commission to make this a priority issue that demands immediate attention.

Gas-electric coordination discussions typically focus how the natural gas industry can provide additional flexibility in terms of hourly flows or the ability to flow gas with little to no notice when generators are suddenly called upon to run. However, the ability to provide this level of flexibility is contingent upon how much physical capacity is actually available in the existing pipe, which is limited by the finite size of the pipeline and its operational parameters. No level of coordination can change that fact.[27] Pipeline infrastructure, including storage, takes years to certificate and build and there must be foresight into what is needed. Given the critical importance of having sufficient infrastructure in place to reliably meet power demand as well as the flexibility required to accommodate the way most gas generators use gas, this issue should be front and center at the stakeholder forum rather than an item suggested for further study.

Growing opposition to infrastructure expansion for natural gas has made it increasingly more difficult, and impossible in some instances, for proposed project sponsors to get a project through final approvals at the state and federal level as well as court challenges. Pipeline construction applications under NGA Section 7(c) undergo robust economic and environmental review by FERC that imposes substantial costs, resource burdens and uncertainties on both the pipeline applicants and their supporting shippers. This comprehensive review is appropriate to ensure that pipelines have shown that construction and operation of the proposed facilities is in the

[26] Federal Energy Regulatory Commission et al., *FERC – NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South- Central United States* (FERC, November 2021): 233.

[27] There are tools in place today that are available to generators that are not often dispatched such as purchasing delivered gas or entering into OBAs or park and loans agreements with pipelines to provide flexibility to the extent that the pipeline system can allow operationally.

public convenience and necessity. However, recent FERC actions, delays in approval of interstate pipelines, and pronouncements by individual commissioners have led some to question if FERC's majority views pipeline construction and expanded gas service, including service to electric generators, to be contrary to the public interest based on environmental concerns. The ability of pipelines and shippers, including electric generators, to engage in long-term planning, including planning for generation fuel supply, is dependent upon a transparent, stable, and predictable regulatory policy.

The impact of the growing level of resistance to expanding pipeline capacity is no longer theoretical – it is our reality. In recent weeks, Gordon van Welie, the President and CEO of ISO-NE, responded to close calls in New England by stating that the region relies on natural gas for the bulk of its electricity, but pipeline capacity is constrained and, during periods of extreme cold, gas is directed to homes for heating. In his continued efforts to build more support for increased pipeline capacity, he stated, "The clean energy transition is a long journey, and we cannot escape the reality that the region will be reliant on much of the existing fleet, and the fuels they utilize, for many years to come."[28]

There is an obvious tension between FERC's goals of ensuring grid reliability and recent pronouncements and recent actions regarding interstate pipeline infrastructure approval policies, which have increased the burdens and risks associated with approval under NGA Section 7(c) for expansions of existing pipelines and new greenfield pipelines. The FERC-NERC Final Report acknowledges this basic conflict. Among other things, Recommendation 24 urges further study of (1) investments in strategic natural gas storage facilities to serve pipelines supplying natural gas-

[28] "These are not hypotheticals." Bruce Mohl, "Close calls as region's power grid walks a tightrope," CommonWealth, Feb. 1, 2022. https://commonwealthmagazine.org/energy/close-calls-as-regions-power-grid-walks-a-tightrope/.

fired generating units, (2) options for increased regasification of Liquefied Natural Gas ("LNG") (including possible Jones Act waivers to transport LNG between domestic U.S. terminals); and (3) finding a means to support for generator owners and operators to acquire firm pipeline transportation capacity through long-term contracts. The Report further recognizes that much of the existing interstate pipeline transportation grid was constructed to serve LDCs and may not have sufficient firm capacity to support the demands of generator owners and operators. However, "the Team acknowledges that promoting additional pipeline infrastructure may be contrary to certain federal and state policy goals."[29] Both the goals of reducing emissions and reliability are important and finding the right balance between the two should be our mutual objective.

In addition to coordinating with the natural gas industry, it is important for officials and participants in power markets to be more vocal about the critical need for gas infrastructure to ensure that generation in their region remains reliable. If regional operators weigh in to support a specific pipeline project that is an essential component to support grid reliability, this does not mean that an RTO is no longer resource neutral. It simply means that they have the foresight to understand what is required to ensure that existing generation in their footprint continue to have the ability to acquire fuel instead of watching that reliability and flexibility wane when pipeline capacity becomes increasingly constrained.

Regional operators and market participants have suggested that it would be beneficial for the natural gas industry to incorporate some level of extra pipeline capacity to hold in reserve. However, without adequate financial support for new projects through generator contracting for additional capacity, existing customers would need to subsidize the cost of expansions, or pipelines would have to absorb the costs themselves.

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[29] Federal Energy Regulatory Commission et al., *FERC – NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South- Central United States* (FERC, November 2021): 234, Footnote 362.

VII. NGSA's Perspective on Potential Topics for the Gas-Electric Stakeholder Forum and Further Study

a. The Gas-Electric Stakeholder Forum Should Explore the Lack of Transparency in Intrastate Pipeline Transportation Markets.

In view of the importance of natural gas supply and transportation to the reliable operation of the Bulk-Power System in extreme weather events, coordination and cooperation between suppliers, transporters and distributors is critical to maintaining reliable natural gas service to support a reliable grid. In addition to communication and coordination between gas suppliers, interstate pipelines and local distribution companies ("LDCs"), intrastate pipelines are also an essential part of industry coordination, and they must also operate in a manner that maximizes throughput in critical periods. To ensure that is being done in the most effective manner, the Gas-Electric Stakeholder Forum must assess thoroughly the operations of intrastate gas pipelines during critical periods such as Winter Storm Uri.

During Winter Storm Uri, producers and generators experienced significant issues due to, among other things, *force majeure* declarations and imposition of Operational Flow Order ("OFO") charges and/or excessive penalties from intrastate pipelines.[30] For example, on January 19, 2022, Luminant Energy Company and Dynegy Marketing and Trade, LLC, filed a complaint and request for relief before the Railroad Commission of Texas ("RRC") to prevent Energy Transfer Fuel, LP ("ETF") and Oasis Pipeline, LP ("Oasis"), from terminating gas service to electric generation facilities serving approximately 400,000 homes, businesses and critical

[30] "On February 9, 2021, intrastate pipelines in Texas began to issue OFOs to natural gas shippers, requiring them to balance their receipts and deliveries. Also, on February 9, one intrastate pipeline in Texas issued the first of what would be several critical notices, warning that there would be pipeline natural gas delivery restrictions to natural gas fired generating units with interruptible natural gas transportation contracts in northern Texas area of ERCOT, effective for the February 10, 2021 gas day." Federal Energy Regulatory Commission et al., *FERC – NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South- Central United States* (FERC, November 2021): 92.

infrastructure such as hospitals and schools in the middle of the winter heating season.[31] The complaint arises out of events during Winter Storm Uri. Among other things, Luminant and Dynegy contend that they delivered natural gas to ETF's system in excess of their delivered quantities, which should have ***alleviated*** shortage conditions, and that ETF responded in part by imposing $21.6 million in OFO penalties for in effect alleviating shortages on the pipelines' respective systems. The complaint further alleges that ETF and Oasis conditioned further transportation service on payment of the illegal OFO penalties by refusing to negotiate any short or long-term natural gas transportation or sales arrangements.

To be clear, NGSA is not taking the side of either party in this dispute and has no independent knowledge of the specific factual allegations. Further, NGSA understands that the parties subsequently entered into a temporary agreement to maintain service through March 2022. The point is not this specific dispute. However, this dispute, and the threat by the intrastate pipelines to discontinue service during the heating season, is illustrative of the lack of transparency in intrastate pipeline operations compared with interstate natural gas pipelines regulated by the FERC. This situation raises valid concerns and presents a strong case that more should be done to prevent these types of situations at the state level. The dual role of intrastate pipelines as both transporters and bundled sellers of gas commodity and transportation services heightens these concerns because they may lead to or exacerbate market distortions during critical periods.

NGSA further recognizes that FERC's jurisdiction over intrastate pipelines is limited by, among other things, Section 311 of the Natural Gas Policy Act. We are not suggesting any expansion of that authority. Rather, given that the Commission intends to bring all relevant entities

[31] Railroad Commission of Texas**,** No. OS-22-00008656, *Complaint of Luminant Energy Company, LLC, and Dynegy Marketing and Trade, LLC, against Energy Transfer Fuel, LP, and Oasis Pipeline, LP,* (January 19, 2022).

together at its Gas-Electric Stakeholder Forum,[32] including state regulators, the forum is the most appropriate venue for the parties to assess thoroughly the performance of intrastate pipelines during Winter Storm Uri, and to determine if actions are warranted by the appropriate regulatory authority. For example, at the forum, participants could explore whether capacity release or more flexible points would have assisted shippers during Winter Storm Uri if intrastate pipelines had similar provisions in their tariffs and if so, whether there are actions that state regulatory authorities could take to ensure improvements are made to enhance performance during extreme events.

b. Generator Contracting Practices Should Reflect Their Critical Status Before Embarking on Abrogation of Contracts to Prioritize Power Customers After Residential Customers During Emergencies.

Key Recommendation 7 of the FERC-NERC Final Report suggests that a possible topic for discussion at the Gas-Electric Stakeholder Forum should be "which entity has authority, and under what circumstances, to take emergency actions to give critical electric generating units pipeline transportation priority second only to residential heating load, during cold weather events in which natural gas supply and transportation is limited but demand is high."[33] We understand that during emergency situations, there is considerable pressure to look beyond customer contracts and direct gas supplies to generating units that are critical to keep the lights on. However, prior to pursuing such extreme measures of confiscation of other customers' gas and disregarding the sanctity of contracts, we must explore how it would be possible that a "critical electric generating unit" would

[32] Recommendation 7 states that the forum will include representatives of state legislatures and/or regulators with jurisdiction over natural gas infrastructure, in cooperation with FERC, NERC and the Regional Entities (which collectively oversee the reliability of the Bulk Electric System), and with input from the Balancing Authorities (which are responsible for balancing load and available generation) and natural gas infrastructure entities.

[33] Federal Energy Regulatory Commission et al., *FERC – NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South- Central United States* (FERC, November 2021): 195.

not be holding a firm contract for both gas supply and transportation that provides priority status in the first instance.

Since unbundling under the Commission's Order No. 636 over three decades ago, priority end-use has been replaced by a competitive framework in which contracts and the sanctity of those contracts are the fundamental components that have contributed to the successful natural gas markets we have today. Redirecting a customer's supply, when that customer has paid large sums of money for reliable uninterrupted service, to another customer that has not invested in the same level of priority of service would not only be disruptive to that customer but also to our industry's stability, which is underpinned by contracts. A majority of natural gas shippers already pay hefty reservation charges and costs to secure both long-term interstate natural gas transportation and supply arrangements based on their load assessments. Why would these shippers and customers continue to sign these contracts if they are subject to abrogation when needed the most?

Due to the extent of disruptions during Winter Storm Uri, not all firm contractual commitments for gas supply could be honored, which could lead some to argue that Winter Storm Uri demonstrated that contractual arrangements do not matter, especially during extreme events. However, the FERC-NERC Final Report correctly finds that the opposite is true – in fact, contracts matter the **most** during extreme events. The Final Report found that, "Although generating units with firm natural gas commodity and transportation contracts were not immune from outages and derates due to natural gas fuel supply issues, of the 357 natural gas-fired generating units across the three footprints that had an outage or derate due to natural gas fuel supply issues, only 29 percent had both firm natural gas commodity and firm natural gas pipeline transportation contracts for any volume…. Even though the figure indicates that natural gas shipped to natural gas-fired generating units with firm interstate pipeline capacity was less than contracted volumes…, the

majority of nominated natural gas was delivered to natural gas-fired generating units. Natural gas-fired generating units with interruptible transportation contracts were still able to nominate and ship some gas under those contracts, but at smaller volumes than gas shipped under firm transportation contracts."[34] Also, contracts determine how liability and penalties are allocated in the aftermath of an event such as Winter Storm Uri.

Also, history shows that the inability to meet firm contractual commitments is an extremely rare event in the natural gas industry. During the 2014 Polar Vortex, FERC found that, "During each of these cold events, customers who had firm transportation capacity on natural gas pipelines generally managed to secure natural gas deliveries." Additionally, a report for the Natural Gas Council details how the natural gas industry performed during Hurricanes Harvey and Irma and during the Bomb Cyclone with only minimal disturbances.[35] During a force majeure (or unexpected emergency) event applicable to firm pipeline customers, curtailment by interstate pipelines is based on the transportation contract in place, in which case, interruptible transportation contracts that were already confirmed are curtailed first. When interruptible transportation is not confirmed and firm customers are fully utilizing their firm commitments on a pipeline that is fully subscribed, pipelines are unable to provide interruptible transportation. In those instances, the inability to secure interruptible transportation is not considered curtailment of service due to the nature of the contract.

[34] Ibid., 205.
[35] Richard Smead, "Weather Resilience in the Natural Gas Industry: The 2017-18 Test and Results", *RBN Energy,* Aug. 3, 2018: 17. https://drive.google.com/file/d/1gdyLshGFbAOLERXpf4Ss-IemFTfNmUV5/view.

c. The Proposal to Create an Energy Product Reliability Organization (EPRO) Requires More Clarity and a Stated Purpose of What Such an Organization Can Uniquely Do to Enhance Reliability.

As explained earlier in these comments, it is important to consider the potential impacts on costs, other customers or the functioning of the natural gas and power markets of proposals that are introduced as potential ways to bolster reliability. The FERC-NERC Final Report introduced the general concept of a NERC-like organization for natural gas as one of many possible topics that could be discussed at the stakeholder forum – not a recommendation in the report as was suggested at the January 19th hearing.[36] In fact, a footnote in the report states: "The Team is not advocating for the specific implementation of any specific action on any of these topics; rather, this Recommendation envisions that the entities … will convene and identify potential solutions …" [37] Therefore, we believe proposed legislation to create an Energy Product Reliability Organization (EPRO) that was introduced without a clear rationale for its essential purpose and without the opportunity for participant input was premature.

The EPRO legislation does not clearly identify what problems it is intended to address or what regulatory gap it is intended to fill. Instead, EPRO would create redundant and conflicting authority between the new organization and other Federal and State agencies that already possess the same or similar authority and oversight over the natural gas and products industries; creating yet another layer of regulatory oversight that may do more to hamper than bolster reliability as intended.

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[36] Federal Energy Regulatory Commission et al., *FERC – NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South- Central United States* (FERC, November 2021): 196.
[37] Federal Energy Regulatory Commission et al., *FERC – NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South- Central United States* (FERC, November 2021): Footnote 299.

While we have not been provided with many details about precisely what is intended to be gained through the establishment of EPRO, one likely purpose of creating EPRO is to provide federal authority to impose federal winterization standards for the natural gas industry in the same way FERC and NERC have developed winterization standards for the power sector. If the purpose for creation of a new federal reliability authority is primarily intended to accomplish this single objective, there are likely more efficient means to ensure natural gas facilities have been properly winterized than the creation of a new federal entity.

Before embarking on enacting such measures, it is incumbent on policymakers to first assess whether there is a need for legislation that would provide federal authority to develop national standards for natural gas facilities, especially given the legislatively mandated actions already underway in Texas to identify critical gas facilities and require winterization. Not all states may have winterization requirements but that may be because facilities in cold-weather states are typically built in a manner to withstand extreme temperatures.[38] Also, there is an inherent economic incentive for natural gas producers to ensure that their production continues to flow so they can continue to sell their gas. After an experience like Winter Storm Uri, company experts in the field will automatically review and recalibrate operations to ensure that they are doing what is needed and under their control to ensure that gas continues to flow during similar situations. Also,

[38] On January 19, 2022, the Railroad Commission of Texas released a statement entitled "State's Critical Natural Gas Supply Demonstrating Significant Progress Winterizing Equipment." In that release, the RRC states that, "Since the end of last summer, RRC inspectors have conducted site visits at more than 3,800 natural gas facilities representing oil and gas leases with nearly 22,000 active wells, gas storage facilities that account for about 76% the state's gas storage, and more than 350 pipelines transporting natural gas. During the site visits, which are continuing throughout the winter, RRC inspectors have been directly observing measures operators are undertaking to provide gas supplies under normal and emergency conditions. Inspectors have physically observed what devices natural gas facilities have put in place and processes to harden their assets against cold weather. About 98% of the facilities visited had been winterized. The remaining 2% or so were in the process of winterizing at the time when RRC visited them in the last few months." Railroad Commission of Texas, "State's Critical Natural Gas Supply Demonstrating Significant Progress Winterizing Equipment," Jan. 19, 2022. https://www.rrc.texas.gov/news/011922-natural-gas-winterization/.

it should be recognized that a certain level of production freeze offs during extreme cold conditions is expected and operationally unavoidable. In those instances, natural gas storage facilities assist in mitigating the impact of production freeze offs.

NGSA is not suggesting that national standards ultimately may not be necessary but prior to determining whether an expansion of federal authority is necessary, efforts should be made to gather information and data that may (or may not) justify the need for such actions in addition to providing an opportunity for parties to comment on the assessment. The assessment should include an examination of issues such as the level of state regulatory oversight and authority, the level of unexpected losses due to improper weatherization (versus the declines expected as part of normal operations), the manner in which proper weatherization is determined, the impact of unexpected declines due to weather-related failures and whether critical gas facilities are prioritized during power losses.

NGSA also encourages FERC to reach out to the proper state officials or to work through NARUC to assess whether there is a need for federal action to ensure facilities in their states are not experiencing unexpected operational issues due to a failure to adequately weatherize their equipment.

d. The Natural Gas Market Remains Competitive and Provides Critical Market Signals for Needed Investment.

A foundational element of FERC regulation of the gas industry throughout the open-access era commencing more than three decades ago is the competitiveness of natural gas commodity markets. Following the decontrol of wellhead sales,[39] FERC's primary goal has been to ensure all

[39] Natural Gas Wellhead Decontrol Act of 1989, Public Law No. 101-60, 103 Stat. 157 (1989). Through enactment of the Natural Gas Policy Act in 1978, 15 U.S.C. §§ 3301, *et seq.,* the Congress started the process of decontrolling wellhead prices of natural gas. Upon decontrol, NGPA Section 601 removed much of the pricing of the nation's natural gas supplies from the Commission's regulatory jurisdiction. The NGPA, therefore, radically changed a key aspect of the natural gas industry by eliminating Commission-determined prices for first sales of natural gas. In doing that, the

shippers have meaningful access to the pipeline transportation grid so that willing buyers and sellers can meet in a competitive, national market to transact the most efficient deals possible. FERC's intent has been to further "facilitat[e] the unimpeded operation of market forces to stimulate the production of natural gas . . . [and thereby] contribute to reducing our Nation's dependence upon imported oil, help to ensure the availability of clean-burning natural gas for purposes of addressing environmental problems and the need for electric generating capacity[.]"[40] As the House Committee Report to the 1989 Decontrol Act stated: "All sellers must be able to reasonably reach the highest-bidding buyer in an increasingly national market. All buyers must be free to reach the lowest-selling producer and obtain shipment of its gas to them on even terms with other supplies."[41]

In the decades following price decontrol, a stable system of spot pricing has developed, supported by FERC open-access policies and the evolution of established, transparent, reliable price indices reflecting the development of numerous liquid, competitive markets. The fact that many market participant rely on these indices demonstrates a high level of confidence in the integrity of the natural gas market. Independent market participant assessments of underlying fundamentals remain at the heart of natural gas transaction decisions regardless of whether the transaction is at a fixed price, at index or at a hybrid of the two. Monthly and daily physical natural gas markets have developed as different, distinct product markets.[42]

NGPA "reflect[ed] the workably competitive nature of the production industry." Order No. 436, *supra* n.2 at p. 31,470. See also Pennzoil Co v. FERC, 645 F.2d 360, 378-79 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982).

[40] S. Rep. No. 39, 101st Cong., 1st Sess., at p. 2 (1989).

[41] H.R. Rep. No. 29, 101st Cong., 1st Sess., at p. 2 (1989).

[42] Applebaum, D., & Brecher, T., *Enhancing the Transparency, Efficiency, and Fairness of the Federal Energy Regulatory Commission's Enforcement Program*, [White Paper], Submitted on Behalf of American Gas Association, Edison Electric Institute, Electric Power Supply Association, Interstate Natural Gas Association of America, and Natural Gas Supply Association, (2019).

FERC has long recognized that "[t]he ability to raise prices does not mean that [an entity] has significant market power; it may simply mean that the current rates for peak period service are below the competitive market price."[43] The relevant standard is whether an entity can exercise market power to charge rates in excess of the prevailing competitive level established in the market. The Commission defines "market power" as the ability …to profitably maintain prices above competitive levels ***for a significant period of time***.[44] Thus, for example, in Order No. 712, the Commission found that during short-term peak demand periods, price ceilings inhibit economic efficiencies, thereby harming short-term markets by preventing the allocation of resource to the highest value uses.[45]

In emergency circumstances such as those created by Winter Storm Uri, the use of commodity price caps could create distortions in precisely the circumstances in which efficient allocation of a scarce resource is of paramount importance and masking the market signals that are vitally important to incentivize increased investments that increase supply.

[43] *Explorer Pipeline Co.*, 87 FERC ¶ 61,374, at 62,392 (1999)
[44] *Alternative Rate Policy Statement*, 74 FERC at 61,234 (emphasis added).
[45] *Promotion of a More Efficient Capacity Release Market,* Order No. 712, 123 FERC ¶ 61,286 at P 34 (2008), *order on reh'g,* Order No. 712-A, 125 FERC ¶ 61,216 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009). In this context, the Commission is referring to the use of cost-of-service maximum transportation rates as a price ceiling for short-term capacity release transactions.

VIII. Conclusion

NGSA is appreciative for the opportunity to comment in this proceeding and to offer our perspective on what we believe are the most important considerations and next steps required to ensure reliability during this critical time of transition. We look forward to a productive dialogue with the Commission and all other interested parties on these pivotal issues.

Respectfully submitted,

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