April 10, 2023

Council on Environmental Quality
Attn: Jomar Maldonado
730 Jackson Place, NW
Washington, D.C. 20503
Via regulations.gov

Re: Comments on the Notice of Interim Guidance on the National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emission and Climate Change [Docket No. CEQ-2022-0005]

In response to the Council on Environmental Quality's (CEQ) interim guidance to assist agencies in analyzing greenhouse gas (GHG) and climate change effects of their proposed actions under the National Environmental Policy Act (NEPA) (Guidance), the Natural Gas Supply Association (NGSA) and the Center for LNG (CLNG) respectfully submit the following comments. As discussed below, NGSA and CLNG support CEQ's overarching goal of promoting effective environmental reviews and our collective memberships are committed to continuing to support the reduction of GHG emissions. However, NGSA and CLNG have concerns regarding the CEQ's Guidance and its effect on regulatory certainty, including its likelihood to cause permitting delays due to a duplicative, slow, and costly regulatory review process that will inhibit the build-out of infrastructure needed to maintain reliability in the U.S. power grid and constrain U.S. ability to be a global leader in reducing GHG emissions to help address climate change.

I. Interest of NGSA and CLNG

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.

CLNG advocates for public policies that advance the use of liquefied natural gas (LNG) in the United States, and its export internationally. A committee of NGSA, CLNG represents the full LNG value chain, including large-scale LNG export facilities in the United States, shippers, and multinational developers, providing it with unique insight into the ways in which the vast potential of this abundant, clean, and versatile fuel can be fully realized. CEQ's proposal directly affects CLNG and its members, as LNG export facilities permitted under the Natural Gas Act undergo NEPA analyses, and facility operators are responsible for working with regulators throughout the NEPA process.

II. Comments

a. CEQ's Interim Guidance Will Negatively Impact Investments in the Natural Gas Infrastructure Needed to Support the Transition to a Lower-Carbon Energy Future

NGSA and CLNG share the CEQ's concerns regarding the impact of GHG emissions and their contribution to climate change. NGSA and CLNG believe in the use of natural gas for home heating, power generation, transportation, and export as LNG because natural gas is an efficient energy-carrier and the lowest carbon-intensive hydrocarbon and provides clear environmental benefits both domestically and globally versus other hydrocarbons. NGSA and CLNG members are leading the transition to a reliable and lower-emissions energy future for the world by supporting stable and consistent government policies to reduce GHG emissions and investing billions of dollars in new technologies and practices to continue the momentum of innovation to reduce emissions.

The natural gas industry relies on regulatory certainty from federal agencies to make these investments possible. Allocating capital for significant expenditures and securing customer commitments can take years and billions of dollars; having a reliable regulatory structure is an imperative part of making these investments possible. NGSA and CLNG's

members are actively developing and implementing projects and technologies such as Carbon Capture, Utilization, and Storage ("CCUS"), hydrogen and renewable natural gas to meet energy demand while further reducing GHG emissions.[1] In pursuit of lower GHG emissions, several NGSA and CLNG member companies have developed and launched CCUS techniques and technologies, ranging from CCUS hubs to fuel treatments that reduce emissions from wellhead to end-use. Member companies also use various innovative practices to monitor and reduce emissions, such as utilization of electric motors to minimize air emissions, natural gas recycling to reduce flaring, drone technologies to detect leakage, and providing LNG customers with GHG emissions data associated with the LNG produced and exported– to name just a few innovative practices.

i. The U.S. natural gas regulatory process influences the decisions other countries make regarding their energy mix.

The natural gas industry is a partner in the transition to a lower-carbon future, and exporting U.S. LNG is one of the ways that we are working to reduce emissions on a global scale, while meeting the energy demands for a growing population. As countries choose to increase their use of natural gas for power generation, not only will they reduce their GHG emissions through fuel switching from coal to natural gas, they also will gain the opportunity to increase their use of renewable energy, thus reducing emissions even further.

The energy crisis in Europe has shown the importance of the U.S. LNG industry and a robust global LNG market. Although U.S. LNG is not the sole solution to the EU's energy supply crunch, the United States has been the EU's largest supplier of LNG throughout their energy crisis, and their situation would be far worse without U.S. LNG. Further, having a robust supply of LNG on the global market is critical to helping developing nations reduce their GHG emissions. This is because natural gas power generation is an ideal partner to intermittent

[1] Press Release, NGSA, 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-CleanEnergy-Future-for-All.pdf.
CLNG, Reaching Climate Goals with Natural Gas and LNG, Fall 2021, https://www.lngfacts.org/wp-content/uploads/sites/2/2021/11/CLNG-Climate-Goals-Timeline-Infographic-print-1006.pdf.

renewable energy resources, given its ability to ramp up quickly and provide real-time reaction to changing power supply and demand responses.

Further, because of natural gas's ability to generate dependable, consistent power, it can be used as base load power replacing traditional higher carbon dioxide emitting options. Natural gas is an alternative for counties looking to lessen their reliance on coal generation. However, without a sufficient supply of LNG on the global market, it becomes more difficult for developing countries to create an effective decarbonization strategy.[2]

CEQ should not overlook how U.S. regulatory policy affects decisions made by other countries regarding their own power generation fleet. Having robust natural gas infrastructure that is supported by regulatory certainty here in the United States has an influence on the decisions other countries make regarding their own energy portfolios and their ability to reduce their emissions profile. Regulatory certainty for U.S. natural gas infrastructure is essential and sends a positive signal to our allies and trading partners that the United States is serious about energy security and climate leadership.

ii. Natural gas is the backbone of the U.S. electric grid and regulatory certainty is critical to maintaining its reliability.

Natural gas also serves a critical role in maintaining electric power grid reliability here in the United States. CEQ should not overlook the importance of having sufficient natural gas infrastructure in place to provide the reliability consumers depend on for home use and for electricity. The North American Electric Reliability Corporation (NERC), the regulatory authority whose mission is to assure the effective and efficient reduction of risks to the reliability and security of the power grid, recognizes that "additional pipeline infrastructure is needed to reliably serve [electricity] load."[3]

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[2] An example of how an insufficient amount of global LNG can negatively affect a developing nation's plans for decarbonization is in Pakistan's reversal to coal-fired generation because of insufficient LNG supplies.
Gibran Naiyyar Peshimam, *Pakistan plans to quadruple domestic coal-fired power, move away from gas,* Reuters. February 14, 2023, https://www.reuters.com/business/energy/pakistan-plans-quadruple-domestic-coal-fired-power-move-away-gas-2023-02-13/.

[3] NERC, Long-Term Reliability Assessment at 38 (Dec. 2020)
https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2020.pdf.

Further, pipeline expansions are recognized as "mechanisms promoting fuel assurance," and that "[p]ipeline expansion into constrained areas significantly promotes [bulk power system] fuel assurance."[4] As society transitions to a lower carbon energy future and greater reliance on more intermittent electricity generating resources, the ability to maintain grid reliability will be affected. Many of those intermittent resources are dependent on having a flexible, fast-ramping resource, such as natural gas generation plants, to provide back-up generation and frequency stability. Creating a higher threshold or implementing additional hurdles to permitting gas infrastructure is counterintuitive to the energy transition because it will impede reliability, and CEQ should avoid creating a situation where customers are choosing between emissions reduction and grid reliability. For decades to come, natural gas will continue to serve a key role in the energy transition, and sufficient gas infrastructure is essential to promote grid reliability and preserve global energy security while reducing GHG emissions.

b. CEQ Must Ensure that NEPA Regulations and GHG Emissions Guidance Provide for a Clear, Predictable, and Timely Environmental Review Process.

CEQ's charge is to provide clarifications on the application and scope of NEPA and helpful direction to Federal agencies to assist with their decision-making processes. However, NGSA and CLNG are concerned that this Guidance will do the opposite and make the process confusing and more time consuming. While NGSA and CLNG are supportive of allowing agencies a degree of flexibility to "develop their own agency specific practices and guidance for framing NEPA reviews"[5], so long as those procedures are consistent with NEPA regulations and the agency's statutory authority, we are concerned with the potential for 'scope creep' or overly prescriptive regulations. Allowing Federal agencies to broaden the scope of NEPA reviews without clear boundaries could create unnecessary hurdles for proposed projects during the environmental review process and could also greatly increase the duration of reviews.

[4] Id. at 34.

[5] National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, Federal Register / Vol. 88, No. 5 / Monday, January 9, 2023 / Notices, pp. 1210.

The scope of NEPA review has already seriously expanded since its enactment in 1981, and so too have the timeline and costs to complete the reviews. The average environmental impact statement (EIS) that once took three years to complete can now take up to six years. This lengthened timeline makes project applicants take new, costly and time-consuming steps in preparing their applications, without any assurance that a project will be approved, how it will be conditioned, or whether it will remain economically viable following the NEPA review. CEQ must ensure that this Guidance makes progress toward a more efficient, transparent, and predictable review process.

c. CEQ Should Consider That Many Agencies Already Regulate GHG Emissions.

CEQ's Guidance does not consider that upstream and downstream emissions are already regulated by multiple layers of federal and often state regulation. CEQ, by requiring all agencies in their respective NEPA reviews to consider all direct and indirect GHG emissions of a proposed project, encourages multiple counting of GHG emissions and multiple layers of agency reviews. Congress imbued the Environmental Protection Agency (EPA) and states with authority to regulate air emissions, including GHGs, through the Clean Air Act (CAA). The CAA establishes an all-encompassing regulatory program, supervised by the EPA, to address comprehensively interstate air pollution.[6] As the Supreme Court explained, "Congress designated an expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions."[7] Further, CEQ's Guidance does not take into account that the EPA has already taken significant steps to regulate GHG emissions from pipeline facilities and other sources. The EPA has a proposed rule under the CAA to further limit emissions of methane from facilities in the oil and natural gas sector, which it has been regulating since 2011.[8]

Likewise, other federal agencies' regulations already address the natural gas industry's upstream and downstream GHG emissions. For example, the power sector is further impacted

[6] Massachusetts v. EPA, 549 U.S. 497, 532 (2007)
[7] Am. Elec. Power Co. v. Connecticut, 564 U.S. 410, 428 (2011).
[8] Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 86 Fed. Reg. 63,110 (Nov. 15, 2021).
Supplemental Update, 87 Fed. Reg. 74,702 (Dec. 06, 2022). [consider adding original NSPS OOOO citation]

by the EPA's Ozone National Ambient Air Quality Standards and the Mercury and Air Toxics Standards. LNG terminals and interstate pipelines' NEPA reviews are directed by the Federal Energy Regulatory Commission (FERC) with other agencies, such as the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the U.S. Coast Guard, enforcing their own regulations. FERC also has an outstanding policy statement on how it should consider GHG emissions from natural gas infrastructure projects.[9] FERC has yet to finalize its GHG Policy Statement and the outcome of this policy is still unknown.

States also play an important role in regulating air emissions under the CAA. Congress intended that states would have a significant role in establishing measures to mitigate emissions from stationary sources.[10] The CAA acknowledges state authority to issue permits to regulate stationary sources related to upstream and downstream activities.[11] Pursuant to the CAA, states have developed specific standards regulating sources of emissions, including from FERC-regulated compressor stations and LNG facilities. Many states have also taken significant steps to regulate GHG emissions by enacting laws aimed at reducing GHG emissions.[12]

Natural gas facilities' emissions are subject to extensive regulation in one form or another from the EPA and states. And while one can debate whether NEPA's intended scope of review includes indirect GHG emissions, the fact is that activities and facilities upstream and downstream of the pipeline or LNG facilities are in many cases already covered through the regulations of other federal and state agencies. CEQ, in directing all federal agencies to look at indirect GHG emissions, disregards the climate regulations already in place and creates duplicative procedures that will only serve to cause confusion, create potential regulatory clashes and contradictions, and lengthen the application timeline, thus weakening investor confidence, and diminishing regulatory certainty.

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[9] Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews, 178 FERC ¶ 61,108 (Feb. 18, 2022) ("Interim GHG Policy Statement").

[10] 8 42 U.S.C. § 7401(a)(3) ("air pollution control at its source is the primary responsibility of States and local governments").

[11] See id. § 7661e(a)

[12] Examples: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, and Virginia participate in the Regional Greenhouse Gas Initiative ("RGGI"), which is a state led effort to cap and reduce power sector CO2 emissions. New York has a Climate Leadership and Community Protection Act of 2019 (CLCPA), which requires New York to reduce economy wide GHG emissions 40 percent by 2030 and no less than 85 percent by 2050 from 1990 levels.

d. CEQ Should Rescind the Immediate Effect of this Guidance.

The immediate effectiveness of this Guidance in and of itself has also already caused uncertainty for energy projects that are far advanced in the NEPA review process. It is unclear how this Guidance will affect those projects and what actions agencies already in the middle of NEPA reviews will take to "make use of [this Guidance] immediately".[13] The uncertainty that this Guidance has caused erodes faith that CEQ understands and appreciates its role in providing regulatory certainty to the NEPA process and clear guidance to the agencies involved.

e. CEQ Should Equitably Weigh the Benefits of All Projects.

NGSA and CLNG are concerned that CEQ has set forth this Guidance venturing only to look at the negative environmental impacts when evaluating natural gas and LNG projects. The environmental benefits that natural gas can provide through reduced GHG emissions at home and abroad by replacing coal and enabling an increase in renewable generation must be given equal consideration in any analysis. CEQ should not use this Guidance as a veiled attempt to eliminate natural gas pipelines, production, and/or LNG exports. If the CEQ is considering any changes that would result in higher hurdles to finding natural gas projects in the public interest, it must balance those with consideration of the additional economic benefits of natural gas production and the value that low-cost natural gas has for low-income communities and the U.S. economy as a whole, as well as the environmental benefits of natural gas power generation and its ability to partner with renewables and meet growing energy demand.

Further, CEQ should not be picking winners and losers or tipping the scale when it comes to energy resources. The Guidance advises that agencies consider specific types of alternatives, such as a clean energy project alternative to a fossil fuel project, but CEQ cites no authority to further a particular policy goal. A fundamental tenet of NEPA is that it is a procedural statute. NEPA does not mandate any particular outcome or require an agency to select an alternative that has the fewest environmental consequences. NEPA simply requires

[13] National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, Federal Register / Vol. 88, No. 5 / Monday, January 9, 2023 / Notices, pp. 1196.

that an agency take a "hard look" at the environmental consequences of any major federal action it is undertaking[14]. This Guidance favors renewable energy projects by recommending against agencies looking at impacts if they are "minor and short-term GHG emissions associated with construction of certain renewable energy projects, such as utility-scale solar and offshore wind."[15] The Guidance thus downplays renewable energy project's environment effects, even though the Guidance also "encourages agencies to mitigate GHG emissions to the greatest extent possible".[16] NEPA is fuel-neutral and CEQ's Guidance should be as well.

III. Conclusion

CEQ's goal should be to provide greater regulatory certainty, not hinder it. The NEPA review is an important part of investing in infrastructure projects, as it helps to ensure the longevity and integrity of a project. When companies consider investing in expensive, long-lived energy infrastructure, they need well-thought-out regulations and guidance that recognize the complexity and interconnected nature of the energy industry. Without a clear and certain process, a company is less likely to promote and be able to generate such an investment. NGSA and CLNG ask CEQ to recognize the benefits that natural gas infrastructure will bring to the energy transition and how it can help meet the nation's climate goals without sacrificing reliability and energy security for energy consumers in the United States and around the world.

Sincerely,

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[14] See Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350-51 (1989); Kleppe v. Sierra Club, 427 U.S. 390, 410, n.21 (1976).
[15] National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, Federal Register / Vol. 88, No. 5 / Monday, January 9, 2023 / Notices, pp. 1202.
[16] Ibid, 1206.