



June 9, 2022

The Honorable Joe Manchin III  
Chairman  
Committee on Energy & Natural Resources  
United States Senate  
Washington, DC 20510

The Honorable John Barrasso  
Ranking Member  
Committee on Energy & Natural Resources  
United States Senate  
Washington, DC 20510

Dear Chairman Manchin and Ranking Member Barrasso:

The Interstate Natural Gas Association of America (INGAA) appreciates the Senate Energy & Natural Resources Committee holding an oversight hearing on March 3 to review the Federal Energy Regulatory Commission's (FERC) guidance, colloquially known as the "Policy Statements," related to authorizing interstate natural gas infrastructure projects. The hearing precipitated, and some might argue effectuated, FERC's suspension of the guidance, its decision to solicit additional public input, and commitment to not apply the guidance to pending applications before issuing revised Policy Statements. These actions were important steps towards restoring both regulatory certainty and focusing on Congress' goal in passing the Natural Gas Act (NGA)—the orderly development of plentiful supplies of natural gas at reasonable prices.

As part of the public input process, numerous stakeholders filed comments. Many commentators highlighted the grave flaws in the Policy Statements and negative effects on energy infrastructure if the Statements are not significantly altered. However, the Environmental Protection Agency (EPA) and other groups pressed FERC to either adopt the Policy Statements or, in some cases, adopt more aggressive measures in the name of addressing climate change. There is significant risk that FERC will not address the numerous problems with its Policy Statements but rather adopt the same or similar flawed policies. The result will be the obstruction of the orderly development of natural gas infrastructure at a time when the United States must *promote* such development to protect Americans from future spikes in energy costs, support our allies abroad, enable greater incorporation of renewable energy sources, and further reduce greenhouse gas (GHG) emissions from the electric sector.

Many aspects of FERC's Policy Statements are unlawful or otherwise unsound, and come with significant consequences, but INGAA has identified three flaws that will pose the greatest threat to the United States' ability to realize the substantial benefits of its abundant supplies of natural gas if adopted by FERC in response to outside pressure.

***First, FERC cannot and should not require pipeline developers to mitigate indirect GHG emissions associated with a proposed pipeline or deny a certificate application based on the volume of unmitigated indirect emissions.***

Prior to 1938, there was no federal regulation of natural gas and, while states could regulate the production, transportation, and use of natural gas within their borders, the Supreme Court prohibited states from regulating transportation of natural gas between states. Congress passed the NGA to address the fact that

*no* entity—state or federal—oversaw a narrow segment of the natural gas industry: interstate transmission. The NGA was designed to complement state authority by filling a regulatory gap that states could not fill, not to insert FERC into regulatory issues which Congress reserved to the states or assigned to EPA and which the states and EPA are already addressing.

During the Committee’s March 3 hearing, FERC commissioners argued that certain court decisions *compelled* them to ignore the NGA’s clear jurisdictional boundaries, to require “mitigation” of upstream and downstream emissions, and to deny certificate applications if the volume of unmitigated indirect emissions exceeded some unspecified threshold. Not so. There is no law or court case that obliges FERC to defy the plain language of the NGA; to assume authority held by states or other federal agencies for nearly 85 years; and to act as a *de facto* regulator of upstream and downstream emissions. Neither the NGA nor the National Environmental Policy Act mandates that FERC force a developer to mitigate the indirect impacts of its upstream producers’ or downstream customers’ GHG emissions or to consider any unmitigated impacts when deciding whether to issue an NGA certificate. Such GHG emissions fall outside the scope of the NGA. If FERC requires developers to mitigate indirect emissions or rejects a certificate application based on the volume of unmitigated indirect emissions, it will be because a majority of FERC commissioners *chose* to adopt that unlawful approach, not because the law made them do so.

***Second, the Commission should not rely on the social cost of greenhouse gas (SC-GHG) tool when determining whether to issue an NGA certificate.***

While FERC has estimated “social costs” using the SC-GHG tool, the agency has not incorporated the estimates into its decision-making due to ongoing legal challenges to agencies’ use of SC-GHG and to uncertainty as to whether the tool can be used for project-specific analyses. FERC’s reticence to use SC-GHG is well warranted. As INGAA explained in its prior correspondence, the SC-GHG tool is deeply flawed and erroneously inflates the effects of projects. The tool has calculated, for example, that the “social costs” of a project are over 100 times greater than the project’s actual construction costs. Moreover, any use of the SC-GHG tool requires FERC to make *public policy* decisions that fall exclusively within Congress’ purview. For example, Congress, not unelected FERC commissioners, must determine whether the agency should account for “social costs” incurred outside the United States and how the agency should weigh “social costs” incurred by future Americans relative to present-day Americans.

Despite FERC’s current position on SC-GHG, the tool’s inherent flaws, and the clear need for Congress to determine critical inputs to the tool, there is a significant risk that FERC will respond to pressure and rely on SC-GHG in the future. The EPA’s push for FERC to use the SC-GHG tool in NGA certificate application proceedings is particularly inappropriate. President Biden tasked an interagency working group—of which EPA is but one member—with developing recommendations as to whether and how agencies should use SC-GHG in their decision-making. To INGAA’s knowledge, this group has not done so, nor has the group responded to repeated requests from Ranking Member Barrasso and other senators to provide transparency regarding the group’s work in this area.<sup>1</sup> Even if the SC-GHG tool was not fatally flawed, the EPA cannot unilaterally direct FERC—an *independent* agency—how to use the tool.

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<sup>1</sup> See Letter from Sen. Shelley Capito, Ranking Member, Committee on Environment and Public Works, *et al.*, to The Honorable Cecilia Rouse, Chair, Council of Economic Advisors, *et al.* (May 13, 2022), <https://tinyurl.com/2v3hj925>.

***Third, FERC should not expand its assessment of market need for a pipeline to include evidence other than precedent agreements.***

Under its current practice, FERC will determine that a pipeline is needed if shippers execute long-term contracts for transportation of a substantial portion of the proposed pipeline’s capacity. FERC’s reliance on these “precedent agreements” is a clear, objective test that courts have affirmed and that allows utilities and businesses operating in competitive markets to determine how best to meet their energy needs.

Several entities urge FERC to abandon this sound test. They argue that state policies require transitions away from fossil fuels and that FERC’s approval could “undermine” those policies. These entities effectively ask FERC to ignore the market’s choices regarding energy, as demonstrated by precedent agreements, in favor of a top-down approach where FERC makes its own determination how much natural gas utilities and businesses need and for how long based on individual states’ climate goals.

There is no need for FERC to “second guess” the market in this manner. If a state’s law prohibits the use of natural gas past a certain date, utilities (many of whom require state approval to execute contracts) and businesses will account for that law when making long-term purchases. And industrial and manufacturing customers, who are competitive businesses with no guaranteed recovery, will not subscribe to long-term capacity if they do not believe that the capacity is needed. Precedent agreements remain the best and sufficient evidence of need for a proposed project no matter how certain states’ laws might affect demand for natural gas within those states’ borders in the future.

Further, individual states cannot use FERC to foist their policy preferences on other states. Each state sets climate goals, or otherwise makes decisions about the regulation of upstream production-related or downstream combustion-related activities—whether in the interest of climate change or other policy goals. That is their prerogative. But FERC reviews proposals for projects that concern multiple states’ interests. If FERC bases its determination of need on state law or incorporates state law into its NGA certificates as some suggest, then FERC would apparently have to evaluate each relevant state’s laws, select a winner from among the states, and use its NGA authority to implement the winning state’s laws in every state along the proposed pipeline’s right-of-way.

Finally, the reports of natural gas’ death are grossly exaggerated. The North American Electric Reliability Corporation—the organization charged with ensuring the reliability of our electric grid—explained that “[n]atural gas is the reliability ‘fuel that keeps the lights on,’ and natural gas policy must reflect this reality.”<sup>2</sup> PJM Interconnection and the Midcontinent Independent System Operator—who together operate an electric grid serving over 107 million retail customers in 24 states and Washington, D.C.—likewise concluded, in a joint submission to FERC, that “the continued availability of natural gas and associated infrastructure is a key component in ensuring long-term resource adequacy, and by extension, in meeting PJM and MISO’s significant reliability responsibilities.”<sup>3</sup>

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<sup>2</sup> North American Electric Reliability Council, *2021 Long-Term Reliability Assessment* at 5 (Dec. 2021), <https://tinyurl.com/5n7nzh3v>.

<sup>3</sup> Limited Reply Comments of PJM Interconnection, LLC and the Midcontinent Independent System Operator, Inc. at 2, FERC Docket Nos. PL18-1-001, PL21-3-001 (May 25, 2022), <https://tinyurl.com/5chsxm35>.

The United States is already experiencing the harmful effects of inadequate access to the country's abundant supply of natural gas: higher, more volatile prices, heightened threats to electric reliability, and increased GHG emissions as higher natural gas prices lead to greater reliance on coal-fired power plants for electricity generation. Increased production and a reduction in unused natural gas leases on federal land are not a panacea for these problems; without adequate infrastructure to transport natural gas, demand will remain unsatisfied despite greater levels of production.

Ohio, Pennsylvania, Texas, and West Virginia illustrate how the lack of infrastructure affects natural gas production. Natural gas production in these states has *slowed* despite record highs in the price of natural gas because of inadequate pipeline infrastructure.<sup>4</sup> Market analysts note that Appalachia "is nearing takeaway capacity limits" and expect "little to no production growth" until new pipelines enter service.<sup>5</sup> Although temporary factors like poor weather contributed to the slowdown in production from Appalachia, analysts concluded that other factors are at play, specifically, "infrastructure development has been stymied," "limiting [production] growth."<sup>6</sup>

INGAA values the Committee's oversight to ensure that FERC remains focused on its mission to protect Americans from high natural gas prices. INGAA remains concerned, however, that FERC will adopt policies that *increase* prices and reduce reliability and security as part of an effort to address the contributions to climate change of upstream and downstream sources outside of the agency's purview and within the states' exclusive jurisdiction. States can and are addressing these contributions consistent with the policy preferences of their citizens; there is no need for FERC to second guess the states and use the NGA to impose a duplicative layer of regulation on interstate natural gas pipelines.

Thank you,



Amy Andryszak  
President & CEO  
Interstate Natural Gas Association of America

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<sup>4</sup> Scott DiSavino, Arathy Somasekhar, Brijesh Patel, *U.S. natural gas production growth wanes as need arises*, Reuters (May 2, 2022), <https://tinyurl.com/2p84krav>

<sup>5</sup> *Id.*

<sup>6</sup> Tristan Bove, *Demand for U.S. natural gas has never been higher. So why is production slowing?*, Fortune (May 3, 2022), <https://tinyurl.com/yjn3v5f9>.