Interstate Natural Gas Association of America

February 28, 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 to review the Federal Energy Regulatory Commission's (FERC) sweeping changes to natural gas infrastructure policy.

When FERC issued its new natural gas certificate and greenhouse gas mitigation policy statements, the Commission's majority suggested that changes to FERC policy are needed to improve the predictability and certainty of the natural gas infrastructure certification process. But instead of creating a more predictable process, FERC's new policy statements abandon the prior bipartisan approach to natural gas permitting that has delivered the many benefits of U.S. natural gas across our country and around the world. Instead of providing more certainty, FERC's new policies create more confusion and set the stage for unprecedented chaos in FERC's natural gas certificate proceedings moving forward.

INGAA urges FERC to reconsider the staggering scope and consequences of its new greenhouse gas mitigation policy statement. This policy proclaims that the Commission has the authority to require pipeline project applicants to mitigate "reasonably foreseeable" greenhouse gas emissions related to the production and end use of natural gas—which are outside of pipelines' control. Moreover, Congress provided the authority to mitigate upstream and downstream emissions to other federal agencies or reserved it for state agencies, not FERC.

FERC should refocus its natural gas policies on the Commission's mandate to oversee the development of reliable and affordable natural gas while also minimizing the *direct* impacts of pipeline construction and operation on communities. Otherwise, INGAA is concerned that FERC's new policies will imminently threaten energy security, reliability, and affordability, including by adding new delays to project reviews that the Commission has already postponed and by saddling consumers with significantly higher natural gas costs.

The Committee's hearing could not come at a more critical moment to ensure FERC policies are enabling access to low-cost natural gas. Americans are facing skyrocketing energy prices. Electric grid operators and NERC are warning that natural gas pipeline constraints put the electric grid at heightened risk of emergencies. Russia is using its natural gas supplies as a cudgel against our allies. Pipeline construction workers are sidelined waiting for the FERC's permission to work. State and local governments are waiting for the Commission to approve

projects that will ensure the reliable delivery of heat and electricity to their constituents. This letter further details INGAA's concerns with FERC's new natural gas policy statements.

FERC's new policies abdicate the Commission's responsibility to ensure the benefits of affordable, reliable natural gas are available to the American people.

FERC's new natural gas certificate and greenhouse gas mitigation policy statements replace the Commission's prior natural gas policy statement, which was issued on a unanimous, bipartisan basis in 1999. FERC's 1999 certificate policy statement demonstrated how the Commission can achieve significant benefits for the United States when it works in a bipartisan fashion to advance the goal set by Congress in the Natural Gas Act: "to encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices."[1] Over the past two decades, FERC has issued certificates for more than 23,000 miles of major pipeline projects using the reasoned, consistent, and predictable review process established by the 1999 statement. This expansion of America's natural gas network has provided substantial economic, climate, and national security benefits. The United States' natural gas network is the envy of the world.

By connecting natural gas supplies unlocked by the shale revolution with homes and businesses across the country, the addition of pipeline infrastructure to constrained markets has resulted in lower natural gas and electric power prices.[2] This is precisely what Congress intended when it provided FERC the authority to regulate interstate natural gas infrastructure development.

Further, increased use of natural gas has been a primary factor behind flattening total U.S. greenhouse gas emissions and sharply declining emissions from the electric power sector. With a policy environment that encourages natural gas infrastructure development, progress to-date could represent only the beginning of the climate benefits of natural gas infrastructure. Natural gas infrastructure can play a critical role complementing the expansion of renewable energy by providing an on-demand, fast-ramping partner for periods when renewables are not available. Further, INGAA is encouraged by bipartisan Congressional support for initiatives to expand renewable natural gas and hydrogen blending projects to further reduce emissions associated with natural gas use, but the success of these initiatives depends upon FERC supporting continued investment in natural gas infrastructure.

Current events in Europe make it obvious to every American that domestic energy security is fundamental to national security. The expansion of U.S. natural gas pipeline and export infrastructure provided for record exports of natural gas in 2019 and helped our country become energy independent for the first time in 67 years. Natural gas infrastructure has enabled the U.S. to meet domestic energy needs without depending on foreign nations. It also allows us to support our allies and trading partners in Europe during the unfolding crisis in the Ukraine.

[1] Nat'l Ass'n for Advancement of Colored People v. Fed. Power Comm'n, 425 U.S. 662, 670 (1976).
[2] ENERGY INFORMATION ADMINISTRATION, ANNUAL ENERGY OUTLOOK 2021 WITH PROJECTIONS TO 2050 25 (2021).

INGAA wholeheartedly agrees both with Chairman Manchin's recent statement that "this energy security affords [the U.S.] with expanded geopolitical tools and strengthens our national security" and with Ranking Member Barrasso's recent statement that "we are much better as a country and safer as a country and stronger as a country if we sell energy from the United States to our friends" rather than relying on energy from other nations that do not share our geopolitical or environmental goals. Recent EIA analysis confirms that where Americans are paying excessive costs for natural gas, it is not because of our exports, but because of a lack of pipeline capacity to supply certain regions, such as the Northeastern U.S.[3]

Unfortunately, FERC's new policy statements abandon the predictable, bipartisan approach to natural gas project reviews that has delivered the benefits of U.S. natural gas across our country and around the world. Instead, the new policy statements advance the apparent view of FERC's three Democratic Commissioners that the use of natural gas is inherently harmful and must be "mitigated" in order to be in the public interest—a view that is clearly contrary to the letter and intent of the Natural Gas Act. Although it remains to be seen how the Commission will apply these policies, the sweeping new emissions authorities and responsibilities claimed by FERC's majority are at odds with its primary mission to promote reliable and affordable natural gas.

FERC's new policies will imminently threaten energy security, reliability, and affordability, including by adding new delays to projects that the Commission has already paused.

In FERC's new natural gas policy statements, the Commission's majority claims not only the authority, but the obligation, to: 1) estimate emissions from upstream producers and downstream end users associated with a natural gas pipeline project, 2) "encourage" project developers to submit plans to mitigate the impacts of those emissions, and 3) deny a developer's application for a certificate or impose additional mitigation measures as a condition of the certificate if the Commission deems the developer's "voluntary" plan to mitigate emissions insufficient. As Commissioner Danly observed, complying with these changes will be "extremely cost-intensive and time-consuming and, in addition, creates a plethora of opportunities for opponents of the project who otherwise lack meritorious objections to it, to run up the costs, to cause delays, and to create new grounds for the inevitable appeals challenging the certificate even if the applicant does manage to obtain it."

Despite the majority's claim that its updated policy statement seeks to "encourage" natural gas projects to "voluntarily" mitigate emissions, nothing about the new greenhouse gas mitigation requirements is voluntary. The new certificate policy statement indicates that FERC "*expects* applicants to propose measures for mitigating impacts, and [it] will consider those measures—or the lack thereof—in balancing adverse impacts against the potential benefits of a proposal." FERC's new policy statements establish no clear mitigation threshold. Instead, FERC will decide in each individual natural gas certificate proceeding whether "an applicant's proposed

[3] ENERGY INFORMATION ADMINISTRATION, *New England natural gas and electricity prices increase on supply constraints, high demand* (Feb. 3, 2022), https://www.eia.gov/todayinenergy/detail.php?id=51158&src=email.

mitigation of impacts is inadequate," and if so, "condition the certificate to *require* additional mitigation," or deny the application. These are new, real mitigation requirements with significant potential to limit access to natural gas and increase consumer costs.

Although FERC's majority characterizes the new polices as "a non-binding framework," they will have immediate deleterious effects. The Commission has decided to apply the updated policies to every pending natural gas proceeding currently before FERC, some of which have been pending for more than two years. This effectively sends every pending certificate application back to square one because each developer must now review what the Commission "encourages" it to do to mitigate greenhouse gas emissions, guess at what new standards the project is now required to meet, and submit additional information to show how the project meets those standards, or else FERC may reject the certificate. FERC has already delayed decisions on pending projects while it developed the new policies, and EIA recently noted that 2021 saw the lowest amount of interstate natural gas pipeline capacity additions since 2016.[4]

Moreover, the Commission will immediately apply its interim greenhouse gas mitigation policy to all pending proceedings but reserves the right to modify this interim guidance based on comments received within 60 days. Any work developers do in the next several months to meet the Commission's new standards thus could be a waste because the Commission can just move the goal posts again.

Further, FERC's new greenhouse gas mitigation policy invites *any party* to any pending or future natural gas proceeding to submit any evidence regarding the factors identified in the policy statement, including how FERC should determine the need for the project and the upstream and downstream emissions associated with a project. As a result, the Commission is setting itself up to oversee a lengthy, cumbersome "battle of experts" in each certificate proceeding that could add years to pipeline development timeframes.

In FERC's new greenhouse gas mitigation policy statement, the majority also reserved the right to rely on the "social cost of greenhouse gas." This tool suffers numerous flaws and erroneously inflates the estimated effects of individual projects. For example, EPA recently estimated the social cost associated with the downstream use of natural gas that would be transported by a specific pipeline project currently pending before FERC would be *111 times greater* than the project's total construction costs. Consequently, EPA recommended that FERC reject the project unless the developer offset these costs—that is, unless the developer incurs billions of dollars in mitigation costs for a $127 million dollar project. It is unclear how any natural gas pipeline project could mitigate the entire global social cost of the natural gas to be transported through a pipeline under the framework EPA has recommended to FERC.

[4] ENERGY INFORMATION ADMINISTRATION, *Natural gas pipeline capacity additions decrease in 2021* (Feb. 24, 2022), https://www.eia.gov/todayinenergy/detail.php?id=51398&src=email.

Under these new policies, the Commission expects to prepare a full environmental impact (EIS) statement—the most time- and information-intensive option available under the National Environmental Policy Act (NEPA)—for approximately 75% of projects under review, making the lengthier EIS FERC's default document. This outcome is the result of FERC's new arbitrary presumption that the greenhouse gas emissions impacts of most natural gas projects create a "significant" impact under NEPA. This approach is unnecessary; in many instances, the Commission could determine that a project has no significant impacts on the environment using the more efficient environmental assessment (EA) process, rather than relying on default presumptions to justify a full EIS.

FERC's new natural gas policies, and the Commission majority's plan to implement them, not only ignore the benefits that U.S. natural gas has provided over the last twenty years, but also the current needs of the electric grid. NERC recently stated that natural gas is "the reliability fuel that keeps the lights on" as more renewable energy sources are incorporated into the electric grid and urged regulators like FERC to accept that "natural gas policy must reflect this reality." NERC's statement implies that natural gas development policy has become detached from reality, an obvious problem that FERC's new policies unfortunately make worse. Further, ISO-New England has emphasized the "energy-security risk" created by "inadequate infrastructure to transport natural gas" as a "pressing concern" for New England.[5] FERC's majority does not appear to be heeding NERC and ISO-New England's warnings and is instead setting the stage for a chaotic, unprecedented disruption to FERC's natural gas certificate dockets.

FERC's new policies also appear to discount the high-quality construction jobs enabled by natural gas pipeline development. Natural gas industry workers earn a median hourly wage of more than $30 an hour, approximately 59% higher than the national average.[6] Despite these benefits, FERC's majority has indicated that it will "give[] less weight" to the jobs benefits of pipeline construction because they are "temporary." The majority fails to recognize that a career in any aspect of the construction industry is comprised of a series of "temporary" projects. FERC's new polices also have the effect of asking the pipeline construction workforce to sit on its hands while FERC reconsiders every pending application and invites extended debate on whether each project should be certificated and under what conditions.

[5] ISO NEW ENGLAND, *Natural Gas Infrastructure Constraints*, https://www.iso-ne.com/about/what-we-do/in-depth/natural-gas-infrastructure-constraints.

[6] BW RESEARCH PARTNERSHIP, ENERGY FUTURES INITIATIVE, & NATIONAL ASSOCIATION OF STATE ENERGY OFFICIALS, WAGES, BENEFITS, AND CHANGE: A SUPPLEMENTAL REPORT TO THE ANNUAL U.S. ENERGY AND EMPLOYMENT REPORT (2021), https://static1.squarespace.com/static/5a98cf80ec4eb7c5cd928c61/t/606d1178a0ee8f1a53e66206/1617760641036/Wage+Report.pdf.

Congress provided the authority to mitigate emissions from natural gas production and end use to other federal agencies or reserved it for state agencies—not FERC.

One might ask why FERC is seeking to control emissions upstream and downstream of pipelines by threatening to require *the pipeline* to assume the mitigation costs. The answer is that the Commission has absolutely no jurisdiction over natural gas production or end use, and to get around these jurisdictional limitations, FERC's majority is seeking to dramatically expand its "pipeline" authority to control emissions from natural gas production and consumption.

INGAA members are strongly committed to action to address global climate change and are working as an industry towards net-zero greenhouse gas emissions from our natural gas pipeline transmission and storage operations by 2050. However, Congress vested other federal agencies, or left to state regulators, the authority to dictate emissions reduction requirements for natural gas pipelines, producers, and end users.[7] FERC does not have this authority. Nor are the authorized regulators asleep at the wheel, as the Commission's majority appears to believe. For example, EPA has proposed New Source Performance Standards and Emissions Guidelines for Oil and Gas Sector and currently is reviewing comments on this proposal. INGAA has vocally supported EPA pursuing federal methane regulations covering our operations.

Further, numerous states have passed laws that set climate change and clean energy goals for natural gas end users within their states. It is not FERC's role to judge the efficacy of states' efforts to address climate change and to step in where the Commission thinks states have failed, yet that is precisely what the Commission's new policy statements envision. FERC should reconsider its interim greenhouse gas mitigation policy and tailor it to the direct impacts of *pipeline* construction and operations.

No court has directed FERC to assume the expansive and unlawful greenhouse gas mitigation authorities presented in the new policy statements.

INGAA supports FERC's goal of protecting its certificate orders from the legal challenges that have become routine in nearly every pipeline proceeding, so long as those orders are consistent with the laws established by Congress. The majority's actions, however, go beyond what courts require, rely on dubious legal reasoning, and appear to be an attempt to frustrate natural gas infrastructure development. To justify the Commission majority's self-appointment of FERC as the nation's primary regulator of emissions from the natural gas industry, the majority cites its interpretation of *one sentence* of *one opinion* from the D.C. Circuit, which itself did not squarely address the extent of FERC's jurisdiction over upstream and downstream greenhouse gas

[7] *Am. Elec. Power Co. v. Conn*., 564 U.S. 410, 426 (2011) ("Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants"); *Am. Lung Ass'n. v. EPA*, 985 F.3d at 959-60 (D.C. Cir. 2021) ("there is no question that the regulation of greenhouse gas emissions by power plants across the Nation falls squarely within the EPA's wheelhouse.").

emissions. Furthermore, the majority did not meaningfully engage, much less reconcile its position, with Supreme Court precedent, prior D.C. Circuit precedent, and case law from another circuit that conflict with the majority's reading of the Commission's authority to mitigate upstream and downstream emissions related to pipeline projects.

FERC *should* take steps to ensure the legal durability of its certificate orders, just not the steps envisioned by its new policies. The Commission should, for example, quantify reasonably foreseeable greenhouse gas emissions in its project *NEPA analyses*, and evaluate these emissions in the context of global climate change. However, the Commission must not conflate its obligations under NEPA, a procedural transparency statute, with its Natural Gas Act authority. Upstream and downstream emissions should remain outside of the Commission's determination of whether to approve a pipeline, and under what conditions.

FERC should also establish clear standards for evaluating environmental justice considerations that are tailored to FERC's duties under the Natural Gas Act and NEPA and the interests and needs of communities actually affected by a pipeline project. FERC should apply its greenhouse gas and environmental justice standards consistently across certificate proceedings.

In addition to narrowing its new greenhouse gas emissions mitigation policy, INGAA also urges FERC to work promptly with the pipeline industry to clarify numerous unresolved questions about the implementation of the two new policy statements.

INGAA thanks the Committee for its work promoting an American energy system that is secure, reliable, affordable, and increasingly cleaner, due in large part to our natural gas infrastructure. We stand ready to work with the Committee and FERC to continue delivering the benefits of natural gas to the American people.

Thank you,

Amy Andryszak
President & CEO
Interstate Natural Gas Association of America