

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

Certification of New Interstate Natural Gas  
Facilities

Docket No. PL18-1-001

Consideration of Greenhouse Gas Emissions  
in Natural Gas Infrastructure Project Reviews

Docket No. PL21-3-001

**COMMENTS OF AMERICAN FOREST & PAPER ASSOCIATION,  
INDUSTRIAL ENERGY CONSUMERS OF AMERICA AND PROCESS  
GAS CONSUMERS GROUP**

On February 18, 2022, the Federal Energy Regulatory Commission (“Commission”) issued an Updated Certificate Policy Statement to describe how the Commission will determine whether a new interstate natural gas transportation project is required by the public convenience and necessity under Section 7 of the Natural Gas Act (“NGA”) (hereafter “Updated Certificate Policy Statement”).<sup>1</sup> Simultaneously, the Commission issued an interim Policy Statement on Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews to explain how the Commission will assess the impacts of natural gas infrastructure projects on climate change in its reviews under the National Environmental Policy Act (“NEPA”) and the NGA (hereafter “GHG Policy Statement”).<sup>2</sup> The GHG Policy Statement invited comments by April 4, 2022. By order issued on March 24, 2022 in the above-captioned proceedings, the

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<sup>1</sup> *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Updated Policy Statement).

<sup>2</sup> *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) (Interim GHG Policy Statement).

Commission made both policy statements drafts, extended the period for comments on the draft GHG Policy Statement to April 25, 2022, and also invited initial comments on the draft Updated Certificate Policy Statement to be submitted by April 25, 2022.<sup>3</sup> American Forest & Paper Association (“AF&PA”), Industrial Energy Consumers of America (“IECA”) and Process Gas Consumers Group (“PGC”, and together with AF&PA and IECA, “AIP”) hereby submit these comments in regard to the draft policy statements.

### **I. AF&PA, IECA and PGC**

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry’s sustainability initiative – Better Practices, Better Planet 2020. The forest products industry accounts for approximately 4% of the total U.S. manufacturing GDP, manufactures over \$200 billion in products annually, and employs approximately 900,000 men and women. The industry meets a payroll of approximately \$50 billion annually and is among the top 10 manufacturing sector employers in 45 states. AF&PA member companies own and operate facilities that consume natural gas delivered through numerous interstate natural gas pipelines.

IECA is an association of manufacturing companies with \$1.1 trillion in annual sales, over 4,200 facilities nationwide, and more than 1.8 million employees. IECA membership represents a diverse set of industries including: chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, building products,

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<sup>3</sup> 178 FERC ¶ 61,197 (2022).

automotive, independent oil refining, and cement. IECA member companies own and operate facilities that consume natural gas delivered through numerous interstate natural gas pipelines.

PGC is a trade association that represents energy-intensive, large industrial and manufacturing natural gas consumers who are typically longstanding, significant employers within their respective communities. PGC members own and operate hundreds of manufacturing plants and facilities in virtually every state in the nation and consume natural gas delivered through interstate natural gas pipeline systems throughout the United States.

## **II. Executive Summary**

AIP members rely on natural gas in their manufacturing processes and as a feedstock for their products. Unlike other shippers, these entities cannot pass on the increased cost of natural gas to their customers as they operate in globally competitive markets. For this reason, they encourage FERC to keep at the forefront of its decision-making the importance of FERC's primary responsibility under the NGA of ensuring just and reasonable rates, and to consider the economic impacts of the costs of mitigation measures that it orders and whether customers should bear such costs. While the draft GHG Policy Statement briefly addresses costs, AIP members urge the Commission to require pipelines to propose cost-effective, proven environmental mitigation measures that are currently available using a best practices approach, and to support adoption of this as a standard for required mitigation of direct impacts from construction and operation of the pipeline. AIP members request that the Commission require consumer protections for cost recovery of mitigation measures, similar to those adopted in PL15-1 for recovery of modernization expenditures, such as requiring rate review of any mitigation costs in the context of a rate case or recent rate review. Moreover, the Commission should require similar transparency regarding the actual GHG mitigation projects planned, and pipelines should identify the amount of expected reduction in GHG emissions from such projects in order to ensure accountability.

AIP members also support the Commission clarifying the draft GHG Policy Statement in order to provide regulatory certainty. AIP members support the clean energy transition and have strong sustainability goals, as discussed above. However, they also need reliable natural gas service and believe that without additional clarifications, the draft policy statements may cause unintended delays and risk cancellation of needed pipeline infrastructure. For this reason, they request the Commission clarify that pipelines are only required to mitigate GHG emissions related to construction and operation of the proposed facilities and not upstream or downstream GHG emissions. AIP also requests that the Commission clarify the amount of mitigation it will require of direct emissions from construction and operation of a project. If the Commission is unable to propose a specific level of mitigation, AIP urges the Commission to adopt a standard for mitigation, such as the most cost-effective mitigation that is consistent with mitigation agreed to by industry and the EPA under the EPA's methane reduction programs.

While AIP appreciates that the Commission partially adopted AIP's suggestion in its Post-Technical Conference comments that the Commission not overestimate adverse environmental impacts by using peak usage of the pipeline for determining the adverse impacts of a proposal on the environment and the benefit of proposed mitigation in the Section 7 certificate process, the Commission is still proposing to rely upon an unrealistic assumption of peak usage or what it refers to as "full burn" for purposes of making the decision whether to perform a full Environmental Impact Statement ("EIS"), based on the rationale that it does not want the courts to later remand certificates for relying on an Environmental Assessment ("EA") instead of an EIS. For the reasons stated below, AIP does not believe that the courts require this full burn assumption, and are concerned that the upfront delay of requiring a full EIS for most pipeline projects is not necessary for FERC to meet the court's guidance. As discussed below, we appreciate that the Commission

adopted a policy that considers actual projected pipeline utilization in making the Section 7 needs determination and request the Commission use the same projected utilization for the EIS determination or request that FERC better explain why it cannot make such a determination.

In addition, AIP supports the Commission's declaration in the Updated Certificate Policy Statement that the Commission remains committed to the goals of the 1999 Policy Statement. AIP also supports the Commission's statements that it will consider additional evidence of need in addition to precedent agreements, as well as the continued consideration of whether there are adverse impacts to existing customers of the pipeline or captive customers on competing pipelines in terms of degradation of service. However, AIP is very concerned that the Updated Policy Statement appears to move away from the very clear principle that the pipeline must be able to financially support the pipeline project without subsidies from existing customers, and opposes any change to the Commission's policy that contradicts this principle.

### **III. Comments on the GHG Policy Statement**

#### **A. The Commission Should Require Rate Review and Other Consumer Economic Protections Prior to Allowing the Pass-Through of the Costs of GHG Mitigation Measures.**

##### **1. To the Extent that the Commission Allows a Pipeline to Collect the Costs of GHG Mitigation and Offsets and Pass such Costs Through to its Customers, it Must Do So in the Context of a Rate Review.**

The Policy Statement devotes very little discussion to the issue of cost recovery even though pipelines and the EPA both assert that the costs of environmental mitigation could be billions of dollars per pipeline. The Commission makes a passing reference to a Ruby pipeline case where the Commission allowed the pass-through of environmental offsets, but otherwise simply leaves it to pipelines to propose how to pass through the costs of GHG mitigation. As noted in prior comments, FERC is the only economic regulator for interstate pipeline rates and is charged with ensuring that pipeline rates are just and reasonable under the NGA. AIP members

urge the FERC to adopt regulations in this area that protect consumers from unjust and unreasonable rates.

Pipelines continue to over-earn their allowed returns as demonstrated in the NGSAs ROE studies that have been performed on a rolling five-year basis. Pipelines continue to request ROE's between 14.75-16% on capital structures that are composed of 64-68% equity as demonstrated in recent rate filings. As noted in public comments, pipelines are able to manipulate their capital structures to reach the highest levels of return through inter-company transactions and their cash management programs for the purpose of inflating rate increases in their rate case filings. Many of these pipelines are experiencing leaks and explosions due to lack of maintenance of the pipeline for many years, despite receiving operation and maintenance expenses in their rate cases for decades. The Commission must be careful not to allow pipelines to further inflate shareholder earnings with additional GHG mitigation revenues with no accountability to consumers for how they spend this money. The Commission should require a rate review and a review of the pipeline's maintenance history before any such costs may be passed through to ratepayers, and adopt other consumer protections similar to what FERC requires for modernization trackers in Policy Statement PL15-1.<sup>4</sup>

**2. The Commission Must Take Measures to Ensure that Pipelines are Held Accountable to Achieve GHG Emissions to the Extent that Ratepayers Are Forced to Pay GHG Mitigation Costs.**

As noted by one Senator in the recent hearing on the Policy Statements, pipelines have stated for years that they have achieved significant GHG reductions on their own accord. As noted in the order, our members have previously asked the Commission to establish a baseline for

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<sup>4</sup> See *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities*, 151 FERC ¶ 61,047 (2015).

emissions and require that any payments from ratepayers to accomplish emissions reductions achieve such results, or require the pipeline to repay the money that was collected. Also, to the extent that the Commission allows pipelines to collect money for GHG offsets, it should also require the pipelines to pay the ratepayers any revenues from the sale of GHG offsets and provide credit for any other environmental attributes or tax credits that the pipelines earn from offsets that are paid for by consumers. The Commission should also consider requiring pipelines that install new compressors to mitigate GHG emissions to conduct fuel studies and requiring that any fuel efficiency savings achieved through the new, more efficient compressors be calculated so that customers can ensure that they are receiving the benefits in reductions in pipeline fuel charges.

In addition, the Commission should require detailed reporting of GHG emissions to the extent that such GHG mitigation costs are included in rates. These reports should include detail for calculating GHG impacts similar to what FERC now includes in the final EIS and break down the emissions by equipment (*e.g.*, per compressor station, pipeline segment, well, valves, etc.), so that customers will know that replacement of a particular piece of equipment at a particular cost has achieved a measurable level of reduced emissions, avoiding double charges for continual emissions mitigation without measurable GHG benefits.

**B. The Commission Should Clarify the GHG Policy Statement to Provide Regulatory Certainty and Ensure Sufficiency of Pipeline Transportation and Natural Gas Supply for Manufacturers of Critical Consumer Goods.**

AIP members rely on natural gas pipeline supply to produce essential consumer products, including, among others, crop inputs to increase food supply, paper and packaging for foods and medicines, automobiles, and construction materials for housing. Also, AIP members have strong sustainability goals, as discussed above. To the extent that there is uncertainty related to the GHG

Policy Statement that could result in insufficient pipeline capacity being built to meet our needs, AIP urges the Commission to clarify its policies to eliminate such uncertainty.

**1. The Commission Should Clarify that it Will Not Require Mitigation of Upstream and/or Downstream Emissions, or, if Upstream and Downstream Mitigation is Required, the Commission Should Identify the Type of Mitigation Measures it Will Require, in Order to Promote Regulatory Certainty.**

AIP supports the Commission taking steps necessary to comply with judicial guidance as to FERC's responsibilities under NEPA so that FERC's certificate orders are not vacated or remanded. To this end, AIP acknowledges that in March of 2022, the D.C. Circuit in Food & Water Watch v. FERC reiterated that under NEPA, FERC has an obligation to consider upstream and downstream indirect environmental impacts that are reasonably foreseeable in its environmental review of pipeline certificate applications.<sup>5</sup> As discussed there, not all downstream impacts are foreseeable; however, in those cases where they are foreseeable, the court has determined that the downstream impacts of facilitating the transportation of gas must be considered. In this regard, the court held that the Commission has a duty to seek information about downstream end-users from the pipeline, and that a lack of clear information is not sufficient for FERC to fail to account for such emissions. Thus, AIP acknowledges, that, as stated by the D.C. Circuit, the Commission must seek information and calculate such emissions when it has information about the intended end-use, or state in its certificate order why it cannot calculate the emissions in order to avoid having such orders remanded.

However, FERC's calculation of the expected emissions is different from FERC requiring mitigation of upstream and/or downstream GHG emissions. Chairman Glick, in his testimony

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<sup>5</sup> See *Food & Water Watch and Berkshire Environmental Action Team v. FERC*, 28 F.4th 277 (D.C. Cir. 2022).

before the Senate Energy Committee, appeared to indicate that mitigation of upstream and downstream indirect emissions is an area that the Commission could clarify:

There's two types of mitigation that we're talking about. There's mitigation of direct emissions – construction and operation, and yes, . . . the [GHG] Policy Statement says you have to propose it if it's going to be significant, as we require of all these other environmental impacts. But if it's downstream emissions, you do not have to propose it, and we say that explicitly in the [GHG] Policy Statement.<sup>6</sup>

AIP urges the Commission to clarify that mitigation of upstream and downstream emissions are not required by FERC, but that pipelines may voluntarily propose mitigation measures. AIP urges that FERC also require the pipelines to adopt cost-effective mitigation measures for direct emissions, and avoid the temptation to gold-plate the pipeline system in the name of GHG mitigation. AIP notes that pipelines have already collected billions of dollars of “modernization and integrity tracker” costs.

**2. The Commission Should Clarify the Level of GHG Mitigation Required for Direct Emissions or Provide a Standard for the Types of Mitigation Measures that will be Required.**

The Commission indicated in the GHG Policy Statement that it will not require a uniform level of mitigation, a departure from its proposal prior to the GHG Mitigation Technical Conference to consider establishing a standard level of mitigation (including possibly mitigating to zero emissions). AIP appreciates that by not setting a standard level, the Commission seeks to maintain some flexibility. However, the Policy Statement has created uncertainty about the level of mitigation that will be required, which AIP understands may cause some projects not to be

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<sup>6</sup> Senate Committee on Energy & Natural Resources, Full Committee Hearing to Review FERC's Recent Guidance on Natural Gas Pipelines at 1:46:36 (Mar. 3, 2022), <https://www.energy.senate.gov/hearings/2022/3/full-committee-hearing-to-review-ferc-s-recent-guidance-on-natural-gas-pipelines>.

proposed. Thus, AIP suggests that the Commission provide some objective standard for any required mitigation. For example, to the extent that the U.S. EPA and the industry have developed cost-effective best practices for leak prevention or other mitigation measures, AIP suggests that FERC adopt such cost-effective best practices as a standard. This would provide better certainty to industry participants as to what level and types of mitigation will be required. As discussed extensively at the Technical Conference, some LDCs and APGA members are already implementing many of these mitigation techniques, and these techniques appear to be acceptable in terms of available technology and cost to implement. For example, the witness for an LDC in the Pacific Northwest talked about using compression to capture gas during construction to avoid blow down emissions, and the witness from APGA discussed many mitigation measures that they are employing based on participation in the U.S. EPA's programs for methane reduction.

**3. The Commission Should Clarify Why it Uses Pipeline “Full Burn” in Determining if an EIS is Needed, Versus the Actual Projected Utilization for the Section 7 Public Interest Determination.**

In prior comments, our members urged the Commission not to overstate adverse emissions impacts on the environment by using peak or full burn in calculating GHG emissions. While we appreciate that the Commission agreed with us regarding considering actual projected utilization for determining the net adverse environmental impacts for finding that a certificate is in the public interest, it adopted a “full burn” standard for determining when to conduct the EIS. It is our understanding that this was done to avoid having certificates remanded to FERC by the courts in cases where an EA was performed initially, but it was later determined by the court that an EIS was required. However, we do not read the court's guidance as requiring a full burn calculation in determining whether to prepare an EIS. Rather, AIP believes that the court's standard could be met by providing a realistic upper limit based on projected actual utilization, and takes the position

that the courts should provide deference to the Commission in specifying a methodology for calculating GHG emissions based on the Commission's technical expertise in this area. If the purpose of adopting a full burn standard was to provide guidance to the industry or to expedite the EIS determination, then the Commission should explain why overstating emissions is preferred in order to speed up the review process. In addition, the Commission should clarify determining that an EIS is necessary using this standard will not prevent FERC from approving the certificate, but rather, that such calculation is just meant to provide certainty and speed in processing the EIS in order to eliminate regulatory certainty.

#### **IV. Comments on the Updated Certificate Policy Statement**

AIP supports the Commission's declaration in the Updated Certificate Policy Statement that the Commission remains committed to the goals of the 1999 Policy Statement, including: (1) appropriately considering the enhancement of competitive transportation alternatives, the possibility of overbuilding, the avoidance of unnecessary disruption of the environment and unneeded use of eminent domain, (2) providing incentives for the optimal level of construction and customer choices, and (3) providing incentives to applicants to structure a project to avoid, or minimize, the potential adverse impacts of the project. AIP understands that with this Updated Policy Statement, the Commission intends to provide a more comprehensive analytical framework for its decision-making process and more regulatory certainty. Specifically, FERC clarifies how it will evaluate all factors bearing on the public interest, including the balancing of economic and environmental interests in determining whether a project is required by the public convenience and necessity, thus providing more regulatory certainty in the Commission's review process and public interest determinations.

AIP supports the Commission's statements that it will consider additional evidence of need in addition to precedent agreements, including evidence related to the results of any open seasons, the expected end uses of the gas, any market studies to support the project, benefits to consumers of lower natural gas prices or increased reliability of service, and whether the pipeline is built to replace older equipment with more efficient equipment or to respond to environmental concerns. AIP urges the Commission to bolster its certificate orders with such record evidence to avoid the potential for remand of its certificate orders, as was the case in the *Spire STL* proceedings where the court vacated the certificate order for relying solely upon a precedent agreement with an affiliate as evidence of need. AIP is concerned with one of the factors in that it discusses whether there will be a future demand for the pipeline given market trends and expected policy and regulatory changes (*i.e.*, climate policy). AIP submits that expected regulatory and policy changes are difficult to predict, and this factor appears to call for a crystal ball prediction of the future as opposed to factual evidence.

AIP also supports the Updated Policy Statement to the extent that it continues to consider whether there are adverse impacts to existing customers of the pipeline or captive customers on competing pipelines in terms of degradation of service. However, AIP is very concerned that the Updated Policy Statement appears to move away from the very clear guidelines that the Commission has previously held as a threshold issue; specifically, that the pipeline must be able to financially support the pipeline project without subsidies from existing customers. For the first time in the Updated Policy Statement, and with no explanation, the FERC makes a vague statement that, in some cases, project costs may be rolled into system rates. AIP opposes any change to the current threshold that the pipeline must be able to finance new projects without relying upon subsidization from current shippers. Pipeline currently have the ability to perform maintenance or

updates to their existing transmission systems where needed to preserve system reliability for existing shippers and to include such costs in their rate cases. Pipelines also may propose to roll in the costs of an expansion under the Commission's current policies based on benefits to existing shippers.

Furthermore, pipelines have the ability to propose modernization trackers in connection with a recent rate review and, in settlements in certain rate cases and in pre-filing settlements, existing shippers have agreed to additional costs for future modernization projects and environmental projects or costs to be reflected in current rates. In these cases, the settlements include a recent rate review and impose many safeguards to avoid double recovery of system costs, and to ensure that pipelines meet a threshold level of operation and maintenance expense in an attempt to prevent overearning and/or excessive returns. These settlements included specific lists of eligible projects and ensure accountability for the expenditures. AIP strongly urges the Commission to retract this general statement of allowing unspecified rate increases at the certificate stage and to retain its current no subsidization policy, or open a new docket to provide record evidence as to why the current no subsidization policy is no longer resulting in just and reasonable rates and to explain how the new policy will ensure that existing customers are not being charged unjust and unreasonable rates.

Respectfully submitted,

/s/ Andrea J. Chambers

Andrea J. Chambers

Jonathan Wright

Covington & Burling LLP

One CityCenter

850 10th St. NW

Washington, DC 20001

Telephone: (202) 662-5170

Email: achambers@cov.com

*Attorneys for AF&PA, IECA and PGC*

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused a copy of the foregoing document to be served upon each person designated on the Service List for this docket compiled by the Secretary in accordance with the Commission's Rules of Practice and Procedure.

Dated at Washington, DC, this 25th day of April 2022.

/s/ Andrea J. Chambers

Andrea J. Chambers