

**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

**REPLY 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> Reply comments were due by May 25, 2022.<sup>4</sup> American Forest & Paper Association (“AF&PA”), Industrial Energy Consumers of America (“IECA”) and Process Gas Consumers Group (“PGC”)<sup>5</sup> submitted initial comments in regard to the draft policy statements on April 25, and hereby submit these reply comments.

## **I. Updated Certificate Policy Statement Reply Comments**

### **A. The Primary Purpose of the NGA is To Ensure Just and Reasonable Transportation Rates.**

In adopting its Updated Certificate Policy Statement to address concerns by the courts over FERC’s compliance with NEPA, the Commission must not lose sight of the main purpose of the Natural Gas Act as stated by the Supreme Court -- to ensure just and reasonable rates for the transportation of natural gas in interstate commerce:

The Natural Gas Act declares that "the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest," and that federal regulation of interstate commerce in natural gas "is necessary in the public interest." § 1(a). The Act directs that all rates and charges in connection with the transportation or sale of natural gas, subject to the jurisdiction of the Commission, shall be "just and reasonable."<sup>6</sup>

In their comments on the Updated Certificate Policy Statement, the pipelines claim that they are entitled to recover the cost of GHG mitigation in rates and argue that mitigation measures undertaken in accordance with a certificate application are *per se* prudent and used and useful for

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

<sup>4</sup> *Id.*

<sup>5</sup> AF&PA, IECA and PGC are collectively referred to herein as “AIP”.

<sup>6</sup> *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575 (1942).

ratemaking purposes.<sup>7</sup> They claim that guaranteed recovery of GHG mitigation costs is required so that interstate natural gas pipelines earn a fair return on investment. The pipelines do not cite any legal authority or any other example of costs to build new facilities that are considered to be *per se* prudent.

AIP urges the Commission to adopt consumer protections concerning the recovery of the cost of GHG mitigation for new pipelines similar to what FERC required for the costs of mitigation of leaks from existing pipelines in Docket No. PL15-1. There, the Commission allowed pipelines to adopt trackers for such costs only in the context of a recent Section 4 rate review to ensure that the pipelines are not over-recovering their costs.<sup>8</sup> The Commission pointed out that allowing a tracker was an exception to its ordinary rate practices, but disagreed with commenters' contentions that allowing modernization cost trackers will eliminate the pipeline's risk of cost under-recovery, noting that the pipelines will still have the burden of showing all costs are prudent:

Moreover, the pipelines will have the burden of showing that all costs included in a modernization cost tracker are prudent and consistent with the Commission's eligibility standards for including costs in such a tracker. This will give the Commission and all interested parties an opportunity to review whether the subject capital investments are prudent and required for the safe and efficient operation of the pipeline.<sup>9</sup>

The Commission also noted that it was requiring the pipelines to engage in a collaborative effort with its shippers to review the pipeline's base rates similar to what occurred in the context of the Columbia Gas settlement, which provided a tracker to collect modernization costs, and noted that the collaboration in the Columbia Gas case led to the pipeline's agreement to a significant

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<sup>7</sup> See Enbridge Comments on Updated Certificate Policy Statement at 112-113.

<sup>8</sup> See Cost Recovery Mechanisms for Modernization of Natural Gas Facilities, Docket No. PL15-1, 152 FERC ¶61,047 (2015) at P 31.

<sup>9</sup> *Id.* at P 34 and n. 44.

reduction in rate base and refunds. AIP asserts that the Commission must continue to protect consumers by ensuring that the burden of proof remains on pipelines to demonstrate that any costs incurred to mitigate GHGs are subject to scrutiny in the context of a rate proceeding where the pipeline must demonstrate that the costs incurred were prudent and necessary costs.

Under Section 7(c) of the NGA, a pipeline files to request a "Certificate of Public Convenience and Necessity" to construct a new pipeline or to expand existing facilities, in order to offer new or additional services. The rates established by the Commission under Section 7 for these services are referred to as "initial rates" and generally remain in effect until such time as the pipeline files a Section 4 rate filing in which all of the pipeline's rates are reviewed.<sup>10</sup> The Commission protects existing customers from cost shifts due to construction of such new facilities by requiring that existing customers not subsidize any new facilities.<sup>11</sup> The costs of such facilities may only be rolled into system rates after a showing of benefit to the system of such costs, usually demonstrated by showing that system rates would decrease due to the roll-in.<sup>12</sup> The Commission should ensure that these critical consumer protections remain in place under the Updated Certificate Policy Statement.

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<sup>10</sup> See *Arkansas Western Pipeline Co.*, 63 FERC ¶ 61,006 at 61,028 (1993) (“the rates approved herein are initial rates under Section 7 of the NGA and our approval does not constitute approval of any underlying rate methodology...These initial rates will remain in effect until such time as Arkansas Western files a section 4 general rate proceeding”); the typical price condition authorizes a particular initial rate and further provides that, if the authorized initial rate is ultimately found unreasonable, overcharges will be refunded. See, e.g., *Tenn. Gas Pipeline, Tenneco. v. FERC*, 736 F.2d 747 (D.C. Cir. 1984) (citing e.g. *Tennessee Gas Pipeline Co.*, 21 FERC ¶ 61,199, at 61,456 (Nov. 26, 1982)).

<sup>11</sup> See, e.g., *Natural Gas Pipeline Company of America LLC* (“Natural”), 169 FERC ¶61,050 (2019) at P 11 (applying existing Certificate Policy Statement); *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

<sup>12</sup> See *Natural* at P 12.

Some pipelines argue that they must be guaranteed recovery of costs, or FERC will not comply with the requirements that the Commission must set pipeline rates and returns on investment commensurate with other enterprises of comparable risk and sufficient to attract capital, and “assure confidence in the financial integrity of the enterprise under the precedent established in *Hope* and *Bluefield*.”<sup>13</sup> AIP agrees that pipelines are entitled to earn a fair return on their investments. However, AIP is concerned that pipelines could earn more than a fair return on investments that have not been shown to be prudent, which could occur absent a rate review of GHG mitigation costs. As noted in *Hope*, FERC ratemaking also “involves a balancing of the investor and the consumer interests.” Guaranteeing pipelines recovery of mitigation costs without verifying prudence would lead to unjust and unreasonable returns, does not balance the interests of investors and consumers, and would represent an abdication of the Commission’s primary responsibility under the NGA to ensure just and reasonable rates.

## **II. GHG Policy Statement**

In the Draft GHG Policy Statement, the Commission states that pipelines “wishing to purchase offsets or proposing other measures to mitigate their project’s GHG emissions may propose to recover the costs of these measures through their proposed rates.”<sup>14</sup> Kinder Morgan supports this proposition and requests clarification that the cost recovery of GHG mitigation be allowed for all GHG mitigation required by the Commission.<sup>15</sup> This is an example of the need to consider all cost and revenues in the context of a Section 4 rate review. To the extent that a pipeline may wish to purchase offsets to mitigate their GHG emissions and recover the costs in rates, it is

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<sup>13</sup> See Comments of TC Energy at 47 (citing *Hope*, 320 U.S. at 603).

<sup>14</sup> GHG Policy Statement at P 128.

<sup>15</sup> See Kinder Morgan Comments at 27.

important to note that the pipeline may also be able to sell such offsets or earn other revenue related to its reduction of GHGs, and, therefore, any costs incurred by the pipeline might be offset by such other revenues. Moreover, many of the GHG mitigation projects could involve the replacement of existing equipment with newer equipment, including compressors and valves, and should lead to less operation and maintenance expenses, including less lost and unaccounted for gas, due to the new equipment being more efficient. Thus, it is critical to consider the pipeline's overall potential revenues when determining if GHG mitigation costs should be borne by customers.

Respectfully submitted,

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## **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 May 2022.

/s/ Andrea J. Chambers  
Andrea J. Chambers