UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Impacts of COVID-19 on Energy Industry) Docket No. AD20-17-000

POST-TECHNICAL CONFERENCE COMMENTS OF
PROCESS GAS CONSUMERS GROUP AND
INDUSTRIAL ENERGY CONSUMERS OF AMERICA

On July 8 and 9, 2020, the Federal Energy Regulatory Commission convened a Commissioner-led technical conference to discuss the ongoing, serious impacts that the emergency conditions caused by COVID-19 are having on various segments of the United States' energy industry. During the conference, the Commission explored the potential longer-term impacts on the entities that it regulates in order to ensure the continued efficient functioning of energy markets, transmission of electricity, transportation of natural gas and oil, and reliable operation of energy infrastructure today and in the future, while also protecting consumers. On July 16, 2020, the Commission issued a notice inviting all interested persons to file post-technical conference comments on any or all of the topics discussed at the July 8-9 technical conference by 45 days after the date of the notice.[1] The Comment Notice stated that commenters may also respond to the questions outlined in the July 1, 2020 supplemental notice of technical conference.[2] Pursuant to the Comment Notice, Process Gas Consumers Group ("PGC") and Industrial Energy Consumers of America ("IECA") hereby submit the comments below.

[1] *Notice Inviting Post-Technical Conference Comments*, Docket No. AD20-17-000 (July 16, 2020) ("Comment Notice").

[2] *See Supplemental Notice of Technical Conference*, Docket No. AD20-17-000 (July 1, 2020).

I. IECA and PGC

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, automotive, independent oil refining, and cement. IECA members hold transportation capacity on numerous interstate 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. PGC members hold transportation capacity on numerous interstate pipelines.

II. Comments

PGC and IECA take this opportunity to thank the Commission for its tremendous efforts during the pandemic to operate the Commission in an effective and efficient manner that helps to ensure that consumers' interests are served in providing vital regulated energy services, particularly with respect to the natural gas transportation that PGC and IECA members rely upon to serve their facilities and to allow them to continue to produce products that consumers depend upon even during these challenging times. [3] PGC and IECA urge the Commission to heed the

[3] PGC and IECA's comments align with those being filed by AF&PA, but they are limited to the natural gas industry, whereas AF&PA's comments also address the electric industry.

advice of many of the panelists and not rely upon COVID-19 to make unrelated regulatory changes that were urged by some of the panelists, particularly as concerns regulated returns on equity and unnecessary infrastructure expansion.[4] PGC and IECA members compete in competitive markets globally and rely upon FERC to ensure that regulated returns on equity and public utility investments are just and reasonable. PGC and IECA members are also affected by the economic impacts of a global pandemic and cannot pass on to their consumers unlimited increased costs for natural gas transportation.

While spokespersons for some regulated entities asserted that increased market risks justified higher pipeline returns, other panelists pointed out that credit markets experienced only short-term impacts but quickly returned to liquidity and that even former Master Limited Partnership pipelines like Kinder Morgan and Williams are able to raise capital.[5] Additional panelists pointed out that in this low interest rate environment, investors have tremendous amounts of capital that they are looking to invest.[6]

Similarly, panelists supported the need for pipeline modernization but urged the Commission to continue to bring Section 5 actions to ensure that rates of return on such investments are just and reasonable.[7] PGC and IECA submit that arguments made by some owners of regulated natural gas pipelines that the Commission should allow them to over-recover on some pipelines because they cannot recover their cost of service on other pipelines[8] is inconsistent with

[4] See Tr. at 326 – 329, 409, Comments of Mauricio Gutierrez, CEO of NRG.

[5] See Tr. at 139-140, Comments of Paul Segal, President and Chief Executive Officer, LS Power.

[6] See Tr. at 306, Comments of Anatol Feygin, Executive Vice President and Chief Commercial Officer, Cheniere Energy.

[7] See Tr. at 295, Comments of Gary Gibson, General Manager and Chief Executive Officer, City Utilities of Springfield.

[8] See Tr. at 325, Comments of Kimberly Dang, President of Kinder Morgan.

the Commission's statutory duty under the Natural Gas Act ("NGA") to ensure just and reasonable rates. Such claims, which are not supported by any evidence, also go far afield of the COVID-related scope of this docket.

PGC and IECA submit that studies performed by the Natural Gas Supply Association ("NGSA"), which look at 5-year average returns, show that most interstate natural gas pipelines are earning returns in excess of the 12% benchmark that the Commission used in the Form 501-G proceedings to determine whether pipelines should reduce rates due to the over-recovery of income taxes after the passage of the Tax Cut and Jobs Act.[9] Many former Master Limited Partnership pipelines that retained excess deferred income taxes of millions of dollars have also now converted to corporate structures and propose to collect tax allowances, yet they have not been subject to scrutiny as to their actual returns on equity. Thus, if the Commission engages this issue at all as part of its inquiry into COVID-related impacts on regulated industries, PGC and IECA submit that the Commission should first investigate any potential overall over-recoveries of return prior to considering any changes to allowed returns on equity due solely to the impacts of the pandemic.

Pipelines that claim they are not recovering their cost of service are able to file for a rate increase under Section 4 of the NGA on a case-by-case basis, and the merits of their claims will be assessed in those individual proceedings. No sweeping pronouncements are justified or necessary in this docket.

[9] Shipper study finds 23 of 32 major gas pipelines over-recovered, S&P Global Market Intelligence, March 13, 2020.

III. Conclusion

For these reasons, PGC and IECA urge the Commission not to make any additional changes to how it determines return on equity for regulated entities due to the current pandemic.

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 PGC and IECA

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 31st day of August 2020.

/s/ Andrea J. Chambers
Andrea J. Chambers