UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Certification of New Interstate Natural Gas Facilities	))	Docket No. PL18-1-000

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

On February 18, 2021, the Federal Energy Regulatory Commission ("FERC" or "Commission") issued a notice of inquiry seeking new information and additional stakeholder perspectives to help the Commission explore whether it should revise its approach under the currently effective policy statement on the certification of new natural gas transportation facilities ("Certificate Policy Statement") ("2021 NOI").[1] The 2021 NOI follows a notice of inquiry issued by the Commission in 2018 regarding the Certificate Policy Statement ("2018 NOI"),[2] and the 2021 NOI states that the Commission seeks comments that reflect additional information developed and insights gained during the interim period. On March 31, 2021, the Commission extended the deadline for comments in response to the 2021 NOI to May 26, 2021.[3] American Forest & Paper Association ("AF&PA"), Industrial Energy Consumers of America ("IECA"), Process Gas Consumers Group ("PGC") and The Fertilizer Institute ("TFI"), collectively with AF&PA, IECA and PGC, "AIPF") hereby submit these comments in response to the 2021 NOI.

[1] *Certification of New Interstate Natural Gas Facilities*, 174 FERC ¶ 61,125 (2021) (2021 NOI).

[2] *Certification of New Interstate Natural Gas Facilities*, 163 FERC ¶ 61,042 (2018) (2018 NOI).

[3] *Notice Extending Time For Comments*, Docket No. PL18-1-000 (March 31, 2021).

I. AF&PA, IECA, PGC AND TFI

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 the numerous interstate natural gas pipelines.

IECA is an association of manufacturing companies with $1.1 trillion in annual sales, over 4,400 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.

TFI represents the nation's fertilizer supply chain including producers, importers, wholesalers, retailers, and companies that provide services to the fertilizer industry. The fertilizer supply chain supports nearly 500,000 high-quality American jobs and has an economic impact of more than $130 billion annually, supporting communities in all 50 states. The fertilizer industry plays an essential role in ensuring that American farmers receive the nutrients they need to enrich the soil and, in turn, grow the crops that feed our nation and the world. In fact, fertilizer is responsible for half of the world's food production. As food demand grows, farmers around the world will continue to rely on fertilizer to increase production efficiency by producing more food while using less land.

II. 2021 NOI

In the 2021 NOI, the Commission seeks input regarding several topics as a supplement to the comments received in response to the 2018 NOI. The Commission identifies five general areas of examination in the 2021 NOI, including: (1) the reliance on precedent agreements to demonstrate need for a proposed project; (2) the potential exercise of eminent domain and landowner interests; (3) the Commission's evaluation of alternatives and environmental effects under the National Environmental Policy Act ("NEPA") and the Natural Gas Act ("NGA"); (4) the efficiency and effectiveness of the Commission's certificate processes; and (5) the Commission's identification and addressing of any disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on environmental justice communities and the mitigation of those adverse impacts and burdens.[4] In addition, the 2021 NOI

[4] 2021 NOI, 74 FERC ¶ 61,125 at PP 5-6.

encourages stakeholders to submit new or modified comments that clearly explain *why* the Commission should or should not take a specific course of action, as discussed in the questions posed , and, more importantly, provide precise recommendations for *how* the Commission could implement such changes.[5]

[5] *Id.* at P 4.

III. Executive Summary

AIPF generally supports the Commission's current approach to evaluating whether a proposed pipeline project is needed and is in the public interest, as outlined in the Certificate Policy Statement. However, as noted below, while the Commission is assessing the costs and benefits of a proposed project, AIPF urges the Commission also to consider the benefits to energy-intensive, trade-exposed manufacturers, and the manufacturing sector at large that employs approximately 13 million people,[6] as well as the consumers that buy their products, all of which depend upon an affordable and reliable natural gas supply. For the manufacturing sector, natural gas serves as both a fuel and feedstock. The Commission must also consider that for most AIPF members, there is no substitute for the use of natural gas as a fuel or feedstock. Also, natural gas is used to produce combined heat and power electricity for use in our facilities, which is essential for the generation of thermal energy in thousands of facilities and can operate at up to 80-percent energy efficient and are extremely environmentally friendly.[7] Producing our own electricity and steam energy reduces our costs and increases competitiveness. Natural gas is also used to fuel our industrial boilers, which are also used to generate steam (thermal energy) to operate the facilities economically. While companies in the paper and wood products manufacturing industries, represented by AF&PA, may in some circumstances be able to use more biomass, in many other cases, where natural gas is used in manufacturing processes, electricity cannot be substituted due

[6] U.S. Bureau of Labor Statistics, *Current Employment Statistics - CES (National)*, available at https://www.bls.gov/web/empsit/cesbmart.htm#Table2.

[7] U.S. EPA, *Combined Heat and Power (CHP) Partnership*, available at https://www.epa.gov/chp/chp-benefits.

to technological and economic reasons. Without pipelines and increased pipeline capacity, we cannot grow, invest, create high-paying, family-sustaining jobs or produce the products that consumers require and products for U.S. national defense and exports. We cannot have electric reliability and resiliency without adequate pipeline capacity. Adequate pipeline capacity is also essential for national security. From a homeowner safety perspective, hurricanes and storms do disrupt electricity supply, but rarely interrupt pipeline natural gas supply. Furthermore, AIPF requests that the Commission consider that AIPF members' plants provide economic benefits to the communities where they are located in terms of jobs and often associated benefits such as tax revenues and support for local businesses and jobs.

AIPF supports the Commission's consideration of reasonably foreseeable GHG emissions associated with a proposed project as part of the overall environmental review, as directed by the D.C. Circuit. However, AIPF agrees with the Commission's prior determinations that the Social Cost of Carbon ("SCC") is not an appropriate tool to use to measure the impacts of emissions associated with a particular project, and, instead, supports the Commission's reliance upon its many years of expertise in analyzing environmental impacts as part of the overall determination of whether certification is in the public interest based on consideration of the record evidence.

The Commission must take into consideration that natural gas-fired electric generation is the primary base-load dispatchable source of power for intermediate and peaking services for the country and is absolutely essential for accommodating growing volumes of intermittent wind and solar power generation.[8] We cannot have electric grid reliability and resilience without natural gas pipeline reliability. As we green the grid, pipelines play a vital role and there is no substitute.

[8] *See*, *e.g.*, U.S. EIA, *Natural Gas Consumption by End Use*, available at https://www.eia.gov/dnav/ng/ng_cons_sum_dcu_nus_m.htm.

A robust pipeline system is also needed to serve a critical infrastructure for a future carbon-free, hydrogen-based energy solution.

We urge the Commission to consider that approving a pipeline does not prevent manufacturers or other shippers from switching to renewables where it is feasible, and we note that most of our members have robust sustainability goals. If the Commission makes it difficult to build pipelines, the Commission would effectively force manufacturers to cancel plans to build new plants where there is no substitute for natural gas as a fuel source or cancel plans to switch plants from a more carbon-intensive fuel than natural gas, such as coal. Pipelines enable choice, competition and resiliency. Allowing known demand to be constrained to a single or overloaded pipeline would effectively subsidize monopolies, which will drive up the costs for all consumers. Under the NGA, the Commission is charged with determining whether granting a certificate is in the public interest, and AIPF asserts that part of this determination should reflect the need of manufactures for natural gas supply to produce publicly-consumed goods at reasonable prices.

Finally, AIPF offers to provide information on end uses of natural gas by its members' facilities where such information is needed to support certification of a pipeline project that will serve their members.

IV. Comments[9]

A. Potential Adjustments to the Commission's Determination of Need

A1. Should the Commission consider changes in how it determines whether there is a public need for a proposed project?

[9] AIPF is not submitting comments on landowner inquiries covered in Section B of the 2021 NOI, nor does it address every inquiry in each of the other sections. However, AIPF has included the specific inquiries that it addresses before its response for ease of reference by the Commission.

AIPF asserts that the manner in which the Commission currently evaluates public need under the Certificate Policy Statement by examining the proposed project's impact on market demand, resilience and reliability and the functioning of the gas markets is largely sufficient. However, AIPF asserts that, as discussed more specifically below, the Commission should improve the record in support of its certificate orders by including more data concerning the need for gas supply to serve energy-intensive, trade-exposed ("EITE") industrial end users, such as the AIPF members. EITE industries consume approximately 80 percent of all the natural gas and natural gas fired electricity consumed by the manufacturing sector.[10] Importantly, in most cases, manufacturing does not have a substitute for natural gas. We are completely dependent upon natural gas pipelines.

There are 12.8 million manufacturing workers, accounting for 8.4 percent of the entire workforce that pay family-sustaining wages and benefits that average over $87,000 per year.[11] Taken alone, manufacturing in the U.S. would be the seventh-largest economy in the world. For every $1.00 spent in manufacturing, another $2.79 is added to the economy.[12] That said, manufacturing's livelihood is dependent on natural gas pipelines. The 2018 EIA Manufacturing Energy Consumption Survey (MECS) covers 15,000 facilities representing 97-98 percent of

[10] U.S. EIA, 2018 Manufacturing Energy Consumption Survey, Slide 10, available at https://www.eia.gov/consumption/manufacturing/pdf/MECS%202018%20Results%20Flipbook.pdf.

[11] *See* National Association of Manufacturers, 2020 United States Manufacturing Facts, available at https://www.nam.org/state-manufacturing-data/2020-united-states-manufacturing-facts/ ("…there were an average of 12.8 million manufacturing employees in the United States in 2019, with an average annual compensation of $87,185.18 in 2018").

[12] *See* National Association of Manufacturers, Facts About Manufacturing, available at https://www.nam.org/facts-about-manufacturing/.

manufacturing payroll and 50 industry groups.[13] The report says, "Overall, the percentage of natural gas that could not be switched in the manufacturing sector was 93 percent in 2018."[14] The reason for this is that much of our equipment used to make products are designed for natural gas, not electricity. And, in almost all cases, equipment does not exist that would allow us to use electricity versus natural gas.

A2. In determining whether there is a public need for a proposed project, what benefits should the Commission consider? For example, should the Commission examine whether the proposed project meets market demand, enhances resilience or reliability, promotes competition among natural gas companies, or enhances the functioning of gas markets?

AIPF asserts that among the potential benefits that the Commission should consider are the benefits to manufacturing interests of a particular project including future investments and jobs. President Biden and Congress have acknowledged the need to manufacture more products in the U.S., especially the products that are needed in the supply chain to produce a myriad of clean-energy related products needed to achieve GHG emission commitments and goals. Production of these products, most of which are energy intensive, will require increased use of natural gas by manufacturing facilities. As noted above, AIPF members are EITI companies that produce many consumer products, including plastics, paper, steel, aluminum, cement, wallboard, agricultural inputs, chemicals, glass, food processing, cars and trucks, etc. Consumers benefit from the manufacturing of these products and the processes which require natural gas (for which there is often no substitute fuel) and natural gas is a low-cost fuel for the energy needs of these manufacturers. As noted above, natural gas is used as both a fuel and as a feedstock for many of

[13] U.S. EIA, 2018 Manufacturing Energy Consumption Survey, Slide 3, available at https://www.eia.gov/consumption/manufacturing/pdf/MECS%202018%20Results%20Flipbook.pdf.

[14] U.S. EIA, 2018 Manufacturing Energy Consumption Survey, Slide 14, available at https://www.eia.gov/consumption/manufacturing/pdf/MECS%202018%20Results%20Flipbook.pdf.

their respective operations, and there is no practical or economical substitute for this supply for these companies.

In addition, AIPF member companies recently made substantial investments in converting boilers used in some plants from oil and coal to natural gas in an effort to reduce emissions consistent with the companies' sustainability initiatives. These beneficial impacts, such as reduced greenhouse gas ("GHG") emissions, and improved air quality for the communities near the facilities that will now be fueled by natural gas delivered by new pipeline projects, should be included in the Commission's analysis.

Further, as discussed above, AIPF members' plants are large employers and provide economic benefits to communities in terms of employment opportunities and support for local businesses and jobs. Having access to low-cost natural gas allows these plants to remain competitive with fierce global manufacturing competition, as the ever-increasing presence of overseas competitors compels U.S. manufacturers to keep costs as low as possible in order to maintain sustainable business models. Thus, having access to an abundant and low-cost fuel and feedstock supply is critical to AIPF member companies' continued growth and viability, and, as a result, to the opportunities and support that they provide to various U.S. communities. Every mile of interstate and intrastate natural gas pipelines either creates or sustains, on average, 42.6 manufacturing jobs, and that number is increasing.[15] There are about 305,000 miles of interstate

[15] *See* National Association of Manufacturers, Facts About Manufacturing, available at https://www.nam.org/facts-about-manufacturing/; U.S. EIA, *About U.S. Natural Gas Pipelines - Transporting Natural Gas*, available at https://www.eia.gov/naturalgas/archive/analysis_publications/ngpipeline/index.html. 13 million jobs divided by 305,000 miles of intrastate and interstate natural gas pipelines.

and intrastate natural gas pipelines that enable 13 million manufacturing jobs.[16] According to the EIA, in 2019, the manufacturing sector consumed 27 percent of US natural gas supply.[17] Industrial consumption has increased from 6.8 trillion cubic feet ("TCF") in 2010 to 8.3 TCF in 2020, a 22 percent increase. EIA AEO 2021 forecasts industrial demand to increase to 11.8 TCF by 2030, an increase of 42 percent from 2020. Finally, manufacturing consumes 25 percent of U.S. power production. Natural gas consumption by the power sector has increased from 7.4 Tcf in 2010 to 11.6 Tcf in 2020, a 57 percent increase.[18]

A3. Currently, the Commission considers precedent agreements, whereby entities intending to be shippers on the contemplated pipeline commit contractually to such shipments, to be strong evidence that there is a public need for a proposed project. If the Commission were to look beyond precedent agreements, what types of additional or alternative evidence should the Commission examine to determine project need? What would such evidence provide that cannot be determined with precedent agreements alone? How should the Commission assess such evidence? Is there any heightened litigation risk or other risk that could result from any broadening of the scope of evidence the Commission considers during a certificate proceeding? If so, how should the Commission safeguard against or otherwise address such risks?

AIPF submits that the Commission should not require any particular type of evidence of need for different end uses, but rather, it should allow pipelines to provide this information in their applications as support for their projects and continue its recent practice of issuing data requests where additional information is necessary to support the Commission's determination. As the applicant, it remains the pipeline company's responsibility to support its Section 7(c) application. Data requests to applicants regarding end uses would likely require the applicant to consult with shippers that have signed precedent agreements to obtain certain information. However, for

[16] U.S. EIA, *About U.S. Natural Gas Pipelines - Transporting Natural Gas*, available at https://www.eia.gov/naturalgas/archive/analysis_publications/ngpipeline/index.html.

[17] U.S. EIA, *Natural Gas Consumption by End Use*, available at https://www.eia.gov/dnav/ng/ng_cons_sum_dcu_nus_m.htm.

[18] U.S. EIA, *Annual Energy Outlook 2021*, available at https://www.eia.gov/outlooks/aeo/data/browser/#/?id=2-AEO2021&cases=ref2021&sourcekey=0.

companies proposing projects that often cost hundreds of millions or several billion dollars, this task should not be overly burdensome, particularly when any information gained will likely add to a favorable determination regarding the public convenience and necessity for the proposed project. The company should be afforded adequate time to gather this information, although changes to the Certificate Policy Statement that include reference to this data would put all companies on notice that it may be requested by the Commission.

Developing the record regarding the end use of gas should be a critical consideration for the Commission when evaluating a proposed project and will help to avoid the possibility of an appellate court vacating a certificate for a pipeline that is already operational. This issue was brought to the forefront most notably by the D.C. Circuit in *Sierra Club*, *albeit* in the context of the Commission's environmental review.[19] In that case, the D.C. Circuit noted that the proposed projects at issue would exclusively serve natural gas-fired power plants in Florida, and found that the downstream GHG emissions were reasonably foreseeable. Due to the length of time to reach the appellate stage, the court's mandate vacating the pipeline's certificate authorization for failure by the Commission to consider the downstream emissions came close to shutting down a pipeline that was already delivering natural gas to several AIPF member companies, potentially causing severe disruptions to their manufacturing processes and possible plant shutdowns.

Therefore, AIPF supports the Commission including a calculation of reasonably foreseeable GHG emissions, consistent with the court's analysis in *Sierra Club*, in its environmental review of pipeline projects. Indeed, as noted in the 2021 NOI, the Commission has included a calculation of emissions in certificate orders since the court's decision in *Sierra Club*. In order to help the Commission ensure that it has a well-developed record particularly

[19] *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir 2017).

regarding the need determination, AIPF members are willing to provide information to the applicants in certificate proceedings regarding their respective needs for the gas that a proposed project will deliver. The information gathered from these parties and submitted by the pipeline would help the Commission reach a better-supported conclusion regarding the need for a proposed project and would provide a more robust record to support the Commission's decisions on appeal.

A4. Should the Commission consider distinguishing between precedent agreements with affiliates and non-affiliates in considering the need for a proposed project? If so, how?

In considering whether affiliate precedent agreements should be sufficient to demonstrate a proposed project's need, AIPF also encourages the Commission to consider issuing data requests to ensure that there is sufficient demand to avoid any possibility that captive customers on other pipelines will end up bearing the costs of stranded pipeline capacity or negotiated rates or discounts, especially if there are affiliated shippers. Taking such steps can protect captive customers who pay the pipeline's recourse rates from the risks of the pipeline filing for rate increases due to the turn-back of unneeded capacity or discounting rates to attract additional load. As discussed below, the Commission should also consider regional demand for a proposed project.

A5. Should the Commission consider whether there are specific provisions or characteristics of the precedent agreements that the Commission should more closely review in considering the need for a proposed project? For example, should the term of the precedent agreement have any bearing on the Commission's consideration of need or should the Commission consider whether the contracts are subject to state review?

AIPF takes the position that the Commission could consider whether a precedent agreement is subject to state review as additional support for the need of a proposed project, as most LDC pipeline transportation contracts must be reviewed by their state regulatory body for prudence. AIPF does not know of any specific characteristics of the precedent agreement that need to be more closely scrutinized.

A6. In its determinations regarding project need, should the Commission consider the intended or expected end use of the natural gas? Would consideration of end uses better inform the Commission's determination regarding whether there is a need for the project? What are the challenges to determining the ultimate end use of the new capacity a shipper is contracting for? How could such challenges be overcome?

As noted above, AIPF asserts that the Commission should consider the intended or expected end use of the natural gas and specifically include uses by manufacturing interests where such information is submitted in connection with the application. This would allow a more comprehensive analysis of the economic and environmental benefits of a proposed project. As an example, the Commission should consider the pipeline's impact to direct and indirect manufacturing jobs, investment and economic contributions. Additionally, AIPF encourages Commission Staff to continue to issue data requests where the need data in the application is unclear. AIPF members are willing to provide details to support projects needed to supply their plants.

A7. Should the Commission consider requiring additional or alternative evidence of need for different end uses? What would be the effect on pipeline companies, consumers, gas prices, and competition? Examples of end uses could include: LDC contracts to serve domestic use; contracts with marketers to move gas from a production area to a liquid trading point; contracts for transporting gas to an export facility; projects for reliability and/or resilience; and contracts for electric generating resources.

As discussed above, AIPF members believe that the Commission should consider requiring additional evidence of the need for different end uses. While many AIPF members hold firm transportation contracts on pipelines across the country, AIPF members also have plants that are served behind the LDC meter. AIPF members also purchase natural gas under contracts with marketers at liquid trading points and are large purchasers of electricity produced from gas-fired generation. AIPF members also need reliable natural gas service to run their plants and interruptions in service can result in damage to product production equipment, damage to products, shortages of consumer products, safety issues if a plant has to shut down unexpectedly, and adverse

economic impacts to communities that depend on the plant to provide direct and indirect economic benefits including employment.

A8. How should the Commission take into account that end uses for gas may not be permanent and may change over time?

The Commission must also consider that demand, including manufacturing demand, may be greater than projected and the resulting job creation. It is important for the Commission to examine demand in the context of a reasonable investment horizon of, for example, twenty years. While AIPF believes that it may be reasonable for the Commission to take into account that end uses may not be permanent, this usage information should be considered in the context of the current energy market environment, where technology and policy are ever-evolving, and where tomorrow's business landscape is not entirely knowable today. Nothing in the NGA prohibits the Commission from issuing a Section 7(c) certificate that is term-limited, and requires a pipeline to seek re-certification on a date-certain in the future. To the extent that the Commission may be concerned that future needs may differ from then-current needs when it is considering an application, it may grant the Section 7(c) certificate for the project with an expiration date, and require the pipeline company to demonstrate continued need on, or prior to, that date in order for the certificate to remain valid. However, doing so may result in higher costs for consumers as pipelines normally recover the costs of their investments over the remaining economic life of the facilities and, as the remaining life of the facilities is shortened, the pipeline's rates will increase in order to recoup the investment over a shortened economic life. Considering FERC's jurisdictional role as an economic regulator, the Commission must consider the economic impacts of its determinations on consumers.

A9. Should the Commission assess need differently if multiple pipeline applications to provide service in the same geographic area are pending before the Commission? For example, should the Commission consider a regional approach to a needs determination if there are multiple pipeline

applications pending for the same geographic area? Should the Commission change the way it considers the impact of a new project on competing existing pipeline systems or their captive shippers? If so, what would that analysis look like in practice?

AIPF believes that in the case of multiple pipeline applications for the same region, by including additional evidence of legitimate regional demand for all proposed projects, the Commission can eliminate potential rate pressure placed on the truly captive shippers on existing pipelines. For instance, this would assist shippers that are negotiating settlements in individual pipeline cases to more accurately determine a reasonable settlement rate where the pipeline argues for higher rates because it asserts that its current throughput level is not likely to continue, as it anticipates losing load due to a new pipeline entering the market. This has been an issue in some cases. While AIPF recognizes that many years ago when the Commission held protracted hearings to consider competing pipeline applications, AIPF notes that the Commission has made great progress since that time in expediting the hearing process, and the pipelines can be prepared to provide sufficient evidence to support the regional need in their applications, which would avoid issues being set for a hearing.

Finally, the Commission must not speculate on the readiness and economics of speculative future unproven technology as a substitute for natural gas. This includes manufacturing's ability to switch to other non-natural gas consuming technology.

A10. Should the Commission consider adjusting its assessment of need to examine (1) if existing infrastructure can accommodate a proposed project (beyond the system alternatives analysis examined in the Commission's environmental review); (2) if demand in a new project's markets will materialize; or (3) if reliance on other energy sources to meet future demand for electricity generation would impact gas projects designed to supply gas-fired generators? If so, how?

AIPF believes that neither the Commission, nor anyone else, has the ability to predict whether the future demand expected will or will not occur, nor the rate at which reliance upon other energy sources to meet future demand for electricity will occur, potentially leaving plants

unable to obtain gas supply. Nor should the Commission speculate on whether non-natural gas technology alternatives will become economic or commercially available. To this point, EIA has expert market analysis capabilities, yet not all of their forecasts have proven to be accurate. Moreover, as noted above, in the case of gas used in manufacturing as a fuel or feedstock, substitution of another energy source is not possible in the foreseeable future. Technology development takes several decades. Thus, in the event that the pipeline provides support for its projected future demand and is placed at risk for recovery of its investments, AIPF does not support the Commission speculating about future events that may increase or decrease market demand.

A11. In its determination of need, should the Commission consider the economic, energy security and social attributes of domestic production and use of natural gas as detailed in the letter dated February 11, 2021 from the Chairman of the Senate Energy and Natural Resources Committee, Senator Joe Manchin III, to President Biden?

AIPF supports the Commission's consideration of economic attributes of domestic production and use of gas discussed in Senator Manchin's letter in particular, to the extent that he mentions that natural gas and natural gas liquids serve as feedstock for chemicals, plastics and other synthetic materials that are in everyday products used by consumers, including PPE, disinfectants and other medical equipment. Given current concerns about supply chain interruptions and economic recovery, it is even more critical to consider these important factors in the needs determination.

A12. In its general public interest considerations under the NGA or other federal statutes, should the Commission consider the interests of low to middle-income communities in which the production or transportation of natural gas is a significant source of jobs and/or tax revenues that fund public services?

AIPF supports the Commission taking into account both the direct and indirect public interests of communities that benefit from the jobs and tax revenues from the production or

transportation of natural gas. Including, for example, for every $1.00 spent in manufacturing, another $2.79 is added to the economy.[20]

C. The Commission's Consideration of Environmental Impacts

C3. In conducting an analysis of a project, how could the Commission consider upstream impacts (e.g., from the drilling of natural gas wells) and downstream end-use impacts? Should applicants be required to provide information on the origin and end use of the gas? How would the Commission determine end-use impacts if the gas is sent to a pooling point or a mid-stream shipper? If the end use is electric generation or an LDC, how would the Commission determine the GHG emissions of existing and anticipated gas usage attributed to a project? How would additional information related to upstream or downstream impacts of a proposed project inform the Commission's decision on an application? Should shippers who have subscribed capacity on a project (or potentially, the shippers' customers) be encouraged to provide the type of information contemplated above? If so, how might this be done? How could such a policy be squared with CEQ's final rule? (citations omitted)

AIPF encourages the Commission to perform its environmental review with a view towards developing a record and reaching a decision that has the greatest chance of withstanding appellate review. In recent years, the court of appeals has vacated and remanded certificate orders issued by the Commission after finding that its environmental review was either flawed or incomplete. (*e.g.*, *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304 (2014)). AIPF urges the Commission to build a strong record on environmental issues where they are reasonably foreseeable as directed by the court in *Sierra Club* because of the economic damages that member companies could incur if they are forced to shut down operations if a pipeline is built and serving their plants and then loses its certificate to operate.

If the Commission considers upstream GHG emissions for natural gas, it is arguable that the Commission must consider similar impacts of alternatives to building the pipeline under

[20] *See* National Association of Manufacturers, Facts About Manufacturing, available at https://www.nam.org/facts-about-manufacturing/.

NEPA. For this analysis, it is arguable that the Commission would need to consider the upstream GHG emissions of alternative sources of energy that would be relied upon under the alternatives to building the pipeline.[21]

The Commission must also consider the environmental and economic impacts of not building the pipeline. For manufacturers, this often will require continuing their existing use of coal or fuel oil, instead of switching to natural gas where gas is being used as a fuel. Or, if pipeline capacity is not available, it prohibits companies from investing in existing facilities or new ones where natural gas is being used as a fuel or feedstock. Unfortunately, if companies cannot access pipeline capacity, some companies will have no alternative but to build facilities in other countries which shifts GHG emissions, investments and jobs offshore and increases global GHG emissions. This is called industrial GHG leakage.

It is important to note that consumer demand for our products continues to increase because they are essential for economic growth, public welfare and quality of life. These products will either be manufactured in the U.S. or imported. If they are imported, there is a possibility that they are produced with greater GHG intensity than U.S. produced products, thereby contributing to GHG emissions. To this point, the International Energy Agency recognizes that U.S. greenhouse gas emissions were 0.29 kg CO2 per U.S. dollar of GDP in 2016.[22] This compares to a global

[21] *See* Robert Rapier, *Estimating The Carbon Footprint Of Utility-Scale Battery Storage*, available at https://www.forbes.com/sites/rrapier/2020/02/16/estimating-the-carbon-footprint-of-utility-scale-battery-storage/?sh=2d5164f17adb. This article indicates that there are significant upstream GHG emissions for energy storage batteries, citing to a 2019 study from IVL Swedish Environmental Research Institute which reviewed the available carbon emissions data for lithium-ion batteries. The authors found that the production of upstream battery materials generally comprises the largest share of the emissions of such projects, identified as 59 kilograms (kg) of CO2 equivalent (eq) per kilowatt-hour (kWh) of battery capacity.

[22] International Energy Agency, "Picture of CO2 Emissions from Fuel Combustion 2018 Highlights," available at https://webstore.iea.org/co2-emissions-from-fuel-combustion-2018-highlights.

average of 0.41 kg CO2 (41% higher than the U.S.). Moreover, given nearly half of all U.S. imported goods and services come from non-OECD countries, like China, it is notable that the non-OECD emission average is 0.71 kg CO2 per U.S. dollar of GDP (173% higher than the U.S. average) and the China emission average is 0.95 kg CO2 per U.S. dollar of GDP (328 percent higher than the U.S. average). Goods manufactured in the U.S. are 80% more carbon efficient than the world average.[23] Therefore, we encourage the Commission to consider the avoided GHG emission of manufacturing's use of natural gas.

Furthermore, AIPF supports the Commission's historic approach of balancing the costs and benefits of each project, including offsetting environmental costs and benefits. In terms of offsetting benefits, AIPF suggests giving consideration to whether end users follow sustainability programs which offset adverse environmental impacts from the gas that will be delivered to them from a proposed pipeline. Many manufacturing companies have implemented strong corporate sustainability initiatives that offset emissions with other actions to mitigate their environmental impact. Even absent a sustainability initiative, when a company switches its fuel source from coal or fuel oil to natural gas, it results in immediate and substantial environmental, GHG reduction and economic benefits. New natural gas boilers will be more energy efficient than older boilers fueled by other energy sources, and they also will meet much more stringent environmental requirements. Switching to natural gas also will result in energy cost savings for the company—savings that can be used to support additional jobs, new product development, and plant expansion, all of which provide economic benefits to the local community. The Commission should consider all these benefits when balancing the benefits of a proposed project against the adverse

[23] Climate Leadership Council, *America's Carbon Advantage* at 2, available at https://clcouncil.org/reports/americas-carbon-advantage.pdf.

environmental impacts. The Commission must also consider that if it does restrict pipeline facilities, it will drive up the cost of natural gas and electricity for low-income families who can least afford higher costs. The cost of heating a home with natural gas is less expensive than heating a home with electricity.[24] If natural gas prices increase, so will the price of electricity. Higher natural gas prices also increase the costs of producing manufacturing goods, which are eventually passed onto consumers.

C6. Does the NGA, NEPA, or other federal statute authorize or mandate the use of Social Cost of Carbon (SCC) analysis by the Commission in its consideration of certificate applications? If so, how does the statute direct or authorize the Commission to use SCC? Does the statute set forth specific metrics or quantitative analyses that the Commission must or may use and/or specific findings of fact the Commission must or may make with regard to SCC analysis of a certificate application? Does the statute set forth specific remedies the Commission must or may implement based on specific SCC findings of fact?

AIPF opposes the use of the SCC by the Commission in the certificate process. The SCC is not appropriate for certificate applications. AIPF does not believe that the Commission has any statutory basis authorizing it to use SCC calculations of cost impacts outside of the United States. AIPF notes that there are substantial uncertainties with SCC calculations in that the calculations are not based upon scientific evidence. Also, AIPF believes that calculating global avoided costs is extremely difficult and that the margin of error is very high. AIPF points out that there is no consensus on the accuracy of economic modeling in terms of the costs that should be included or how to calculate avoided costs, or the proper discount rate to be applied. Therefore, there are

[24] *See*, *e.g.*, Washington Gas Company, *Cost Savings Comparison*, available at https://www.washingtongas.com/home-owners/savings/cost-savings; U.S. EIA, *Average Consumer Prices and Expenditures for Heating Fuels During the Winter*, available at https://www.eia.gov/outlooks/steo/pdf/wf01.pdf.

uncertain benefits of using SCC. To our knowledge, no other country in the world is using SCC and global climate costs in domestic decision-making.

The SCC considers and adds in 'global' costs of climate change.[25] Using the SCC adds highly uncertain 'global' costs to certain 'domestic' costs in weighing a pipeline certificate. Moreover, any domestic application of an estimated SCC must reduce that estimate by the hundreds of billions of dollars that are already prospectively required--through thousands of federal, state, and local laws and regulations, as well as all utility ratepayer-funded initiatives, as well as all voluntary corporate and non-profit investments—to reduce, avoid, or sequester emissions.[26] To date, every application of the SCC has failed to correct for this double-counting. As a result, the combined costs tip the scale against the U.S. manufacturing sector that needs pipelines and that must compete with global competitors. Our competitors do not face the same costs. Therefore, using the SCC can negatively impacts our competitiveness and, more likely than not, will result in an INCREASE in global emissions by displacing more energy efficient and less carbon-intensive domestic use of fuel with less energy efficient and more carbon-intensive international use of fuel. If the SCC is used for adjudicating pipeline certificate applications, and

[25] *See*, *e.g.*, Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990* at 14-16, available at https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.

[26] No government entity or organization has ever calculated the total cost of all federal, state, local, utility and voluntary "green" subsidies, programs, initiatives and investments. DSIRE counts at least 2,383 currently active federal and state subsidy programs from renewable energy and energy efficiency. This does not include any local subsidies, nor any utility mandates, nor any voluntary initiatives. DSIRE is operated by the N.C. Clean Energy Technology Center at N.C. State University. DSIRE was funded by DOE from 1995-2016; during that time all information was publicly available. Since then, the information is available only for a fee, at its sister site, DSIRE Insight. *See* https://programs.dsireusa.org/system/program; https://www.dsireinsight.com/. The US Treasury estimated that just one of the above-referenced 2,383 subsidy programs, the wind production tax credit, will cost taxpayers $40.12 billion in the period from 2018–2027.

the pipeline's SCC is too high and thus its application is denied, it is the manufacturing sector and its jobs that actually are penalized. In summary, for the manufacturing sector that faces severe global competition, use of the SCC and the potential result of denying a certificate application, may directly damage competitiveness, investment, economic growth and job creation, and may increase global emissions.

C7. If the Commission chooses to use the SCC tool, how could it be used to determine whether a proposed project is required by the public convenience and necessity? How would the Commission determine the appropriate discount rate to use? (citation omitted) Should the Commission consider multiple discount rates or one discount rate? Please provide support for each option. How could the Commission use the SCC tool in the weighing of the costs versus benefits of a proposed project? How could the Commission acquire complete information to appropriately quantify all of the monetized costs/negative impacts and monetized benefits of a proposed project? Should the Commission use the tool to determine whether a project has significant effects on climate? If so, how could the Commission connect the SCC estimate with the actual effects of the project? What level of cost would be significant and why?

AIPF asserts that this question illustrates the difficulty in trying to apply the SCC tool to estimate the actual effects of a particular project and submits that such application would result in arbitrary and capricious decisions due to the subjective nature of the estimates and choices of discount rates.

C8. Are there alternatives to the SCC tool that the Commission should consider using? If so, how could the Commission use those tools?

AIPF asserts that the Commission has decades of experience considering the impact on the environment of pipeline projects. The Commission's NEPA analysis routinely considers many environmental impacts of a pipeline project and considers environmental impacts as part of the overall costs and benefits of a project without any specific tools (*e.g.*, impact on wetlands, soils, etc.). AIPF supports the approach taken in the recent *Northern Natural* decision of considering GHG emissions as part of the environmental review undertaken under NEPA without using a

specific tool to determine the significance of GHG emissions.[27] In that order, the Commission found that to evaluate whether the impact of GHG emissions would be significant, the Commission concluded that it only has to determine whether such impact "would result in a substantial adverse change in the physical environment," and need not rely on evidence that is universally accepted.[28] Thus, the Commission determined that comparing the project's reasonably foreseeable GHG emissions to the total emissions of the U.S. as a whole was a reasoned basis to consider the significance of the project's GHG emissions and their potential impact on climate change based on the record in that case.[29]

C9. How could the Commission determine whether a proposed project's GHG emissions are offset by reduced GHG emissions resulting from the project's operations (*e.g.*, displacing a more carbon-intensive fuel source such as coal or fuel oil)?

In *Northern Natural*, the Commission noted that, should it determine that a project's reasonably foreseeable GHG emissions are significant, those GHG-related impacts would be considered along with many other factors when determining whether a project is required by the public convenience and necessity.[30] As end users provide information to the Commission in response to data requests regarding the need for a project, they could also provide detail regarding whether the gas to be used will displace other more carbon-intensive sources of fuel. As the Commission quantifies the GHG emissions that result from the use of the gas downstream, it could

[27] *Northern Natural Gas Company*, 174 FERC ¶ 61,189, P 1 (2021) (*Northern Natural*).

[28] *Id.* at PP 32-33 and n. 49 (citing *Magnum Gas Storage, LLC*, 134 FERC ¶ 61,197, at P 114 (2011) (*"*an impact was considered to be significant if it would result in a substantial adverse change in the physical environment or natural condition and could not be mitigated to less-than-significant level")). The Commission found that NEPA does not require that the studies, metrics, and models—scientific and otherwise—on which an agency relies be universally accepted or otherwise uncontested; instead, NEPA permits agencies to rely on the best available evidence, quantitative and qualitative, even where that evidence has certain limitations.

[29] *Id.* at P 34.

[30] *Id.* at P 36.

similarly quantify the level of emissions that would result if coal or oil were used instead of a portion of the gas, based on the information provided by end users.

As discussed above, AIPF member companies are willing to share data with the Commission on their respective efforts to displace the use of more carbon-intensive fuel in connection with pipeline projects that would serve their plants. In addition, while it is important for the Commission to consider direct displacement of more carbon-intensive resources by the gas to be used by a proposed pipeline, the Commission should also consider the ways in which end users further offset the emissions produced by the gas used in determining the impact of a proposed project. This information could also be obtained in responses to the data requests discussed above. AIPF member companies are also willing to provide information on their sustainability initiatives and offset programs.

C10. How could the Commission impose GHG emission limits or mitigation to reduce the significance of impacts from a proposed project on climate change? Can the Commission interpret its authority under NGA section 7(e) to permit it to mitigate GHG emissions? If the Commission decides to impose GHG emission limits, how would the Commission determine what limit, if any, is appropriate? Should GHG mitigation be considered only for direct project GHG emissions or should downstream enduse, or upstream emissions also be evaluated? What are the options or methods applicants could propose to mitigate GHG emissions through offsets or other means?

AIPF agrees with the judicial precedent cited in the 2021 NOI that indicates that FERC has no authority to regulate greenhouse gas emissions by end users. (*e.g.*, *American Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 428 ("It is altogether fitting that Congress designated an expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions.")). Thus, absent a state or federal limitation on GHG emissions, FERC should not try to indirectly create such a limit. However, to the extent that the Commission regulates the transportation of natural gas by interstate pipelines, the Commission has authority to ensure that pipelines are built

and operated so as to mitigate impacts on the environment as it has done for years through its conditioning of certificates to construct and operate interstate pipelines.

Therefore, for example, FERC would appear to have authority to require that a pipeline be constructed and operated in a way that meets state and federal laws concerning emissions using the Commission's prior practice of conditioning certificates to comply with applicable environmental laws. While it is possible for a pipeline to propose offset programs similar to those of many end users, the Commission should be careful not to impose additional financial burdens on shippers by allowing the pipeline to pass through the costs of such offsets to shippers through increased rates. This is particularly important to manufacturing interests that, as stated above, are endeavoring to compete in a global market where costs of production can be dramatically lower in other countries due in large part to less onerous regulatory burdens.

C11. What categorical exclusions established by other agencies should the Commission consider adopting? Why is it appropriate for the Commission to adopt those categorical exclusions? Should the Commission consider establishing new categorical exclusions that modify the existing categorical exclusions of other agencies? Should the Commission consider adding new categorical exclusions for actions where there is no construction or restoration activities and the environment is not involved? Those actions could include, but are not limited to, modifications to certificated capacity that involve no construction or ground disturbance, modifications to export/import volumes at border crossing facilities if there are no changes to the facilities, rate amendments, NGA section 7(f) service area determinations, conversion of NGA section 7 facilities to section 3 authorizations, limited jurisdiction certificates, etc. Are there other actions that could benefit from a categorical exclusion and would be consistent with the Commission's obligations under NEPA?

AIPF would support categorical exclusions such as those suggested above.

D. Improvements to the Efficiency of the Commission's Review Process

D1. Should certain aspects of the Commission's application review process (i.e., pre-filing, post-filing, and post-order-issuance) be condensed, performed concurrently with other activities, or eliminated, to make the overall process more efficient? If so, what specific changes could the Commission consider implementing?

If it would be more efficient, AIPF encourages the Commission to ensure meaningful opportunities for manufactures to weigh in on pipeline projects at the earliest possible time, and

would be in favor of collapsing the pre-filing into the post-filing processes to try to eliminate the lengthy time to process these applications. Specific implementation changes would be to require pipelines to notify manufacturing interests potentially served by proposed projects at the same time as the notification of landowners and tribes and including them in any pre-filing meetings.

D2. Should the Commission consider changes to the pre-filing process? How can the Commission ensure the most effective participation by interested stakeholders during the pre-filing process and how would any such changes affect the implementation and duration of the pre-filing process?

AIPF submits that the Commission should consider changes to the pre-filing process to include all affected interests, not just landowners and tribes. In addition to including landowners and tribes in the pre-filing process, the Commission should include manufacturers whose plants are located in the region served by the proposed project. The Commission should include a requirement that the pipeline identify industrial loads that are served directly and indirectly, through marketers and LDCs.

E. The Commission's Consideration of Effects on Environmental Justice Communities

E3. When evaluating disproportionately high and adverse effects on environmental justice communities, should the Commission change how it considers the location or distribution of a project's impacts? If so, how?

AIP supports efforts by the Commission to address disproportionately high adverse effects of pipeline projects being placed on environmental justice communities. However, similar to the cost/benefit analysis that the Commission undertakes in considering other environmental impacts, the Commission should consider the positive as well as the negative impacts of proposed infrastructure. For example, these same communities may benefit when new natural gas infrastructure is located in the area which ensures a community has reliable and affordable energy, as they may not have the economic means to secure alternative accommodations in the event of a

power outage. These communities also can benefit when natural gas infrastructure is built for new facilities or the expansion of existing manufacturing facilities, as these facilities provide jobs and tax revenues to communities that need both.

V. Conclusion

Manufacturing is the engine for U.S. economic growth. Moreover, EITE industries produce all of the raw materials needed for clean energy technologies. Given the dependence upon the pipeline supply of natural gas as a feedstock for many companies, and the lack of a substitute either economically or physically, due to technology limitations, AIPF Members cannot maintain or grow investments and jobs without more pipelines. Manufacturing is also price sensitive, especially EITE industries. If the Commission acts in a manner that increases costs, it will directly damage our competitiveness, thereby impacting existing jobs and forfeiting job growth. For these reasons, AIPF respectfully requests that the Commission take action on its Certificate Policy Statement consistent with the above comments.

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 26th day of May 2021.

/s/ Andrea J. Chambers
Andrea J. Chambers