



## FEDERAL ENERGY REGULATORY COMMISSION

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November 4, 2022

The Honorable John Barrasso, M.D.  
United States Senate  
Washington, D.C. 20510

Dear Senator Barrasso,

Thank you for your letter dated September 6, 2022,<sup>1</sup> in which you requested information concerning the development of, and changes to, FERC policies regarding natural gas and electricity since the March 3, 2022 Energy and Natural Resource Committee's hearing (March Hearing) on the certificate policy statements<sup>2</sup> that FERC issued at its February 2022 open meeting. In your letter, you express apprehension that, since the March Hearing, the policies that FERC has been implementing both in its review processes and in its orders could cause "the reliability and affordability of domestic energy [to] suffer" and impair the country's ability to support "allies and friends in Europe, who are in desperate need of American natural gas."<sup>3</sup> You ask that my colleagues and I answer a series of questions completely and promptly. Below, please find my responses.

**1. It appears that the Commission has applied the same counterproductive policies found within the 2022 Policy Statements to individual proceedings on its natural gas docket. This is not entirely surprising. For example, in their respective**

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<sup>1</sup> Senator Barrasso, September 6, 2022 Letter, Docket Nos. PL18-1-000, et al. (Barrasso September 6, 2022 Letter).

<sup>2</sup> *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Updated Certificate Policy Statement) (Danly, Comm'r, dissenting); *Consideration of Greenhouse Gas Emissions [(GHG)] in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,108 (2022) (Interim GHG Policy Statement), (Danly, Comm'r, dissenting); *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197, at P 2 (2022) (Order on Draft Policy Statements) (Danly, Comm'r, concurring in part and dissenting in part).

<sup>3</sup> Barrasso September 6, 2022 Letter at 2.



tenures on the Commission, Chairman Glick (nearly five years) and Commissioner Clements (nearly two years) each has developed a robust record clearly expressing the conviction that the Commission—even without the 2022 Policy Statements—has the authority (if not the duty) to require or “encourage” the calculation and mitigation of downstream and upstream greenhouse gas emissions.

- a. **In your view, since March 3, 2022, has the Commission applied any one or more of the policies announced in either of the 2022 Policy Statements in any individual proceeding? If not, why not?**
- b. **If so, please list in the form that you believe will be most clear and effective for the public record: i) the relevant proceeding and Order; and ii) the policy that the Commission applied that was also articulated in either one or both of the 2022 Policy Statements.**

Since the March Hearing, the Commission has applied a number of the policies announced in the 2022 Policy Statements in its recent issuances.<sup>4</sup> Specifically, as detailed in Appendix A, the Commission’s orders have included (1) the consideration of a shipper’s affiliation with the pipeline applicant as part of the FERC’s determination of whether a pipeline project is needed; (2) the identification of the end use of the gas transported by the incremental capacity when determining whether there is a need for the pipeline project; (3) the “encouragement” of applicants to provide evidence of GHG offsets to support FERC’s calculation of a project’s GHG emissions; and (4) the “encouragement” of pipeline companies to “voluntarily” mitigate GHG emissions. Each of these four new policies were new proposals identified in the now-draft 2022 Policy Statements. Bear in mind that, in those policy statements, FERC stated that it would “not apply . . . to pending applications or applications filed before the Commission issues any final guidance in these dockets.”<sup>5</sup> Although I read the Natural Gas Act (NGA) to require closer scrutiny of affiliate relationships when considering project need, I dissented on the other three points and continue to see them as problematic, if not unlawful.

There are those who might say that the Commission is not implementing the 2022 Policy Statements but is rather fulfilling its obligations under the Administrative Procedure Act (APA) to respond to arguments raised in the comments in specific

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<sup>4</sup> See, e.g., *North Baja Pipeline, LLC*, 179 FERC ¶ 61,039 (2022) (Danly, Comm’r, concurring in the judgment at PP 9-11) (*North Baja*).

<sup>5</sup> Order on Draft Policy Statements, 178 FERC ¶ 61,197 at P 2.



proceedings. In *some* cases, that may be true. But, in many proceedings the Commission raises these issues on its own initiative, even though commenters did not raise them.<sup>6</sup> The project need analysis in *North Baja Pipeline, LLC* is one such example.<sup>7</sup> Though not a single commenter contested the need for the project, the Commission’s order notes that the anchor shipper is “not affiliated with North Baja” and discusses the end use of the gas:

the end use of the gas to be transported by the project is known. Specifically, Sempra LNG intends on using the gas transported by the project to supply feed gas for Sempra LNG’s and IEnova’s proposed Energia Costa Azula LNG facility.<sup>8</sup>

Before the issuance of the 2022 Policy Statements, it would have been unusual for the Commission to include such information if the project were supported by a precedent agreement and no party contested the need for the project.<sup>9</sup>

Since March 2022, the Commission has made other notable changes in its natural gas orders.

The Commission has recently begun imposing novel mitigation regimes on projects justified on the basis of reducing adverse effects on environmental justice (EJ)

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<sup>6</sup> See, e.g., *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199, at P 88 n.128 (2022) (without pipeline applicant requesting otherwise, the Commission states “[i]n the absence of evidence supporting an alternative utilization rate we are using a conservative assumption of full burn.”).

<sup>7</sup> *North Baja*, 179 FERC ¶ 61,039.

<sup>8</sup> *Id.* P 13.

<sup>9</sup> See, e.g., *Tuscarora Gas Transmission Co.*, 175 FERC ¶ 61,147, at PP 11-16 (2021) (no discussion of whether the shipper, which signed a precedent agreement for 100% of the project capacity, was an affiliate or the shipper’s planned use of the natural gas in determining whether the project is in the public convenience and necessity).



communities.<sup>10</sup> In the 2022 Policy Statements, FERC stated that it would “expect applicants to propose measures for mitigating impacts, and . . . will consider those measures—or lack thereof—in balancing adverse impacts against the potential benefits of a proposal” and that “[s]hould [FERC] deem an applicant’s proposed mitigation of impacts inadequate to enable [FERC] to reach a public interest determination, [FERC] may condition the certificate to require additional mitigation.”<sup>11</sup> The Policy Statement also stated, with respect to impacts on EJ communities, that FERC would “look with disfavor on mitigation proposals that are proposed without sufficient community input” and “that the effective mitigation will require the Commission to consider, among other things, the feasibility of proposed mitigation and methods for ensuring compliance, . . . and, where useful, a range of potential mitigation options.”<sup>12</sup> Like other aspects of the 2022 Policy Statements, these requirements, or “expectations,” are broad and standardless. NEPA, however, “not only does not require agencies to discuss any particular mitigation plans that they might put in place, it does not require agencies—or third parties—to affect any.”<sup>13</sup> With respect to FERC’s conditioning authority, the Commission can only impose conditions to the extent to which they are necessary or appropriate for the project to be consistent with the public interest.

As a recent example, in *Golden Pass LNG Terminal LLC*,<sup>14</sup> FERC required the project sponsor to file a standard operating procedure for shuttle bus operations on an off-site parking lot to restrict bus idling and specify the locations in which the bus could operate.<sup>15</sup> As Commissioner Christie stated in his concurrence, “[p]arking and traffic regulations, as well as land use, are uniquely local in character and are under state and

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<sup>10</sup> The Commission defines “environmental justice community” as “disadvantaged communities that have been historically marginalized and overburdened by pollution” including “minority populations, low-income populations, or indigenous peoples.” *North Baja*, 179 FERC ¶ 61,039 at P 44 n.75 (citations omitted).

<sup>11</sup> Updated Certificate Policy Statement, 178 FERC ¶ 61,107 at P 74.

<sup>12</sup> *Id.* at 91.

<sup>13</sup> *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 206 (D.C. Cir. 1991) (citation omitted).

<sup>14</sup> 180 FERC ¶ 61,058 (2022).

<sup>15</sup> *Id.* P 46 & Environmental Condition No. 5.



local jurisdiction derived from inherent police powers.”<sup>16</sup> The Commission acknowledged in its order that Golden Pass LNG “consulted with state and local officials” on the location and use of the parking lots, “obtained the appropriate state, county, and city permits,” and was not required by the state to conduct “additional traffic studies in association with greater than existing use of these lots.”<sup>17</sup> Nevertheless, the Commission imposed mitigation prescribing “[p]arking and traffic regulations” on Golden Pass. This micromanaging may be one of the reasons the Commission took sixteen months to approve expanded parking facilities at Golden Pass’ construction site.

In addition to FERC’s expanded use of its conditioning authority and EJ analysis, since March 2022, the Commission has also changed its approach to how it responds to comments arguing that the Commission should use the Social Cost of Carbon to assess the significance of GHG emissions. Previously, when faced with such arguments, the Commission would explain that “the Social Cost of Carbon is not appropriate in project-level [National Environmental Policy Act (NEPA)] review, and cannot meaningfully inform the Commission’s decisions on natural gas infrastructure projects under the [Natural Gas Act (NGA)].”<sup>18</sup> Since March 2022, the Commission now calculates the Social Cost of Carbon for each project but states:

[N]oting pending litigation challenging federal agencies’ use of the [Interagency Working Group on Social Cost of Greenhouse Gases’] interim values for calculating the social cost of GHGs, we are not relying on or using the social cost of carbon estimates to make any finding or determination regarding either the impact of the project’s GHG emissions or whether the project is in the public convenience and necessity.<sup>19</sup>

Despite this language, and FERC’s prior, consistent determination that the Social Cost of Carbon cannot meaningfully inform project-level review, FERC recently stated in

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<sup>16</sup> *Id.* (Christie, Comm’r, concurring at P 3).

<sup>17</sup> *Id.* P 46.

<sup>18</sup> *See, e.g., Double E Pipeline, LLC*, 173 FERC ¶ 61,074, at P 107 (2020) (Glick, Comm’r, dissenting).

<sup>19</sup> *North Baja*, 179 FERC ¶ 61,039 at P 42 (footnotes omitted).



rehearing orders that this Social Cost of Carbon analysis was used for “evaluat[ing] [a project’s] GHG emissions.”<sup>20</sup> This appears to mark an abrupt change to FERC’s longstanding position on the Social Cost of Carbon.

The draft Interim GHG Policy Statement stops short of requiring the use of the Social Cost of Carbon in Commission project reviews, citing pending litigation. The draft Interim GHG Policy Statement, however, explicitly leaves the door open to later including the Social Cost of Carbon in our analysis, stating: “[t]o the extent permitted by law, the Commission could consider the [Social Cost of Carbon] in the future.”<sup>21</sup> It is impossible to know whether or not FERC will eventually adopt the Social Cost of Carbon, but, as a commissioner, Chairman Glick advocated in at least fifty-five separate statements for the Commission to use the Social Cost of Carbon to assess a project’s effects on climate change.<sup>22</sup>

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<sup>20</sup> *Columbia Gulf Transmission, LLC*, 180 FERC ¶ 61,206, at P 91 (2022); *Tenn. Gas Pipeline Co., LLC*, 180 FERC ¶ 61,205, at P 75 (2022); *Tenn. Gas Pipeline Co., L.L.C.*, 181 FERC ¶ 61,051, at P 37 (2022).

<sup>21</sup> Interim GHG Policy Statement, 178 FERC ¶ 61,108 at P 96 (citation omitted).

<sup>22</sup> See *Nat’l Fuel Gas Supply Corp.*, 172 FERC ¶ 61,039 (2020) (Glick, Comm’r, dissenting at P 18); *Mountain Valley Pipeline, LLC*, 171 FERC ¶ 61,232 (2020) (Glick, Comm’r, dissenting in part at P 15); *Tex. E. Transmission, LP*, 171 FERC ¶ 61,081 (2020) (Glick, Comm’r, dissenting in part at P 9); *Adelphia Gateway, LLC*, 171 FERC ¶ 61,049 (2020) (Glick, Comm’r, dissenting in part at P 13); *Transcon. Gas Pipe Line Co., LLC*, 171 FERC ¶ 61,032 (2020) (Glick, Comm’r, dissenting in part at P 14); *Transcon. Gas Pipe Line Co., LLC*, 171 FERC ¶ 61,031 (2020) (Glick, Comm’r, dissenting in part at P 14); *Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,247 (2020) (Glick, Comm’r, dissenting in part at P 10); *Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,246 (2020) (Glick, Comm’r, dissenting in part at P 10); *Gulf S. Pipeline Co., LP*, 170 FERC ¶ 61,201 (2020) (Glick, Comm’r, dissenting in part at P 12); *Fla. Gas Transmission Co., LLC*, 170 FERC ¶ 61,200 (2020) (Glick, Comm’r, dissenting in part at P 10); *Gulfstream Nat. Gas Sys., L.L.C.*, 170 FERC ¶ 61,199 (2020) (Glick, Comm’r, dissenting in part at P 9); *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,198 (2020) (Glick, Comm’r, dissenting in part at P 10); *Sabine Pass LNG, L.P.*, 170 FERC ¶ 61,145 (2020) (Glick, Comm’r, dissenting in part at P 11); *Tenn. Gas Pipeline Co., L.L.C.*, 170 FERC ¶ 61,142 (2020) (Glick, Comm’r, dissenting in part at P 11); *Annova LNG Common Infrastructure, LLC*, 170 FERC ¶ 61,140 (2020) (Glick, Comm’r, dissenting at



P 24); *Tex. LNG Brownsville LLC*, 170 FERC ¶ 61,139 (2020) (Glick, Comm'r, dissenting at P 23); *Rio Grande LNG, LLC*, 170 FERC ¶ 61,046 (2020) (Glick, Comm'r, dissenting at P 20); *Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,045 (2020) (Glick, Comm'r, dissenting in part at P 14); *Tenn. Gas Pipeline Co., L.L.C.*, 169 FERC ¶ 61,230 (2019) (Glick, Comm'r, dissenting in part at P 10); *Dominion Energy Transmission, Inc.*, 169 FERC ¶ 61,229 (2019) (Glick, Comm'r, dissenting in part at P 9); *E. Shore Nat. Gas Co.*, 169 FERC ¶ 61,228 (2019) (Glick, Comm'r, dissenting in part at P 12); *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220 (2019) (Glick, Comm'r, dissenting in part at P 9); *El Paso Nat. Gas Co., L.L.C.*, 169 FERC ¶ 61,133 (2019) (Glick, Comm'r, dissenting in part at P 13); *Rio Grande LNG, LLC*, 169 FERC ¶ 61,131 (2019) (Glick, Comm'r, dissenting at P 13); *Tex. LNG Brownsville LLC*, 169 FERC ¶ 61,130 (2019) (Glick, Comm'r, dissenting at P 18); *Transcon. Gas Pipe Line Co., LLC*, 169 FERC ¶ 61,051 (2019) (Glick, Comm'r, dissenting in part at P 12); *Nat. Gas Pipeline Co. of Am. LLC*, 168 FERC ¶ 61,205 (2019) (Glick, Comm'r, dissenting in part at P 8); *Venture Global Plaquemines LNG, LLC*, 168 FERC ¶ 61,204 (2019) (Glick, Comm'r, dissenting at P 11); *Eagle LNG Partners Jacksonville LLC*, 168 FERC ¶ 61,181 (2019) (Glick, Comm'r, dissenting at P 9); *Cheyenne Connector, LLC*, 168 FERC ¶ 61,180 (2019) (Glick, Comm'r, dissenting at P 13); *Gulf S. Pipeline Co., LP*, 168 FERC ¶ 61,036 (2019) (Glick, Comm'r, dissenting in part at P 9); *Gulf LNG Liquefaction Co., LLC*, 168 FERC ¶ 61,020 (2019) (Glick, Comm'r, dissenting at P 10); *Freeport LNG Development, L.P.*, 167 FERC ¶ 61,155 (2019) (Glick, Comm'r, dissenting at P 8); *Driftwood LNG LLC*, 167 FERC ¶ 61,054 (2019) (Glick, Comm'r, dissenting at P 11); *Port Arthur LNG, LLC*, 167 FERC ¶ 61,052 (2019) (Glick, Comm'r, dissenting at P 11); *Empire Pipeline, Inc.*, 166 FERC ¶ 61,172 (2019) (Glick, Comm'r, dissenting in part at P 10); *Venture Global Calcasieu Pass, LLC*, 166 FERC ¶ 61,144 (2019) (Glick, Comm'r, dissenting at P 9); *Transcon. Gas Pipe Line Co., LLC*, 165 FERC ¶ 61,221 (2018) (Glick, dissenting in part at 6); *RH energytrans, LLC*, 165 FERC ¶ 61,218 (2018) (Glick, Comm'r, dissenting in part at 61,835-836); *Tex. E. Transmission, LP*, 165 FERC ¶ 61,132 (Glick, Comm'r, dissenting in part at 61,538); *Nat'l Grid LNG LLC*, 165 FERC ¶ 61,031 (2018) (LaFleur & Glick, Comm'rs, concurring); *Sierrita Gas Pipeline LLC*, 165 FERC ¶ 61,001 (2018) (LaFleur & Glick, Comm'rs, concurring); *Transcon. Gas Pipe Line Co., LLC*, 164 FERC ¶ 61,101 (2018) (Glick, Comm'r, dissenting in part at 5); *PennEast Pipeline Co., LLC*, 164 FERC ¶ 61,098 (2018) (Glick, Comm'r, dissenting at 11-12); *Dominion Energy Cove Point LNG, LP*, 164 FERC ¶ 61,102 (2018) (Glick, Comm'r, dissenting in part at 2-3); *NEXUS Gas Transmission, LLC*, 164 FERC ¶ 61,054 (2018) (Glick, Comm'r, dissenting at 7-8); *Nw. Pipeline LLC*, 164 FERC ¶ 61,038 (2018) (Glick, Comm'r, dissenting in part at 5-6); *Tex. E. Transmission, LP*, 164 FERC ¶ 61,037 (2018) (Glick, Comm'r, dissenting



**2. Even before the 2022 Policy Statements were issued or converted to drafts, it appeared that a number of projects were delayed, thus impacting their ability to remain commercially viable. While it was promising that the Commission approved the Clear Creek Natural Gas Storage Project, it appears that other projects did not receive the same attention. Do you agree or disagree? Please provide the basis for your view with reference to specific proceedings to the extent that you have access to such information.**

The Commission has acted on some projects, including the Clear Creek Expansion Project and other projects that had been pending before the Commission for nearly (or more than) two years.<sup>23</sup> While those applicants have now received their certificates, FERC issued those certificates months, and in some cases, more than a year later than the applicants should have reasonably expected them.<sup>24</sup> Because of the uncertainty and delay caused by FERC's novel review processes, two applicants cancelled their projects and withdrew their certificate applications.<sup>25</sup> In another case, delays required the project

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in part at 4); *Columbia Gas Transmission, L.L.C.*, 164 FERC ¶ 61,036 (2018) (Glick, Comm'r, dissenting in part at 4-5); *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197 (2018) (Glick, Comm'r, dissenting at 7); *Tenn. Gas Pipeline Co., L.L.C.*, 163 FERC ¶ 61,190 (2018) (Glick, Comm'r, dissenting in part at 2); *Fla. Se. Connection, LLC*, 163 FERC ¶ 61,158 (2018) (Glick, Comm'r, dissenting in part at 2); *Gulf S. Pipeline Co., LP*, 163 FERC ¶ 61,124 (2018) (Glick, Comm'r, dissenting in part at 1); *DTE Midstream Appalachia, LLC*, 162 FERC ¶ 61,238 (2018) (LaFleur & Glick, Comm'rs, dissenting in part at 1); *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233 (2018) (Glick, Comm'r, dissenting at 7-8).

<sup>23</sup> See, e.g., *North Baja*, 179 FERC ¶ 61,039 (order issued two years, four months, and six days after application was filed).

<sup>24</sup> For example, *North Baja Pipeline, LLC* could have reasonably expected the Commission to act on its certificate application for the *North Baja XPress Project* on January 8, 2021. See Commissioner Danly November 29, 2021 Letter to Senator Barrasso, Docket Nos. CP20-27-000, et al., at Attach. A, page 1 (Danly November 29 Letter). The Commission did not act until April 21, 2022. See *North Baja*, 179 FERC ¶ 61,039.

<sup>25</sup> See *Eastern Gas Transmission and Storage, Inc., Mid-Atlantic Cooler Project*, Docket No. CP21-97-000 (withdrawn on September 20, 2021); *Adelphia Gateway, LLC*,





applicant and its anchor shippers to renegotiate precedent agreements.<sup>26</sup> Having to renegotiate the contracts that underpin a project’s financial viability can affect whether the project is ultimately completed.

To provide a snapshot of the current state of FERC’s pipeline and LNG applications and the consequences of FERC’s new review policies, I have prepared appendices listing natural gas proceedings that are pending before the Commission: Appendix B lists pending proceedings on remand from the courts of appeals; Appendix C lists pending petitions for declaratory order which ask FERC whether or not it has jurisdiction over existing or proposed LNG facilities; Appendix D lists pending NGA section 3<sup>27</sup> LNG proceedings; and Appendix E lists pending NGA section 7<sup>28</sup> proceedings. I do not list NGA section 7 abandonment proceedings, NGA section 7(f)<sup>29</sup> service area determinations, or activities that pipeline companies may conduct under blanket certificates.

The Commission continues to process applications at a slower pace compared to recent historical practice. From 2011 through 2020, the average processing time for all NGA section 7 and 3 applications requiring an Environmental Assessment (EA) or Environmental Impact Statement (EIS) was 12.1 months.<sup>30</sup> As shown in Appendix F, since February 2021, the average processing time for NGA section 7 certificate orders authorizing facilities that add incremental capacity is about 18 months. I cannot calculate an average for processing a LNG greenfield or expansion project as the FERC has not approved any since May 2020, though three applications are pending before us and, of

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Marcus Hook Electric Compression Project, Docket No. CP21-14-000 (withdrawn on October 12, 2021).

<sup>26</sup> See North Baja Pipeline, LLC, Request for Prompt Action, Docket No. CP20-27-000, at 2 (Jan. 31, 2022) (explaining in-service date had to be revised to February 1, 2023). North Baja Pipeline, LLC’s original anticipated in-service date was Nov. 1, 2022.

<sup>27</sup> 15 U.S.C. § 717b.

<sup>28</sup> *Id.* § 717f.

<sup>29</sup> *Id.* § 717f(f).

<sup>30</sup> See Danly November 29 Letter at 7.



those, two have been pending for more than 15 months.<sup>31</sup> Since then, the Commission has only approved NGA section 3 applications to amend an LNG terminal’s total capacity to reflect actual operating conditions and to construct tie-ins for non-jurisdictional activities. Such delay is particularly inexplicable given the current geopolitical importance of LNG. As you point out in your letter, our allies are in “desperate need for American natural gas.”<sup>32</sup>

What accounts for this 50% increase in processing times? In large measure, it is due to the now-default practice of FERC staff (who work under the Chairman’s supervision) preparing EISs for all projects in which GHG emissions could even *potentially* exceed the arbitrary threshold established in *Northern Natural Gas Company*.<sup>33</sup> This marks a drastic departure from prior practice. Before May 2021—

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<sup>31</sup> See Appendix D.

<sup>32</sup> Barrasso September 6, 2022 Letter at 2.

<sup>33</sup> *N. Nat. Gas Co.*, 174 FERC ¶ 61,189 (2021) (*Northern*); *id.* P 29 (“The EA discloses that the project’s construction will emit a total of 19,655 metric tons of carbon dioxide equivalent [] while its operation will emit 351 metric tons annually.”) (citation omitted); *id.* P 29 n.43 (“There is no new capacity associated with this pipeline replacement, thus no downstream [GHG] emissions to consider.”); *id.* P 29 (“[W]e conclude that those impacts are not significant.”). In *Northern*, a majority of my colleagues established what has been referred to (by some) as the “eyeball” test. See Catherine Morehouse, *Glick, Danly spar over gas pipeline reviews as FERC considers project’s climate impacts for first time*, Util. Dive (Mar. 19, 2021), <https://www.utilitydive.com/news/glick-danly-spar-over-gas-pipeline-reviews-as-ferc-considers-projects-cli/597016/> (“We essentially used the eyeball test,” [Chairman Glick] said, adding that based on that analysis, “it didn’t seem significant in terms of the impact of those emissions on climate change.”). The Chairman repeatedly suggests that the “eyeball test,” *i.e.*, an approach of “I know it when I see it,” is sufficient; he apparently views such an approach as a “judgment call” falling within the Commission’s authority. See *Tenn. Gas Pipeline Co., L.L.C.*, 181 FERC ¶ 61,051 (2022) (*Tennessee Gas*) (Glick, Chairman, concurring at P 1) (“I write separately to reiterate my view that the Commission could have—and, in my view, should have—assessed the significance of the project’s reasonably foreseeable GHG emissions, consistent with *Northern*”) (citations omitted); *id.* (Glick, Chairman, concurring at P 1) (“As I explained in my underlying concurrence, I would have concluded based on the record in this proceeding that the



when FERC issued several notices announcing supplemental environmental review for projects that had already completed the NEPA process—FERC staff prepared EAs for most project applications.<sup>34</sup>

The preparation of an EIS is much more burdensome than the preparation of an EA, and necessarily takes longer. This is because, instead of processing a single, shorter document that is filed in the record of the application proceeding, the EIS process requires the preparation of a draft EIS, a 45-day public comment period, public meetings on the draft EIS, and the issuance of a final EIS. The final EIS itself requires a great deal more analytical work because it must respond to every comment that stakeholders submit on the draft EIS.<sup>35</sup> Since the preparation of an EIS requires significant time and effort, FERC often engages third-party contractors who are paid by the applicant to supplement FERC’s own staff resources. Although these third-party contractors have become absolutely necessary to process applications (even on the delayed timelines we have

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reasonably foreseeable GHG emissions caused by [Tennessee Gas’s] East 300 Upgrade Project are significant, but nevertheless outweighed by the benefits of the project.”) (citation omitted); *see id.* (Glick, Chairman, concurring at P 2) (“Nor is it necessary for the Commission to identify discrete impacts when assessing significance, when we *know*, beyond any serious dispute, that impacts will result from those emissions. After all, the administration of NEPA is rife with judgment calls, and agencies necessarily must use the best tools and information at hand, caveating them as appropriate.”) (emphasis in original) (footnotes & citations omitted).

I respectfully disagree. *N. Nat. Gas Co.*, 174 FERC ¶ 61,189 (Danly, Comm’r, concurring in part and dissenting in part); *see also Tennessee Gas* (Danly, Comm’r, dissenting). “Without an accepted methodology, the Commission cannot make a finding whether a particular quantity of greenhouse gas emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change.” *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 67 (2018).

<sup>34</sup> Danly November 29 Letter at 11-12.

<sup>35</sup> *See* 40 C.F.R. § 1502.9 (regulations on the two stages of an EIS); *id.* § 1506.11 (stating agencies shall allow for a 45-day comment period on draft EISs).



recently witnessed), third-party contractors are becoming increasingly difficult to retain because of increasingly common conflicts of interest.<sup>36</sup>

Because of the novel policy of preparing EISs in most cases, the burden on FERC staff has increased significantly. That in turn has driven (by necessity) an increased reliance on third-party contractors who assist FERC staff in developing the NEPA documents. The more third-party contractors hired, the more conflicts will necessarily arise. By way of example, consider that Transcontinental Gas Pipe Line Company, LLC (Transco), a subsidiary of The Williams Companies, Inc. (Williams), has five applications currently pending before the Commission,<sup>37</sup> three of which third-party contractors have been hired to assist the Commission and one of which FERC staff recently requested third-party contractor assistance.<sup>38</sup> Those third-party contractors could have an organizational conflict of interest in any Williams application for the next three

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<sup>36</sup> *See, e.g.*, East Tennessee Natural Gas, LLC, Request for Approval to Use the Pre-Filing Review Process, Docket No. PF22-7-000, at 10 (May 6, 2022) (Accession No. 20220506-5074) (“Only one firm was interested in submitting a proposal . . . East Tennessee contacted the prospective third-party contractors to understand the lack of interest in bidding and the reasons were significant conflict of interests, perception of a low chance of success based on past proposals to FERC, and staffing and capacity issues.”).

<sup>37</sup> *See* Appendix E.

<sup>38</sup> *See* FERC Staff September 8, 2022 Request for Third-Party Contractor, Docket No. CP22-495-000 (Accession No. 20220908-3042); FERC Staff Final Environmental Impact Statement for the Regional Energy Access Expansion Project, Docket No. CP21-94-000, at App. H (July 29, 2022) (Accession No. 20220729-3005) (listing a third-party contractor as a preparer of the environmental impact statement); Transco December 22, 2021 Third Party Contractor Memorandum of Understanding, Docket No. PF22-4-000 (Accession No. 20211222-5150) (to conduct environmental review of the proposed Commonwealth Energy Connector Project); Transco November 2, 2021 Third Party Contractor Memorandum of Understanding, Docket No. PF22-1-000 (Accession No. 20211102-5137) (to conduct environmental review of the proposed Southside Reliability Enhancement Project).



years. FERC staff has already declined to use a third-party contractor for the remaining Transco project because of organizational conflicts of interest.<sup>39</sup>

Absent the assistance of third-party contractors, project reviews will likely suffer significant delays. We have recently seen what happens when FERC staff alone prepares an EIS: the Commission has had to extend project review timelines because the “numerous comments filed during the draft EIS comment period require additional time for Commission staff’s analysis.”<sup>40</sup>

Preparing an EIS is entirely unnecessary for most FERC applications. The Chairman has claimed that judicial precedent requires the Commission to prepare an EIS to satisfy the requirements of NEPA when examining the effects of a project’s GHG emissions.<sup>41</sup> But no court has *ever* overturned a certificate order on the basis that the

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<sup>39</sup> See FERC Staff April 18, 2022 Approval of Pre-Filing Request, Docket No. PF22-6-000, at 2 (Accession No. 20220418-3067) (“Transco filed proposals for the selection of a third-party contractor to assist us in preparing the National Environmental Policy Act documentation. In response to potential conflict of interest concerns, Transco supplemented the third-party contractor proposals on March 7, March 18, and March 28, 2022. At this time and based on the potential conflicts, [FERC] staff plans to proceed with the pre-filing review of the planned Southeast Energy Connector Project and the preparation of the environmental document without third-party contractor assistance.”).

<sup>40</sup> FERC Staff October 7, 2022 Notice of Revised Schedule for Environmental Review of the GTN XPress Project, Docket No. CP22-2-000, at 1 (Accession No. 202221007-3027).

<sup>41</sup> See Full Committee Hearing to Review Administration of Laws Within FERC’ Jurisdiction Before the Senate Committee on Energy and Natural Resources, 117th Cong. (Sept. 28, 2021), <https://www.energy.senate.gov/hearings/2021/9/full-committee-hearing-to-review-administration-of-laws-within-ferc-jurisdiction> (Chairman Glick at 2:11:5-2:12:20) (“[W]hat we are doing is delaying things because every time we’re supposed to perform an EIS and we prepare an EA, we just ignore climate change altogether. The courts say you got it wrong, you’ve got to do it all over again.”); Chairman Glick September 24, 2021 Letter to The Honorable John Barrasso, M.D., at 4-5 (“I note that NEPA requires the Commission to prepare an EIS when issuing a certificate of public convenience and necessity, unless the Commission can determine that the project either will not cause any significant adverse impacts or that such impacts will be mitigated. In



Commission should have prepared an EIS instead of an EA. The courts have consistently upheld certificates in which the Commission had prepared EAs for its NEPA review,<sup>42</sup> dismissing challenges from litigants who have challenged the sufficiency of an EA.<sup>43</sup>

The purpose of NEPA is not to produce paperwork, but to inform decision making and inform the public. Since FERC’s analysis of a project’s impact on climate change in its EISs has been identical to that in its EAs, the particular form of NEPA document FERC employs does not add any benefit to the Commission’s decision making nor produce additional information for the public. Because FERC’s analysis of a project’s impact on climate change has been *identical* in both EAs and EISs, it is far from clear how the decision to prepare an EA vs. an EIS can threaten a certificate order’s legal durability. All this shift to EISs does is adds months of additional process and delay.<sup>44</sup>

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other words, when there are any ‘arguably significant’ environmental impacts, the Commission must address those impacts in an EIS.’’) (citations omitted).

<sup>42</sup> See *Del. Riverkeeper Network v. FERC*, 45 F.4th 104 (D.C. Cir. 2022) (affirming certificate for incremental expansion where an EA was prepared); see also *Food & Water Watch v. FERC*, 28 F.4th 277 (D.C. Cir. 2022) (dismissing petitioners “bare assertion that the Commission should have further assessed the significance of climate impacts,” finding that such assertion was “unsupported by a validly raised criticism of the Commission’s reasoning or any workable alternative method, affords no basis to overturn the Commission’s finding.”).

<sup>43</sup> By way of example, in *Food & Water Watch*, in their brief, petitioners appear to have challenged the sufficiency of FERC’s EA, stating “this Court and others nationwide have consistently held that the judiciary must ‘reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as ‘crystal ball inquiry,’ just as the Commission has done here as it relates to the significance of indirect effects” and citing *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1240 (9th Cir. 2005) for the proposition that “[p]reparation of an [environmental impact statement] is mandated where uncertainty may be resolved by further collection of data, or where the collection of such data may prevent speculation on potential . . . effects.” Brief of Petitioners at 40, *Food & Water Watch v. FERC*, 28 4th 277 (D.C. Cir. 2022) (No. 20-1132), 2020 WL 6696079.

<sup>44</sup> See Draft EIS in Iroquois Gas Transmission System, L.P., Docket No. CP20-48-000 (June 11, 2021) (Accession No. 20210611-3022) (reiterating information in the



While the bulk of our natural gas applicants are suffering delays under the new regime, some applicants are experiencing particularly protracted delays. These projects include:

- the expansion of the Port Arthur LNG Terminal (as of November 1, 2022, 986 days pending) (Appendix D),
- the processing of the D.C. Circuit’s remand of the Rio Grande LNG Terminal and its connected Rio Bravo Pipeline (as of November 1, 2022, 455 days pending) (Appendix B) as well as the related amendments for the pipeline (as of November 1, 2022, 868 days pending) (Appendix E) and LNG Terminal (as of November 1, 2022, 349 days pending) (Appendix D),
- the D.C. Circuit remand of the Texas LNG Terminal (as of November 1, 2022, 455 days pending) (Appendix B), and
- two petitions for declaratory order asking for the Commission to determine whether the Commission has jurisdiction over the construction and operation of certain LNG facilities (as of November 1, 2022, 781 and 774 days pending) (Appendix C).

I provide general background information on each proceeding and the latest filings in each docket.

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September 30, 2020 EA, disclosing downstream emissions for informational purposes, continuing to conclude that no determination can be made regarding the significance of climate change, and responding to comments on the EA). Empty formalism is contrary to NEPA’s regulatory scheme. *See Dep’t of Transportation v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (*Public Citizen*) (“[I]nherent in NEPA and its implementing regulations is a ‘rule of reason,’ which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process. Where the preparation of an EIS would serve ‘no purpose’ in light of NEPA’s regulatory scheme as a whole, no rule of reason worthy of that title would require an agency to prepare an EIS.”) (internal citations omitted).



## Port Arthur LNG Terminal Expansion

The Port Arthur LNG Terminal is an authorized, unconstructed LNG facility planned for Port Arthur, Texas, near the Texas-Louisiana border.<sup>45</sup> Chairman Glick was the only current member on the Commission that voted on its initial authorizations; then Commissioner Glick dissented in full, advancing his view that the Commission did not satisfy its NEPA obligations, because it failed to consider the significance of the project's climate change effects or analyze mitigation for such effects. Foreshadowing the policy statements, he argued that the Commission has the authority to impose mitigation of climate change effects as a condition to approval of the certificate.<sup>46</sup> As a Commissioner, Chairman Glick dissented in full in nearly every LNG and dissented in part in the majority of NGA section 7 certificate orders.<sup>47</sup>

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<sup>45</sup> In 2019, the Commission authorized the construction and operation of the Port Arthur LNG Terminal as well as a connected interstate NGA section 7 pipeline. *Port Arthur LNG, LLC*, 167 FERC ¶ 61,052 (Glick, Comm'r, dissenting).

<sup>46</sup> See *Alaska Gasline Development Corp.*, 171 FERC ¶ 61,134 (Glick, Comm'r, dissenting), *order on reh'g*, 172 FERC ¶ 61,214 (2020) (Glick, Comm'r, dissenting); *Jordan Cove Energy Project L.P.*, 170 FERC ¶ 61,202 (2020) (Glick, Comm'r, dissenting), *order on reh'g*, 171 FERC ¶ 61,136 (2020) (Glick, Comm'r, dissenting); *Corpus Christi Liquefaction Stage III, LLC*, 169 FERC ¶ 61,135 (2019) (Glick, Comm'r, dissenting); *Annova LNG Common Infrastructure, LLC*, 169 FERC ¶ 61,132 (2019) (Glick, Comm'r, dissenting), *order on reh'g*, 170 FERC ¶ 61,140 (Glick, Comm'r, dissenting); *Rio Grande LNG, LLC*, 169 FERC ¶ 61,131 (Glick, Comm'r, dissenting), *order on reh'g*, 170 FERC ¶ 61,046 (Glick, Comm'r, dissenting); *Tex. LNG Brownsville LLC*, 169 FERC ¶ 61,130 (Glick, Comm'r, dissenting), *order on reh'g*, 170 FERC ¶ 61,139 (Glick, Comm'r, dissenting); *Venture Global Plaquemines LNG, LLC*, 168 FERC ¶ 61,204 (Glick, Comm'r, dissenting); *Eagle LNG Partners Jacksonville LLC*, 168 FERC ¶ 61,181 (Glick, Comm'r, dissenting); *Gulf LNG Liquefaction Co., LLC*, 168 FERC ¶ 61,020 (Glick, Comm'r, dissenting); *Freeport LNG Development, L.P.*, 167 FERC ¶ 61,155 (Glick, Comm'r, dissenting); *Driftwood LNG LLC*, 167 FERC ¶ 61,054 (Glick, Comm'r, dissenting); *Port Arthur LNG, LLC*, 167 FERC ¶ 61,052 (Glick, Comm'r, dissenting); *Venture Global Calcasieu Pass, LLC*, 166 FERC ¶ 61,144 (Glick, Comm'r, dissenting).

<sup>47</sup> See, e.g., *Adelphia Gateway, LLC*, 171 FERC ¶ 61,049 (Glick, Comm'r, dissenting in part).





On June 14, 2019, in Docket No. PF19-5-000, Sempra filed a request to initiate the pre-filing process to add two liquefaction trains to its authorized LNG terminal (Expansion Project). FERC’s pre-filing process is mandatory for LNG export and import facilities. The pre-filing process is intended to provide early involvement for the public and government agencies in order to “start the environmental review,” “notify and consult with potentially interested persons,” “identify those aspects of a project that merit most attention,” “winnow the issues in play,” and “refine the proposal prior to filing an application.”<sup>48</sup> For simplicity, I will use, Sempra, the parent company of the project as the project sponsor for all filings related to the Port Arthur LNG Terminal.<sup>49</sup>

On June 25, 2019, the pre-filing process began.

On February 19, 2020, Sempra formally filed an application to add two liquefaction trains to the already authorized LNG terminal.<sup>50</sup>

On January 15, 2021, Commission staff issued an EA for the project establishing February 15, 2021, as the deadline for comments. Based on the Commission’s prior average processing times, the Commission could have acted on Sempra’s application by May 2021, but did not.<sup>51</sup>

*Nearly a year* after the initial comment deadline for the EA—on February 3, 2022—Commission staff invited the EPA to participate as a cooperating agency in the

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<sup>48</sup> Regulations Implementing the Energy Policy Act of 2005: Coordinating the Processing of Federal Authorizations for Applications Under Sections 3 and 7 of the Natural Gas Act and Maintaining a Complete Consolidated Record, 71 Fed. Reg. 62912 (Oct. 27, 2006).

<sup>49</sup> Sempra Revised Application at 58 of 261.

<sup>50</sup> Sempra February 19, 2020 Application, Docket No. CP20-55-000 (Accession No. 20200219-5157). While Sempra filed its application on February 19, 2020, because its application was not accessible, Sempra refiled its application on February 26, 2020. *See* Sempra February 26, 2020 Port Arthur Revised Application, Docket No. CP20-55-000 (Accession No. 20200226-5370) (Sempra Revised Application).

<sup>51</sup> Danly November 29, 2021 Letter at Attachment A, page 2.



environmental review process.<sup>52</sup> Though based in part on comments received on the EA, FERC’s invitation to EPA to become a cooperating agency was unusual (in addition to the inexplicable delay) because it marked the EPA’s second invitation—Commission staff had invited agencies to participate as cooperating agencies during the pre-filing process on October 1, 2019, over two years earlier.<sup>53</sup> Although EPA has participated as a cooperating agency in other proceedings,<sup>54</sup> in this case, EPA did not accept the original 2019 invitation. On February 18, 2022, EPA accepted the second invitation.<sup>55</sup>

The docket was then dormant for four months until, on June 21, 2022, FERC staff requested information on the “total and incremental” impact of hazardous air pollutants from the facility on environmental justice communities.<sup>56</sup>

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<sup>52</sup> FERC Staff February 3, 2022 Request for Participation as a Cooperating Agency, Docket No. CP20-55-000 (Accession No. 20220203-3035).

<sup>53</sup> FERC Staff October 1, 2019 Notice of Intent to Prepare an Environmental Assessment Statement for the Planned Port Arthur Expansion Project, Docket No. PF19-5-000, at 4 (Accession No. 20191001-3056) (“With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate in the preparation of the EA.”) (citation omitted).

<sup>54</sup> *See, e.g.*, FERC Staff November 15, 2019 Final Environmental Impact Statement for the Jordan Cove Energy Project, Docket Nos. CP17-494-000, et al., at Title Page 1-2 (Accession No. 20191115-3040); FERC Staff January 31, 2019 Final Environmental Impact Statement for Port Arthur Liquefaction Project, Texas Connector Project, and Louisiana Connector Project, Docket Nos. CP17-20-000, et al., at Title Page (Accession No. 20190131-3023).

<sup>55</sup> EPA February 18, 2022 Request for Participation as a Cooperating Agency, Docket No. CP20-55-000 (Accession No. 20220218-5011).

<sup>56</sup> FERC Staff June 21, 2022 Environmental Information Request, Docket No. CP20-55-000, at Question 1 (Accession No. 20220621-3045).



On July 12, 2022, Sempra submitted a timely filing “providing a complete response to the Commission’s Environmental Information Request dated June 21, 2022.”<sup>57</sup>

That same day, July 12, 2022, Commission staff requested information on the project’s visual and socioeconomic impacts on affected environmental justice communities and emergency response planning.<sup>58</sup>

On August 12, 2022, Sempra submitted a timely filing “providing a complete response to the Commission’s Environmental Information Request dated July 12, 2022.”<sup>59</sup>

Though there has been no activity in the docket since, the trade press reported that Chairman Glick and Commissioner Phillips traveled on September 28, 2022 “to the Texas and Louisiana Gulf Coast to meet with community leaders and participate in a driving tour the groups organized to highlight impacts of fossil fuel and petrochemical facilities on local communities.”<sup>60</sup> This visit was not a noticed event that could be attended by other members of the public or the Commission. The “main goal for the tour” was reported to be “to provide context . . . by showing nearby facilities [in Port Arthur], such the Total, Valero and Motiva refineries, and the Oxbow Calcining Plant, which has come under scrutiny for sulfur dioxide emissions.”<sup>61</sup> One of my colleagues’ hosts was quoted as stating, “leaders here in Port Arthur . . . just want decisionmakers to understand the cumulative impacts of existing pollution” and that the Commissioners exhibited a “refreshing degree of inquisitiveness in attempt to see how their decisions

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<sup>57</sup> Sempra July 12, 2022 Filing, Docket No. CP20-55-000, at 1 (Accession No. 20220712-5179).

<sup>58</sup> FERC Staff July 12, 2022 Environmental Information Request, Docket No. CP20-55-000 (Accession No. 20220712-3058).

<sup>59</sup> Sempra August 12, 2022 Filing, Docket No. CP20-55-000, at 1 (Accession No. 20220812-5207).

<sup>60</sup> Maya Weber, *US FERC members win praise from ‘frontline’ groups for Gulf Coast visit, tour*, GAS DAILY Sept. 30, 2022.

<sup>61</sup> *Id.*



could add to an already terrible situation.”<sup>62</sup> This same host filed comments on the 2021 EA contesting its assessment of cumulative impacts and the impacts on environmental justice communities.<sup>63</sup>

As of November 1, 2022, the Port Arthur LNG Terminal Expansion Project has been pending before the Commission for 986 days (that is, 2 years, 8 months, and 13 days). By way of comparison, in 2015 the Commission approved the request to add two liquefaction trains to the Sabine Pass LNG Terminal—three miles southeast of the planned Port Arthur LNG site—in 553 days (that is, 1 year, 6 months, and 7 days).<sup>64</sup>

How much longer the Commission will take to issue a decision is anyone’s guess. Commission staff, acting under the supervision of the Chairman, may well issue a notice announcing the preparation of a supplemental EIS.<sup>65</sup> In other proceedings where the Commission has issued such notices, it has taken the Commission ten to eleven additional months to issue a decision on the merits.<sup>66</sup>

### **Brownsville, Texas Projects**

In November 2019, the Commission authorized the unconstructed Rio Grande LNG Terminal and Texas LNG Terminal to be located adjacent to one another in Brownsville, Texas, near the United States-Mexico Border. The Rio Grande LNG

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<sup>62</sup> *Id.* (quoting Jeffrey Jacoby of Texas Campaign for the Environment).

<sup>63</sup> Texas Campaign for the Environment, et al., February 16, 2021 Comments, Docket No. CP20-55-000 (Accession No. 20210216-5079).

<sup>64</sup> *Sabine Pass Liquefaction Expansion, LLC*, 151 FERC ¶ 61,012 (2015) (application was filed on September 30, 2013, and the Commission granted the requested authorization on April 6, 2015).

<sup>65</sup> *See, e.g.*, FERC Staff May 27, 2021 Notice of Intent for Supplemental Environmental Impact Statement for the North Baja XPress Project, Docket No. CP20-27-000 (Accession No. 20210527-3052).

<sup>66</sup> For example, for the North Baja XPress Project, FERC staff issued a Notice of Intent to Prepare a Supplemental Environmental Impact Statement on May 27, 2021, and the Commission acted nearly 11 months later on April 22, 2022. *See id.*; *North Baja*, 179 FERC ¶ 61,039.



Terminal will receive feed gas<sup>67</sup> from the Rio Bravo Pipeline Project (authorized concurrently with the Rio Grande LNG Terminal) while the Texas LNG Terminal will receive feed gas from a non-jurisdictional intrastate pipeline. Given the passage of time, Chairman Glick was the only current member on the Commission who voted on those authorizations; like nearly all other LNG projects on which he has voted, Chairman Glick dissented in full.<sup>68</sup>

After the Commission's approval, the project developers made several design changes to the projects. On April 15, 2020, Rio Grande LNG, LLC (Rio Grande) requested that FERC staff authorize a variance to make design changes to the Rio Grande LNG Terminal.<sup>69</sup>

On August 13, 2020, FERC staff approved the design changes, finding that the project effects would be similar or less than those of the originally proposed design.<sup>70</sup>

On January 19, 2021, the Commission affirmed FERC staff's approval; then-Commissioner Glick and Commissioner Clements dissented.<sup>71</sup>

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<sup>67</sup> Feed gas is the "[n]atural gas that is delivered to a liquefaction facility via pipeline to be converted into LNG." *What is Feedgas?*, NATURAL GAS INTELLIGENCE, <https://www.naturalgasintel.com/feed-gas/>.

<sup>68</sup> *See supra* notes 46-47.

<sup>69</sup> Rio Grande April 15, 2020 Supplement 1, Docket No. CP16-454-000 (Accession No. 20200415-5171).

<sup>70</sup> August 13, 2020 Letter Approving Design Change Proposals from the Director, Division of LNG Facility Reviews and Inspections, Office of Energy Projects (Letter Order), Docket No. CP16-454-000 (Accession No. 20200813-3023).

<sup>71</sup> *Rio Grande LNG, LLC*, 174 FERC ¶ 61,048 (2021) (Glick & Clements, Comm'rs, dissenting), *aff'd*, *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, No. 20-1045, 2021 WL 3716769 (D.C. Cir. Aug. 3, 2021).



On June 16, 2020, Rio Bravo Pipeline Company, LLC (Rio Bravo) proposed to amend its project to make design changes to the Rio Bravo Pipeline Project which would not affect the total certificated design capacity.<sup>72</sup>

On December 21, 2020, FERC Staff issued an EA for the amendment application finding that the proposal would not have a significant impact on the environment.<sup>73</sup> FERC Staff would not make another filing in that docket until 16 months later.

On August 3, 2021, in *Vecinos para el Bienestar de la Comunidad Costera v. FERC (Vecinos)*,<sup>74</sup> the D.C. Circuit remanded back to FERC the authorizations for the Rio Grande LNG Terminal, Texas LNG Terminal, and Rio Bravo Pipeline Project, holding that the Commission failed to (1) explain why it defined affected environmental justice communities as those within a 2-mile radius of the project; and (2) respond to petitioners' argument concerning the significance of section 1502.21(c) of CEQ's NEPA regulations in determining whether the Commission should use the Social Cost of Carbon. The court held that because of these APA deficiencies "[t]he Commission's determinations of public interest and convenience under the NGA were therefore deficient" and directed the Commission to "reconsider its determinations of public interest and convenience under Sections 3 and 7 of the NGA, along with its NEPA analyses of the projects' impacts on climate change and environmental justice communities."<sup>75</sup> The court's holding in *Vecinos* was narrow: it found that FERC failed to fulfil its obligations under the APA to provide reasoned responses to arguments raised in the proceeding and required no more than that FERC remedy those deficiencies in reasoning. The court did not vacate the certificate or authorizations or provide for any

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<sup>72</sup> Rio Bravo, Docket No. CP20-481-000, at 1 (Accession No. 20200616-5023).

<sup>73</sup> FERC Staff December 21, 2020 Environmental Assessment, Docket No. CP20-481-000 (Accession No. 20201221-3012).

<sup>74</sup> 6 F.4th 1321 (D.C. Cir. 2021).

<sup>75</sup> *Id.* at 1331.



other remedy.<sup>76</sup> Indeed, in a concurrently issued opinion, the court dismissed petitioners' other two arguments.<sup>77</sup>

Nevertheless, that evening, Chairman Glick tweeted that the *Vecinos* “decision demonstrates @FERC’s authority & obligation to analyze/consider the impacts from #GHG emissions & impacts to #EnvironmentalJustice communities. Moreover, failure to do so puts @FERC’s decisions & investments made on those decisions, in legal peril.”<sup>78</sup> The Commission followed this tweet, and the court’s remand, with months of inactivity in the related dockets. Eventually, Commission staff issued requests and took the unprecedented step of opening comment periods on the companies’ responses.

On November 17, 2021, Rio Grande filed a request to amend its authorization to incorporate non-jurisdictional carbon capture and sequestration facilities into the approved site and design of the Rio Grande LNG Terminal.<sup>79</sup> According to Rio Grande, it only sought FERC authorization to tie the non-jurisdictional facilities into the jurisdictional LNG facilities.<sup>80</sup>

While seemingly the sort of emissions mitigation the Commission sought to “encourage” in the February policy statements,<sup>81</sup> FERC Staff would not even begin to gather information on the amendment proposal until five months later, on April 27 and

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<sup>76</sup> *Id.* at 1332.

<sup>77</sup> *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, No. 20-1045, 2021 WL 3716769.

<sup>78</sup> Rich Glick (@RichGlickFERC), TWITTER (Aug. 3, 2021) <https://twitter.com/RichGlickFERC/status/1422687780694540288>.

<sup>79</sup> Rio Grande November 17, 2021 Application, Docket No. CP22-17-000 (Accession No. 20211117-5060).

<sup>80</sup> *Id.* at 7. Rio Grande likened its application to the request by Freeport LNG Development, LP (Freeport) to tie-in non-jurisdictional helium facilities into its authorized facilities. *Id.* at 17 n.38. The Commission acted on Freeport’s request in just over 13 months of the application being filed. *Freeport LNG Development, LP*, 175 FERC ¶ 61,237 (2021).

<sup>81</sup> *See, e.g.*, Interim GHG Policy Statement, 178 FERC ¶ 61,108 at P 106.



May 2, 2022.<sup>82</sup> The NEPA scoping period for the project would not be established for another four months, on September 2, 2022.<sup>83</sup> By comparison, the NEPA scoping for Venture Global CP2 LNG, LLC's and CP Express Pipeline Project began 2 months and 7 days after the application was filed.<sup>84</sup>

On February 3, 2022, six months following the *Vecinos* decision, the Commission requested that Rio Grande and Texas LNG provide information on EJ communities located within 50 kilometers of the authorized LNG terminal and provide updated air pollutant emission rates and air modeling.<sup>85</sup> The Commission asked questions to "address deficiencies noted in . . . *Vecinos*."<sup>86</sup> Rio Grande responded on March 3, 2022.<sup>87</sup> Texas LNG filed responses on March 4 and May 2, 2022.<sup>88</sup>

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<sup>82</sup> FERC Staff April 27, 2022 Letter Requesting Additional Information, Docket No. CP22-17-000 (Accession No. 20220427-3036); FERC Staff May 2, 2022 Environmental Information Request, Docket No. CP22-17-000 (Accession No. 20220502-3053).

<sup>83</sup> FERC Staff September 2, 2022 Notice of Scoping Period, Docket No. CP22-17-000 (Accession No. 20220902-3040).

<sup>84</sup> *See* Appendix D (showing the application was filed on December 2, 2021, and the environmental schedule was issued on February 9, 2022).

<sup>85</sup> FERC Staff February 3, 2022 Environmental Information Request, Docket No. CP16-116-000 (Accession No. 20220203-3050); FERC Staff February 3, 2022 Environmental Information Request, Docket No. CP16-454-000, et al. (Accession No. 20220203-3051).

<sup>86</sup> *See, e.g.*, FERC Staff February 3, 2022 Environmental Information Request, Docket No. CP16-454-000, et al., at 1 (Accession No. 20220203-3051).

<sup>87</sup> Rio Grande LNG, LLC March 3, 2022 Response, Docket No. CP16-454-000 (Accession No. 20220303-5182).

<sup>88</sup> Texas LNG Brownsville LLC March 4, 2022 Response, Docket No. CP16-116-000 (Accession No. 20220304-5197); Texas LNG Brownsville LLC May 2 Response, Docket No. CP16-116-000 (Accession No. 20220502-5075).





On May 2, 2022, the Commission requested that Rio Grande LNG provide an update on federal and state government permit approvals and update information for the Commission’s cumulative impacts analysis.<sup>89</sup> That same day, on May 2, 2022, the Commission requested that Rio Bravo provide information “to address deficiencies noted in . . . *Vecinos* . . . and to process the . . . amendment application.”<sup>90</sup> Rio Grande and Rio Bravo timely answered staff’s requests.<sup>91</sup>

On August 16, 2022, staff again requested information from Rio Grande and Texas LNG “to address deficiencies noted in . . . *Vecinos* . . . and for staff to conduct *additional necessary analysis* for the authorized LNG export terminal.”<sup>92</sup> What was meant by “additional necessary analysis” is unclear but must necessarily mean something more than the analysis required to address the specific APA violations the *Vecinos* court identified.

Rio Grande, Rio Bravo, and Texas LNG filed timely responses to these requests, yet the Commission still has not acted.

Then, on September 30, 2022, FERC staff, acting under the supervision of the Chairman, issued surprise notices requesting initial *and* reply comments on Rio Grande, Rio Bravo, and Texas LNG’s data requests.<sup>93</sup> As far as I have been able to ascertain, the

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<sup>89</sup> FERC Staff May 2, 2022 Environmental Information Request, Docket No. CP16-454-000 (Accession No. 20220502-3057).

<sup>90</sup> FERC Staff May 2, 2022 Environmental Information Request, Docket Nos. CP16-455-000, et al., at 1 (Accession No. 20220502-3048). On May 10, 2022, FERC Staff issued a revised Environmental Information Request, correcting an error. FERC Staff May 10, 2022 Environmental Information Request, Docket No. CP16-455-000 (Accession No. 20220510-3059).

<sup>91</sup> Rio Grande May 20, 2022 Response, Docket No. CP16-454-000 (Accession No. 20220520-5124); Rio Bravo Pipeline, LLC June 1, 2022 Response, Docket Nos. CP16-455-000, et al. (Accession No. 20220601-5340).

<sup>92</sup> *See, e.g.*, FERC Staff August 16, 2022 Environmental Information Request, Docket No. CP16-116-000, at 1 (Accession No. 20220816-3045) (emphasis added).

<sup>93</sup> FERC Staff September 30, 2022 Notice Seeking Public Comment on Responses to Information Requests, Docket Nos. CP16-116-000, et al. (Accession No. 20220930-



Commission has *never* sought comment on an applicant's response to a data request in an NGA section 3 proceeding. This procedure adds an additional six weeks to the timeline just for the comment and reply periods.<sup>94</sup> On top of that, once the comment period closes, the Commission will have to take the time and expend the resources to respond to all of the comments it receives in order to fulfill its APA obligations.

What is a reasonable time in which FERC should be expected to act when it receives remands? From 2010 through 2020, the courts have remanded seven NGA section 3 or section 7 orders back to the Commission.<sup>95</sup> Of these seven, the Commission took anywhere from 2 months to 17 months to issue new orders.<sup>96</sup> How the Commission

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3013); FERC Staff Notice Seeking Public Comment on Responses to Information Requests, Docket Nos. CP16-454-000, et al. (Accession No. 20220930-3012).

<sup>94</sup> See, e.g., FERC Staff Notice Seeking Public Comment on Responses to Information Requests, Docket Nos. CP16-454-000, et al., at 2 (Accession No. 20220930-3012) (stating reply comments are due by November 4, 2022).

<sup>95</sup> See *Gulf S. Pipeline Co., LP v. FERC*, 955 F.3d 1001 (D.C. Cir. 2020) (remand) (*Gulf South*); *City of Oberlin v. FERC*, 937 F.3d 599 (D.C. Cir. 2019) (remand) (*City of Oberlin*); *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017) (remand and vacatur of certificates) (*Sabal Trail*); *BP Energy Co. v. FERC*, 828 F.3d 959 (D.C. Cir. 2016) (remand) (*BP Energy Co.*); *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014) (remand) (*Delaware Riverkeeper*); *Apache Corp. v. FERC*, 627 F.3d 1220 (D.C. Cir. 2010) (remand) (*Apache*); *Mo. Pub. Serv. Comm'n v. FERC*, 601 F.3d 581 (D.C. Cir. 2010) (remand and vacatur with respect to issue) (*Mo. PSC*).

<sup>96</sup> See *Gulf S. Pipeline Co., LP*, 172 FERC ¶ 61,192 (2020) (order on remand issued 4 months and 21 days after *Gulf South* decision); *NEXUS Gas Transmission, LLC*, 172 FERC ¶ 61,199 (2020) (order on remand issued 11 months and 28 days after *City of Oberlin* decision); *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233 (order on remand issued 6 months and 20 days after *Sabal Trail* decision); *Dominion Cove Point LNG, LP*, 160 FERC ¶ 61,134 (2017) (order on remand issued 14 months and 14 days after *BP Energy Co.* decision); *Tenn. Gas Pipeline, L.L.C.*, 153 FERC ¶ 61,215 (2015) (order on remand issued 17 months and 13 days after *Delaware Riverkeeper* decision); *Midcontinent Express Pipeline LLC*, 134 FERC ¶ 61,155 (2011) (order on remand issued 2 months and 3 days after *Apache* decision); *Mo. Interstate Gas, LLC*, 132 FERC ¶ 61,161 (2010) (order on remand establishing settlement procedures issued 4 months and 11 days after *Mo. PSC* decision).



acts on remand decisions likely depends on the complexity of the issues raised, whether additional environmental review needs to be conducted, and the sense of urgency and interest at the Commission.

On remand, the Commission has jurisdiction over the proceeding and is free to modify any term of the original authorizations or add analysis beyond that required by the court. In my judgment, such actions, though lawful, are bad policy. What project developer or financier will risk the extraordinary quantity of capital required to build an LNG facility when there is a real possibility that their project could receive the necessary approvals from the Commission, find those approvals remanded back to the agency for narrow APA violations, and then stand helpless as the Commission sits on the remand interminably, before then subjecting their application to novel and unpredictable procedures with a decision on the merits nowhere in sight?

### **Petitions for Declaratory Order**

On occasion, entities ask the Commission for a declaratory order regarding whether contemplated LNG facilities would be subject to the Commission's jurisdiction.<sup>97</sup> These petitions are not without cost. Currently, at the time of filing, a petitioner must pay a fee of \$33,690 to the Commission.<sup>98</sup> This is on top of their counsel's legal fees and other expenses that can far exceed this already significant amount.

In September 2020, two subsidiaries of New Fortress Energy Inc. filed separate petitions for declaratory order regarding the Commission's jurisdiction over LNG facilities "out of an abundance of caution" following the Commission's initiation of a show cause proceeding in *New Fortress Energy, Inc.*<sup>99</sup> On September 11, 2020, the first,

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<sup>97</sup> See 18 C.F.R. § 385.207(a)(2) (allowing a person to file "[a] declaratory order or rule to terminate a controversy or remove uncertainty").

<sup>98</sup> 18 C.F.R. § 381.302(a) ("[T]he fee established for filing a petition for issuance of a declaratory order under § 385.207 of this chapter is \$33,690. The fee must be submitted in accordance with subpart A of this part."); see also *id.* § 385.207(c) ("each petition for issuance of a declaratory order must be accompanied by the fee prescribed in § 381.302(a)").

<sup>99</sup> See, e.g., DRP September 11, 2020 Petition for Declaratory Order, Docket No. CP20-522-000, at 1 (Accession No. 20200911-5331).



Delaware River Partners, LLC (DRP) filed a petition for declaratory order, requesting “that the Commission act on [its] Petition and provide the relief sought on an expedited basis but no later than October 30, 2020, thereby providing regulatory certainty for DRP’s financing counterparties, stakeholders, and customers.”<sup>100</sup> On September 16, 2020, the second, Bradford County Real Estate Partners, LLC (Bradford) filed its petition for declaratory order, requesting that the Commission act “no later than November 15, 2020” in order to “provid[e] regulatory certainty [for Bradford] to proceed with operations on a timely basis” as Bradford had “intend[ed] to seek financing for the Facility during October 2020 and begin construction shortly thereafter.”<sup>101</sup> Both petitioners have reiterated their request that the Commission act in a timely manner.<sup>102</sup>

Other than the notices announcing the applications over two years ago, the Commission has made no other filings or issuances in the record. While these proceedings continue to linger, the Commission has acted on three petitions for declaratory order regarding its jurisdiction over LNG facilities: one application was processed in under 2 months,<sup>103</sup> one in under 6 months,<sup>104</sup> and one in just over 11 months.<sup>105</sup> It is difficult to understand the variability in processing time amongst the declaratory orders that have issued and even harder to understand the delay in these two proceedings.

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<sup>100</sup> *Id.* at 22.

<sup>101</sup> Bradford September 18, 2022 Petition for Declaratory Order Disclaiming Jurisdiction and Motion for Expedited Action, Docket No. CP20-524-000, at 13 (Accession No. 20220918-5180).

<sup>102</sup> Bradford February 3, 2022 Letter Providing Supplemental Information, Docket No. CP20-524-000, at 2 (Accession No. 20220203-5072); DRP May 6, 2022 Answer, Docket No. CP20-522-000, at 7 (Accession No. 20220506-5198).

<sup>103</sup> See *Limetree Bay Terminals, LLC*, 181 FERC ¶ 61,041 (2022) (petition was filed on August 31, 2022, and order was issued on October 20, 2022).

<sup>104</sup> See *CNG Holding 1 LLC*, 180 FERC ¶ 61,077 (2022) (petition was filed on February 17, 2022, and order was issued on August 4, 2022).

<sup>105</sup> See *Nopetro LNG, LLC*, 178 FERC ¶ 61,168 (2022) (petition was filed on April 20, 2021, and order was issued on March 25, 2022).



**3. Since March 3, 2022, the Commission has approved matters pending on its natural gas docket. This is a good sign. Nevertheless, what evidence is there that these approvals are indicative of a broader, long-term practice at the Commission that would lead to more prompt disposition of applications on the Commission’s natural gas docket?**

- a. Does the pace and direction of Orders addressing matters pending on the Commission’s natural gas docket since March 3, 2022, reflect a change by comparison to the pace and direction of Orders addressing matters pending on FERC’s natural gas docket between January 21, 2021, and March 3, 2022? If so, please provide the basis for your view including, to the extent practicable, citations to specific proceedings. If not, please provide the basis for your view including, to the extent practicable, citations to specific proceedings.**

The Commission has issued fifteen certificate orders (nine of which authorize incremental expansion of transportation services ) since March 3, 2022.<sup>106</sup> Though you

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<sup>106</sup> See *Tex. Gas Transmission, LLC*, 181 FERC ¶ 61,049 (2022) (certificate for incremental transportation service); *Golden Pass Pipeline LLC*, 181 FERC ¶ 61,050 (2022) (amending certificate with no change to certificated capacity); *Tex. E. Transmission, LP*, 180 FERC ¶ 61,186 (2022) (certificate for replacement project); *LA Storage, LLC*, 180 FERC ¶ 61,188 (2022) (certificate for natural gas storage); *Gas Transmission Nw. LLC*, 180 FERC ¶ 61,056 (2022) (certificate for reliability project, no incremental service added); *Spire Storage W. LLC*, 179 FERC ¶ 61,123 (2022) (certificate for natural gas storage); *ANR Pipeline Co.*, 179 FERC ¶ 61,122 (2022) (certificate for incremental transportation service); *Kern River Gas Transmission Co.*, 179 FERC ¶ 61,121 (2022) (certificate for incremental transportation service); *Tenn. Gas Pipeline Co., L.L.C.*, 179 FERC ¶ 61,041 (2022) (certificate for incremental transportation service); *ANR Pipeline Co.*, 179 FERC ¶ 61,040 (2022) (certificate for incremental transportation service); *N. Baja Pipeline, LLC*, 179 FERC ¶ 61,039 (2022) (certificate for incremental transportation service); *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (certificate for incremental transportation service); *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022) (certificate for incremental transportation service); *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2022) (certificate for incremental transportation service); *N. Nat. Gas Co.*, 178 FERC ¶ 61,203 (2022) (certificate for storage buffer to comply with safety standards). I do not include the Commission’s certificate orders authorizing the construction of operation of



are correct that this is a “good sign,” that FERC has not abandoned its statutory mission, in the nine months preceding the intense scrutiny FERC came under on March 3, the Commission did not issue a single certificate order authorizing incremental transportation service.<sup>107</sup> At the time, I had concerns that the Commission would subject these proceedings to even more delay as it worked to implement the now-draft Policy Statements.<sup>108</sup>

Since January 2021, as shown in Appendix F, the average processing time for NGA section 7 applications involving incremental transportation service provided by expansion facilities is 17.64 months, over five months longer than the average processing time for both NGA section 3 and 7 applications with NEPA review from 2011 through 2020.

I am not confident that these processing times will improve. The possible adoption of the 2022 Policy Statements remains a concern. At the March 2022 Open Meeting, Commissioner Clements stated that making the 2022 Policy Statements draft was a “difficult” vote for her because she “believe[d] that these policy statements were an important step forward in clarifying facts to be considered in making our public interest determinations and doing so consistent with court mandates.”<sup>109</sup> At the May 2022 Commission Open Meeting, Chairman Glick stated, “we’re going to continue working to

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interconnections on Rover Pipeline LLC’s system as these are typically constructed under a blanket certificate.

<sup>107</sup> See Commissioner Danly March 2, 2022 Letter to Senator Barrasso, Docket Nos. PL21-3-000, et al., at 6, <https://www.ferc.gov/news-events/news/commissioner-james-danly-letter-senator-barrasso>.

<sup>108</sup> *Id.* at 10.

<sup>109</sup> *Transcript of the 1088th Commission Meeting*, FERC, at 15 (Mar. 24, 2022), <https://www.ferc.gov/news-events/events/march-24-2022-open-meeting-03242022>; see also *Transcript of the 1087th Commission Meeting*, FERC, at 36-37 (Feb. 17, 2022), <https://www.ferc.gov/news-events/events/february-17-2022-virtual-open-meeting-02172022> (Commissioner Clements stated, “I think [the Updated Certificate Policy Statement] is an important step towards establishing a framework for making wise and legally durable decisions that account for the complexities of an energy system undergoing profound transformation.”).



try to develop a policy statement that’s legally durable.”<sup>110</sup> Likewise, Commissioner Clements stated that “the Commission must make it a priority to finalize updated policies for considering the need and impact of new natural gas infrastructure.”<sup>111</sup>

My colleagues have given no indication that they no longer stand by the policy statement’s claim that it must be a “*priority . . . for project sponsors to mitigate, to the greatest extent possible, a project’s direct GHG emissions*” and that FERC should “encourage[] project sponsors to propose mitigation of reasonably foreseeable indirect emissions”.<sup>112</sup> Rather, Chairman Glick has brushed aside concerns raised by the Supreme Court’s recent reinvigoration of the Major Questions Doctrine in *West Virginia v. EPA*,<sup>113</sup> arguing that “[t]he US Supreme Court’s recent climate ruling should not deter the Federal Energy Regulatory Commission from considering climate change in permitting decisions for natural gas projects.”<sup>114</sup>

Chairman Glick has argued in over *forty* separate statements that the Commission *must* require natural gas pipelines to mitigate significant direct and indirect GHG emissions.<sup>115</sup> In some statements, he stated that the Commission has a “*duty* to explore

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<sup>110</sup> *Transcript of the 1090th Commission Meeting*, FERC, at 11 (May 19, 2022), <https://www.ferc.gov/media/commission-meeting-transcript-may-2022>; *see also* Chairman Glick, August 24, 2022 Letter to Senator Whitehouse (Accession No. 20220824-4000) (“I believe that revisions to the Commission’s 1999 Policy Statement are in order so as to provide greater certainty than now exists because of the Commission’s poor record on appeal of natural gas infrastructure proceedings. Following review of the record in these dockets, I intend to expeditiously work with my colleagues to seek consensus on a path forward that reflects the directives of the courts.”).

<sup>111</sup> *Transcript of the 1090th Commission Meeting*, FERC, at 15.

<sup>112</sup> Interim GHG Policy Statement, 178 FERC ¶ 61,108 at P 105 (emphasis added).

<sup>113</sup> 142 S. Ct. 2587 (2022).

<sup>114</sup> Corey Paul & Maya Weber, *US FERC chair says Supreme Court ruling doesn’t derail agency’s climate approach*, GAS DAILY, July 29, 2022.

<sup>115</sup> *See Alaska Gasline Development Corp.*, 172 FERC ¶ 61,214 (Glick, dissenting at P 24); *Nat’l Fuel Gas Supply Corp.*, 172 FERC ¶ 61,039 (Glick, Comm’r, dissenting at P 21); *Mountain Valley Pipeline, LLC*, 171 FERC ¶ 61,232 (Glick, Comm’r, dissenting



in part at P 19); *Alaska Gasline Development Corp.*, 171 FERC ¶ 61,134 (Glick, Comm'r, dissenting at P 21); *Tex. E. Transmission, LP*, 171 FERC ¶ 61,081 (Glick, Comm'r, dissenting in part at P 12); *Adelphia Gateway, LLC*, 171 FERC ¶ 61,049 (Glick, Comm'r, dissenting in part at P 16); *Transcon. Gas Pipe Line Co., LLC*, 171 FERC ¶ 61,032 (Glick, Comm'r, dissenting in part at P 17); *Transcon. Gas Pipe Line Co., LLC*, 171 FERC ¶ 61,031 (Glick, Comm'r, dissenting in part at P 17); *Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,247 (Glick, Comm'r, dissenting in part at P 13); *Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,246 (Glick, Comm'r, dissenting in part at P 13); *Jordan Cove Energy Project L.P.*, 170 FERC ¶ 61,202 (Glick, Comm'r, dissenting at P 20); *Gulf S. Pipeline Co., LP*, 170 FERC ¶ 61,201 (2020) (Glick, Comm'r, dissenting in part at P 15); *Fla. Gas Transmission Co., LLC*, 170 FERC ¶ 61,200 (Glick, Comm'r, dissenting in part at P 14); *Gulfstream Nat. Gas Sys., L.L.C.*, 170 FERC ¶ 61,199 (2020) (Glick, Comm'r, dissenting in part at P 12); *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,198 (Glick, Comm'r, dissenting in part at P 13); *Sabine Pass LNG, L.P.*, 170 FERC ¶ 61,145 (Glick, Comm'r, dissenting in part at P 13); *Tenn. Gas Pipeline Co., L.L.C.*, 170 FERC ¶ 61,142 (Glick, Comm'r, dissenting in part at P 15); *Annova LNG Common Infrastructure, LLC*, 170 FERC ¶ 61,140 (Glick, Comm'r, dissenting at P 26); *Tex. LNG Brownsville LLC*, 170 FERC ¶ 61,139 (Glick, Comm'r, dissenting at P 25); *Rio Grande LNG, LLC*, 170 FERC ¶ 61,046 (Glick, Comm'r, dissenting at P 23); *Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,045 (Glick, Comm'r, dissenting in part at P 17); *Tenn. Gas Pipeline Co., L.L.C.*, 169 FERC ¶ 61,230 (2019) (Glick, Comm'r, dissenting in part at P 13); *Dominion Energy Transmission, Inc.*, 169 FERC ¶ 61,229 (2019) (Glick, Comm'r, dissenting in part at P 12); *E. Shore Nat. Gas Co.*, 169 FERC ¶ 61,228 (2019) (Glick, Comm'r, dissenting in part at P 15); *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220 (Glick, Comm'r, dissenting in part at P 12); *Corpus Christi Liquefaction Stage III, LLC*, 169 FERC ¶ 61,135 (Glick, Comm'r, dissenting at P 14); *El Paso Nat. Gas Co., L.L.C.*, 169 FERC ¶ 61,133 (Glick, Comm'r, dissenting in part at P 16); *Rio Grande LNG, LLC*, 169 FERC ¶ 61,131 (Glick, Comm'r, dissenting at P 15); *Tex. LNG Brownsville LLC*, 169 FERC ¶ 61,130 (Glick, Comm'r, dissenting at P 20); *Transcon. Gas Pipe Line Co., LLC*, 169 FERC ¶ 61,051 (Glick, Comm'r, dissenting in part at P 15); *Venture Global Plaquemines LNG, LLC*, 168 FERC ¶ 61,204 (Glick, Comm'r, dissenting at P 13); *Eagle LNG Partners Jacksonville LLC*, 168 FERC ¶ 61,181 (Glick, Comm'r, dissenting at P 12); *Cheyenne Connector, LLC*, 168 FERC ¶ 61,180 (Glick, Comm'r, dissenting at P 16); *Gulf S. Pipeline Co., LP*, 168 FERC ¶ 61,036 (Glick, Comm'r, dissenting in part at P 12); *Gulf LNG Liquefaction Co., LLC*, 168 FERC ¶ 61,020 (Glick, Comm'r, dissenting at P 13); *Freeport LNG Development, L.P.*, 167 FERC ¶ 61,155 (Glick, Comm'r, dissenting at P 2); *Driftwood LNG LLC*, 167 FERC ¶ 61,054 (Glick, Comm'r, dissenting





possible mitigation measures to reduce any significant adverse [climate change] effects.”<sup>116</sup> As recently as last month, the Chairman restated his view that the Commission may require applicants to mitigate GHG emissions and that a project sponsor’s proposal to do so may “tip[] the scales in the project’s favor.”<sup>117</sup>

The Chairman’s continued commitment to the 2022 Policy Statements’ position—the position he has held throughout his tenure on the Commission—that the Commission *must* mitigate GHG emissions to some unspecified level, will continue to chill investment in critical pipeline infrastructure. The pipeline industry, and the customers who depend on it, cannot plan projects and raise capital in the face of such uncertainty. Should the Chairman finalize a policy statement enshrining these (his) policy preferences in a Commission issuance, this will likely add significant time to the processing of natural gas applications. Commission staff will have to grapple with, and parties will litigate, the contours of poorly defined requirements on a subject about which the Commission and its staff have no expertise. Reviewing applications will take more and more time as the Commission introduces more issues that it must consider and respond to in order to not run afoul of its APA obligations.

- b. For Chairman Glick only: at any time during your tenure as Chairman have you, directly or indirectly, suggested, encouraged, requested, directed, or otherwise indicated to any member of the Commission or any member of the staff of the Commission that the Commission’s consideration of any application or any other matter pending on the**

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at P 2); *Port Arthur LNG, LLC*, 167 FERC ¶ 61,052 (Glick, Comm’r, dissenting at P 2); *Empire Pipeline, Inc.*, 166 FERC ¶ 61,172 (Glick, Comm’r, dissenting in part at P 9); *Venture Global Calcasieu Pass, LLC*, 166 FERC ¶ 61,144 (Glick, dissenting at P 6); *Transcon. Gas Pipe Line Co., LLC*, 165 FERC ¶ 61,221 (Glick, dissenting in part at 4); *Tex. E. Transmission, LP*, 165 FERC ¶ 61,132 (Glick, Comm’r, dissenting in part at 61,538).

<sup>116</sup> See, e.g., *Freeport LNG Development, L.P.*, 167 FERC ¶ 61,155 (Glick, Comm’r, dissenting at P 2) (emphasis added).

<sup>117</sup> *Columbia Gulf Transmission, LLC*, 180 FERC ¶ 61,206 (2022) (Glick, Chairman, concurring at P 4) (“In addition, the applicant may propose and the Commission may, where appropriate, require mitigation of adverse impacts in a way that further tips the scales in the project’s favor.”); *Tenn. Gas Pipeline Co., L.L.C.*, 180 FERC ¶ 61,205 (2022) (Glick, Chairman, concurring at P 4) (same).



**Commission’s natural gas docket that was otherwise ready for decision or on a path to be ready for decision in the ordinary course of business should be delayed? If so, please explain the circumstances and, to the extent the matter has been disposed of, please identify the matter.**

Not applicable.

- c. With respect to applications for facilities to export liquefied natural gas (“LNG”), has there been progress in the time required for the Commission to take action? Please provide evidence to support your conclusion, including, to the extent practicable, citations to specific proceedings.**
- i. For example, Texas LNG is an export facility being developed in Brownsville, Texas. It received its initial FERC certificate in 2019. The certificate was challenged in the United States Court of Appeals for the D.C. Circuit. The project appears to have had most of its key development and construction contracts in place. It appears there are willing buyers of LNG, particularly in Europe. The commercial environment and the opportunity to provide energy security to strategic allies has been highlighted even by the Biden administration. The D.C. Circuit remanded the Commission’s initial Order approximately one year ago. Under these circumstances, without a final order on remand, no developer could start detailed engineering planning or initiate construction. LNG exports are not only vital to our national interest, they are critical in supporting U.S. allies abroad.**
  - ii. Are there other LNG projects currently pending before FERC that have been awaiting final action for a substantial period of time (*e.g.*, more than 120 days)?**
  - iii. If so, please list the project and briefly explain the source of the delay for Commission action with respect to these projects?**
  - iv. Why hasn’t FERC processed these projects with more deliberate speed, especially given the need for U.S. exports in Europe?**
  - v. What is the status of Texas LNG and other LNG projects now pending before FERC?**



**vi. When does the Commission expect to issue orders on these projects?**

As shown in Appendices B and D, all of the LNG export facility authorization applications and LNG-related remand proceedings have been pending before the Commission for more than 120 days. It is not unusual for the Commission to take longer than 120 days to process requests to construct and operate LNG facilities. For example, in 2016, the Commission approved the Magnolia LNG Project, a processing, liquefaction and export facility, after the application had been pending for close to two years.<sup>118</sup> Applications to add facilities to existing sites have also taken more than 120 days. In 2020, the Commission took over a year to approve Sabine Pass LNG, L.P.'s application to add to the existing Sabine Pass LNG Terminal a third marine berth to serve additional LNG carriers.<sup>119</sup>

Nonetheless, multiple pending LNG applications have faced unusual delays, including as you point out, the remand proceeding for the Texas LNG Terminal. As I discuss in response to Question 2, above, Sempra's application for its Port Arthur LNG Terminal Expansion, DRP and Bradford's Petitions for Declaratory Order, and the remand and amendment proceeding for the Rio Grande LNG Terminal also face unusual delays.

Regretfully, I am unable to answer your questions regarding why these proceedings have been delayed, why the Commission has not acted with more deliberate speed given the need for U.S. exports in Europe and around the world, or when the Commission will act. Several project sponsors with pending projects have informed the Commission that they expect their projects will supply Europe's demand for LNG.<sup>120</sup> For example, on August 12, 2022, in Docket No. CP16-116-000, Texas LNG

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<sup>118</sup> *Magnolia LNG, LLC*, 155 FERC ¶ 61,033 (2016) (application was filed in April 2014 and the Commission granted the requested authorizations in April 2016).

<sup>119</sup> *Sabine Pass LNG, L.P.*, 170 FERC ¶ 61,145.

<sup>120</sup> See *Rio Grande LNG, LLC*, 181 FERC ¶ 61,032, at P 5 (2022) ("expects to play a role in supplying Europe's demand for LNG as the European Union attempts to reduce reliance on Russian energy supplies."); *Port Arthur LNG, LLC*, 181 FERC ¶ 61,024, at P 3 n.7 (2022) ("Sempra Infrastructure Partners, LP has entered into negotiations with multiple European companies that contemplate negotiation of long-term sale and purchase agreements for LNG from the Liquefaction Project.").



Brownsville, LLC (Texas LNG) indicated that it “is in active discussions with buyers of LNG, particularly in Europe, and is optimistic about the commercial environment and the opportunity to provide energy security to strategic allies of the United States.”<sup>121</sup> In that filing, Texas LNG requested prompt Commission action on remand and explained that “[t]he lack of Commission action on remand is having a material impact on Texas LNG” and that “Texas LNG has significant internal and external technical resources standing by to continue the development and eventual construction of the project, but without a final order on remand, Texas LNG lacks much-needed clarity on timing for project planning purposes.”<sup>122</sup> It is not “grandstanding” to raise concerns about the delays in processing applications for LNG export terminals given the indisputable fact that demand for American LNG has risen dramatically and has recently become more geo-strategically critical than ever before.<sup>123</sup>

FERC’s handling of LNG related petitions for rulemaking also bears mentioning. On March 14, 2022, George Washington University Law Professor Richard J. Pierce, Jr. petitioned FERC to issue an emergency interim rule finding that “[a]ll exports of natural gas and LNG terminals used to export natural gas are in the public interest.”<sup>124</sup> Professor Pierce stated that “[t]he Russian invasion of Ukraine has created emergency conditions that support issuance of the proposed rule,”<sup>125</sup> and argued that, “the U.S. can greatly assist our European allies . . . by maximizing exports of U.S. natural gas to Europe.”<sup>126</sup> The Commission did not notice Professor Pierce’s petition for comment, missing an opportunity to explore ways to expedite the Commission’s LNG dockets.

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<sup>121</sup> Texas LNG Brownsville LLC, Request for Commission Action on Remand for Texas LNG Project, Docket No. CP16-116-000, at 2 (Aug. 12, 2022).

<sup>122</sup> *Id.* at 2-3.

<sup>123</sup> *Transcript of the 1092nd Commission Meeting*, FERC, at 18 (July 28, 2022), <https://www.ferc.gov/media/commission-meeting-transcript-july-2022>.

<sup>124</sup> Professor Richard J. Pierce, Jr. March 14, 2022 Petition for Rulemaking under the Natural Gas Act, Docket No. RM22-9-000, at 1 (Accession No. 20220314-5315).

<sup>125</sup> *Id.* at 1.

<sup>126</sup> *Id.* at 3.



In contrast, on July 22, 2022, a coalition of environmentalist organizations filed a petition to initiate a rulemaking asking FERC to reconsider its precedent governing when the Commission exercises jurisdiction over certain inland LNG facilities.<sup>127</sup> The Commission noticed that petition for comment the very same day.<sup>128</sup> Expanding the Commission’s jurisdiction consistent with the petition would impose greater regulatory barriers on this class of facilities’ ability to produce LNG for domestic and international markets. One cannot help but note the different treatment these two petitions received.

**4. During the March 3 hearing, Chairman Manchin asked each Commissioner and Chairman Glick if all five Commission Members had “lengthy discussion[s] . . . to work your differences out . . . as a group.” Because the 1999 Natural Gas Policy Statement has been applied in proceedings on the Commission’s natural gas docket for decades, many assume that the 2022 Policy Statements or their replacements will be similarly durable. In that event, policies having the support of all five or nearly all five Commissioners would be more likely to produce a clearer and fairer set of standards. Moreover, the adoption of Policy Statements on a non-partisan basis would reflect the intent of Congress that the Commission demonstrate that it is non-partisan and independent.**

Since March 3, 2022, several Commissioners have been quoted in press accounts and espousing in speeches Chairman Manchin’s view that the Commissioners should deliberate collectively with the hope, if not the expectation, that the Commission’s Order’s reflect a non-partisan approach to its work. For example, in a speech before the Energy Bar Association on May 18, 2022, Commissioner Phillips said he “look[s] forward to working with [his] colleagues on this in a bipartisan basis to resolve this issue.”

- a. **In your view, is it important for issuances such as the 2022 Policy Statements and other major Orders to be adopted on a vote that is not a 3-2 vote along partisan lines? If so, why? If not, why not?**

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<sup>127</sup> WWALS Watershed Coalition, Inc., et al. July 22, 2022 Petition For Rulemaking, Docket No. RM22-21-000 (Accession No. 20220722-5043).

<sup>128</sup> FERC July 22, 2022 Notice of Petition for Rulemaking, Docket No. RM22-21-000 (Accession No. 20220722-3060).



- b. What efforts have been made or are underway to issue significant Orders on other than a 3-2 vote along partisan lines?**
- c. As you see it, how should the Commission deliberate in its proceedings? Should major Orders reflect the input of all Commissioners to the extent practicable? What are and should be the norms for Commission deliberation?**

The Department of Energy Organization Act (DOE Organization Act), the Commission’s organic statute establishes the rules that govern the Commission. It provides that “[e]ach member of the Commission, including the Chairman, shall have one vote” and that “[a]ctions of the Commission shall be determined by a majority vote of the members present.”<sup>129</sup> Although FERC is headed by the Chairman as a corporate body, the Chairman has typically directed the Commission’s agenda by noticing business for its open meetings and by advancing proposed orders which are drafted at his direction by the staff of the Commission, whom, by the terms of the DOE Organization Act, he supervises.

Over the last 30 years, most landmark orders have issued with something closer to unanimity, though there have been occasional separate statements, typically dissents in part.<sup>130</sup> Regardless of historical practice, every commissioner should—I would argue,

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<sup>129</sup> 42 U.S.C. § 7171(e).

<sup>130</sup> See, e.g., *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, 61 Fed. Reg. 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080) (Hoecker, Comm’r, concurring in part and dissenting in part) (Massey, Comm’r, dissenting in part), *order on reh’g*, Order No. 888-A, 62 Fed. Reg. 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220) (Hoecker, Comm’r, dissenting in part) (Massey, Comm’r, dissenting in part), *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. N. Y. v. FERC*, 535 U.S. 1 (2002); see also *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 76 Fed. Reg. 49842 (Aug. 11, 2011), 136 FERC ¶ 61,051 (2011) (Moeller, Comm’r, dissenting in part), *order on reh’g*, Order No. 1000-A, 77 Fed. Reg. 32184 (May 31, 2012), 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000 -



must—cast his or her vote in strict accordance with his or her view of the governing law and the facts on the record. To the extent to which the Commission as a body has widely divergent views on the law, dissents will be more common. Similarly, to the extent to which the Commission’s members are disinclined to discuss major policy decisions amongst themselves and incorporate one another’s thoughts and criticisms, dissents will be more common. Dissents will be even more common if the Chairman (who directs the Commission’s agenda) advances orders based on unsettled or novel legal theories.

Institutionally, it is probably preferable to issue unanimous orders because such orders usually reflect the entire body’s input or, at any rate, acquiescence. Dissents often provide fodder for the pleadings filed in subsequent petitions for appellate review, suggesting that the issues are not settled. Unanimity is also valuable for the jurisdictional entities that the Commission is charged with regulating. The more split votes there are, the less stable those issuances will likely be. The regulated community knows that changes to 3-2 orders may be likely when the composition of the Commission changes. Such regulatory flux chills investment in the capital-intensive industries we regulate.

Institutional and regulatory interests should not override each individual commissioner’s obligation to cast their vote according to their view of the law and the factual record, so the best way to achieve unanimity, if that is the objective, would be to discuss major policy enactments well ahead of the development of draft orders and attempt to establish consensus from the beginning.

**5. The 2022 Policy Statements, or their replacements, will have a significant and demonstrable impact on the economy of the United States, as well as individual states such as Wyoming and West Virginia. These, and other energy producing states, rely on robust infrastructure development to be able to transport natural gas to other states and regions that have a dramatic need for this resource at reasonable prices.**

- a. Has the Commission conducted a study (or studies) or sought comment on the potential impact of the 2022 Policy Statements on i) the cost of natural gas; ii) the availability of natural gas; iii) the cost, reliability or resilience of electricity; iv) employment in or beyond the energy sector;**

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B, 141 FERC ¶ 61,044 (2012) (LaFleur, Comm’r, dissenting in part), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).



**v) employment generally; or vi) the broader economy? If so, what are the results? If not, why not?**

I am not aware of any Commission study regarding the effect of the 2022 Policy Statements on i) the cost of natural gas; ii) the availability of natural gas; iii) the cost, reliability or resilience of electricity; iv) employment in or beyond the energy sector; v) employment generally; or vi) the broader economy. I am also not aware of any plans to conduct such a study. Between the issuance of the 2022 Policy Statements through November 2022, the Commission will have held fourteen technical conferences on a variety of matters ranging from specific proceedings to broader policy initiatives.<sup>131</sup> None of those technical conferences dealt with or assessed the economic and reliability impacts of the 2022 Policy Statements. In addition, none of the currently planned technical conferences focus on the economic or reliability impacts of the 2022 Policy Statements.

It is not clear to me why the Commission has not studied, nor announced any plans to study, the potential impact of the 2022 Policy Statements. Assessing the 2022 Policy Statements effects on the cost and availability of natural gas would aid in determining whether the proposals would, in fact, achieve the NGA's purpose which is to "encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices."<sup>132</sup> Such study could also inform the Commission on how to discharge our duties to oversee the establishment of mandatory reliability standards under section 215 of the Federal Power Act (FPA). In that role, the Commission oversees the North American Electric Reliability Corporation (NERC) which has consistently emphasized the importance of natural gas, referring to it as "the reliability 'fuel that keeps the lights on.'"<sup>133</sup> NERC has counseled that "natural gas policy must reflect this reality."<sup>134</sup> Indeed, in comments on the 2022 Policy Statements, PJM Interconnection, L.L.C. (PJM) and Midcontinent

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<sup>131</sup> Technical Conference Schedule—2022, FERC, <https://www.ferc.gov/technical-conference-schedule-2022>.

<sup>132</sup> *NAACP*, 425 U.S. at 669-70; *accord Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1307 (D.C. Cir. 2015) (quoting *NAACP*, 425 U.S. at 669-70).

<sup>133</sup> *2021 Long-Term Reliability Assessment*, NERC, at 5 (Dec. 2021), [https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC\\_LTRA\\_2021.pdf](https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2021.pdf).

<sup>134</sup> *Id.*





Independent System Operator, Inc. (MISO) “urge[d] the Commission to keep in mind that the continued availability of natural gas and associated infrastructure is a key component in ensuring long-term resource adequacy, and by extension, in meeting PJM and MISO’s significant reliability responsibilities under Section 215 of the [FPA].”<sup>135</sup>

**b. What do you personally believe will be the impact when applied in specific proceedings of the 2022 Policy Statements on local, state, and national economies? Will the burden be shared equally? Will specific regions benefit or suffer more than others? If so, how?**

If the Commission finalizes the 2022 Policy Statements, the cost of transporting natural gas, and the price paid by shippers, will inevitably increase. The finalization of the 2022 Policy Statements would cause the chilling of investment, which would slow infrastructure development, further constraining supply. This would exacerbate scarcity and rising prices.

In a letter to the FERC Chairman and commissioners, the Chief Executive Officers of TC Energy Corporation, Enbridge, Inc., Williams, and Kinder Morgan, Inc. explained how the uncertainty caused by FERC’s policy statements and its changes in review procedures is harming their industry.<sup>136</sup> They stated, “[r]ather than streamline the development of infrastructure that is clearly in the public interest, convenience and necessity, the permitting process has become less consistent, has led to project delays and derailments, and has stymied the development of needed infrastructure.”<sup>137</sup> Williams repeated its concerns in preliminary comments on the policy statements, stating, “[t]he difficulties in apportioning risky and expensive development and mitigation costs between pipeline applicants and potential customers will alone chill investment in much needed infrastructure.”<sup>138</sup>

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<sup>135</sup> PJM Interconnection, L.L.C., et al., May 25, 2022 Limited Reply Comments, Docket Nos. PL21-3-000, at 2 (citation omitted) (Accession No. 20220525-5045).

<sup>136</sup> TC Energy, et al. March 3, 2022 Letter to Chairman Glick and Commissioners, Docket No. PL21-3-000 (Accession No. 20220303-5041).

<sup>137</sup> *Id.* at 5.

<sup>138</sup> Williams March 16, 2022 Preliminary Comments, Docket No. PL21-3-000, et al., at 12 (Accession No. 20220316-5132).



These effects are already visible in the Commission’s dockets. There have been fewer applications filed at the Commission to add incremental capacity than in years past. As Appendix E shows, the Commission has received only ten applications for incremental capacity this year. From 2017 through 2021, the Commission received an average of 19.8 NGA section 7 incremental capacity applications annually with a median of 19 applications. This decline in submissions demonstrates that natural gas pipeline companies, having weighed the risks involved, have chosen not to pursue as many interstate pipeline projects. Natural gas pipeline companies are making this decision—industry wide—despite record demand for natural gas in some regions of the country.<sup>139</sup>

Pipeline companies are unlikely to invest in interstate pipeline infrastructure if there is significant risk that they will not receive necessary permits in time to meet contractual commitments. Trade press reported earlier this year that Kinder Morgan has “sw[orn] off new major interstate pipeline construction to avoid becoming mired in any more morasses like their doomed NE Energy Direct gas pipeline into New England—that experience a few years ago turned them almost completely intrastate (not under FERC jurisdiction) in their growth objectives.”<sup>140</sup> For a major pipeline company like Kinder Morgan to swear off the development of interstate natural gas pipelines, and to do so because of the regulatory risk created by FERC, is proof-positive that FERC is frustrating the objectives that Congress established for us under the NGA to “encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”<sup>141</sup>

In addition to describing the impacts on the industry, Commenters on the policy statements explained their impacts on consumers. Enbridge Gas Pipelines explained that

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<sup>139</sup> See *Harsh Weather Conditions Could Pose Challenges to New England’s Power System This Winter*, ISO New England, at 2 (Dec. 6, 2021), [https://www.iso-ne.com/static-assets/documents/2021/12/20211206\\_pr\\_winteroutlook2122.pdf](https://www.iso-ne.com/static-assets/documents/2021/12/20211206_pr_winteroutlook2122.pdf) (“For the past two decades, ISO New England has raised concerns about fuel supply issues and their impact on electricity supply during periods of extreme cold weather. Constraints on the natural gas pipeline system limit the availability of fuel for natural gas-fired power plants, as heating customers are served first through firm service contracts”).

<sup>140</sup> David Braziel, *Climb That Hill – A Steeper Path To Gas-Project Certification Following New FERC Policies*, RBN ENERGY (Mar. 1, 2022), <https://rbnenergy.com/climb-that-hill-a-steeper-path-to-gas-project-certification-following-new-ferc-policies>.

<sup>141</sup> *NAACP*, 425 U.S. at 669-70; accord *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d at 1307 (quoting *NAACP*, 425 U.S. at 669-70).



if a project sponsor were required to mitigate to net-zero GHG emissions through offset purchases, “residential gas bills would rise in the vicinity of 13%,” “[i]ndustrial gas bills would rise in the vicinity of 36%,” and “electric power gas costs (passed on to users of electricity) would rise in the vicinity of 43%.”<sup>142</sup> These increases would be on top of already rising natural gas prices. The Energy Information Administration (EIA) recently reported, “[r]esidential and commercial natural gas prices reach[ing] multiyear highs in 2022.”<sup>143</sup>

Production is unlikely to increase to relieve these prices, because of the lack of corresponding increases in pipeline infrastructure. In certain regions of the country, such as the Marcellus, natural gas production has already “hit the wall” because of the “limit of midstream capacity.”<sup>144</sup> The pipeline system is now the limiting factor on how much gas will get to market. This means that rising prices *cannot* create the incentives to drive more production, since any gas that might be yielded from incremental production cannot be transported. There is only one possible result: scarcity will continue and worsen; prices will continue to rise.

Of course, rising prices will have significant effects on the costs of household and commercial use of gas and will have serious repercussions for natural gas users. It will also, as noted above, cause electricity prices to rise. Even more troubling, the natural gas scarcity caused by pipeline constraints threatens the stability of the bulk power system. NERC has repeatedly and unvaryingly declared that natural gas is absolutely critical for electric reliability and resource adequacy and that this will remain the case for the foreseeable future. In the Northeast, which has a notoriously constrained natural gas supply, the price of natural gas, during some points in the year, converges with prices

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<sup>142</sup> Enridge Gas Pipelines January 7, 2022 Post-Technical Conference Comments, Docket No. PL21-3-000, at 36 (emphasis omitted) (citation omitted); *see also* Interstate Natural Gas Association of America September 23, 2022 Supplemental Reply Comments, Docket Nos. PL21-3-000, at Table 1 (Accession No. 20220923-5161).

<sup>143</sup> *Residential and commercial natural gas prices reach multiyear highs in 2022*, EIA (Oct. 4, 2022), <https://www.eia.gov/todayinenergy/detail.php?id=54119>.

<sup>144</sup> Jamison Cocklin, *EQT Working to ‘Catalyze’ East Coast LNG Projects Amid Appalachian Constraints*, Nat. Gas Intelligence (July 28, 2022), <https://www.naturalgasintel.com/eqt-working-to-catalyze-east-coast-lng-projects-amid-appalachian-constraints/>.



with Europe. Because of insufficient pipeline infrastructure, the region remains dependent upon LNG imports for which it must compete in the global market.<sup>145</sup>

**6. During the March 3 hearing and in his dissents to the 2022 Policy Statements, Commissioner Christie argued that the major questions doctrine precludes the Commission from regulating both upstream and downstream greenhouse gas emissions. The major questions doctrine, as explained by Commissioner Christie, “presumes that Congress reserves major issues to itself, so unless a grant of authority to address a major issue is explicit in a statute administered by an agency, [the authority] cannot be inferred to have been granted.”**

**In *West Virginia v. EPA*, the Supreme Court recently relied upon the major questions doctrine to strike down a regulation designed to “compel the transfer of power generating capacity from existing sources to wind and solar.” The court’s opinion stated, “the Government must—under the major questions doctrine—point to clear congressional authorization to regulate in that manner.” The court found no clear statement within the Clean Air Act. Instead, the court found that the EPA stepped well beyond the authority that the Clean Air Act conferred by effectively requiring fuel switching under the guise of mitigation. Although the court agreed that climate change is a significant issue, “a decision [to impose a rule] of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body.”**

- a. What is the “clear statement” in statute (e.g., what federal law) by which Congress authorized the Federal Energy Regulatory Commission to require or “encourage” mitigation of non-jurisdictional upstream and downstream greenhouse gas emissions? What is the law that allows the Commission to determine that a natural gas project will not have a significant impact if it allows a region to fuel switch, i.e., take coal-fired units offline?**

There is no clear statement in the NGA that authorizes the Commission to require or encourage the mitigation of GHGs emitted by non-jurisdictional facilities upstream and downstream of the pipeline. Natural gas pipelines offer a *transportation* service. It

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<sup>145</sup> J. Robinson, *Europe’s gas supply concerns, high prices put New England forward market at risk*, GAS DAILY (Mar. 1, 2022), at 2-3 (stating Algonquin city-gates January 2023 forward trades top \$23/MMBtu and Dutch TTF winter 2022-23 forwards trade around \$30/MMBtu).



would be hard to imagine that Congress, absent a clear statement, would have intended to empower FERC, an economic regulator, to embark upon a broad policy of “encouraging” the mitigation of the environmental effects of the production and use of natural gas—when FERC’s duty is to approve natural gas transportation infrastructure which are in the public convenience and necessity.

NGA section 7(e) empowers the Commission to “attach to the issuance of the certificate . . . reasonable terms and conditions as the public convenience and necessity may require.”<sup>146</sup> This is *not* a clear statement that Congress gave FERC the authority to burden the end use that Congress sought to *promote*—the production and use of natural gas.<sup>147</sup> Commission precedent aligns with this view<sup>148</sup> and disavows such powers.<sup>149</sup>

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<sup>146</sup> 15 U.S.C. § 717f(e).

<sup>147</sup> *NAACP*, 425 U.S. at 669-70.

<sup>148</sup> *See Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099, at P 57 (2018) (“Congress has not granted the Commission the responsibility to affirmatively establish federal climate policy. . . . Whether Congress’ directive for the Commission ‘to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices,’ is outweighed by the need to address the problem of global climate change is ‘a question of deep ‘economic and political significance’ that is central to this statutory scheme; had Congress wished to assign that question to an agency, it surely would have done so expressly.’ The lack of such an express grant does not necessarily preclude the Commission from considering the impacts of climate change in its assessment of the public interest. But it does mean that the Commission may not flip the NGA on its head, by using it as a vehicle to regulate climate change—and the numerous upstream and downstream activities that contribute thereto—rather than the transportation and sale of natural gas in interstate commerce.”) (citations omitted).

<sup>149</sup> *See, e.g., Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233 at P 29 (“There are no conditions the Commission can impose on the construction of jurisdictional facilities that will affect the end-use-related GHG emissions.”) (footnote omitted); *id.* P 29 n.63 (“Contrast this with the direct project-related impacts, which the Commission has the ability to mitigate through conditions on routing (*e.g.*, changes to avoid sensitive resources), construction methodology (*e.g.*, timing restrictions to lessen impacts on wildlife, requirements to drill under sensitive streams rather than open cut), and



Regarding your second question, the court in *Sabal Trail*<sup>150</sup> held that the emissions from downstream powerplants that receive gas transported by the proposed pipeline are reasonably foreseeable effects of a proposed interstate pipeline that the Commission is required to consider under NEPA. Although *Sabal Trail* is the prevailing law in the D.C. Circuit, it is in tension with the Supreme Court’s holding in *Department of Transportation v. Public Citizen (Public Citizen)*.<sup>151</sup> My views on this holding are not idiosyncratic. Both the partial dissent in *Sabal Trail* and the Court of Appeals for the Eleventh Circuit agree that the holding does not properly apply *Public Citizen*.<sup>152</sup>

To comply with NEPA, CEQ’s regulations require that agencies assess reasonably foreseeable effects of a project in an EA (which would support a finding of no significant impact) or in an EIS. CEQ’s current regulations state that agencies should prepare an EA “for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown.”<sup>153</sup> Put differently, an agency preparing an EA must explain why the effect is not significant or explain why it cannot make a significance finding. Prior to May 2021, the Commission has repeatedly explained that it could not determine whether operational or downstream emissions of GHGs were significant because there is no non-arbitrary standard for making such a determination

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operations (*e.g.*, noise restrictions, requiring electric instead of gas compressors in appropriate situations).”).

<sup>150</sup> 867 F.3d 1357.

<sup>151</sup> 541 U.S. 752 (2004).

<sup>152</sup> See 867 F.3d at 1383 (Brown, J., concurring in part and dissenting in part) (“Thus, just as FERC in the [Department of Energy] cases and the Federal Motor Carrier Safety Administration in *Public Citizen* did not have the legal power to prevent certain environmental effects, the Commission here has no authority to prevent the emission of greenhouse gases through newly-constructed or expanded power plants approved by the Board.”); *Ctr. for Biological Diversity v. U.S. Army Corps of Eng’rs*, 941 F.3d 1288, 1300 (11th Cir. 2019) (“[T]he legal analysis in *Sabal Trail* is questionable at best. It fails to take seriously the rule of reason announced in *Public Citizen* or to account for the untenable consequences of its decision.”).

<sup>153</sup> 40 C.F.R. § 1501.5(a).



that would survive scrutiny under the standard of reasoned decision making required by the APA.<sup>154</sup> No court has overturned a FERC certificate order for taking this approach.

If an agency prepares an EIS, there is no authority that directs an agency to determine whether an effect is significant. Instead, CEQ's regulations require an agency to explain the "significance" of the impact, which in that context means to explain to the public what the impact is and why it is relevant.<sup>155</sup>

Your question also implies that you are concerned that the Commission will drive climate policy by approving incremental transportation service pipeline projects that only serve certain uses, including replacing coal generation. The proposed policies in the 2022 Policy Statements would suggest such a route if finalized. The 2022 Policy Statements would favor projects if the applicant could show that the approval of the project would result in a decrease in GHG emissions.

Such an outcome, the intent of the 2022 Policy Statements, is unlawful. As I have previously stated,<sup>156</sup> the Commission has no authority to consider the effects of end use when determining whether a project is in the public convenience and necessity. Doing so would exceed the NGA's limited authorities, would run afoul of the Supreme Court's holding in *Public Citizen*,<sup>157</sup> which limits an agency's consideration of effects over which

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<sup>154</sup> See, e.g., *Nat'l Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145, at P 188 (2017) ("[N]o standard methodology exists to determine how a project's contribution to GHG emissions would translate into physical effects on the environment. Without an accepted methodology, the Commission cannot make a finding whether a particular quantity of GHG emissions poses a significant impact to the environment, whether directly or cumulatively with other sources.").

<sup>155</sup> 40 C.F.R. § 1502.16(a)(1).

<sup>156</sup> See Interim GHG Policy Statement, 178 FERC ¶ 61,108 (Danly, Comm'r, dissenting at PP 28-31); Updated Certificate Policy Statement, 178 FERC ¶ 61,107 (Danly, Comm'r, dissenting at PP 16-19).

<sup>157</sup> *Public Citizen*, 541 U.S. at 767 ("NEPA requires a 'reasonably close causal relationship' akin to proximate cause in tort law.") (citation omitted).



it can exercise jurisdiction, and would violate the Commission’s own precedent requiring pipelines to offer transportation service on an open-access basis.<sup>158</sup>

Neither *Sabal Trail* nor *Birckhead*<sup>159</sup> can be credibly described as requiring the draft policy statements’ unprecedented assertion of jurisdiction over the whole of the natural gas industry’s emissions—from upstream production to downstream consumer use. The holding in that case was narrow. And you do not have to take my word for it. In a case decided eighteen months later, *Appalachian Voices*,<sup>160</sup> the D.C. Circuit itself stated, in clear terms, what *Sabal Trail* requires of the Commission—nothing more than to provide an upper-bound emissions estimate when the emissions are reasonably foreseeable and to explain why FERC does not believe it can calculate the effects of the project on climate change.<sup>161</sup> So long as FERC does just this, it has fully complied with the requirements of *Sabal Trail*. And, until last year, the Commission followed this exact approach in its orders and those orders have been affirmed.

As to *Birckhead*, that case cannot be read to require FERC to do anything. FERC won. And though the court did spill some ink discussing what it wished FERC would have done differently when assessing pipeline applications, it is black letter law that such statements are not binding; they are dicta. Specifically, the court found that it lacked jurisdiction to resolve arguments regarding the development of the FERC’s record informing its determination that the downstream emissions at issue were not reasonably foreseeable.<sup>162</sup> While some may appeal to *Sabal Trail* and *Birckhead* as political cover

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<sup>158</sup> Updated Certificate Policy Statement, 178 FERC ¶ 61,107 (Danly, Comm’r, dissenting at PP 16-19).

<sup>159</sup> *Birckhead v. FERC*, 925 F.3d 510 (D.C. Cir. 2019).

<sup>160</sup> *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 (D.C. Cir. Feb. 19, 2019) (per curiam) (unpublished).

<sup>161</sup> *Id.* at \*2 (“FERC provided an estimate of the upper bound of emissions . . . , and it gave several reasons why it believed petitioners’ preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes.”).

<sup>162</sup> See *Birckhead*, 925 F.3d at 520.





for the seizure of jurisdiction contemplated in the draft policy statements, this maneuver, upon the barest inspection of the case law, is simply unconvincing.

**b. How is the EPA program at issue in *West Virginia v. EPA* similar to, and different from, the 2022 Natural Gas Policy Statements and FERC’s program and efforts that would flow from those or similar policy statements?**

Like the EPA program at issue in *West Virginia v. EPA*, the 2022 Policy Statements’ GHG mitigation policies address a question of major political and economic consequence without any clear congressional authorization to do so. As Commissioner Christie stated in his dissent, “whether and how to regulate GHG emissions is a major question of vast economic and political significance. Congress has not explicitly authorized the Commission to regulate in this area as required under the major questions doctrine, nor has it laid down an intelligible principle for the Commission to follow as required by the non-delegation doctrine.”<sup>163</sup>

There is no clear statement in the NGA that authorizes the Commission to consider the effects of GHG emissions from non-jurisdictional activities in determining whether a proposed project is in the public convenience and necessity. There is no clear statement authorizing the Commission to require or to “encourage” mitigation of GHGs emitted by non-jurisdictional facilities upstream and downstream of the pipeline. There is no clear statement authorizing the Commission to establish its own arbitrary threshold for determining whether GHG emissions are significant, or what degree of mitigation of emissions—direct or indirect—is sufficient. As I explained, to argue that the circuit courts say otherwise is a misinterpretation of the case law and ignores binding authority.

The NGA’s purpose, established by Congress and articulated by the Supreme Court, is for the Commission to *promote* the use of natural gas.<sup>164</sup> It is *not* an environmental statute and to adopt mitigation policies or establish thresholds, the effect of which would be to frustrate the primary purpose of the statute, in order to pursue policy goals in an arena not delegated by Congress, invites challenges under *West Virginia v. EPA*.

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<sup>163</sup> Interim GHG Policy Statement, 178 FERC ¶ 61,108 (Christi, Comm’r, dissenting at P 28).

<sup>164</sup> *NAACP*, 425 U.S. at 669-70.



**c. How should the Supreme Court’s opinion in *West Virginia v. EPA* bear on the scope of any final mitigation requirements to be imposed or “encouraged” by the Commission in accordance with the 2022 Policy Statements or their replacement? How should the Commission take into account *West Virginia v. EPA* as it considers revisions to the 2022 Policy Statements?**

In recent issuances,<sup>165</sup> I have stated that *West Virginia v. EPA* should give the Commission pause before it blunders further into establishing arbitrary thresholds to determine whether the quantity of GHG emissions is significant and whether and what mitigation should be required. Agencies must be cautious and deliberate when attempting to regulate any subject matter that Congress has not clearly placed within its jurisdiction, especially when the regulation of those fields that will have a profound effect on the health and prosperity of all Americans. In my view, in light of the Supreme Court’s reinvigoration of the major questions doctrine, the Commission should abandon a policy initiative that clearly exceeds the boundaries of our delegated authority and proceed by simply terminating the Interim GHG Policy Statement.

Congress has recently provided a “clear statement” as to how it wishes to regulate the emissions from natural gas pipelines, production, and processing.<sup>166</sup> In the Inflation Reduction Act, Congress has imposed a methane fee program that is itself a comprehensive regulatory scheme aimed at mitigating the emissions of the interstate

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<sup>165</sup> See, e.g., *Tex. E. Transmission, LP*, 180 FERC ¶ 61,186 (Danly, Comm’r, concurring in the judgment at P 5).

<sup>166</sup> See *West Virginia v. EPA*, 142 S. Ct. 2587; see also Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60113 (2022) (codified at 42 U.S.C. § 7436) (amending Clean Air Act); *id.*, 42 U.S.C. § 7436(c) (“The Administrator shall impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold under subsection (f) from an owner or operator of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year . . . .”); *id.* § 7436(d) (defining “applicability facility” as including “Liquified natural gas storage,” “Liquefied natural gas import and export equipment” and “Onshore natural gas transmission pipeline.”); see also *Inflation Reduction Act Methane Emissions Charge: In Brief*, Congressional Research Service (Aug. 29, 2022), <https://crsreports.congress.gov/product/pdf/R/R47206>.



natural gas pipelines subject to the Commission’s jurisdiction.<sup>167</sup> This regulatory program did not confer any authority upon FERC. Instead, it delegated that power to the EPA. Not only has Congress never granted such authority to FERC, its recent establishment of this methane regulation program in the hands of the EPA should remove any doubt that Congress has never given FERC the authority to devise mitigation schemes of its own to regulate pipeline emissions.

**7. The Commission has issued several notices of proposed rulemakings (“NOPR”) concerning issues related to electric transmission.**

- a. Should any state be coerced to reflect, in rates or charges levied pursuant to its jurisdiction, costs imposed by or resulting from compliance with the policies of another state?**

No. No state should be forced to pay for the policy choices of another state.<sup>168</sup> In fact, preventing one state’s policies from harming another state is among the reasons Congress passed the FPA.<sup>169</sup>

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<sup>167</sup> 42 U.S.C. § 7436(c) (“The Administrator shall impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold under subsection (f) from an owner or operator of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year . . . .”); *id.* § 7436(d) (“[T]he term ‘applicable facility’ means a facility within the following industry segments . . . (1) Offshore petroleum and natural gas production. (2) Onshore petroleum and natural gas production. (3) Onshore natural gas processing. (4) Onshore natural gas transmission compression. (5) Underground natural gas storage. (6) Liquefied natural gas storage. (7) Liquefied natural gas import and export equipment. (8) Onshore petroleum and natural gas gathering and boosting. (9) Onshore natural gas transmission pipeline.”).

<sup>168</sup> *See, e.g., N.J. Bd. of Pub. Utils.*, 744 F.3d 74, 97 (3d Cir. 2014) (“New Jersey and Maryland are free to make their own decisions regarding how to satisfy their capacity needs, but they ‘will appropriately bear the costs of [those] decision[s][.]’”) (citation omitted).

<sup>169</sup> *See Pub. Utils. Comm’n of R.I. v. Attleboro Steam & Elec. Co.*, 47 S. Ct. 294 (1927); *see also* 16 U.S.C. § 824.



- b. Do you agree that “identifying a cost allocation method that is perceived as fair, especially within transmission planning regions that encompass several states, remains challenging?” If not, why not? If so, isn’t this challenge exactly why the Commission must prevent states from adopting or bearing the burden of cost allocation methods that shift the costs of one state’s public policies on to customers in another state?**

It is indeed challenging to identify a fair method of cost allocation within transmission planning regions encompassing several states.<sup>170</sup> Some states, as is their prerogative under the FPA,<sup>171</sup> have enacted policies preferencing certain kinds of generation assets that require substantial investments in transmission infrastructure.<sup>172</sup> Given that states have made divergent policy choices in this area, they are bound to disagree about the purported “benefits” of other states’ public policies that go beyond reliability or economic benefits. Under the FPA, the Commission has a responsibility to make sure rates are just and reasonable.<sup>173</sup> This means that the Commission cannot require a state to bear the costs of another state’s public policy choices if those policies do not create cognizable reliability and economic benefits.

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<sup>170</sup> See, e.g., *Ill. Commerce Comm’n v. FERC*, 756 F.3d 556, 565 (7th Cir. 2014) (“To summarize, the lines at issue in this case are part of a regional grid that includes the western utilities. But the lines at issue are all located in PJM’s eastern region, primarily benefit that region, and should not be allowed to shift a grossly disproportionate share of their costs to western utilities on which the eastern projects will confer only future, speculative, and limited benefits.”); *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009) (“FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members.”).

<sup>171</sup> 16 U.S.C. § 824(a).

<sup>172</sup> See, e.g., *Carbon Pricing in Organized Wholesale Elec. Mkts.*, 175 FERC ¶ 61,036, at P 6 n.10 (2021) (“Thirteen states—California, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Vermont, Virginia, and Washington—and the District of Columbia have adopted clean energy or renewable portfolio standards of 50% or greater.”) (citation omitted).

<sup>173</sup> 16 U.S.C. § 824d.



**c. What do you foresee as the practical outcome if the NOPRs are adopted as proposed and states do not agree to a cost allocation method?**

The Notice of Proposed Rulemaking left this question unanswered, but I expect that the practical outcome will be that Regional Transmission Organizations (RTO) will develop stakeholder voting procedures or other voluntary “agreements” to force states to share a portion of public policy-driven transmission expansion costs. If a state disagrees, I think the result will be litigation before the Commission with the Commission determining whether a state “benefits” from the policy choices of another state even if the state disagrees that it benefits.<sup>174</sup> Those disputes will eventually make their way to the courts.

We already have a foreshadowing of where we are headed. Just last week, the Commission issued an order, from which I dissented, granting an RTO the discretion to determine, based on arbitrary and insufficiently specific criteria, that transmission costs be socialized across its footprint regardless of whether the RTO or the transmission owner could identify concrete reliability or economic benefits.<sup>175</sup> When this occurs, ratepayers in one state will be forced to pay for neighboring states’ (or localities’) public policy goals. Fair cost allocation is difficult, but the Commission must only approve rates that are just and reasonable.

**d. Beyond the terms of the current NOPRs, what steps should the Commission take to ensure that states will not be coerced into agreement on cost allocation? Are procedural protections necessary for the benefit of states that do not reach agreement on a cost allocation method?**

States cannot be forced to shoulder the expenses of neighboring states’ public policy projects. As a practical matter, protecting states from their neighbors’ public policies may make *some* regional transmission expansion less likely, but states and their utilities are already able to enter into voluntary agreements to develop transmission

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<sup>174</sup> See, e.g., *Ill. Commerce Comm’n v. FERC*, 756 F.3d 556; *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470.

<sup>175</sup> See, e.g., *Sw. Power Pool, Inc.*, 181 FERC ¶ 61,076 (2022) (Dandy, Comm’r, dissenting).



projects with neighboring states. They do not require a Commission order adopting a rule to coerce them to do so.

- e. **One of the options proposed in the NOPRs is for the Commission to assume “responsibility to establish the Long-Term Regional Transmission Cost Allocation Method” instead of the states. If this path is chosen, under what conditions would it take effect?**

I disagree with this proposal. Presumably, its purpose is to allow the Commission to ultimately decide upon cost allocation because it is very unlikely that all of the states will agree to a common method by which to allocate transmission costs.

**8. It is fitting that the Commission will hold its *New England Winter Gas-Electric Forum* (“the Forum”) on September 8, 2022. Please respond to the following with respect to the Forum.**

- a. **With respect to New England, what did you learn from the Forum about:**
  - i. **The sufficiency of FERC-jurisdictional infrastructure for the delivery of natural gas to and in the region;**

The lack of natural gas pipelines in New England is an old and well-known problem. ISO New England (ISO-NE) had also previously released information detailing the critical reliability situation that the ISO will experience this winter<sup>176</sup> and its extraordinary reliance on a single liquefied natural gas terminal.<sup>177</sup> The Chief Executive

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<sup>176</sup> *Winter 2022/2023 Analysis: Assessment and Recommendations*, ISO New England, Chris Geissler, et al., at Slide 14 (July 14, 2022), [https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.iso-ne.com%2Fstatic-assets%2Fdocuments%2F2022%2F07%2Fa09\\_mc\\_2022\\_07\\_12-14\\_winter\\_2022\\_2023\\_presentation.pptx&wdOrigin=BROWSELINK](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.iso-ne.com%2Fstatic-assets%2Fdocuments%2F2022%2F07%2Fa09_mc_2022_07_12-14_winter_2022_2023_presentation.pptx&wdOrigin=BROWSELINK) (“Independent of a winter program, load shedding may be required if the region experiences sustained cold weather and multi-day major source-loss contingencies[.]”).

<sup>177</sup> See ISO New England August 29, 2022 Letter to U.S. Dept. of Energy Secretary Jennifer Granholm, at 1, [https://www.iso-ne.com/static-assets/documents/2022/08/isonenergy\\_security\\_letter\\_to\\_us\\_doe\\_and\\_statement\\_for\\_ferc\\_winter\\_forum\\_2022\\_08\\_29.pdf](https://www.iso-ne.com/static-assets/documents/2022/08/isonenergy_security_letter_to_us_doe_and_statement_for_ferc_winter_forum_2022_08_29.pdf) (“During the coldest days of the year, New England does not have sufficient



Officer of New England’s largest utility, Eversource, recently wrote a letter to President Biden explaining that this situation “represents a serious public health and safety threat.”<sup>178</sup>

**ii. The relationship of FERC-jurisdictional infrastructure for the delivery of natural gas (to and in New England) to the reliability and resilience of the local distribution of natural gas in the region;**

Because of local distribution companies’ (*i.e.*, local gas utilities that serve retail customers) willingness and ability to enter into long-term contracts for firm gas supplies, retail natural gas customers have higher priority contract rights to natural gas than electric generators and thus retail end use customers are less likely to run out of gas on cold winter days. That said, too many draws on the natural gas pipeline capacity may result in pressure failures and shortages that disrupt service to all users. This compounds the risks of having insufficient gas pipeline infrastructure in New England as home-heating residential customers may not have sufficient gas. Like Eversource’s CEO, I think this situation represents an unacceptable health and safety risk.<sup>179</sup>

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pipeline infrastructure to meet the region’s demand for natural gas for both home heating and power generation. For years, the region has relied heavily on foreign liquefied natural gas (LNG) shipments into import facilities . . . to ensure reliable grid operations when pipeline gas is not available in sufficient quantities to support the generation sector.”); *see also* Katherine Blunt & Benoît Morenne, *New England Risks Winter Blackouts as Gas Supplies Tighten*, WALL ST. J., Oct. 17, 2022 (“New England has been grappling with fuel-supply challenges for more than a decade because the region has limited pipeline capacity. Imports of LNG can make up more than a third of the region’s natural-gas supply during periods of peak demand, according to the Energy Information Administration. The Jones Act, a law restricting the movement of ships between U.S. ports, makes maritime delivery of domestic supplies nearly impossible, so the region relies on gas produced abroad. Now, intense competition for LNG cargoes driven by European demand makes securing supply ad hoc a costly proposition.”).

<sup>178</sup> Letter from Joseph R. Nolan, Jr. to President Joseph R. Biden (Oct. 27, 2022) at 1, <https://interactive.fox61.com/pdfs/Letter-to-President-Biden-Winter-Reliability-in-New-England.pdf>.

<sup>179</sup> Letter from Joseph R. Nolan, Jr. at 1.



**iii. The relationship of FERC-jurisdictional infrastructure for the delivery of natural gas (to and in New England) and the local distribution of natural gas in the region to the reliability and resilience of electric service in the region; and**

Again, these are well-known, longstanding problems. Electric generators tend to be the lowest priority natural gas customers and there is a high risk of planned or unplanned outages—such as rolling blackouts—this winter and in the years ahead.<sup>180</sup> This was not news at the forum.<sup>181</sup> This has been known for over a decade. In 2012, the Northeast Gas Association released a white paper stating that “[t]he electric system model in New England does not appear to give electric generators the proper incentive to contract for firm pipeline gas transportation, to ensure supply availability” and that “[d]ue to the financial model under which they operate, and the design of the electric market structure in the region, most generators in New England continue to opt for non-firm gas transportation arrangements to fuel their units. This creates significant uncertainty at peak times on both the natural gas and electric grids.”<sup>182</sup>

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<sup>180</sup> Blunt & Morenne, *supra* note 177 (“New England, which relies on natural gas imports to bridge winter supply gaps, is now competing with European countries for shipments of liquefied natural gas, following Russia’s halt of most pipeline gas to the continent. Severe cold spells in the Northeast could reduce the amount of gas available to generate electricity as more of it is burned to heat homes. The region’s power-grid operator, ISO New England, Inc., has warned that an extremely cold winter could strain the reliability of the grid and potentially result in the need for rolling blackouts to keep electricity supply and demand in balance.”).

<sup>181</sup> See New England Enter Gas-Electric Forum, Transcript, Docket No. AD22-9-000 (Sept. 8, 2022) (Accession No. 20221011-4000).

<sup>182</sup> *Challenges Facing the Natural Gas & Electric Power Interface in New England – and Opportunities to Improve Mutual Reliability*, NE. GAS ASS’N, at 1 (Apr. 2012), [https://www.northeastgas.org/pdf/nga\\_background\\_paper.pdf](https://www.northeastgas.org/pdf/nga_background_paper.pdf); see also Natural Gas Supply Association February 22, 2022 Comments, AD21-11-000, at 13 (Accession No. 20220222-5323) (“In organized power markets, generators face uncertainty about whether they will run until regional operators dispatch them. Consequently, generators often find it difficult to take on the financial risk of procuring their fuel in advance when they are unsure about whether they will need that fuel and whether they will be able to recover fuel-related costs. In many instances, generators continue to rely on interruptible





**iv. The state of wholesale electric capacity and energy sales or purchases, electric transmission, and electric reliability and resilience in the region?**

I doubt any entity—the Commission, the states, ISO-NE, or any individual market participant—believes or can demonstrate that the existing ISO-NE wholesale market design is just and reasonable as required by the FPA. Certainly no one suggested that it is at the forum,<sup>183</sup> even after I expressly inquired.<sup>184</sup>

**b. In your judgment:**

**i. Is FERC-jurisdictional infrastructure for the delivery of natural gas to and within New England sufficient today to assure that natural gas is sufficiently available, reliable, and affordable?**

No. It is particularly inadequate on peak cold winter days. The insufficiency of New England’s pipeline infrastructure has created a situation in which the region must rely on imported LNG, brought into the region through a single facility on Boston Harbor, to make up for its shortfalls.

This raises serious reliability concerns. In his letter to President Biden, Eversource’s CEO expresses his concern that LNG might not be “available to the New England region in the volumes necessary to meet this winter’s needs without causing further stress on European markets and the American economy.”<sup>185</sup> He also worries that “increasing reliance on foreign-sourced natural gas poses a particular national security threat at this time given the war in Ukraine.”<sup>186</sup>

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transportation and supply contracts (that are only available when the gas system has surplus), and day-of gas purchases that expose them to the more volatile spot market.”).

<sup>183</sup> See New England Enter Gas-Electric Forum, Transcript, Docket No. AD22-9-000 (Sept. 8, 2022) (Accession No. 20221011-4000).

<sup>184</sup> *Id.* at 269.

<sup>185</sup> Letter from Joseph R. Nolan, Jr. at 2.

<sup>186</sup> *Id.*



**ii. Is today’s FERC-jurisdictional infrastructure for the delivery of natural gas to and within New England sufficient to assure that electric generation and delivery within the region is and can remain reliable and resilient?**

No. Gas-fired generators likely would not clear in the ISO-NE capacity market if they included the cost of firm gas in their contracts. Even if they could be compensated, there is insufficient natural gas pipeline capacity in New England for all gas generators to procure firm gas contracts.<sup>187</sup>

**iii. Are the FERC-approved arrangements for the wholesale sale and purchase of electricity (capacity and energy) in New England sufficient to assure the reliability, resilience, and affordability of electric service within the region? If not, why not?**

No. There are a host of reasons, but the most obvious issues that are subject to FERC’s jurisdiction are: (1) the capacity market is gamed by state-subsidized renewable resources resulting in artificially low capacity prices, (2) generators cannot clear in the market if they include the cost of firm gas contracts even if there was sufficient natural gas pipeline capacity to do so, and (3) state policies in favor of renewable resources drive existing dispatchable resources out of business.<sup>188</sup> As dispatchable resources are forced

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<sup>187</sup> ISO New England August 29, 2022 Letter to U.S. Dept. of Energy Secretary Jennifer Granholm, *supra* note 177, at 1 (“During the coldest days of the year, New England does not have sufficient pipeline infrastructure to meet the region’s demand for natural gas for both home heating and power generation.”).

<sup>188</sup> See *ISO New England Inc.*, 179 FERC ¶ 61,139 (2022) (Danly, Comm’r, dissenting at P 1) (“I dissent from this order accepting . . . [a] ‘compromise’ filing [that] ensures that the capacity market in New England will no longer serve any meaningful purpose except to be used as a tool to suppress prices paid to existing generators. Meanwhile, a fleet of new, state-subsidized renewable resources will force any generator that is not receiving a subsidy—potentially including older renewables—into premature retirement or into expensive, out-of-market reliability must run contracts (RMR).”) (citations omitted); *id.* (Danly, Comm’r, dissenting at P 3) (“This is the majority’s doing. ISO-NE justifies this ‘more nuanced mechanism’ because ‘[s]everal New England state policymakers and *federal regulators* have made it clear: the MOPR must go or be overhauled.”) (emphasis in original) (citation omitted); *id.* (Danly, Comm’r, dissenting at P 3) (“Chairman Glick expressly threatened that RTOs must get rid of MOPRs or the



out of the market, ISO-NE will likely increase the frequency in which it resorts to “reliability must-run” contracts, that is, out-of-market payments, for dispatchable resources that ISO-NE determines are necessary to maintain reliability.<sup>189</sup> Though such contracts can preserve necessary resources, they further distort the market’s price signals.

**iv. Given all of the issues at stake in New England’s wholesale market, should the single clearing price potentially be reconsidered?**

I do not think the single clearing price is the issue. The problem is that the single clearing price is too low because of state interference with the market (via renewable portfolio standards and subsidized renewable new entry). But I agree that a return to cost-of-service ratemaking in New England may be the ultimate consequence of our failure to reform the wholesale markets.<sup>190</sup> Under the *status quo*, the wholesale markets undercompensate existing resources and fail to create incentives for the development of the new resources necessary to maintain resource adequacy. The ISO will increasingly resort to out-of-market, cost-based band-aids to patch up the market’s failure to send accurate price signals.

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Commission would do so unilaterally.”) (citing Rich Heidorn Jr., *PJM MOPR in the Crosshairs at FERC Tech Conference*, RTO INSIDER, Mar. 23, 2021, <https://www.rtoinsider.com/articles/20033-pjm-mopr-in-the-crosshairs-at-ferc-tech-conference> (“Glick also said the commission would act unilaterally if necessary. ‘I think we should, to the extent we can, allow and enable the RTOs themselves and the stakeholders to come up with their own proposals [for] an approach that’s different than the current MOPR rules around the country,’ Glick said. ‘To the extent they don’t come up with something, I think we have an obligation under the Federal Power Act to act where rates and terms in these markets are unjust and unreasonable. In my opinion, I’ve said several times before, they are certainly in PJM, and so, if for whatever reason PJM and the stakeholders aren’t able to act, I think . . . we need to do it for them.’”)).

<sup>189</sup> See, e.g., *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (2018), *order on clarification*, 172 FERC ¶ 61,044 (2020).

<sup>190</sup> *ISO New England Inc.*, 179 FERC ¶ 61,139 (Danly, Comm’r, dissenting at P 7) (“This begs the question, if all new entry is state-sponsored, and all necessary existing generation can obtain RMRs, why not simply return to cost-of-service ratemaking, thereby protecting ratepayers, ensuring reliability, and saving us all the trouble?”).



- v. **How does the cost of electricity in New England’s wholesale market compare to wholesale costs in other regions? How does the cost of electricity delivered to retail customers compare with delivered costs of electricity in other regions?**

My understanding is that wholesale and retail costs remain among the highest in the United States.

- vi. **Is there sufficient interstate natural gas pipeline capacity serving New England today? If not, why not? If so, what is the basis for your view?**

No. The need for new natural gas pipeline capacity has been well-established for decades.<sup>191</sup>

- vii. **Are you confident that there will be sufficient interstate natural gas pipeline capacity to serve New England’s needs for gas and electricity in 2025? In 2030? In 2040? If so, what is the basis for your confidence? If not, why not?**

No, for all periods. In addition to the problems I highlighted above regarding the disincentive generators have to enter into firm, long-term contracts for gas, previous efforts to build pipelines to serve New England have failed because of New York’s pretextual use of the Clean Water Act to block proposed pipelines.<sup>192</sup> New England states are also adopting aggressive renewable portfolio standards, which may further

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<sup>191</sup> See *Harsh Weather Conditions Could Pose Challenges to New England’s Power System This Winter*, ISO-NE, at 2 (Dec. 6, 2021), [https://www.iso-ne.com/static-assets/documents/2021/12/20211206\\_pr\\_winteroutlook2122.pdf](https://www.iso-ne.com/static-assets/documents/2021/12/20211206_pr_winteroutlook2122.pdf) (“For the past two decades, ISO New England has raised concerns about fuel supply issues and their impact on electricity supply during periods of extreme cold weather.”).

<sup>192</sup> See, e.g., *Nat’l Fuel Gas Supply Corp. v. N.Y. State Dep’t of Env’t. Conservation*, 761 Fed. Appx. 68, 70-71 (2d Cir. 2019) (remanding New York State Department of Environmental Conservation’s notice denying a water quality certification for a pipeline because the agency “relied on considerations outside of Petitioners’ proposal,” showed that the agency either “misunderst[ood] the record” or “relied on determinations made with respect to other pipeline projects,” and that the agency “mistakenly identified project features to reach its final determination.”).



disincentivize the long term investment in natural gas infrastructure needed to provide sufficient supply.

- viii. Are you confident that there will be sufficient electric generation capacity to serve New England’s needs for electricity in 2025? In 2030? In 2040? If so, what is the basis for your confidence? If not, why not?**

No, in all periods. The current ISO-NE wholesale markets are manifestly unjust and unreasonable and, so far, despite my encouragement, neither the Commission nor any other party has shown the resolve to initiate a section 206 complaint under the FPA<sup>193</sup> to propose specific remedies to well-known, longstanding problems.

- ix. Are you confident that there will be sufficient electric transmission capacity to serve New England’s needs for electricity in 2025? In 2030? In 2040? If so, what is the basis for your confidence? If not, why not?**

No, for all periods. As we see with current projects, it is extremely difficult (potentially impossible) to permit and build large transmission projects over local and competition-driven opposition.<sup>194</sup> It also is unlikely the six New England states will voluntarily agree to cost allocation for large scale projects for offshore wind and other renewable projects.

- x. Put most plainly, given the warnings of North American Electric Reliability Corporation and ISO New England for years now:**

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<sup>193</sup> 16 U.S.C. § 824e.

<sup>194</sup> See, e.g., Robert Bryce, *Maine Voters’ Rejection of Transmission Line Shows Again How Land-Use Conflicts are Halting Renewable Expansion*, Forbes (Nov. 5, 2021), <https://www.forbes.com/sites/robertbryce/2021/11/05/maine-voters-rejection-of-transmission-line-shows-again-how--land-use-conflicts-are-halting--renewable-expansion/?sh=1dca560768e8>.



**1. Is there enough interstate natural gas capacity serving New England today? Please explain the basis for your answer.**

No. ISO New England, NERC, and all reasonable sources acknowledge a severe lack of natural gas capacity.<sup>195</sup>

**2. Is there enough electric generation capacity to generate electricity as and when it is needed available in New England today? If so, what are the prospects that this situation can**

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<sup>195</sup> See, e.g., ISO-NE August 29, 2022 Letter to U.S. Dept. of Energy Secretary Jennifer Granholm, *supra* note 177, at 1 (“During the coldest days of the year, New England does not have sufficient pipeline infrastructure to meet the region’s demand for natural gas for both home heating and power generation.”); *2021 Long-Term Reliability Assessment*, NERC, at 36-37 (Dec. 2021), [https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC\\_LTRA\\_2021.pdf](https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2021.pdf) (“New England is currently fuel constrained in winter; this has been identified as one of the most significant risks to the area . . . With its existing fuel infrastructure, New England has faced challenging operating conditions, particularly in extreme cold weather. Given the shift in the current resource mix, these challenges are likely to extend beyond the winter season . . . Although new natural-gas fired generation is being added to the fuel mix, the regional natural gas pipelines continue to have limited fuel deliverability for any power generators without firm natural gas transportation contracts. Additionally, LNG deliveries to New England that are influenced by global economics and logistics can also be uncertain without firm supply contracts.”); *id.* at 25 (“While all generator types can be expected to have increased forced outages in extreme weather, natural gas as a generator fuel is not typically stored on-site, resulting in greater risk of fuel supply disruption. Natural gas supply disruptions in infrastructure-limited areas of New England, California, and the U.S. Southwest have the potential to affect BPS reliability, particularly in winter. In [Northeast Power Coordinating Council (NPCC)]-New England, the capacity of natural gas transportation infrastructure can be constrained when cold temperatures cause peak demand for both electricity generation and consumer space heating needs. Generators that lack firm natural gas delivery can have their supplies curtailed when the demand for natural gas peaks. As a result, the area relies on fuel oil and imported LNG to meet winter peak loads. New England independent system operator (ISO) planners’ estimate that as much as 16% of its winter generating capacity could be at risk from natural gas fuel supply limitations in extreme winter conditions.”) (citation omitted).



**persist for the foreseeable future? Please explain the basis for your answer.**

No. There are both near-term and long-term capacity and fuel security issues in New England caused by the unjust and unreasonable wholesale market design and state policy objectives to essentially replace the entire New England generation fleet with new renewable resources in a matter of years.<sup>196</sup> This situation will persist until the markets are reformed (see next response).

**3. Is the FERC-jurisdictional wholesale market for electricity in New England with its current physical capacity and energy profile and its other characteristics sufficient to assure reliable, resilient, and affordable electric service? If so, what are the prospects that this situation will persist for the foreseeable future? Please explain the basis for your answer.**

No. The Commission must act pursuant to FPA section 206<sup>197</sup> and impose specific short- and long-term reforms to remedy the unjust and unreasonable market design. My focus at the forum was to solicit specific short- and long-term reforms, but almost none were forthcoming.

In the short term, I would examine paying all generators with oil-firing capacity to keep their tanks filled throughout the winter. I would also require immediate reform for how generators are allocated capacity credits to demonstrate their actual ability to provide service.

I would also consider initiating an FPA section 206 ordering ISO-NE to show cause why it should not have its responsibility for resource adequacy removed from it and returned to the states following ISO-NE's declaration that it is no longer able to ensure resource adequacy in the face of fuel constraints through its market mechanisms.<sup>198</sup> This

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<sup>196</sup> See, e.g., *ISO New England Inc.*, 179 FERC ¶ 61,139 (Danly, Comm'r, dissenting).

<sup>197</sup> 16 U.S.C. § 824e.

<sup>198</sup> See *Harsh Weather Conditions Could Pose Challenges to New England's Power System This Winter*, ISO-NE, at 2 (Dec. 6, 2021), [https://www.iso-ne.com/static-assets/documents/2021/12/20211206\\_pr\\_winteroutlook2122.pdf](https://www.iso-ne.com/static-assets/documents/2021/12/20211206_pr_winteroutlook2122.pdf) ("Over the years, the



would relieve ISO-NE, on an immediate basis, of a task that it has acknowledged it cannot perform and force the states to take responsibility for the consequences of their policy decisions.

For the long-term, I would issue an order to show cause under section 206 of the FPA<sup>199</sup> requiring ISO-NE to come forward with specific reform proposals for the Commission's evaluation in time for next winter.

**4. Given the geographic proximity of West Virginia, Pennsylvania, and Ohio natural gas, and the willingness of natural gas producers in those states to serve New England, why does the price of natural gas in New England remain high? Would more interstate natural gas capacity provide immediate relief to consumers?**

The prices remain high because of insufficient natural gas pipeline infrastructure to New England. Additional pipeline capacity would provide immediate relief to consumers in New England.

**xi. Compared with your goals ahead of the Forum, how satisfied are you that the record of the Forum points the way to meaningful and measurable reforms? Whether you are satisfied with the record of the Forum or not, what do you advocate as FERC's next steps for addressing issues that were apparent before or from the record of the Forum?**

I am dissatisfied. We are well past the point of convening talking sessions to discuss these problems. I have advocated for the Commission to act immediately under section 206 of the FPA to implement immediate short-term reforms to preserve reliability

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region has tried to address the need to ensure regional energy adequacy through actions by the states, the Federal Energy Regulatory Commission (FERC), or the ISO, but most of these major steps to solve this risk have been unsuccessful. The ISO does not have the authority to require generators to procure fuel in advance, though resources paid through the Forward Capacity Market to be available during periods of system stress face significant financial penalties if they do not meet their commitments.”).





this winter, and to require long-term reforms far in advance of next winter, as discussed above.

**9. I have long called for reform of federal statutes and regulations to enable more certain and prompt permitting of energy production and delivery infrastructure.**

- a. Please express specifically, and in detail, your ideas for changes in federal statutes and regulations to enable more certain and more prompt permitting of energy production and delivery infrastructure.**
- b. What changes, if any, in the Natural Gas Act, the Federal Power Act, or other federal statutes, are necessary to enable FERC in all of its functions (including as the lead agency under the National Environmental Policy Act) to act more swiftly and give applicants greater certainty with respect to proposed new or upgraded FERC-jurisdictional facilities (e.g., natural gas pipelines, LNG facilities, and electric transmission lines)?**

To meaningfully achieve the goal of more certain and prompt permitting of energy production and delivery infrastructure, Congress should consider reforms that address: (1) unpredictable litigation risk resulting from the vague requirements of NEPA, and (2) states' ability to veto projects that require a water quality certification under section 401 of the Clean Water Act (CWA) must be addressed.

Nearly all of the uncertainty—and attendant delay—in FERC's energy permitting stems in part from the operation of these two statutes. The operation of NEPA, particularly when taken together with the operation of the APA, creates such profound litigation risk upon judicial review that permitting delays become inevitable, regulatory certainty vanishes, and risk premiums rise making otherwise commercially feasible projects financially impossible. This is on top of states use of CWA section 401 to veto projects that require water permits that cross their jurisdiction by declaring that they do not have sufficient information, or the project violates water quality standards. Changes to the NGA, FPA, and other federal statutes could address these issues. While other legislative proposals have doubtless been or will be advanced, absent reform of these two statutes, the promise of any purported permitting reform will be, at best, marginal.

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Thank you for the opportunity to share my thoughts. If I can be of any further assistance with these issues or any other Commission matter, please do not hesitate to contact me.

Sincerely,

*James Danly*

James P. Danly  
Commissioner

## APPENDIX A

### Instances of Commission Implementing 2022 Policy Statements

#### **Proposal to consider shipper affiliate status in project need. Updated Certificate Policy Statement, 178 FERC ¶ 61,107 at P 60.**

- In discussing the project need for the Wisconsin Access Project, the Commission stated, “ANR entered into binding precedent agreements with six *unaffiliated* shippers[.]” *ANR Pipeline Co.*, 179 FERC ¶ 61,122 at P 14 (emphasis added).
- In discussing the project need for the Delta Lateral Project, the Commission states, “Kern River entered into a binding firm transportation service agreement with Intermountain Power Agency, which is *not affiliated* with Kern River[.]” *Kern River Gas Transmission Co.*, 179 FERC ¶ 61,121 at P 11 (emphasis added).
- In discussing the project need for the East 300 Upgrade Project, the Commission states, “ConEd, the project shipper *unaffiliated* with Tennessee . . . .” *Tenn. Gas Pipeline Co., L.L.C.*, 179 FERC ¶ 61,041 at P 15 (emphasis added).
- In discussing the project need for the Alberta XPress Project, the Commission states “ANR entered into binding precedent agreements with Tourlamine and TVA, *which are not affiliated* with ANR.” *ANR Pipeline Co.*, 179 FERC ¶ 61,040 at P 13 (emphasis added).
- In discussing the project need for the North Baja XPress Project, the Commission states, “North Baja entered into a binding, 20-year precedent agreement with Sempra LNG, which is *not affiliated* with North Baja.” *North Baja*, 179 FERC ¶ 61,039 at P 13 (emphasis added).
- In discussing the project need for the Enhancement by Compression Project, the Commission states, “[b]oth shippers . . . are *not affiliated* with Iroquois.” *Iroquois Gas Transmission Sys. L.P.*, 178 FERC ¶ 61,200 at P 13 (emphasis added).
- In discussing the project need for the Evangeline Pass Project, the Commission states, “Tennessee Gas entered into a binding, 20-year precedent agreement with Venture Global, *which is not affiliated* with Tennessee Gas.” *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 at P 30 (emphasis added).
- In discussing the project need for the East Lateral Xpress Project, the Commission states, “Columbia Gulf entered into a binding, 20-year precedent agreement with Venture Global, which is *not affiliated with Columbia Gulf.*” *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 at P 15 (emphasis added).

**Proposal to consider end use of natural gas in project need. Updated Certificate Policy Statement, 178 FERC ¶ 61,107 at P 55.**

- In discussing the project need for the Delta Lateral Project, the Commission states, “Intermountain Power Agency will use the gas transported on the project to generate electricity and convert the existing coal-fired Intermountain Power Project to natural gas-fired generation.” *Kern River Gas Transmission Co.* 179 FERC ¶ 61,121 at P 11.
- In discussing the project need for the Alberta XPress Project, the Commission states that the project will “satisfy a long term [] sales obligation to an affiliate of Cheniere Energy, Inc.,” “potentially sell . . . supply to other U.S. markets” and “in whole or in part, to generate electricity.” *ANR Pipeline Co.*, 179 FERC ¶ 61,040 at P 13.
- In discussing the project need for the North Baja XPress Project, the Commission states, “additionally, the end use of the gas to be transported by the project is known. Specifically, Sempra LNG intends on using the gas transported by the project to supply feed gas for Sempra LNG’s and IEnova’s proposed Energia Costa Azul LNG facility located at the existing Energia Costa Azul regasification terminal in Ensenada, Mexico.” *North Baja*, 179 FERC ¶ 61,039 at P 13.
- In discussing the project need for the Enhancement by Compression Project, the Commission states, “Con Edison and National Grid state that the project will allow them to meet their obligations to provide reliable, safe, and cost-effective service to the public and serve growing heating demand in downstate New York.” *Iroquois Gas Transmission Sys. L.P.*, 178 FERC ¶ 61,200 at P 13 (citations omitted).

**Proposal to consider carbon offsets when calculating downstream GHG emissions. Interim GHG Policy Statement, 178 FERC ¶ 61,108 at P 29.**

- In the environmental discussion for the Delta Lateral Project, the Commission states, “[t]he study shows that the project will result in a net reduction of downstream GHG emissions due to Intermountain Power Agency’s retirement of coal-fired generation.” *Kern River Gas Transmission Co.*, 179 FERC ¶ 61,121 at P 31.
- In the environmental discussion for Rover Pipeline LLC’s Interconnection Project, the Commission states, “we acknowledge that the renewable natural gas facility will likely result in a net decrease of GHG emissions.” *Rover Pipeline LLC*, 179 FERC ¶ 61,043 at P 18 (citation omitted).

- In the environmental discussion on the East 300 Upgrade Project, the Commission states, “[w]hile we will consider documented offsets of GHG emissions when determining the level of downstream GHG emissions associated with a project, neither ConEd nor Tennessee provided sufficient information to allow us to quantify the potential offsets for the project. Without this evidence, we are unable to determine whether further reductions to the estimate discussed are warranted.” *Tenn. Gas Pipeline Co., L.L.C.*, 179 FERC ¶ 61,041 at P 53.
- In the environmental discussion on the Enhancement by Compression Project, the Commission discusses the applicant’s lifecycle GHG emissions study stating, “[t]he study quantifies the lifecycle GHG emissions of the incremental natural gas supply from the project compared to the GHG emissions of the fuels that the study assumes would otherwise be required to meet demand for space heating, water heating, and other end uses,” and “[t]he degree to which GHG emissions associated with the project are offset due to the use of more GHG-intensive fuels.” *Iroquois Gas Transmission System, L.P.*, 178 FERC ¶ 61,200 at P 50.

**Proposal to encourage and consider voluntary measures to mitigate direct project GHG emissions. Interim GHG Policy Statement, 178 FERC ¶ 61,108 at P 106.**

- In the environmental discussion on the Clear Creek Expansion Project, the Commission states, “[b]ased on this record, the Commission is not requiring Spire Storage to adopt the additional recommendations of EPA. We note mitigation of GHG emissions is among the issues the Commission is considering in a generic proceeding in Docket No. PL21-3-000.” *Spire Storage W. LLC*, 179 FERC ¶ 61,123 at P 58.
- In the environmental discussion on the Wisconsin Access Project, the Commission states “[t]o reduce methane emissions, ANR participates in EPA’s Methane Challenge Program and the Natural Gas STAR program. We note that mitigation of GHG emissions is among the issues the Commission is considering in a generic proceeding in Docket No. PL21-3-000.” *ANR Pipeline Co.*, 179 FERC ¶ 61,122 at P 41 (citation omitted).
- In the environmental discussion for the North Coast Interconnect Project, the Commission states, “Rover is taking steps to reduce its direct GHG emissions.” *Rover Pipeline LLC*, 179 FERC ¶ 61,042 at P 23.
- In the environmental discussion for the East 300 Upgrade Project, in response to EPA’s recommendation that the Commission incorporate GHG mitigation measures the Commission states, “Tennessee voluntarily participates in EPA’s

Methane Challenge Program and the ONE Future Coalition.” *Tenn. Gas Pipeline Co., L.L.C.*, 179 FERC ¶ 61,041 at P 58.

- In the environmental discussion on the Albert Xpress Project, the Commission states “ANR is taking steps to reduce its direct GHG emissions,” listing the general programs that ANR participates in, including “EPA’s Methane Challenge Program and the Natural Gas STAR Program” and states that “ANR conducts leak surveys for all.” *ANR Pipeline Co.*, 179 FERC ¶ 61,040 at P 50.
- In the environmental discussion on the North Baja Xpress Project, the Commission states, “[a]s stated in the EA, North Baja is taking steps to reduce its direct GHG emissions,” noting that “North Baja participates in EPA’s Methane Challenge Program as a ONE Future Commitment Partner” and “the Natural Gas STAR program and performs methane leak surveys.” *North Baja*, 179 FERC ¶ 61,039 at P 40.
- In the environmental discussion for the Evangeline Pass Project, the Commission states, “[as] stated in the EA and the final EIS, Southern and Tennessee Gas are taking steps to reduce its direct GHG emissions,” that they “will implement measures to reduce fugitive emissions, including voluntary measures outlined by the Interstate Natural Gas Association of America,” and “are members of the One Future Campaign . . . and the Methane Challenge Program.” *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 at P 90 (footnote omitted).
- In the environmental discussion for the East Lateral Xpress Project, the Commission states, “[a]s stated in the EA and final EIS, Columbia Gulf is taking steps to reduce its direct GHG emissions.” *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 at P 49 (citation omitted).

## APPENDIX B

### Outstanding Remand Orders

Applicant	Docket No.(s)	Project Name	Case and Issuance Date	Court Action and Directive	Time Since Remand <sup>i</sup>	Docket Activity
Spire Pipeline LLC	CP17-40	Spire Pipeline Project	<p><i>Envtl. Def. Fund v. FERC</i>, 2 F.4th 953 (D.C. Cir. 2021).</p> <p>Decided June 22, 2021</p>	<p>Vacatur &amp; Remand of Certificate for further proceedings. Court found it was arbitrary and capricious for FERC to “rely solely on a precedent agreement to establish market need for a proposed pipeline when (1) there was a single precedent agreement for the pipeline; (2) that precedent agreement was with an affiliated shipper; (3) all parties agreed that projected demand for natural gas in the area to be served by the new pipeline was flat for the foreseeable future; and (4) the Commission neglected to make a finding as to whether the construction of the proposed pipeline would result in cost savings or otherwise represented a more economical alternative to existing pipelines.” 2 F. 4th at 976</p> <p>Court also found arbitrary and capricious FERC’s “cursory balancing of public benefits and adverse impacts.” <i>Id.</i></p>	497 days	<p>12/15/21 – Notice of Intent to Prepare a Supplemental Environmental Impact Statement, Request for Comments on Environmental Issues, and Schedule for Environmental Review, establishing 10/7/22 as the date the final supplemental EIS will be issued.</p> <p>6/16/22 – Draft Supplemental EIS issued</p> <p>10/7/22 – Final Supplemental EIS issued</p>

<sup>i</sup> I used November 1, 2022, as the end date. My calculation does not include the end date.

<p>Rio Grande LNG, LLC</p> <p>Rio Bravo Pipeline Company, LLC</p>	<p>CP16-454; CP16-455</p>	<p>Rio Grande Terminal</p> <p>Rio Bravo Pipeline</p>	<p><i>Vecinos para el Bienestar de la Cominidad Costera v. FERC</i>, 6 F.4th 1321 (D.C. Cir. 2021)</p> <p>Decided August 3, 2022</p>	<p>Remand for failure to (1) explain why it defined affected environmental justice communities as those within a 2-mile radius of the project; and (2) respond to petitioners’ argument concerning the significance of section 1502.21(c) of CEQ’s NEPA regulations in determining whether the Commission should use the Social Cost of Carbon.</p>	<p>455 days</p>	<p>2/3/22 – FERC Environmental Information Request for Rio Grande to “address deficiencies noted in . . . [<i>Vecinos</i>].” Rio Grande responded on 3/3/22.</p> <p>5/2/22 – FERC Environmental Information Request for Rio Grande to provide the status of all required federal and state government permit approvals, and to provide an update of any projects or activities planned, proposed, or reasonably foreseeable within the geographic scope of the project since the issuance of the Final EIS. Rio Grande responded on 5/20/22.</p> <p>5/2/22 (as revised on 5/10/22)– FERC Environmental Information Request for Rio Bravo to “address deficiencies noted in . . . [<i>Vecinos</i>].” Rio Bravo responded on 6/1/22.</p> <p>8/16/22 (as revised on 8/31/22)- FERC Environmental Information Request for Rio Grande to “address deficiencies noted in . . . [<i>Vecinos</i>], and for staff to conduct additional necessary analysis for the authorized LNG export terminal.” Rio Grande responded on 8/22/22 and 9/15/2022.</p> <p>9/30/22 – FERC Notice Seeking Public Comment to Information Requests filed by Rio Grande and Rio Bravo</p>
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Applicant	Docket No.(s)	Project Name	Case and Issuance Date	Court Action and Directive	Time Since Remand <sup>i</sup>	Docket Activity
Texas LNG Brownsville	CP16-116	Texas LNG Terminal	Same as above	Same as above	Same as above	<p>2/3/22—FERC Environmental Information Request to “address deficiencies noted in . . . [<i>Vecinos</i>].” Texas LNG responded on 3/4/22 and 5/2/22.</p> <p>8/16/22, as revised on 8/31/22, FERC Environmental Request to “address deficiencies noted in . . . [<i>Vecinos</i>], and for staff to conduct additional necessary analysis for the authorized LNG export terminal.” Texas LNG responded on 9/15/22, 9/21/22, 9/30/22, and 10/3/22.</p> <p>9/30/22 – FERC Notice Seeking Public Comment to Information Requests filed by Texas LNG</p>
Tennessee Gas Pipeline Company, LLC	CP19-7	261 Upgrade Project	<p><i>Food &amp; Water Watch v. FERC</i>, 28 F.4th 277 (D.C. Cir. 2022)</p> <p>Decided 3/11/22</p>	Remand directing FERC to “perform a supplemental environmental assessment in which it must either quantify and consider the project’s downstream carbon emissions or explain in more detail why it cannot do so.” 28 F.4th 277, 289.	235 days	No activity in docket

## APPENDIX C

### Pending Petitions for Declaratory Order

Applicant	Docket No.(s)	Project Name	Date Filed	Time Since Filing <sup>i</sup>	Date Noticed
Delaware River Partners LLC	CP20-522	Petition for Declaratory Order Regarding Gibbstown Logistics Center	9/11/20	781 days	9/15/20
Bradford County Real Estate Partners LLC	CP20-524	Petition for Declaratory Order	9/18/20	774 days	9/23/20
Sierra Club, et al.	CP22-509	Request for the Commission to issue an order declaring that the Fortress LNG export project including the Wyalusing gas liquefaction facility in Pennsylvania and Gibbstown LNG export facility in New Jersey, is subject to the Commission's jurisdiction under NGA section 3	9/7/22	55 days	9/12/22

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<sup>i</sup> I used November 1, 2022, as the end date for the calculation. The calculated number of days does not include the end date.

## APPENDIX D

### Pending NGA Sections 3(a) Applications

<b>Applicant</b>	<b>Docket No.(s)</b>	<b>Project Name &amp; Description</b>	<b>Date Filed</b>	<b>Time Since Filing<sup>i</sup></b>	<b>Date Noticed</b>	<b>Separate NEPA Scoping Document</b>	<b>Notice of Intent to Prepare NEPA Document</b>	<b>New Final NEPA Doc. Date</b>	<b>Order Date Estimate<sup>ii</sup></b>
Port Arthur LNG Phase II, LLC and PALNG Common Facilities Company, LLC	CP20-55	Port Arthur LNG Expansion Project  Proposal to add liquefaction trains to authorized LNG terminal	2/19/20	986 days	3/4/20	None	10/1/19 (EA)  No notice for supp. enviro. review has been issued	1/15/21  No New Final NEPA doc has been issued	Unable to estimate
Commonwealth LNG, LLC	CP19-502	Commonwealth LNG Project  Proposal to construct a new natural gas liquefaction and export terminal and pipeline in Cameron Parish, Louisiana.	7/8/21 <sup>iii</sup>	481 days	7/13/21	None	9/24/21 (EIS)	9/9/22	1/9/23

<sup>i</sup> I used November 1, 2022, as the end date for the calculation. The calculated number of days does not include the end date.

<sup>ii</sup> I am using 4 months as the time between the final NEPA document and order issuance because that was the average processing time from January 1, 2019, to May 24, 2021.

<sup>iii</sup> This is the date Commonwealth LNG, LLC amended its application. Commonwealth LNG, LLC filed its initial application on August 20, 2019.

Applicant	Docket No.(s)	Project Name & Description	Date Filed	Time Since Filing <sup>i</sup>	Date Noticed	Separate NEPA Scoping Document	Notice of Intent to Prepare NEPA Document	New Final NEPA Doc. Date	Order Date Estimate <sup>ii</sup>
NFEnergía LLC <sup>iv</sup>	CP21-496	San Juan Micro-Fuel Handling Facility  Request to operate existing import and regasification facility located at the Port of San Juan in Puerto Rico	9/15/21	412 days	9/29/21	--	--	--	--
Rio Grande LNG, LLC	CP22-17	Limited Amendment  Incorporate non-jurisdictional carbon capture and sequestration facilities into authorized LNG terminal	11/17/21	349 days	11/29/21	9/2/22	--	--	--
Venture Global CP2 LNG, LLC  Venture Global CP Express, LLC	CP22-21 CP22-22	CP2 LNG and CP Express Pipeline Project  Proposal to construct a new export terminal and connected interstate pipeline in Cameron Parish, Louisiana	12/2/21	334 days	12/16/21	--	2/9/22 (EIS)	7/28/23 <sup>v</sup>	11/28/23

<sup>iv</sup> This is the permitting of the existing New Fortress Facility located in Puerto Rico, which the Commission found was required to be permitted under NGA section 3. *New Fortress Energy, LLC*, 174 FERC ¶ 61,207 (2021) (Danly, Comm'r, dissenting), *order on reh'g*, 176 FERC ¶ 61,031 (Danly, Comm'r, dissenting).

<sup>v</sup> This is the revised date as Commission staff, under the supervision of the Chairman, suspended environmental review on July 6, 2022. *See* FERC Staff July 6, 2022 Notice Suspending Environmental Review, Docket Nos. CP22-21-000, et al.; *see also* FERC Staff August 23, 2022 Notice of Revised Schedule, Docket Nos. CP22-21-000, et al.

<b>Applicant</b>	<b>Docket No.(s)</b>	<b>Project Name &amp; Description</b>	<b>Date Filed</b>	<b>Time Since Filing<sup>i</sup></b>	<b>Date Noticed</b>	<b>Separate NEPA Scoping Document</b>	<b>Notice of Intent to Prepare NEPA Document</b>	<b>New Final NEPA Doc. Date</b>	<b>Order Date Estimate<sup>ii</sup></b>
Venture Global Calcasieu Pass, LLC	CP22-25	Calcasieu Pass LNG Terminal Amendment  Proposal to true-up authorized peak capacity of authorized LNG export terminal to reflect actual equipment performance based on updated engineering and vendor data. No construction or modifications of approved facilities.	12/3/21	333 days	12/15/21	3/24/22	4/27/22 (EA)	6/24/22  8/5/22 (revised)	12/5/22
Cameron LNG, LLC	CP22-41	Amended Expansion Project  Proposal to reduce the overall production capacity of Cameron LNG's authorized liquefaction terminal from 9.97 to 6.75 million tons of liquefied natural gas per annum.	1/18/22	287 days	1/28/22	3/31/22	4/27/22 (EA)	12/2/22	4/3/23

<b>Applicant</b>	<b>Docket No.(s)</b>	<b>Project Name &amp; Description</b>	<b>Date Filed</b>	<b>Time Since Filing<sup>i</sup></b>	<b>Date Noticed</b>	<b>Separate NEPA Scoping Document</b>	<b>Notice of Intent to Prepare NEPA Document</b>	<b>New Final NEPA Doc. Date</b>	<b>Order Date Estimate<sup>ii</sup></b>
Venture Global Plaquemines LNG, LLC	CP22-92	Plaquemines Uprate Project  Proposal to true-up authorized peak capacity of authorized LNG export terminal to reflect refinements in assumptions concerning maximum potential operations. No construction or modifications of approved facilities.	3/11/22	235 days	3/25/22	5/11/22	8/26/22 (EA)	1/6/23	5/8/23

## APPENDIX E

### Pending NGA 7(c) Applications

Applicant	Docket No.(s)	Project Name & Description	Date Filed	Time Since Filing <sup>i</sup>	Date Noticed	Separate NEPA Scoping Doc.	Notice of Intent to Prepare NEPA Doc.	New Final NEPA Doc. Date	Order Date Estimate <sup>ii</sup>	Date Potential Stay Lifted <sup>iii</sup>
Rio Bravo Pipeline Company, LLC	CP20-481	Rio Bravo Pipeline Project Amendment: proposal to modify and eliminate certain facilities previously approved by the Commission	6/16/20	868 days	6/25/20	7/28/20	7/28/20 (EA)  No notice for supp. enviro. review has been issued	12/21/20 (EA)	--	--

<sup>i</sup> I used November 1, 2022, as the end date for the calculation. The calculated number of days does not include the end date.

<sup>ii</sup> I am using 4 months as the time between the final NEPA document and order issuance because that was the average processing time from January 1, 2019, to May 24, 2021.

<sup>iii</sup> In Order No. 871-B, the Commission established a policy to stay all certificate and permit proceedings for up to 150 days if there is a landowner protest. *See* Order No. 871-B, 175 FERC ¶ 61,098, at PP 43-51. To avoid the appearance of prejudging any pending cases, I assume the maximum stay for all NGA section 7 filings.

Applicant	Docket No.(s)	Project Name & Description	Date Filed	Time Since Filing <sup>i</sup>	Date Noticed	Separate NEPA Scoping Doc.	Notice of Intent to Prepare NEPA Doc.	New Final NEPA Doc. Date	Order Date Estimate <sup>ii</sup>	Date Potential Stay Lifted <sup>iii</sup>
Transcontinental Gas Pipe Line Company	CP21-94	Regional Energy Access Expansion Project: proposal to add 36 miles of pipeline loop and compression to provide 829,400 Dth/day of firm transportation service capacity to serve local distribution companies and power generation	3/26/21	585 days	4/9/21	7/24/20 (during pre-filing)	10/19/21 (EIS)	7/29/22	11/29/22	4/28/23
Alliance Pipeline L.P.	CP21-113	Three Rivers Interconnection Project: proposal to add 2.9 miles of pipeline to deliver 210 million standard cubic feet per day of natural gas to power plant	4/1/21	579 days	4/12/21	9/20/21	2/10/22 (EIS)	Unknown <sup>iv</sup>	Unknown	Unknown

<sup>iv</sup> On September 15, 2022, FERC Staff suspended the environmental review for the project because information on the adjacent nuclear plant that is necessary for the analysis has not been filed with the Commission. FERC Staff, Notice Suspending Environmental Review Schedule of the Proposed Three Rivers Interconnection Project, Docket No. CP21-113-000 (Accession No. 20220915-3059).



<b>Applicant</b>	<b>Docket No.(s)</b>	<b>Project Name &amp; Description</b>	<b>Date Filed</b>	<b>Time Since Filing<sup>i</sup></b>	<b>Date Noticed</b>	<b>Separate NEPA Scoping Doc.</b>	<b>Notice of Intent to Prepare NEPA Doc.</b>	<b>New Final NEPA Doc. Date</b>	<b>Order Date Estimate<sup>ii</sup></b>	<b>Date Potential Stay Lifted<sup>iii</sup></b>
Driftwood Pipeline LLC	CP21-465	Line 200 and Line 300 Project: proposal to construct two 42-inch-diameter pipeline and add compression to deliver 5.7 billion cubic feet of natural gas per day to the Lake Charles market	6/17/21  10/13/21 amended  10/29/21 amended	368 days <sup>v</sup>	6/30/21  10/20/21  11/12/21	None	1/13/22 (EIS)	9/15/22	1/16/23	6/15/23
Columbia Gas Transmission, LLC	CP21-498	Virginia Electrification Project: proposal to add electric-driven compressor unit and replace natural gas-fired compressor units with electric-driven compressor units to provide 35,000 Dth/d of incremental firm transportation service to a local distribution company	9/21/21	406 days	10/5/21	None	2/3/22 (EIS)	12/16/22	4/17/23	9/14/23

<sup>v</sup> This number is calculated from the last date that the application was amended.

<b>Applicant</b>	<b>Docket No.(s)</b>	<b>Project Name &amp; Description</b>	<b>Date Filed</b>	<b>Time Since Filing<sup>i</sup></b>	<b>Date Noticed</b>	<b>Separate NEPA Scoping Doc.</b>	<b>Notice of Intent to Prepare NEPA Doc.</b>	<b>New Final NEPA Doc. Date</b>	<b>Order Date Estimate<sup>ii</sup></b>	<b>Date Potential Stay Lifted<sup>iii</sup></b>
Gas Transmission Northwest, LLC	CP22-2	GTN XPress Project: proposal to add compression and uprate compression using software to provide 150,000 Dth/d of firm transportation service to serve local distribution companies and bring natural gas to market	10/4/21	393 days	10/19/21	None	1/21/22 (EIS)	11/18/22 <sup>vi</sup>	3/20/23	8/17/23

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<sup>vi</sup> This is a revised final EIS date. Staff had originally identified as October 14, 2022, as the final EIS issuance date. FERC staff delayed the final EIS issuance because “numerous comments filed during the draft EIS comment period require additional time for Commission staff’s analysis.” FERC Staff, Notice of Revised Schedule for Environmental Review of the GTN Xpress Project, Docket No. CP22-2-000, at 1 (Accession No. 20221007-3027).

<b>Applicant</b>	<b>Docket No.(s)</b>	<b>Project Name &amp; Description</b>	<b>Date Filed</b>	<b>Time Since Filing<sup>i</sup></b>	<b>Date Noticed</b>	<b>Separate NEPA Scoping Doc.</b>	<b>Notice of Intent to Prepare NEPA Doc.</b>	<b>New Final NEPA Doc. Date</b>	<b>Order Date Estimate<sup>ii</sup></b>	<b>Date Potential Stay Lifted<sup>iii</sup></b>
Texas Eastern Transmission, LP	CP22-15	Venice Lateral Project: proposal to add pipeline and compression to provide 1,260,000 Dth/d of firm transportation service to Venture Global Plaquemines LNG, LLC's terminal	11/10/21	356 days	11/24/21	None	3/16/22 (EIS)	2/17/23	6/19/23	11/16/23
Northern Natural Gas Company	CP22-26	Des Moines A-line Replacement Project: proposal to replace aging pipeline	12/3/21	333 days	12/17/21	2/8/22	5/5/22 (EA)	11/4/22	3/6/23	8/3/23
Equitrans, L.P.	CP22-44	Ohio Valley Connector Expansion Project: proposal to acquire existing non-jurisdictional compression and add pipeline and compression to provide 350,000 Dth/d firm transportation service to deliver natural gas to market	1/28/22	277 days	2/11/22	5/23/22	7/7/22 (EIS)	1/20/23	5/20/23	10/19/23

<b>Applicant</b>	<b>Docket No.(s)</b>	<b>Project Name &amp; Description</b>	<b>Date Filed</b>	<b>Time Since Filing<sup>i</sup></b>	<b>Date Noticed</b>	<b>Separate NEPA Scoping Doc.</b>	<b>Notice of Intent to Prepare NEPA Doc.</b>	<b>New Final NEPA Doc. Date</b>	<b>Order Date Estimate<sup>ii</sup></b>	<b>Date Potential Stay Lifted<sup>iii</sup></b>
Northern Natural Gas Company	CP22-138	Northern Lights 2023 Expansion: proposal to add pipeline to provide 44,000 Dth/d of incremental firm transportation service for residential, commercial, and industrial uses, and 6,667 Dth/d of transportation service to provide a local distribution company enhanced reliability and flexibility	3/28/22	218 days	4/11/22	5/17/22	7/28/22 (EIS)	3/10/23	7/10/23	12/7/23
Great Basin Gas Transmission Company	CP22-141	2023 Mainline Replacement Project: proposal to replace aging pipeline.	3/30/22	216 days	4/13/22	5/16/22	7/7/22 (EA)	11/10/22	3/10/23	8/1/23
Gulf South Pipeline Company, LLC	CP22-161	Index 130 Mississippi River Replacement Project: proposal to replace pipeline to accommodate Mississippi River Ship Channel Deepening Project	4/8/22	207 days	4/25/22	5/18/22	6/21/22 (EA)	10/5/22	2/6/23	7/6/23

<b>Applicant</b>	<b>Docket No.(s)</b>	<b>Project Name &amp; Description</b>	<b>Date Filed</b>	<b>Time Since Filing<sup>i</sup></b>	<b>Date Noticed</b>	<b>Separate NEPA Scoping Doc.</b>	<b>Notice of Intent to Prepare NEPA Doc.</b>	<b>New Final NEPA Doc. Date</b>	<b>Order Date Estimate<sup>ii</sup></b>	<b>Date Potential Stay Lifted<sup>iii</sup></b>
Columbia Gas Transmission, LLC	CP22-227	Coco B Wells Replacement Project: proposal to abandon and replace injection and withdrawal wells in storage field.	4/26/22	189 days	5/10/22	6/14/22	7/8/22 (EA)	10/20/22	2/22/23	7/22/23
Transcontinental Gas Pipe Line Company, LLC	CP22-461	Southside Reliability Enhancement Project : proposal to add compression to provide firm transportation service to local distribution company	5/23/22	162 days	6/7/22	1/14/22 (during pre-filing)	7/25/22 (EIS)	2/24/23	6/26/23	11/23/23
WBI Energy Transmission, Inc.	CP22-466	Wahpeton Expansion Project: proposal to construct 60.5-mile pipeline to provide firm transportation capacity to deliver natural gas to local distribution company	5/27/22	158 days	6/10/22	1/4/22 (during pre-filing)	6/22/22- (EIS)	4/7/23	8/7/23	1/4/24

<b>Applicant</b>	<b>Docket No.(s)</b>	<b>Project Name &amp; Description</b>	<b>Date Filed</b>	<b>Time Since Filing<sup>i</sup></b>	<b>Date Noticed</b>	<b>Separate NEPA Scoping Doc.</b>	<b>Notice of Intent to Prepare NEPA Doc.</b>	<b>New Final NEPA Doc. Date</b>	<b>Order Date Estimate<sup>ii</sup></b>	<b>Date Potential Stay Lifted<sup>iii</sup></b>
Trailblazer Pipeline Company LLC  Rockies Express Pipeline LLC	CP22-468	Trailblazer Conversion Project: proposal to abandon service in anticipation of future non-jurisdictional use of pipeline, and to construct new lateral pipelines to continue to service customers of abandoned pipeline. No new capacity.	5/27/22	158 days	6/9/22	7/11/22	9/29/22 (EA)	3/31/23	7/31/23	12/28/23
Texas Eastern Transmission, LP	CP22-486	Appalachia to Market II and Armagh and Entriiken HP Replacement Projects: proposal to replacement older gas-driven compressor units with electric motor driven compressor units, and to construct a 2-mile loop to provide additional firm transportation capacity to local distribution company.	7/7/22	117 days	7/19/22	--	8/19/22 (EIS)	7/14/23	11/14/23	4/12/24

<b>Applicant</b>	<b>Docket No.(s)</b>	<b>Project Name &amp; Description</b>	<b>Date Filed</b>	<b>Time Since Filing<sup>i</sup></b>	<b>Date Noticed</b>	<b>Separate NEPA Scoping Doc.</b>	<b>Notice of Intent to Prepare NEPA Doc.</b>	<b>New Final NEPA Doc. Date</b>	<b>Order Date Estimate<sup>ii</sup></b>	<b>Date Potential Stay Lifted<sup>iii</sup></b>
Tennessee Gas Pipeline Company, L.L.C.	CP22-493	Cumberland Project: proposed lateral pipeline to serve natural gas fired generation	7/22/22	102 days	7/29/22	3/22/22 (during pre-filing)	9/7/22 (EIS)	6/30/23	10/30/23	4/28/24
Boardwalk Storage Company, LLC	CP22-494	BSC Compression Replacement Project; replacement of compression. No new capacity.	8/5/22	88 days	8/16/22	9/6/22	10/17/22 (EA)	3/13/23	7/13/23	12/10/23
Transcontinental Gas Pipe Line Company, LLLC	CP22-495	Texas to Louisiana Energy Pathway Project: capacity conversion and compression project to provide 364,400 Dth/day of firm transportation service to bring natural gas to Gulf Coast market.	8/9/22	84 days	8/23/22	--	--	--	--	--
Transcontinental Gas Pipe Line Company, LLC	CP22-501	Southeast Energy Connector: pipeline loop and compression designed to provide 150,000 Dth/d of firm transportation service to power plant.	8/24/22	69 days	8/30/22	5/19/22 (during pre-filing)	10/28/22 (EIS)	8/4/23	12/4/23	5/2/24

<b>Applicant</b>	<b>Docket No.(s)</b>	<b>Project Name &amp; Description</b>	<b>Date Filed</b>	<b>Time Since Filing<sup>i</sup></b>	<b>Date Noticed</b>	<b>Separate NEPA Scoping Doc.</b>	<b>Notice of Intent to Prepare NEPA Doc.</b>	<b>New Final NEPA Doc. Date</b>	<b>Order Date Estimate<sup>ii</sup></b>	<b>Date Potential Stay Lifted<sup>iii</sup></b>
Transcontinental Gas Pipe Line Company, LLC  Columbia Gas Transmission, LLC	CP22-502  CP22-503	Commonwealth Energy Connector: new compression and pipeline designed to provide an additional 105,000 Dth/d of firm transportation service for a local distribution company.  Virginia Reliability Project: pipeline replacement and compression project designed to provide 100,000 Dth/d of firm transportation service for a local distribution company.	8/24/22	69 days	9/8/22	2/22/22 (during pre-filing)	10/25/22 (EIS)	9/15/23	1/16/24	6/14/24
Tres Palacios Gas Storage LLC	CP23-3	Expansion Project: conversion of well into an additional natural gas storage cavern, construction of 0.6 miles of pipeline, and add and abandon compression	10/12/22	20 days	10/26/22		--	--	--	--



## APPENDIX F

### Average Processing times for NGA Section 7 Expansion Projects

	<b>Applicant</b>	<b>Project Name</b>	<b>Docket No(s).</b>	<b>Date Filed<sup>i</sup></b>	<b>Actual or Estimated Order Date<sup>ii</sup></b>	<b>Days</b>
1	Tuscarora Gas Transmission Company	Tuscarora XPress Project	CP20-486	6/24/20	5/20/21	330
2	Northern Natural Gas Company	2021 Expansion Project	CP20-503	7/31/20	5/20/21	293
3	Enable Gas Transmission, LLC, et al.	Gulf Run Pipeline Project	CP20-68; CP20-70	2/28/20	6/1/21	459
4	WBI Energy Transmission, Inc.	North Bakken Expansion Project	CP20-52	7/28/20	6/1/21	308
5	Northern Natural Gas Company	Redfield Storage Facility Expansion	CP21-28	1/13/21	3/24/22	435
6	Iroquois Gas Transmission System, L.P.	Enhancement by Compression Project	CP20-48	2/3/20	3/25/22	781
7	Tennessee Gas Pipeline Company, L.L.C., et al.	Evangeline Pass Expansion Project	CP20-50; CP20-51	2/7/20	3/25/22	777
8	Columbia Gulf Transmission, LLC	East Lateral XPress Project	CP20-527	9/24/20	3/25/22	547
9	North Baja Pipeline, LLC	North Baja XPress Project	CP20-27-	12/16/19	4/21/22	857
10	ANR Pipeline Company, et al.	Alberta XPress Project	CP20-484	6/22/20	4/21/22	688
11	Tennessee Gas Pipeline Company, L.L.C.	East 300 Upgrade Project	CP20-493-	6/30/20	4/21/22	660

<sup>i</sup>For applications that have been amended, I use the date of the application was amended to calculate how long the application will have been before the Commission.

<sup>ii</sup> For the estimated order date, I am using 4 months as the time between the final NEPA document and order issuance because that was the average processing time from January 1, 2019 to May 24, 2021.

	<b>Applicant</b>	<b>Project Name</b>	<b>Docket No(s).</b>	<b>Date Filed<sup>i</sup></b>	<b>Actual or Estimated Order Date<sup>ii</sup></b>	<b>Days</b>
12	Spire Storage West, LLC	Clear Creek Storage Field Expansion Project	CP21-6	10/9/20	5/19/22	587
13	ANR Pipeline Company	Wisconsin Access Project	CP21-78	3/12/21	5/19/22	433
14	Kern River Gas Transmission Company	Delta Lateral Project	CP21-197	4/23/21	5/19/22	391
15	LA Storage, LLC	Hackberry Storage Project	CP21-44	1/29/21	9/22/22	601
16	Golden Pass Pipeline, LLC	Compression Relocation and Modification & MP 33 Compressor Station Modification Project	CP21-1; CP21-458	6/11/21	10/20/22	496
17	Texas Gas Transmission, LLC	Henderson County Expansion Project	CP21-467	6/25/21	10/20/22	482
18	Transcontinental Gas Pipe Line Company	Regional Energy Access Expansion Project	CP21-94	3/26/21	11/29/22	613
19	Driftwood Pipeline LLC	Line 200 and Line 300 Project	CP21-465	11/12/21	1/16/23	430
20	Gas Transmission Northwest, LLC	GTN XPress Project	CP22-2	10/4/21	3/20/23	535
21	Columbia Gas Transmission, LLC	Virginia Electrification Project	CP21-498	9/21/21	4/17/23	573
22	Equitrans, L.P.	Ohio Valley Connector Expansion Project	CP22-44	1/28/22	5/20/23	477
23	Texas Eastern Transmission, LP	Venice Lateral Project	CP22-15	11/10/21	6/19/23	586
24	Transcontinental Gas Pipe Line Company, LLC	Southside Reliability Enhancement Project	CP22-461	5/23/22	6/26/23	399
25	Northern Natural Gas Company	Northern Lights 2023 Expansion	CP22-138	3/28/22	7/10/23	469
26	WBI Energy Transmission, Inc.	Wahpeton Expansion Project	CP22-466	5/27/22	8/7/23	437

	<b>Applicant</b>	<b>Project Name</b>	<b>Docket No(s).</b>	<b>Date Filed<sup>i</sup></b>	<b>Actual or Estimated Order Date<sup>ii</sup></b>	<b>Days</b>
27	Tennessee Gas Pipeline Company, L.L.C.	Cumberland Project:	CP22-493	7/22/22	10/30/23	465
28	Texas Eastern Transmission, LP	Appalachia to Market II and Armagh and Entriiken HP Replacement Projects	CP22-486	7/7/22	11/14/23	495
29	Transcontinental Gas Pipe Line Company, LLC	Southeast Energy Connector	CP22-501	8/24/22	12/4/23	467
30	Transcontinental Gas Pipe Line Company, LLC, et al.	Commonwealth Energy Connector. Virginia Reliability Project	CP22-502; CP22-503	8/24/22	1/16/24	510
				Issued order date average – 536.76 days or 17.64 months  Issued and Anticipated Average Processing Times, 519.37 days or 17.06 months		