



March 2, 2022

The Honorable Joe Manchin
Chairman
Committee on Energy and
Natural Resources
United States Senate
Washington, DC 20510

The Honorable John Barrasso
Ranking Member
Committee on Energy and
Natural Resources
United States Senate
Washington, DC 20510

Dear Chairman Manchin and Ranking Member Barrasso:

The U.S. Chamber of Commerce commends you for swiftly launching a bipartisan inquiry into the recent actions at the Federal Energy Regulatory Commission (“FERC”) to revise its policy statements relating to the agency’s consideration of requests to permit, construct, and operate interstate natural gas pipelines and other natural gas infrastructure projects.¹ FERC has such authorities pursuant to the Natural Gas Act (“NGA”), which provided FERC’s predecessor, the Federal Power Commission, the ability to take control of interstate natural gas transmission, and the Natural Gas Policy Act (“NGPA”), which sought to enhance the domestic availability of predictable and affordable natural gas resources. Unfortunately, FERC’s latest actions undermine the intent of these acts, and indeed are inconsistent with statutory requirements, while unnecessarily constraining the ability to construct needed new natural gas infrastructure. Accordingly, the Chamber welcomes the Committee’s inquiry into this important matter.

As we noted in our comments submitted to FERC in response to its Notice of Inquiry² preceding the issuance of the Certificate Statement, FERC – consistent with Congress’s direction to the agency – should aim to make pipeline certification more reliable and predictable, as opposed to more difficult. In fact, it is Congress who has decided that “the business of transporting and selling natural gas for ultimate

¹ *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,107 (2022) (the “Certificate Statement”); *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) (the “GHG Policy Statement”).

² *Certification of New Interstate Natural Gas Facilities*, 174 FERC ¶ 61,125 (2021) (published in the Federal Register at 86 Fed. Reg. 11,268 (Feb. 24, 2021)).

distribution to the public is affected with a public interest,”³ and the U.S. Supreme Court which has held that the purpose of the NGA is to “encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”⁴

The Certificate Statement and the GHG Policy Statement mark a significant departure from these clear Congressional and legal mandates. They instead elevate associated environmental factors well above the economic factors that previously guided FERC’s analysis of the public interest and public convenience and necessity under sections 3 and 7 of the Natural Gas Act, respectively. While FERC asserts that it is seeking to bring greater structure and predictability to its evaluation of pipeline certification requests, the Certificate Statement and GHG Policy Statement undermine these goals.

Today’s FERC is dramatically departing from its prior natural gas infrastructure review policies. Instead of enhancing certainty and providing clarification of FERC’s certificate evaluations, FERC has undermined investor reliance on market need and competition, essentially jettisoning the benefits of free enterprise and substituting it with a novel interpretation of the NGA that is driven by political winds. FERC has also unilaterally expanded the NGA’s “public interest” standard to now include climate change which, while an important consideration, is inconsistent with FERC’s statutory obligations under the NGA. FERC also sets forth its expectation that the majority of new natural gas infrastructure proposals will now be subject to the more time-consuming analysis attendant to the development of an Environmental Impact Statement rather than the alternative environmental assessment under NEPA that had previously served to streamline some project reviews.

Moreover, FERC now expresses its intention to evaluate the end-use of natural gas as a factor determinative of project need and goes even further to effectively mandate the mitigation of upstream and downstream greenhouse gas emissions potentially attributable to a project. These changes are inconsistent with the NGA’s strictures and are inadequately supported for purposes of the Administrative Procedure Act which, *inter alia*, requires FERC to engage in reasoned decision-making. While the Chamber is strongly supportive of greenhouse gas emission reduction efforts that are consistent with the pace of innovation and legally appropriate, the GHG Policy Statement misses the fact that natural gas has been the biggest domestic driver of such emission reductions. Instead, FERC is now treating natural gas as a nuisance that should be avoided.

³ 15 U.S.C. § 717(a).

⁴ *Nat’l Ass’n for Advancement of Colored People v. Fed. Power Comm’n*, 425 U.S. 662, 670 (1976) (“NAACP”); *see also New Fortress Energy LLC*, 174 FERC ¶ 61,207 at P 11 (2021) (C. Danly, dissenting) (providing that prudence counsels the Commission to avoid “creat[ing] obstacles to the development of the very industries we are charged with encouraging and overseeing”).

Tellingly, this is not a unanimous decision of FERC's five commissioners, thereby undermining its durability from the start. Instead, Commissioner Danly rightly recognizes that the Certificate Statement "contravenes the purpose of the NGA,"⁵ and that the GHG Policy Statement is "irredeemably flawed" and "unlawful because it is illogical, arrogates to the Commission power it does not have, and it violates the NGA, NEPA and the Commission's and the Council on Environmental Quality's regulations."⁶ Commissioner Christie additionally states that the FERC majority is "arrogat[ing] to itself the power to rewrite both the [NGA] and [NEPA], a power that *only* the elected legislators in Congress can exercise," and that the new certification guidelines are therefore "wrong as both law *and* policy."⁷

Perhaps the most prescient indication of the controlling congressional intent was spoken by President Carter when he signed into law the NGPA in 1978. Specifically, he stated:

This act will for the first time provide a uniform national market for natural gas, *with adequate incentives for producers to increase their production* in a sustained and dependable and efficient way, *and also to guarantee consumers increased long-range supplies of this valuable source of energy* and also with predictable and moderate price increases.⁸

FERC's recent actions and pronouncements in the Certificate Statement and GHG Policy Statement stand in stark contrast to President Carter's recognition of the value and benefit of natural gas for the economy and national security.

The Chamber recognizes the importance of fostering a diverse set of energy resources to address climate change and maintain our economic competitiveness. The shale revolution was enabled by market innovation that created thousands of jobs and lowered the cost of natural gas. Contrary to the apparent view of the FERC majority, natural gas has actually driven the greenhouse gas emissions reductions achieved over the last decade. Shale development has also put the United States in a strong competitive position of energy security while leading the clean energy transition. In 2019, the United States became a net total energy exporter for the first time since 1952. It is important that we work to build upon and expand this important

⁵ Certificate Statement at P 2 (C. Danly, dissenting).

⁶ GHG Policy Statement at P 2 (C. Danly, dissenting).

⁷ Certificate Statement at P 2-3 (C. Christie, dissenting) (emphasis in original).

⁸ National Energy Bills Remarks on Signing H.R. 4018, H.R. 5263, H.R. 5037, H.R. 5146, and H.R. 5289 Into Law, *available at* <https://www.presidency.ucsb.edu/documents/national-energy-bills-remarks-signing-hr-4018-hr-5263-hr-5037-hr-5146-and-hr-5289-into-law> (emphasis added).

achievement for our national and economic security, while supporting the use of lower-emitting resources, such as natural gas, overseas.

There is never a good time to unnecessarily constrain domestic energy production, but FERC's recent actions detailing its intended process to analyze natural gas infrastructure certification requests would appear to do just that. Not only is FERC doing so at a time when America is facing historic energy prices and inflationary pressures amid its recovery from a pandemic, but geopolitical turmoil overseas now makes it even more imperative that we take advantage of our domestic energy resources, both for the benefit of Americans and the benefit of our allies. Halting production and slowing permitting won't halt demand for the energy we need and the products we depend upon. Now is certainly not the time to increase our dependence on foreign resources and impair the ability to access those resources that can be produced domestically. Therefore, the Chamber respectfully suggests that it would be appropriate at this time for FERC to revoke its revised policy statements and to reconsider them in light of the clear guidance to FERC under the NGA and NGPA.

Thank you for holding this hearing to discuss and thoroughly evaluate FERC's recent actions to impair the development of needed natural gas infrastructure. We appreciate the Committee's ongoing efforts to work in a bipartisan fashion in support of American energy.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin J. Durbin". The signature is fluid and cursive, with a large, stylized initial "M" and a long, sweeping underline.

Martin J. Durbin
President, Global Energy Institute
Senior Vice President, Policy
U.S. Chamber of Commerce

cc: Members of the Senate Committee on Energy and Natural Resources