

**Written Testimony of Willie L. Phillips
Commissioner, Federal Energy Regulatory Commission**

**Before the Committee on Energy and Natural Resources
United States House Senate**

**Hearing to Review FERC's Recent Guidance On Natural Gas Pipelines
March 3, 2022**

Thank you, Chairman Manchin, Ranking Member Barrasso, and members of the Committee for the opportunity to discuss the Federal Energy Regulatory Commission's updates to the Certificate Policy Statement for Natural Gas Infrastructure and the Interim Greenhouse (GHG) Policy Statement. I appreciate the Committee's close attention to these important issues.

I. Commission Authority

As you are well aware, Congress delegated to the Commission the responsibility to certificate pipeline projects and Liquefied Natural Gas export and import terminals in the public interest to provide needed and reliable energy to consumers pursuant to the Natural Gas Act (NGA).¹

Under the National Environmental Policy Act (NEPA), we are directed to examine whether these projects significantly impact the environment.² I aim to fulfill these duties as expeditiously as possible consistent with each statute and court guidance. Our failure to comply with court

¹ 15 U.S.C. §§ 717b(e), 717f(e).

² 42 U.S.C. § 4332(C).

precedent interpreting the NGA and NEPA risks possible remand³ or vacatur,⁴ which may result in further delays or curtailment of needed service. I believe the Commission’s recently issued guidance is a first step in addressing the uncertainty and delay associated with the Commission’s review of proposed natural gas infrastructure projects.

II. Updated Certificate Policy Statement

The updated Certificate Policy Statement does not establish binding rules but is intended to explain how the Commission will consider applications to construct new interstate natural gas transportation facilities consistent with the NGA and court precedent. Section 7 of the NGA states that the Commission shall issue a certificate upon finding that a project “is or will be required by the present or future public convenience and necessity,” and, once the certificate is issued, authorizes the certificate holder to acquire any necessary property rights by use of eminent domain.⁵ Congress enacted the NGA “with the principal aim of encouraging the orderly development of plentiful supplies of . . . natural gas at reasonable prices, and protecting

³ *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1329 (D.C. Cir. 2021) (directing the Commission to “redress its failure of explanation with regard to its analyses of the projects’ impacts on climate change and environmental justice communities, and its determinations of public interest and convenience under Sections 3 and 7 of the NGA, while reaching the same result”).

⁴ *See, e.g., Env’t Def. Fund v. FERC*, 2 F.4th 953, 977 (D.C. Cir. 2021) ((finding vacatur appropriate due to the Commission’s failure to consider evidence of self-dealing even though the pipeline at issue was already operational); *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017) (vacating and remanding pipeline certificates due to the Commission’s failure to adequately assess downstream greenhouse emissions).

⁵ 15 U.S.C. §§ 717f(e), 717f(h).

consumers against exploitation at the hands of natural gas companies.”⁶ In doing so, the Commission must evaluate all factors bearing on the public interest.⁷

The updated statement explains that, in determining whether to issue a certificate of public convenience and necessity, the Commission will weigh the public benefits of a proposal, the most important of which is the need that will be served by the project, against its adverse impacts. When assessing project need, the Commission will continue to rely on precedent agreements, but may examine additional evidence, and, like the 1999 Policy Statement, consider all relevant factors bearing on the need for a project.⁸ Adverse impacts include: (1) the interests of the applicant’s existing customers; (2) the interests of existing pipelines and their captive customers; (3) environmental interests; and (4) the interests of landowners and surrounding communities, including environmental justice communities. On that last point, I support incorporating environmental justice and equity concerns into our decision-making to ensure we consider these impacts while a project is still in the planning stage and provide opportunity for meaningful engagement with underserved communities.

⁶ *City of Clarksville, Tennessee v. FERC*, 888 F.3d at 477, at 479 (2018) (quoting *NAACP v. FPC*, 425 U.S. 662, at 669-70 (1976) and *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, at 610 (1944)).

⁷ *See Atl. Ref. Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, at 391 (1959) (holding that the NGA requires the Commission to consider “all factors bearing on the public interest”); *see also Sierra Club v. FERC*, 867 F.3d at 1373 & n.9 (explaining that the Commission is “legally authorized to consider downstream environmental effects when evaluating a Section 7 certificate application” and that the Commission may “deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment”).

⁸ Updated Policy Statement on Certification of New Interstate Natural Gas Facilities, 178 FERC ¶ 61,107, at P 54 (2022).

III. Interim Greenhouse Gas Policy Statement

In considering a project's environmental impacts, consistent with precedent, the Commission will also consider climate impacts. The Interim Policy Statement on Greenhouse Gas Emissions provides guidance on how the Commission will consider and calculate projected GHG emissions for Liquefied Natural Gas import and export proposals under section 3 of the NGA and pipeline proposals under section 7 of the NGA. The statement provides guidance on how to assess GHG impacts, indicating that the Commission will accept evidence of a project's anticipated utilization rate and factors to offset emissions, and when and how to consider upstream and downstream emissions, consistent with current law. Project proponents are encouraged to propose mitigation that will minimize a project's direct climate impacts. The Commission will consider mitigation measures proposed by the project sponsor on a case-by-case basis when balancing the need for a project against its adverse environmental impacts.

The statement also establishes a presumptive threshold for assessing whether GHG emissions are significant for purposes of NEPA. This threshold is not an emissions cap, nor does it require project proponents to mitigate direct emissions down to the presumed significance level.

Instead, it establishes a guidepost to consider when GHG emissions may be significant. NEPA requires federal agencies to perform an Environmental Impact Study whenever the impacts of a proposed project will have a significant impact on the human environment.⁹ I believe we have the authority to set this presumption to guide our NEPA document preparation, but I also recognize that no court has required the Commission to do so yet nor has the Council on Environmental Quality, the entity charged with implementing NEPA, indicated when GHG

⁹ 42 U.S.C. § 4332(C).

emissions are significant. However, stakeholders have called for more guidance and the proposed threshold is meant to address ambiguity on when and how the Commission should assess significance. Nonetheless, this is the first time the Commission has established a significance presumption. While the Commission attempts to address the significance standard during this interim period, I look forward to engaging with responses from our comment period. If comments demonstrate a better framework, which can withstand judicial review, I remain open to such solutions. As with all matters, I will continue to look to applicable federal guidance, including from other agencies, and any relevant court cases.

The Commission's role in approving needed natural gas infrastructure is essential to every American. I am committed to ensuring our decision-making is timely, provides an opportunity for stakeholder input, and is insulated from unnecessary court disruption. The new policy statements were the result of years of study and deliberation by multiple Commissions and stakeholders. However, even as we announce these statements, we acknowledge that they will be modified if they fail to achieve their intended purpose. As I have said, my support for the policy statements is based on the need to provide the first step to acting on pending proposals consistent with the law and court guidance.