

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Consideration of Greenhouse Gas)	
Emissions in Natural Gas)	Docket No. PL21-3-000
Infrastructure Project Reviews)	

**INITIAL COMMENTS OF
THE NATURAL GAS SUPPLY ASSOCIATION AND
CENTER FOR LIQUEFIED NATURAL GAS ON THE
DRAFT GREENHOUSE GAS POLICY STATEMENT**

Pursuant to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) request for comments on the draft Interim Policy Statement on Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews (“Draft GHG Policy Statement”),¹ the Natural Gas Supply Association (“NGSA”) and Center for Liquefied Natural Gas (“CLNG”) respectfully submit the following comments.

I. EXECUTIVE SUMMARY

NGSA and CLNG support efforts to reduce greenhouse gas (“GHG”) emissions from natural gas infrastructure subject to the Commission’s jurisdiction; however, NGSA and CLNG are concerned with the regulatory uncertainty created by aspects of this Draft GHG Policy Statement. NGSA and CLNG are seeking clarity and certainty from the Commission on how it will assess the impacts of natural gas infrastructure projects on climate change in its reviews under the National Environmental Policy Act (“NEPA”) and the Natural Gas Act (“NGA”). Project developers need consistency and certainty in how the Commission will regulate GHG emissions, yet the Commission’s Draft GHG Policy

¹ *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022).

Statement leaves industry with more questions than answers with respect to the arbitrary significance threshold, unclear ‘requirements’ for mitigation, and vague statements on the treatment of any mitigation costs in ratemaking.

It is clear from the Commission’s decision to withdraw the policy statements and seek a new round of comments that the Commission is aware of the concern and confusion caused by its actions. The Commission speaks through its orders.² NGSAs and CLNG urge the Commission to proceed carefully in crafting any new order, so that the new policies are clear and thoroughly explained.

As currently written, the Draft GHG Policy Statement will increase regulatory uncertainty and negatively impact investment in natural gas infrastructure, which is needed to support the transition to a lower-carbon energy future and assist our European allies in moving away from Russian natural gas. Natural gas has led in helping to reduce GHG emissions in the electric sector and, for decades to come, natural gas will continue to serve a key role in the energy transition. A reliable and consistent regulatory environment is necessary to support the private sector investment needed for the orderly development of natural gas infrastructure. This will allow NGSAs and CLNG members to continue to invest in the emissions reduction technologies needed for the energy transition. Rather than create regulatory certainty, the Draft GHG Policy Statement, if implemented as written, will actually undermine certainty with likely years of Commission and court rulings to iron out the policy. That is not certainty.

To alleviate some of the uncertainty, the Commission must take several steps modifying and clarifying its draft policy. The Commission should clarify and reconsider

² See *Indianapolis Power & Light Co.*, Opinion No. 327, 48 FERC ¶ 61,040, at p. 61,203 (1989).

its approach to adopting and applying its new GHG emissions “significance” threshold. The draft threshold is arbitrary and capricious. First, the Commission failed to articulate why it would apply a 100% utilization rate or “full-burn” analysis for its determination whether to prepare an Environmental Impact Statement (“EIS”) or Environmental Assessment (“EA”). Second, the adoption of a 100,000 tpy carbon dioxide equivalent (“CO₂e”) lacks scientific or evidentiary support. Third, the Commission should wait until other agencies with subject-matter expertise and statutory authority to act on GHG emissions have developed their own thresholds before establishing its own. The Commission appears to be the first federal agency to develop such a threshold despite its lack of expertise or statutory authority to do so.

The intent and history of the NGA make clear the Commission has limited statutory authority, and lacks the ability to attach conditions to certificate orders to require mitigation of upstream and downstream indirect GHG emissions. The NGA is explicit that upstream production and downstream distribution are outside of the Commission’s jurisdiction.³ While the Commission may attach reasonable conditions, the exercise of such authority—and such conditions—must be consistent with the NGA. The Commission cannot do indirectly, what it lacks the power to do directly.⁴ As the Supreme Court explained, the purpose of the NGA is “to promote the orderly production of plentiful supplies of electric energy and natural gas at just and reasonable rates.”⁵ Attaching conditions requiring pipeline companies to mitigate upstream and downstream emissions outside of the

³ 15 U.S.C. § 717(b).

⁴ *Nat’l Fuel Gas Supply Corp. v. FERC*, 909 F.2d 1519, 1522 (D.C. Cir. 1990).

⁵ *NAACP v. FPC*, 425 U.S. 662, 670 (1976) (emphasis added) (citations omitted).

Commission's jurisdiction and outside of the natural gas company's control is inconsistent with this purpose.

The Commission also ignores that the Environmental Protection Agency ("EPA") and the states already regulate the upstream and downstream sources of GHG emissions through the Clean Air Act ("CAA") and other statutes. As the Supreme Court explained, EPA is the "expert agency" designated by Congress "best suited to serve as primary regulator of greenhouse gas emissions."⁶ The Commission cannot usurp that role. Further, under the CAA, states also play an important role in regulating air emissions, including GHG emissions. The Commission's authority to assess environmental impacts generally under NEPA and to determine whether a project is in the public interest under the NGA does not provide it with jurisdiction Congress did not grant it by statute. In any final GHG policy statement, the Commission should clarify that it cannot and will not dictate or impose mitigation for upstream and downstream impacts related to GHG emissions.

Finally, the Commission must address more fully and clarify the rate treatment of costs to address any new GHG mitigation measures. The Commission should prioritize the most cost-effective mitigation measures and offsets first. Because mitigation costs will ultimately be passed on to shippers and end users, the Commission must be cognizant of the rate impacts of such mitigation. In a 102-page draft policy statement, the Commission—an avowed economic regulator—spent less than three pages addressing cost recovery. Since the technical nature of cost of mitigation and cost recovery in rates was not the specific focus of the Draft GHG Policy Statement, NGSAs and CLNG suggest the Commission consider a separate proceeding to examine rate treatment of any GHG

⁶ *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 428 (2011).

mitigation costs, including how to provide shippers sufficient rate certainty to enable the firm capacity commitments needed to underpin financing and construction of new natural gas pipeline projects. Without more analysis of the cost and rate impacts of imposing sweeping new mitigation requirements, the Commission’s decision will be arbitrary and capricious.

II. BACKGROUND

NGSA and CLNG jointly filed a request for rehearing and clarification of the Interim GHG Policy⁷ as well as the Updated Certificate Policy Statement⁸ on Friday, March 18, 2022. Our request for rehearing and clarification explicitly detailed our position and the arguments raised are relevant here. Since then, the Commission effectively rescinded the Updated Certificate Policy Statement and Interim GHG Policy Statement and reissued the policy statements in draft form, setting April 25, 2022, as the deadline for initial comments.⁹ The Commission explained that it would “not apply the Updated Draft Policy Statement or the Draft GHG Policy Statement to pending applications or applications filed before the Commission issues any final guidance in these dockets.”¹⁰

Previously, on November 19, 2021, the Commission held a Technical Conference discussing methods natural gas companies may use to mitigate the effects of direct and indirect GHG emissions from NGA Sections 3 and 7 authorizations.¹¹ NGSA submitted

⁷ 178 FERC ¶ 61,108.

⁸ *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,107 (2022) (“Updated Draft Policy Statement”).

⁹ *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,197, at P 2 (2022) (“Order on Draft Policy Statements”) (“[W]e are making the Updated Policy Statement and the Interim GHG Policy Statement draft policy statements.”).

¹⁰ *Id.* These Comments will refer to the policy statements as the Updated Draft Policy Statement and the Draft GHG Policy Statement, as the Commission did in its order.

¹¹ Notice of Technical Conference on Greenhouse Gas Mitigation: Natural Gas Act Sections 3 and 7 Authorizations, Docket No. PL21-3-000 (Sept. 16, 2021); Notice Inviting Technical Conference Comments, Docket No. PL21-3-000 (Nov. 16, 2021).

post-Technical Conference comments on January 7, 2022.¹² NGSA explained in its comments that if the Commission moved forward with a policy on GHG emissions mitigation, it should not dictate any specific type of mitigation for upstream or downstream facilities and activities.¹³ NGSA urged the Commission to consider voluntary efforts to reduce environmental impacts and not to create inefficient regulations that would impede the success of ongoing GHG reduction efforts. NGSA further stated that if the Commission pursued mitigation requirements, it should accommodate the broadest set of mitigation measures and offsets possible, prioritize cost-effective measures, and avoid creating a threshold that prevents projects from moving forward.¹⁴

On February 18, 2022, concurrently with the Updated Certificate Policy Statement (now Updated Draft Policy Statement), the Commission issued the Interim GHG Policy Statement (now Draft GHG Policy Statement), explaining how it will evaluate and act on pending applications and assess natural gas infrastructure projects' impacts on climate change.¹⁵ In a major departure from past practice, the Draft GHG Policy Statement requires Commission Staff to prepare an EIS for any project proposed under NGA Sections 3 or 7 that is estimated to emit 100,000 metric tons per year (“tpy”) or more of CO₂e, assuming the project is operated at 100% utilization 24 hours per day, 365 days per year, and all gas transported is combusted downstream.¹⁶ However, during the actual preparation of the EIS, the Draft GHG Policy Statement directs Commission Staff to calculate the GHG emissions from a proposed project using “projected utilization

¹² Post-Technical Conference Comments of the Natural Gas Supply Ass’n, Docket No. PL21-3-000 (Jan. 7, 2022).

¹³ *Id.* at 3-4.

¹⁴ *Id.* at 7-8.

¹⁵ See Interim GHG Policy Statement at P 1; see also Updated Certificate Policy Statement at P 76.

¹⁶ Draft GHG Policy Statement at PP 3, 49, 79 (explaining that “full burn” assumes “the maximum capacity is transported 365 days per year, 24 hours per day and fully combusted downstream”).

rate[s].”¹⁷ The Draft GHG Policy Statement creates a presumption that emissions resulting from the downstream combustion of transported natural gas will be considered indirect impacts and will need to be quantified by Commission Staff in the EIS.¹⁸ The Draft GHG Policy Statement further states that the Commission “may consider the end use of gas and the impact of natural gas combustion on air pollution as a factor in assessing the public interest.”¹⁹ The Draft GHG Policy Statement states that upstream emissions from induced natural gas production will be considered on a case-by-case basis.²⁰ For authorizations under NGA Section 3, however, the Draft GHG Policy Statement provides that neither upstream nor downstream emissions will be considered by the Commission.²¹

The Draft GHG Policy Statement states that the Commission’s priority is for project sponsors to mitigate, “to the greatest extent possible,” a project’s direct GHG emissions.²² The Commission states that, when making the public-interest determination, it will assess the adequacy of the applicant’s proposed mitigation on a case-by-case basis and will consider the project’s impact on climate change.²³ Although the Commission stated that it only “encourages” applicants to propose mitigation measures, the Commission nevertheless states that it “may require additional mitigation of a project’s direct GHG emissions as a condition of the authorization,” if the Commission believes the mitigation proposed by the applicant is inadequate.²⁴

¹⁷ *Id.* at PP 29, 44-46; *see also id.* at P 50 (explaining that “in most instances a 100% utilization rate estimate does not accurately capture the project’s climate impacts”).

¹⁸ *Id.* at P 28 (explaining that Commission Staff’s review will include “GHG emissions resulting from construction and operation of the project as well as, in most cases, GHG emissions resulting from the downstream combustion of transported gas”) (internal footnote omitted).

¹⁹ *Id.* at P 105.

²⁰ *Id.* at P 31.

²¹ *See id.*

²² *Id.* at P 105.

²³ *Id.* at P 107.

²⁴ *Id.*

The Draft GHG Policy Statement is not limited to a project’s *direct* emissions. It further “encourage[s] project sponsors to propose[] measures to mitigate the reasonably foreseeable *upstream or downstream* emissions associated with their projects.”²⁵ While the Draft GHG Policy Statement declines to mandate any particular mechanism of mitigation, any form of verification for mitigation, or any level of GHG reduction achieved by mitigation, it states that the Commission may require additional mitigation as a condition of its authorization, or deny an application where mitigation of adverse impacts is not possible.²⁶

The Commission states it is seeking comments on “all aspects of the interim policy statement, including, in particular, on the approach to assessing the significance of the proposed project’s contribution to climate change.”²⁷ While the Draft GHG Policy Statement originally applied the policy immediately despite the policy being “interim,” the Commission has since changed course designating both policy statements as draft, effectively rescinding them, and requesting comments by April 25, 2022, on the now draft policy statements.²⁸

III. COMMENTS

A. The Regulatory Uncertainty Created by the Draft GHG Policy Statement Will Negatively Impact Investment in Gas Infrastructure Needed to Support the Transition to a Lower-Carbon Energy Future.

NGSA’s and CLNG’s members are leading the transition to a reliable and lower-emissions energy future for the world by supporting policies to reduce GHG emissions and investing billions of dollars in new technologies and practices to continue the momentum

²⁵ *Id.* at P 106 (emphasis added).

²⁶ *Id.* at PP 111-13.

²⁷ *Id.* at P 1.

²⁸ Order on Draft Policy Statements, 178 FERC ¶ 61,197 at P 2.

of innovation. The natural gas industry depends on regulatory certainty from federal agencies to make these investments possible; allocating capital for significant expenditures and securing customer commitments may take years. For decades to come, natural gas will continue to serve a key role in the energy transition, and sufficient gas infrastructure is essential to promote grid reliability and preserve global energy security while reducing GHG emissions. Since 2006, switching to natural gas in the electric power sector has helped reduce carbon dioxide (“CO₂”) emissions by nearly 3.4 billion metric tons in the United States, which equates to a 58% decrease over what has been achieved during the same time frame by all zero-carbon emission sources combined.²⁹ In large part, due to the shift from coal to natural gas as the leading fuel for electric generation, total GHG emissions generated by the electric sector is at its lowest level since 1987.³⁰

NGSA supports the ambitious goal of achieving economy-wide net-zero GHG emissions by 2050³¹ and supported the United States rejoining the Paris Agreement. In 2020, NGSA publicly announced its members’ commitment to achieving significant mitigation of methane emissions.³² NGSA’s member companies have been instrumental in developing new technologies to better detect and prevent methane emissions and to build on our industry’s existing record of substantially reducing carbon emissions.

²⁹ See U.S. Energy Info. Admin., *U.S. Energy-Related Carbon Dioxide Emissions, 2019* (Sept. 30, 2020), <https://www.eia.gov/environment/emissions/carbon/archive/2019/>; see also U.S. Energy Info. Admin., *Electricity energy-related carbon dioxide emissions, Fuel specific emission tables by state*, line 55 (last accessed Apr. 25, 2022), <https://www.eia.gov/environment/emissions/state/excel/electricity.xlsx>.

³⁰ U.S. Energy Info. Admin., *Electricity energy-related carbon dioxide emissions, Fuel specific emission tables by state*, line 55 (last accessed Apr. 25, 2022), <https://www.eia.gov/environment/emissions/state/excel/electricity.xlsx> (using data from 2019, the most recent year available).

³¹ NGSA, *Reaching Climate Goals with Natural Gas and LNG* (Fall 2021), <https://www.ngsa.org/wp-content/uploads/sites/3/2021/10/Reaching-Climate-Goals-with-Natural-Gas-LNG-Fall-2021.pdf>.

³² Press Release, NGSA, *Addressing Methane Emissions Essential to Achieving Clean Environment, America’s Natural Gas Suppliers Say* (Oct. 5, 2020), <https://www.ngsa.org/wp-content/uploads/sites/3/2020/10/10.5.2020-Addressing-Methane-Emissions-Essential-Says-NGSA.pdf>.

NGSA's and CLNG's members are actively developing new emerging technologies such as Carbon Capture, Utilization, and Storage ("CCUS") and hydrogen to meet energy demand while further reducing emissions.³³ In pursuit of lower GHG emissions, several NGSA and CLNG member companies have developed and launched CCUS techniques and technologies, ranging from CCUS hubs to fuel treatments that reduce emissions from wellhead to end-use. In fact, through NGSA members' commitments to the Oil and Gas Climate Initiative, its Climate Investments group has been able to invest billions across the globe to identify and produce advanced CCUS solutions. NGSA's members are at different phases of hydrogen development, yet all see hydrogen, which is commonly derived from natural gas, as an important part of the energy mix moving forward. Some members are already utilizing hydrogen in pilot power plants to help reduce CO₂ emissions by four million tons a year.³⁴ Additionally, NGSA member companies are partnering with certification providers to supply customers with certified or responsibly sourced natural gas.

NGSA and CLNG support sound permitting policies that provide for a thorough environmental review process. These policies must provide industry and other stakeholders with regulatory certainty so as not to hinder investment in sufficient gas infrastructure to support reliability and global energy security. The lack of predictability and additional hurdles created in the Draft GHG Policy Statement with respect to the "significance" threshold and mitigation, discussed in more detail in Sections B and C below, will have a substantial impact on regulatory certainty. We share the Commission's

³³ Press Release, NGSA, *NGSA Members are Innovating for a Clean Energy Future for All* (Fall 2021), <https://www.ngsa.org/wp-content/uploads/sites/3/2022/02/NGSA-Members-Are-Innovating-for-a-Clean-Energy-Future-for-All.pdf>.

³⁴ *Id.*

goal of greater regulatory certainty; however, this draft policy will not create the regulatory certainty the Commission envisions once implemented. It will take years and additional Commission rulings to get the certainty and predictability industry relies on.

NGSA and CLNG are concerned that the Commission's Draft GHG Policy Statement will significantly reduce investment for future projects, which will have to comport with the new requirements adopted in any final policy. Although the Commission states what considerations may cause them to deny a certificate application, the Draft GHG Policy Statement does not provide a clear path to approval. Absent regulatory certainty, NGSA and CLNG are concerned the unknowns and hurdles may be too high to secure financing for future projects. The implications are significant: a recent case study from the U.S. Energy Information Administration ("EIA") concluded that if no additional interstate natural gas pipelines are built between 2024 and 2050, CO₂ emissions remain essentially flat (dropping by 0.7%) while natural gas prices increase on average, 11% higher at Henry Hub.³⁵ EIA forecasts that coal-fired generation is 46 billion kilowatt-hours higher in this scenario to make up for the lower level of natural-gas fired generation. As a result of this no new pipeline scenario, consumers suffer increased costs without reductions in GHG emissions.

B. FERC Should Provide Clarity on the Significance Threshold and Reconsider Its Approach to Applying It as the Trigger for an EIS.

NGSA and CLNG are concerned that the Commission failed to engage in reasoned decision-making and acted arbitrarily and capriciously in determining its significance threshold and requiring the preparation of an EIS when a project's estimated GHG

³⁵ See EIA, *Issues in Focus: Exploration of the No Interstate Natural Gas Pipeline Builds Case*, Annual Energy Outlook 2022 (Mar. 2022), https://www.eia.gov/outlooks/aeo/IIF_pipeline/.

emissions equals or exceeds the arbitrary significance threshold. First, the Commission did not state the reason for its decision to use the 100% utilization rate or the so-called “full burn” for its determination of whether to prepare an EIS. Second, setting the threshold at 100,000 tpy CO₂e lacked any scientific or evidentiary support. Third, the Commission’s determination to only consider the GHG emissions estimate in determining significance and triggering an EIS is short-sighted. Finally, the Commission should have waited until federal environmental agencies, EPA and Council on Environmental Quality (“CEQ”), complete their initiatives to develop a significance threshold and coordinate with these agencies to determine if the threshold would be appropriate for assessing natural gas projects.

1. The Commission Failed to Articulate Any Rational Basis for Its Decision to Use the 100% Utilization Rate or “Full Burn” for the Preparation of an EIS.

In determining whether a project’s emissions will exceed the 100,000 tpy CO₂e threshold and thus require an EIS the Draft GHG Policy Statement states the Commission will assume the project is operating at a 100% utilization rate every day, year-round.³⁶ The Commission states, without support, that this “full burn” analysis “is appropriate because it captures Commission projects that may result in incremental GHG emissions that may have a significant effect upon the human environment.”³⁷ However, the Commission knows that natural gas pipelines are generally sized and constructed to meet peak market demand.³⁸ Interstate pipelines and liquefied natural gas (“LNG”) facilities that operate at a 100% load factor all the time are few and far between. Utilizing a 100% load factor fails

³⁶ Draft GHG Policy Statement at P 3.

³⁷ *Id.*

³⁸ *Id.* at P 49 (“[M]ost projects do not operate at 100% utilization at all times. In fact, many projects are designed to address peak demand.”).

to take into account routine and unplanned maintenance, as well as lower utilization at times of decreased demand. The Commission has not provided a reasoned explanation for why it is applying a standard that the Commission knows, as discussed below, does not comport with how pipelines and LNG facilities operate.

As the Commission also is aware, preparation of an EIS requires applicants, and the Commission, to expend significant resources and time. Many of the projects that will be swept up in the Commission's newly imposed EIS threshold are minor expansion or upgrade projects that previously were subject to a less costly and less time-consuming EA due to their lack of significant impacts.³⁹ The Commission has not adequately explained its change in course.

The arbitrary nature of the Commission's GHG emissions threshold for preparing an EIS becomes particularly evident when the Commission quantifies GHG emissions and climate impacts *actually* attributable to a project under review. In determining the actual emissions attributable to a project, the Commission changes course and states that it will not use a "full-burn" estimate, but instead the EIS will estimate the impacts based on the project's actual utilization rate. The Commission properly concedes that "most projects do not operate at 100% utilization at all times" and that "many projects are designed to address

³⁹ For example, the Commission recently issued a Notice of Intent to Prepare an Environmental Impact Statement for Columbia Gas Transmission, LLC's ("Columbia") Virginia Electrification Project. *See* Columbia Gas Transmission, LLC, Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Virginia Electrification Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review, Docket No. CP21-498-000 (Feb. 3, 2022). The Virginia Electrification Project consists of one new and five replacement electric compressors at existing compressor stations in order to allow Columbia to transport an additional 35,000 Dth per day of natural gas. In the past, the Commission would have prepared an EA for Columbia's project. In comparison, as recently as 2020, the Commission prepared an EA for the Double E Pipeline, LLC Project, a 1.35 million Dth per day pipeline project consisting of approximately 116 miles of mostly greenfield pipe, explicitly finding that an EIS was not required for the project. *Double E Pipeline, LLC*, 173 FERC ¶ 61,074, at P 83 (2020).

peak demand.”⁴⁰ The Commission further explains that “*in most instances a 100% utilization rate estimate does not accurately capture the project’s climate impacts.*”⁴¹

The Commission provides no explanation why it applies this reasoning to its environmental analysis, but not when making the threshold decision of whether to prepare a costly and time-consuming EIS. By the Commission’s own admission, the full-burn estimate is inaccurate “in most instances.”⁴² Therefore, it is unclear why the Commission is inconsistently applying this incorrect standard and calculation to its critical decision of whether to prepare an EIS or an EA. If the Commission is able to calculate the actual emissions that it believes is associated with a particular project, it should be able to make this calculation part of its determination of whether to prepare an EIS.

At a minimum, the Commission should make clear that if an applicant can provide reliable data on the projected load factor at which the project is expected to operate, the Commission will use that data. Allowing the applicant an opportunity to demonstrate that the full-burn threshold will never be reached can avoid sweeping relatively small projects into the costly and time-consuming requirement to prepare an EIS.

2. Setting the Threshold at 100,000 tpy CO₂e Lacks Scientific or Evidentiary Support.

Even more arbitrary, the Commission’s new 100,000 tpy CO₂e threshold itself is not the result of any scientific or factual analysis. The Commission states in the Draft GHG Policy Statement that it has chosen the threshold not by its ability to accurately forecast significance, but because it “captures the majority of annual emissions generated by

⁴⁰ Draft GHG Policy Statement at P 49.

⁴¹ *Id.* at P 50 (emphasis added).

⁴² *Id.*

Commission authorized projects.”⁴³ This is inconsistent with NEPA, and the Commission’s responsibilities thereunder. NEPA requires the Commission disclose *significant* impacts of a project.⁴⁴ The Commission’s draft policy has pre-judged that almost any level of GHG emissions from a project are significant impacts under NEPA *before considering those impacts*.⁴⁵ The Draft GHG Policy Statement dramatically expands the review of minor projects, where an EA may be more appropriate. The Commission has reviewed the emissions associated with a pipeline project and their impact on climate change through an EA.⁴⁶ Thus, it is unclear why an arbitrary threshold is needed to force a longer, more costly EIS review when an EA would suffice. This could have a severe deterrent effect on new natural gas infrastructure needed to supply domestic and global demand, assure the reliability of the grid, and offset GHG emissions from higher-emitting fuel sources.

Further, the Commission does not put forward any rational basis to justify its 100,000 tpy threshold. The Commission fails to explain why it relies upon an estimate of the alleged indirect emissions associated with a project, for the purposes of a significance threshold. Far from explaining how the 100,000 tpy at full burn is significant and triggers the requirement to prepare an EIS, the Commission claims the threshold is justified through

⁴³ *Id.* at P 80; *see also id.* at P 89.

⁴⁴ *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 106-07 (1983) (“NEPA requires an EIS to disclose the *significant* health, socioeconomic, and cumulative consequences of the environmental impact of a proposed action.”) (emphasis added); *see also Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978) (“NEPA places upon an agency the obligation to consider every *significant* aspect of the environmental impact of a proposed action.”) (emphasis added).

⁴⁵ Draft GHG Policy Statement at P 95 (concluding that the Commission’s “proposed threshold of 100,000 [tpy] would deem nearly three-quarters of Commission-regulated natural gas project[s], which collectively account for roughly 99% of GHG emissions from Commission-regulated natural gas projects, to have a significant impact on climate change”).

⁴⁶ *See, N. Nat. Gas Co.*, 174 FERC ¶ 61,189, at P 29 (2021) (discussing EA’s analysis of GHG emissions); *Tuscarora Gas Transmission Co.*, 175 FERC ¶ 61,147, at PP 27-29 (2021) (same).

an unrelated discussion of EPA's thresholds under the CAA Tailoring Rule and Title V permitting programs.⁴⁷ However, EPA is charged with directly regulating those emissions through its programs under the CAA. This may not be comparable to FERC's disclosure responsibilities under NEPA.

Moreover, the Commission acknowledges that although it is adopting a conceptually similar methodology to EPA for establishing a threshold, the Commission's threshold will cover a larger number of emissions. The Commission states its 100,000 tpy threshold will collectively account for roughly 99% of GHG emissions from Commission-regulated natural gas projects,⁴⁸ thus assuming nearly every project will have a significant impact on climate change. Yet, according to Commission Staff, a threshold of 1,000,000 tpy would have covered 98.909% of emissions from natural gas projects authorized from 2017 through 2021.⁴⁹ Far from being "legally durable," adoption of the Draft GHG Policy Statement's significance threshold may actually cause more uncertainty and constitute reversible error in court. In all the recent FERC cases before circuit courts, no court has required the Commission to explicitly make a significance determination with respect to indirect GHG emissions. In fact, the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") has upheld the Commission's previous finding that it could not determine whether a project's contribution to climate change would be significant.⁵⁰ This further demonstrates that the chosen 100,000 tpy threshold lacks scientific or evidentiary support, and is indeed arbitrary.

⁴⁷ See Draft GHG Policy Statement at PP 90-95.

⁴⁸ See *id.* at P 95.

⁴⁹ See *id.*, Danly, Dissent at P 33.

⁵⁰ See *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 295 (2017), *order on reh'g*, 163 FERC ¶ 61,197, at P 305 (2018), *affirmed sub. nom.*, *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at *2 (D.C. Cir. Feb. 19, 2019).

3. The Commission’s Determination to Solely Consider the GHG Emissions Estimate for Determining Significance, and No Other Environmental Factors, Is Arbitrary and Short-sighted.

It is arbitrary and short-sighted for the Commission to determine the appropriate level of a NEPA review, including the trigger for preparing an EIS, based just on a GHG emissions estimate. The Draft GHG Policy Statement states “[t]o assess significance, the Commission determines whether the impact ‘would result in a substantial adverse change in the physical environment,’ which, as discussed, is based on considerations of the severity of adverse environmental impacts.”⁵¹ While one would interpret this to mean that *all* environmental impacts are considered in determining significance, the Commission essentially chooses only to consider the estimate of GHG emissions in its significance determination. In other words, because almost all Commission-jurisdictional projects meet this arbitrary significance threshold, the Commission need not consider any other environmental impacts in its significance determination. NGSA and CLNG recognize the importance of assessing GHG emissions and their contribution to climate change in the Commission’s review, but do not understand why this is the only factor and why other environmental impacts, including impacts to land, air, or water quality are not given any consideration. An estimate of the GHG emissions should not be the sole driver to determine the need for a more burdensome environmental review process.

Moreover, the Commission’s addition of a new threshold conflicts with its existing regulations, which dictate when an EA may be prepared versus an EIS.⁵² Importantly, the regulations specify that an EIS will normally be prepared for “[*m*]ajor pipeline construction projects under section 7 of the [NGA] using rights-of-way in which there is

⁵¹ Draft GHG Policy Statement at P 54 (internal citation omitted).

⁵² 18 C.F.R. §§ 380.5, 380.6, and 157.202 (2021).

no existing natural gas pipeline[.]”⁵³ In promulgating this regulation, the Commission expressly declined to impose hard-and-fast criteria to define what is a “major pipeline” that normally requires preparation of an EIS.⁵⁴ Instead, the Commission decided that it “must determine whether a project involves major pipeline construction on a case-by-case basis.”⁵⁵ As required by the regulation, Commission practice has been to consider unique components of individual pipelines in making these decisions.⁵⁶ Not so anymore. Now, the Commission’s policy is effectively limiting itself to one factor—an estimate of GHG emissions—to make that determination.

The Commission has the right to amend its rules. However, before it amends its rules, the Commission is required to undertake a rulemaking proceeding allowing for notice and comment by the public.⁵⁷ The Commission cannot amend its rules *sub silentio* in the guise of a proposed policy statement.

4. The Commission Should Wait Until Federal Environmental Regulators Complete Initiatives to Develop a Significance Threshold and Coordinate with These Agencies.

NGSA and CLNG are concerned that the Commission is not the appropriate agency to define the threshold number for determining significance. The Commission states “[t]o date, no federal agency, including the Commission, has established a threshold for determining what level of project-induced GHG emissions is significant.”⁵⁸ The

⁵³ *Id.* § 380.6(a)(3) (emphasis added).

⁵⁴ *Regulations Implementing National Environmental Policy Act of 1969*, Order No. 486, 1986–1990 FERC Stats. & Regs., Regs. Preambles 30,783, at pp. 30,930-31 (1987), *order on reh’g*, Order No. 486- A, 1986–1990 FERC Stats. & Regs., Regs. Preambles ¶ 30,799 (1988).

⁵⁵ Order No. 486 at p. 30,930.

⁵⁶ *See, e.g., Nat’l Fuel Gas Supply Corp.*, 164 FERC ¶ 61,084, at P 71 (2018) (“[A] pipeline with 69 percent of its length co-located along existing pipeline or utility rights of way, one new and one modified gas-fired compressor station, and one new dehydration facility[] normally would not fall under the ‘major’ category for which an EIS is automatically prepared.”).

⁵⁷ 5 U.S.C. § 553.

⁵⁸ Draft GHG Policy Statement at P 56.

Commission is an economic, not an environmental, regulator, yet the Commission still feels compelled to lead on this finding. The Commission then notes that CEQ and EPA are undertaking initiatives that may culminate in the establishment of a significance threshold for GHG emissions or that may impact the Commission's determination of GHG significance in its NEPA analysis. If CEQ or EPA issues any future guidance regarding the evaluation of GHG emissions, the Commission says it may adjust its methods for determining the significance of GHG emissions consistent with that guidance.⁵⁹ The Commission provides no reasoned basis for why it would jump ahead of a process that it acknowledges is already underway with agencies that are actually environmental regulators.

C. The Commission Lacks Authority to Attach Conditions to Require Mitigation of Upstream and Downstream Indirect GHG Emissions.

The Commission is limited by its statutory authority.⁶⁰ The NGA defines the boundaries of the Commission's jurisdiction. "[I]f there is no statute conferring authority, FERC has none."⁶¹ The NGA authorizes the Commission to regulate the transportation of natural gas in interstate commerce. "Congress deliberately chose not to regulate 'the entire natural-gas field to the limit of constitutional power' but instead designated the areas to be regulated and the areas in which FERC cannot regulate."⁶² The NGA expressly precludes the Commission from regulating local distribution or production and gathering.⁶³ Thus,

⁵⁹ *Id.* at P 84, n.206.

⁶⁰ *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C. Cir. 2002) ("As a federal agency, FERC is a 'creature of statute,' having 'no constitutional or common law existence or authority, but *only* those authorities conferred upon it by Congress.'" (quoting *Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C. Cir. 2001)) (emphasis added).

⁶¹ *Id.* (citing *Michigan*, 268 F.3d at 1081; *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)).

⁶² *Tex. Pipeline Ass'n v. FERC*, 661 F.3d 258, 259 (5th Cir. 2011) (quoting *Nw. Cent. Pipeline Corp. v. State Corp. Comm'n of Kan.*, 489 U.S. 493, 510 (1989) (quoting *FPC v. Panhandle E. Pipe Line Co.*, 337 U.S. 498, 502-03 (1949)).

⁶³ 15 U.S.C. § 717(b).

the Commission lacks authority under the NGA to attach conditions on Section 3 and Section 7 authorizations to mitigate upstream and downstream indirect GHG emissions. The Commission's actions in the Draft Policy Statements are outside its statutory authority and *ultra vires*.

The Draft GHG Policy Statement “encourages each *project sponsor* to propose measures to mitigate the impacts of reasonably foreseeable GHG emissions associated with its proposed project.”⁶⁴ The Commission, for its part, “will consider such mitigation proposals in assessing the extent of a project’s adverse impacts.”⁶⁵ This statement is not as innocuous as it may seem. Coupled with the Commission’s declaration in the Updated Draft Policy Statement that it “may deny an application based on any . . . adverse impacts,” including GHG impacts, this is properly viewed as a directive and not a mere suggestion.⁶⁶ The Commission does not state the consequences of a failure to mitigate, but it is clear the Commission may find that the project has unmitigated adverse environmental impacts, and may deny its authorization on these grounds alone. The Commission devotes a substantial portion of its Draft GHG Policy Statement to discussing and describing mitigation methods, making clear that mitigation is not voluntary.⁶⁷ The clear purpose and structure of the NGA and the courts’ interpretations do not grant the Commission the power to impose such conditions far outside its jurisdiction. More to the point, other federal and state agencies, pursuant to other federal and state statutes, are actively engaged in assessing and regulating the sources of GHG emissions; it is not the job of the Commission.

⁶⁴ Draft GHG Policy Statement at P 104.

⁶⁵ *Id.*

⁶⁶ Updated Draft Policy Statement at P 62.

⁶⁷ Draft GHG Policy Statement at PP 113-28.

1. The Commission Lacks Authority to Order Mitigation of Indirect GHG Emissions.

The plain language of the NGA and longstanding court interpretations of the statute make clear that the Commission lacks authority to condition its certificate authorizations on mitigating or compensating for indirect GHG emissions. The NGA's genesis is in 1927, when the U.S. Supreme Court ruled that the states lacked authority to regulate the interstate transportation or sale for resale of natural gas because regulation of interstate commerce was the province of the federal government.⁶⁸ As a result, interstate pipelines were entirely unregulated. At the direction of Congress, and after seven years of study and 84 monthly reports to Congress, the Federal Trade Commission ("FTC") laid out its summaries and conclusions on the interstate natural gas pipeline industry. The FTC identified several concerns with the industry and recommended federal regulation of interstate natural gas pipelines.⁶⁹ The result was the NGA.

Congress "declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest."⁷⁰ However, the Commission's authority was limited. Section 1(b) of the NGA explicitly rejects regulation by the Commission of "the local distribution of natural gas or to the facilities used for such distribution or to the production and gathering of natural gas."⁷¹ Section 1(c) further

⁶⁸ See *Pub. Utils. Comm'n of R.I. v. Attelboro Steam & Elec. Co.*, 273 U.S. 83 (1927).

⁶⁹ See Final Report of the Federal Trade Commission to the Senate of the United States, Report 84-A, 70th Cong. 609-12 (1st Sess. 1936).

⁷⁰ 15 U.S.C. § 717(a).

⁷¹ *Id.* § 717(b) ("The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce . . . but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.").

circumscribes the Commission’s jurisdiction by exempting from NGA jurisdiction certain natural gas transportation and facilities in interstate commerce, declaring such activities and facilities to be “matters primarily of local concern,” so long as they were regulated under state law.⁷²

Courts have recognized that with the NGA, “[t]hree things and three only Congress drew within its own regulatory power. . . . These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale.”⁷³ In *NAACP v. FPC*, the Supreme Court—in an 8-0 opinion—discussed, in more general terms, the “public interest” in the context of the NGA.

[I]n order to give content and meaning to the words “public interest” as used in the Power and Gas Acts, it is necessary to look to the purposes for which the Acts were adopted. In the case of the Power and Gas Acts it is clear that ***the principal purpose of those Acts was to encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.*** While there are undoubtedly other subsidiary purposes contained in these Acts, the parties point to nothing in the Acts or their legislative histories to indicate that the elimination of employment discrimination was one of the purposes that Congress had in mind when it enacted this legislation. The use of the words “public interest” in the Gas and Power Acts is not a directive to the Commission to seek to eradicate discrimination, but, rather, is a charge ***to promote the orderly production of plentiful supplies of electric energy and natural gas at just and reasonable rates.***⁷⁴

⁷² *Id.* § 717(c) (“The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission.”).

⁷³ *Tex. Pipeline*, 661 F.3d at 263 (quoting *Panhandle E. Pipe Line Co. v. Pub. Serv. Comm’n*, 332 U.S. 507, 516 (1947)).

⁷⁴ *NAACP*, 425 U.S. at 669-70 (emphasis added) (citations omitted).

While the Court acknowledged there were subsidiary purposes of the NGA and the Federal Power Act (“FPA”), including “conservation, environmental, and antitrust questions,” these issues remain subsidiary to the primary purposes of the NGA.⁷⁵

One purpose of the NGA is “to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”⁷⁶ NGA Section 7(e) authorizes the Commission to issue a “certificate of public convenience and necessity” to “any qualified applicant . . . if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed” and that the activity proposed “is or will be required by the present or future public convenience and necessity.”⁷⁷ In addition, Section 7(e) provides that “[t]he Commission shall have the power to attach to the issuance of the certificate . . . such reasonable terms and conditions as the *public convenience and necessity may require*.”⁷⁸ The Commission’s NGA conditioning authority, therefore, is directly tied to the purpose and intent of the NGA and the Commission’s inherent authority thereunder. It does not extend to conditioning approval of a certificate on mitigating indirect emissions.

Recent cases from the D.C. Circuit do not alter the extent of the Commission’s jurisdiction and its lack of authority to mitigate indirect emissions. The Commission cites *Sabal Trail* for the proposition it has authority to impose conditions to mitigate indirect GHG emissions.⁷⁹ In that case, the D.C. Circuit was presented with the question of “whether, and to what extent, the EIS for [the] pipeline project needed to discuss [the]

⁷⁵ *Id.* at n.6. Notably, the statutory provisions and cases cited by the Supreme Court do not support the proposition that “environmental questions” are one of the NGA’s “subsidiary purposes.” The only environmental provisions cited by the Court are from Part I of the FPA, which regulations pertain to non-federal hydropower facilities, not the NGA. *Id.* at 669-70 (citing 16 U.S.C. § 803(a)).

⁷⁶ *Id.* at 670.

⁷⁷ 15 U.S.C. § 717f(e).

⁷⁸ *Id.* (emphasis added).

⁷⁹ Draft GHG Policy Statement at P 23 n.52 (citing *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (“*Sabal Trail*”).

“downstream” effects of the pipelines and their cargo.”⁸⁰ The court held that GHG emissions were an indirect effect of authorizing the project and “conclude[d] that at a minimum, FERC should have estimated the amount of power-plant carbon emissions that the pipelines will make possible.”⁸¹ The court’s statement that the Commission had “legal authority to mitigate” those emissions, which the Commission unduly relies upon in the Policy Statements, did not form a necessary part of the court’s conclusion.⁸² It was *dicta*. The entire case was framed around the Commission’s responsibilities under NEPA, and not its statutory authority under the NGA. Dissenting, Judge Brown pointed out, “nothing in the text of [the NGA or NEPA] empowers the Commission to entirely deny the construction of an export terminal or the issuance of a certificate based solely on an adverse indirect environmental effect regulated by another agency.”⁸³ The U.S. Court of Appeals for the Eleventh Circuit also heavily criticized the D.C. Circuit’s analysis in *Sabal Trail*, noting the court “fails to take seriously the rule of reason announced in *Public Citizen* or to account for the untenable consequences of its decision” and “breez[es] past other statutory limits and precedents.”⁸⁴ NGSA and CLNG do not point this out just to suggest the D.C. Circuit wrongly decided *Sabal Trail*; rather, to point out the Commission is relying on an unsupported and expansive interpretation of *Sabal Trail*.

Other cases have more directly addressed the extent of the Commission’s conditioning authority under NGA Section 7. The D.C. Circuit has explained that “[t]he Commission may not . . . when it lacks the power to promote the public interest directly,

⁸⁰ *Sabal Trail*, 867 F.3d at 1371.

⁸¹ *Id.*

⁸² *Id.* at 1374.

⁸³ *Id.* at 1382 (J. Brown, concurring in part and dissenting in part).

⁸⁴ *Ctr. for Biological Diversity v. U.S. Army Corps of Eng’rs*, 941 F.3d 1288, 1300 (11th Cir. 2019) (citing *Sabal Trail*, 867 F.3d at 1380-81.)

do so indirectly by attaching a condition to a certificate that is, in unconditional form, already in the public convenience and necessity.”⁸⁵ Because the Commission’s direct authority under the NGA does not extend upstream to natural gas production and gathering or downstream to local distribution and end-use, the Commission is powerless to mandate conditions upon upstream production and downstream consumption of gas as part of its certificate authorizations. Requiring the pipeline operator to mitigate those impacts is clearly inconsistent with the powers granted to the Commission by Congress and the purpose and intent of the NGA.⁸⁶

No other sections of the NGA otherwise invest the Commission with this conditioning authority. NGA Section 16, which describes the administrative powers of the Commission, does not grant the Commission any independent authority that it does not already have under the substantive sections of the NGA, or authorize the Commission to take actions that it otherwise may not do under other sections of the NGA. Rather, Section 16 merely provides a vehicle by which the Commission may perform its express regulatory functions—which is to provide for plentiful supplies of natural gas at reasonable prices—and it grants no substantive authority to require mitigation or compel project applicants to propose voluntary mitigation.⁸⁷ Therefore, nothing in the NGA authorizes the Commission to attach conditions to mitigate for GHG emissions.

⁸⁵ *Nat’l Fuel Gas Supply Corp. v. FERC*, 909 F.2d at 1522 (quoting *Sunray Mid-Continent Oil Co. v. FPC*, 364 U.S. 137, 152 (1960) (“once want of power to do this directly were established, the existence of power to achieve the same end indirectly through the conditioning power might well be doubted”); *cf. Richmond Power & Light v. FERC*, 574 F.2d 610, 620 (D.C. Cir. 1978) (the Commission may not achieve indirectly through conditioning power of the FPA what it is otherwise prohibited from achieving directly).

⁸⁶ While Section 3(e)(3)(A) allows the Commission to attach conditions to its approval of LNG terminal facilities, this authority is likewise limited by the authority granted to the Commission in the NGA. *See* 15 U.S.C. § 717b(e)(3)(A).

⁸⁷ *See FPC v. Texaco Inc.*, 417 U.S. 380 (1974); *United Gas Pipe Line Co. v. FPC*, 385 U.S. 83 (1966).

2. NEPA Does Not Authorize the Commission to Mitigate Indirect GHG Emissions.

Nor does NEPA provide statutory authority for the Commission to attach conditions to mitigate or compensate for GHG emissions, absent enabling authority in the NGA. The NGA preceded the enactment of NEPA in 1969 by over 30 years, and the two statutes have very different purposes. As explained above, the purpose of the NGA is “to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”⁸⁸ NEPA is a disclosure statute that, as the Supreme Court explained, “has twin aims. First, it ‘places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action.’ . . . Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decision making process.”⁸⁹

While NEPA requires informed decision-making, “it is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process.”⁹⁰ “NEPA imposes only procedural requirements on federal agencies with a particular focus on requiring agencies to undertake analyses of the environmental impact of their proposals and actions.”⁹¹ As Chairman Glick recognized, NEPA “does not dictate particular decisional outcomes.”⁹² Rather, NEPA “‘merely prohibits uninformed—rather than unwise—agency action.’”⁹³

⁸⁸ *NAACP*, 425 U.S. at 670.

⁸⁹ *Balt. Gas & Elec.*, 462 U.S. at 97 (quoting *Vt. Yankee Nuclear Power*, 435 U.S. at 553).

⁹⁰ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

⁹¹ *DOT v. Pub. Citizen*, 541 U.S. 752, 756-57 (2004).

⁹² *Annova LNG Common Infrastructure, LLC*, 170 FERC ¶ 61,140 (2020) (Glick Dissent at P 28) (quoting *Sierra Club v. U.S. Army Corps of Eng’rs*, 803 F.3d 31, 37 (D.C. Cir. 2015)), *pet. for review denied*, *Vecinos Para El Bienestar De La Comunidad Costera v. FERC*, Nos. 20-1045, *et al.*, 2021 WL 3716769 (D.C. Cir. Aug. 3, 2021).

⁹³ *Id.* (quoting *Robertson*, 490 U.S. at 351).

Significantly, “NEPA does not mandate action which goes beyond the agency’s organic jurisdiction.”⁹⁴ NEPA requires agencies only to consider those impacts that have “‘a reasonably close causal relationship’ between the environmental effect and the alleged cause.”⁹⁵ Significantly, “courts must look to the underlying policies or legislative intent in order to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not.”⁹⁶

Congress expressly limited the Commission’s authority to the sale and transportation of natural gas in interstate and foreign commerce, and explicitly carved out production, gathering, and local distribution from Commission jurisdiction. NEPA, a disclosure statute, cannot be used to expand the Commission’s powers—and allow it to impose conditions to mitigate GHG emissions—that the Commission does not otherwise have under the NGA.

Participants in the Commission’s Technical Conference on GHG Emissions made this clear, but the Commission’s Draft GHG Policy Statement failed to address these arguments. Former Chairman Joseph T. Kelliher expressed this view at the Technical Conference, explaining that it cannot “reasonably be argued that the Commission’s conditioning authority is unlimited. It too is cabined by the purposes of the [NGA].”⁹⁷ Chairman Kelliher also pointed out the inherent inconsistency between imposing conditions that require pipeline companies to mitigate for GHG emissions and the very purpose of the NGA, explaining that “[i]mposing mitigation discourages or forestalls

⁹⁴ *Gage v. U.S. Atomic Energy Comm’n*, 479 F.2d 1214, 1220 n.19 (D.C. Cir. 1973).

⁹⁵ *Pub. Citizen*, 541 U.S. at 767 (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

⁹⁶ *Id.* (quoting *Metro. Edison*, 460 U.S. at 774).

⁹⁷ Greenhouse Gas Mitigation: Natural Gas Act Sections 3 and 7 Authorizations, Docket No. PL21-3-000, Transcript of Technical Video Conference, at 22:11-14 (Nov. 19, 2021; Dec. 22, 2021).

pipeline development, the policy is directly contrary to the principal purpose of the [NGA] and must be set aside.”⁹⁸

The Draft GHG Policy Statement does not consider these arguments. According to the Commission, “[t]he question is not whether the Commission has regulatory authority over downstream emissions.”⁹⁹ Rather, the Commission flips the analysis on its head, arguing that because, under NEPA, the Commission has an obligation to look at indirect emissions as an effect of a project, it must be empowered to act on that information.¹⁰⁰ According to the Commission, it must, *ipso facto*, have authority to regulate these indirect GHG emissions; however, this logic ignores the extent of Commission jurisdiction under the NGA. Under this rubric, any potential direct or indirect effect the Commission looks at under NEPA may be used as a justification for denying or conditioning a proposed project. In other words, under this interpretation, the Commission may ignore the dictates of Congress and its narrow authority under the NGA and deny projects on any grounds. That is wholly inconsistent with the purpose and intent of the NGA, as detailed above, and further inconsistent with the “major questions” doctrine, as explained below.

Under the Commission’s new view, its authority would seem to be almost unlimited. For example, the Commission’s NEPA regulations require a project sponsor to disclose whether existing housing is sufficient to meet the needs of any additional population that would relocate to the area temporarily to construct the project.¹⁰¹ Under the Commission’s rationale, because it considers impacts on housing under NEPA, it must

⁹⁸ *Id.* at 22:9-11.

⁹⁹ Draft GHG Policy Statement at P 39.

¹⁰⁰ *Id.* (citing *Sabal Trail*, 867 F.3d at 1372-73).

¹⁰¹ See 18 C.F.R. § 380.12(g)(4) and (5) (requiring applicants to “[d]etermine whether existing housing within the impact area is sufficient to meet the needs of the additional population” and “[d]escribe the number and types of residences and businesses that would be displaced by the project, procedures to be used to acquire these properties, and types and amounts of relocation assistance payments”).

have authority to order mitigation, so it could presumably order the pipeline to construct new permanent housing instead of the ordinary practice of housing pipeline workers in hotels temporarily. The Commission’s jurisdiction cannot be so broadly construed.¹⁰²

To support this broad expansion of its conditioning authority, the Commission cites cases in which it has imposed mitigation.¹⁰³ But the citations do not support the mitigation of indirect GHG emissions. All of the cases cited by the Commission require mitigation of the *direct* effects from project construction and operation, and not upstream or downstream impacts. There is a significant difference between requiring mitigation of impacts directly associated with the jurisdictional pipeline and mitigation of impacts from non-jurisdictional facilities, which the Commission lacks the authority to regulate.

3. EPA and States Already Regulate Upstream and Downstream GHG Emissions Under the CAA and Other Statutes.

Indirect upstream and downstream emissions are already regulated by multiple layers of federal and often state regulation. The Commission’s attempt to influence and regulate these emissions is far outside its jurisdiction. Congress imbued the EPA and states with authority to regulate air emissions, including GHGs, through the CAA.¹⁰⁴ The CAA establishes an all-encompassing regulatory program, supervised by the EPA, to address comprehensively interstate air pollution.¹⁰⁵ As the Supreme Court explained, “Congress

¹⁰² See *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014) (holding that EPA’s new interpretation of the Prevention of Significant Deterioration and Title V was “unreasonable because it would bring about an enormous and transformative expansion in EPA’s regulatory authority without clear congressional authorization”).

¹⁰³ See Draft GHG Policy Statement at P 27 n.69.

¹⁰⁴ NGLA and CLNG note that EPA recently filed comments as part of the Commission’s NEPA review of pipeline and LNG projects, urging the Commission to, among other things, consider practicable mitigation measures to reduce GHG emissions. See Comments of EPA, Docket Nos. CP22-21-000; CP22-22-000 (Mar. 10, 2022). Such comments do not confer jurisdiction on FERC.

¹⁰⁵ *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007) (“EPA has the statutory authority to regulate the emission of such gases from new motor vehicles”).

designated an expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions.”¹⁰⁶ Congress recently reaffirmed EPA’s authority to regulate methane emissions from the oil and gas sector by disapproving a previous EPA rule that would have rolled back EPA’s methane regulation.¹⁰⁷

States also play an important role in regulating air emissions under the CAA. Congress intended that states would have a significant role in establishing measures to mitigate emissions from stationary sources.¹⁰⁸ The CAA acknowledges state authority to issue permits to regulate stationary sources related to upstream and downstream activities.¹⁰⁹ CAA Section 111(f) also dictates that “[b]efore promulgating any regulations . . . or listing any category of major stationary sources . . . the [EPA] Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.”¹¹⁰ The Commission, on the other hand, has no role to play in the CAA permitting process, other than its general evaluation of environmental impacts of pipeline projects under NEPA. Pursuant to the CAA, states have developed specific standards regulating sources of emissions, including from FERC-regulated compressor stations and LNG facilities. The Commission’s “encouragement” of mitigation measures fails to acknowledge the role of EPA and the states in regulating these sources of emissions and could potentially create irreconcilable differences/conflicts in standards a permit applicant must meet between the EPA and FERC. The Commission’s authority to assess

¹⁰⁶ *Am. Elec. Power*, 564 U.S. at 428.

¹⁰⁷ Joint Resolution Providing for Congressional Disapproval Under Chapter 8 of Title 5, United States Code, of the Rule Submitted by the Environmental Protection Agency Relating to “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review,” Pub. L. No. 117-23, 135 Stat. 295 (June 30, 2021).

¹⁰⁸ 42 U.S.C. § 7401(a)(3) (“air pollution control at its source is the primary responsibility of States and local governments”).

¹⁰⁹ *See id.* § 7661e(a).

¹¹⁰ *Id.* § 7411(f)(3).

environmental impacts generally under NEPA and to determine whether a project is in the public interest under the NGA does not provide it with jurisdiction Congress did not grant it by statute.¹¹¹

EPA has already taken significant steps to regulate GHG emissions from pipeline facilities and other sources. EPA recently announced a proposed rule under the CAA to limit emissions of methane from facilities in the oil and natural gas sector.¹¹² The proposed regulations would reach hundreds of thousands of new and existing facilities in production, gathering, processing, and transmission and storage.¹¹³ EPA is exercising this authority under Section 111 of the CAA through the routine rulemaking process in order to establish New Source Performance Standards for new and modified stationary sources of air pollutants and emission guidelines for existing sources.¹¹⁴ If enacted, EPA estimates the rule would result in significant reductions in methane emissions from the oil and natural gas sectors, including emissions from activities upstream and downstream of Commission-jurisdictional pipeline projects.

Many states have also taken significant steps to regulate GHG emissions by enacting laws aimed at reducing GHG emissions. For example, Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, and Virginia participate in the Regional Greenhouse Gas Initiative (“RGGI”), which is a state-led effort to cap and reduce power sector CO₂ emissions. Participating states have

¹¹¹ *Bulova Watch Co. v. United States*, 365 U.S. 753, 758 (1961) (“[I]t is familiar law that a specific statute controls over a general one ‘without regard to priority of enactment.’”) (quoting *Townsend v. Little*, 109 U.S. 504, 512 (1883)).

¹¹² Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 86 Fed. Reg. 63,110 (Nov. 15, 2021).

¹¹³ *Id.* at 63,117 (“The proposed [New Source Performance Standards] described above would apply to new, modified, and reconstructed emission sources across the Crude Oil and Natural Gas source category, including the production, processing, transmission, and storage segments . . .”).

¹¹⁴ *Id.* at 63,113.

established a regional cap on CO₂ emissions from power plants and over time the cap declines, reducing emissions. As part of joining RGGI, each member state passed laws or promulgated regulations to implement certain portions of the RGGI programs. Since its inception, CO₂ emissions in RGGI states have been reduced by more than 50 percent, which is twice as fast as the nation as a whole.¹¹⁵ Many Commission-regulated pipelines operate extensive facilities in RGGI states and serve customers that are subject to the RGGI cap and trade program.

In addition, New York recently passed its Climate Leadership and Community Protection Act of 2019 (“CLCPA”), which requires New York to reduce economy-wide GHG emissions 40 percent by 2030 and no less than 85 percent by 2050 from 1990 levels.¹¹⁶ New York recently announced proposed changes in its air permitting process that requires the state permitting agencies to consider these emissions targets in whether to issue permits.¹¹⁷ Under the CLCPA, New York is moving to enforce comprehensively its GHG emissions reductions targets through its air permitting process, which includes regulating of direct emissions from pipeline facilities and other sources of air emissions.

These are just some examples of federal and state laws that specifically regulate GHG emissions, both directly from Commission-jurisdictional pipeline facilities and from sources upstream and downstream of the pipeline facilities. These facilities’ emissions are subject to extensive regulation in one form or another from the EPA and states. The Commission’s attempt to step in and regulate activities and facilities upstream and

¹¹⁵ See Regional Greenhouse Gas Initiative Fact Sheet, at 1 (updated Sept. 2021), https://www.rggi.org/sites/default/files/Uploads/Fact%20Sheets/RGGI_101_Factsheet.pdf.

¹¹⁶ See N.Y. State Sen. Bill S6599, <https://legislation.nysenate.gov/pdf/bills/2019/S6599>.

¹¹⁷ N.Y. State Dep’t of Env’tl. Conservation, DEC Program Policy, DAR-21, The Climate Leadership and Community Protection Act and Air Permit Applications, https://www.dec.ny.gov/docs/air_pdf/dar21.pdf (last accessed Apr. 25, 2022).

downstream of the pipeline facilities under its jurisdiction is inconsistent with the arrangement Congress envisioned when it limited the jurisdiction of the Commission.

Moreover, the Commission’s existing NEPA regulations, which are not discussed in the Draft GHG Policy Statement, explicitly recognize the role of state and local governments to regulate emissions.¹¹⁸ In preparing Resource Report 9, which addresses air quality impacts and is required for all pipeline and LNG projects, applicants are required to estimate the impact of their proposed facilities on air quality and “how existing regulatory standards would be met.”¹¹⁹ In other contexts besides GHG emissions, the Commission regularly acknowledges that operating facilities in compliance with EPA or state air quality permits means that projects do not significantly impact air quality.¹²⁰ The Draft GHG Policy Statement is devoid of discussion as to why the Commission recognizes the authority of other agencies in all matters except for GHG emissions. While other agencies or state governments may not regulate GHG emissions in a manner satisfactory to the Commission, that does not create jurisdiction for the Commission.

4. The Commission’s Attempt to Regulate Mitigation of Upstream and Downstream GHG Emissions Violates the Major Questions Doctrine.

As Commissioner Christie points out in his dissent, the Draft Policy Statements also violate the “major questions” doctrine.¹²¹ Regulation of GHG emissions is a major

¹¹⁸ See 18 C.F.R. pt. 380.

¹¹⁹ *Id.* § 380.12(k)(3).

¹²⁰ See *Transcon. Gas Pipe Line Co.*, 167 FERC ¶ 61,110, at P 34 (2019), *reh’g denied*, 171 FERC ¶ 61,031 (2020); *Midship Pipeline Co.*, 164 FERC ¶ 61,103, at P 77 (2018).

¹²¹ Draft GHG Policy Statement, Christie Dissent at PP 3, 22; see also *Nat’l Fed. of Indep. Bus. v. DOL*, ___ U.S. ___, 142 S. Ct. 661, 667 (2022) (Gorsuch, J., concurring). See also *Whitman v. Am. Trucking Ass’n.*, 531 U.S. 457, 468 (2001) (“Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.”).

question of public policy, and if Congress intended to grant the Commission jurisdiction in this area, it would have said so explicitly.¹²²

The purpose and structure of the NGA illustrates that Congress did not give the Commission authority to regulate mitigation of upstream and downstream GHG emissions. The NGA was passed to encourage the orderly development of the interstate natural gas pipeline industry.¹²³ For over 80 years, under multiple Commissions, that goal has been paramount. However, the Commission's jurisdiction is limited to regulating the transportation of gas in interstate commerce.¹²⁴ Before and after the gas enters interstate commerce, the Commission has no authority.¹²⁵ Thus, attempts to require mitigation measures for upstream and downstream facilities are beyond this Commission's jurisdiction.

NGSA and CLNG support efforts to reduce GHG emissions. However, as John Adams was the first to point out, we are “a government of laws, not of men.”¹²⁶ The Commission's enabling legislation does not authorize it to compel mitigation of upstream or downstream GHG emissions. It is up to Congress to determine national policy on this major question and until Congress authorizes the Commission to regulate mitigation of indirect GHG emissions, it cannot do so.

¹²² See *Am. Elec. Power*, 564 U.S. at 426; *id.* at 428 (“Congress designated an expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions”). See also *U.S. Telecom Ass'n v. FCC*, 855 F.3d 381, 421 (D.C. Cir. 2017) (Kavanaugh, J., dissenting) (“If an agency wants to exercise expansive regulatory authority over some major social or economic activity . . . regulating greenhouse gas emitters, for example—an *ambiguous* grant of statutory authority is not enough. Congress must *clearly* authorize an agency to take such a major regulatory action.”).

¹²³ *NAACP*, 425 U.S. at 669-70.

¹²⁴ 15 U.S.C. § 717(b).

¹²⁵ See *id.* § 717(c).

¹²⁶ IV, Charles Francis Adams, *The Works of John Adams: Second President of the United States*, “Novanglus Papers,” No. 7, p. 106 (Charles C. Little and James Brown eds., 1851).

D. The Commission Should Affirm It Cannot and Will Not Dictate Mitigation for Upstream or Downstream Impacts.

It is unclear how the Commission intends to consider upstream and downstream GHG emissions in its evaluation of pipeline projects, including mitigation of such emissions. The Draft GHG Policy Statement provides, “[t]he Commission also *encourages* project sponsors to propose mitigation of reasonably foreseeable indirect emissions, and will take such proposals into account in assessing the extent of a project’s adverse impacts.”¹²⁷ At the March 3, 2022, Senate Hearing, at which U.S. Senators from both parties questioned how the Commission would apply the Policy Statements, Chairman Glick stated:

There’s two types of mitigation that we’re talking about. There’s mitigation of *direct emissions* – construction and operation, and yes, . . . the [Interim GHG] Policy Statement says you have to propose it if it’s going to be significant, as we require of all these other environmental impacts. But if it’s *downstream emissions*, you do not have to propose it, and we say that explicitly in the [Interim GHG] Policy Statement.¹²⁸

Additionally, Chairman Glick told an interviewer, “I think there was some other language in there that confused people. We are not going to require mitigation of downstream emissions.”¹²⁹ Chairman Glick continued that this is an aspect of the policies that “we probably need to further clarify.”¹³⁰

¹²⁷ Draft GHG Policy Statement at P 105 (emphasis added).

¹²⁸ Senate Committee on Energy & Natural Resources, Full Committee Hearing to Review FERC’s Recent Guidance on Natural Gas Pipelines at 1:46:36 (Mar. 3, 2022) (“Senate Hearing”), <https://www.energy.senate.gov/hearings/2022/3/full-committee-hearing-to-review-ferc-s-recent-guidance-on-natural-gas-pipelines> (emphasis added).

¹²⁹ S&P Global, *CERAWEEK: Glick says FERC permitting does not limit more LNG exports to Europe* (Mar. 11, 2022) (“S&P Global Mar. 2022 Press Release”), <https://www.spglobal.com/commodity-insights/en/market-insights/latest-news/natural-gas/031122-ceraweek-glick-says-ferc-permitting-does-not-limit-more-lng-exports-to-europe>. See also Testimony of Commissioner Phillips, Senate Hearing at 2:11:30 (Mar. 3, 2022) (“As we go forward, I’m committed to making sure that, if there’s a better framework, if there are reasonable, legally durable modifications we can make to these policies, I’m committed to doing so.”), <https://www.energy.senate.gov/hearings/2022/3/full-committee-hearing-to-review-ferc-s-recent-guidance-on-natural-gas-pipelines>.

¹³⁰ S&P Global Mar. 2022 Press Release.

The Chairman's statements demonstrate the need for clarity in any final policy statement, which should affirm that the Commission cannot and will not consider mitigation of upstream or downstream GHG emissions in its determination of whether a pipeline project is required by the public convenience and necessity.

Absent clarification, the Commission's approach to considering and requiring mitigation for indirect emissions from the combustion of natural gas transported by Section 7 and 3 projects may lead to a perverse policy result that is clearly contrary to the NGA's statutory purpose of providing for plentiful supplies of natural gas. Under the Commission's draft analysis, which appears to consider direct and indirect emissions equally in its public interest determination, a proposed project with *lower direct emissions* that transports a *greater* quantity of natural gas may be disfavored in comparison to another project with relatively *higher direct emissions*, but which transports a *lesser* quantity of natural gas. Unlike direct emissions, over which a project proponent may have some degree of control based upon the technologies and practices it utilizes in the construction and operation of its facilities, the emissions profile of indirect downstream emissions is entirely beyond the control of a project sponsor or the Commission. Because every incremental combustible molecule that a project transports would effectively be weighed against it in the Commission's analysis, this policy would effectively discourage the development of infrastructure designed to transport natural gas merely because that gas will ultimately be combusted. This cannot be the result that Congress intended in vesting the Commission with authority to authorize natural gas pipeline and LNG infrastructure under the NGA. It discourages exactly the activity that Congress intended the Commission to promote—the orderly development of natural gas infrastructure to transport gas from

production to market. This perverse policy result is compounded by the fact that the indirect emissions that the Commission would consider arise from activities that Congress excluded from the Commission's jurisdictional and regulatory scope.

E. The Commission Should Clarify How It Considers GHG Mitigation Measures.

In the Commission's discussion for how it will treat mitigation, the Commission leaves it unclear if there is any threshold level of mitigation. For instance, does the Commission expect applicants to mitigate a fixed percentage of the GHG emissions that would occur without mitigation? Is an applicant required to propose mitigation for 100% of a project's direct emissions, or is 10% sufficient? Is there a sliding scale of mitigation the Commission will require based on the demonstrated need and other project benefits? Is there a predictable level of unmitigated GHG emissions that will cause the Commission to deny an application? The Draft GHG Policy Statement leaves these questions unanswered. The Commission states that its "priority is for project sponsors to mitigate, to the greatest extent possible, a project's direct GHG emissions."¹³¹ It is unclear what this means. For instance, if the project sponsor does not mitigate direct GHG emissions "to the greatest extent possible," will that be grounds for denial of its application? And who ultimately makes the determination of whether a project's GHG emissions has been mitigated to the greatest extent possible? Will the cost of mitigation, to the extent it is prohibitive, be a factor in assessing whether a project sponsor has met its mitigation obligation? The Commission must address these questions and clarify how it will determine the required level of GHG mitigation in any final GHG policy statement.

¹³¹ Draft GHG Policy Statement. at P 105.

Moreover, the Commission should codify that market-based approaches will automatically be factored in as mitigation of a proposed project's GHG emissions when appropriate. If a price on carbon or cap-and-trade program is adopted or in place at the state, regional, or federal level, then that should be considered adequate mitigation with respect to a proposed project based in that region and no other mitigation should be required for the project's emissions.

F. The Commission Should Clarify the Rate Treatment of Costs to Meet New GHG Mitigation Requirements

The Draft GHG Policy Statement creates enormous questions concerning how mitigation of GHG emissions will affect pipelines' transportation rates. The Commission provides that pipelines may propose to recover the costs of GHG mitigation measures through their rates, similar to how they recover other costs.¹³² However, the Commission provides little more information on how it will ensure that new GHG mitigation requirements will not result in unjust and unreasonable rates. When approving mitigation measures and offsets, the Commission should prioritize the most cost-effective options first. Since the costs associated with purchasing offsets and adopting mitigation measures will be passed on to shippers and customers, the Commission should be cognizant of the rate impacts and prioritize cost-effective measures when feasible. The Commission must ensure pipeline operators are held to the just and reasonable standard when approving mitigation measures.

Costs of mitigation measures are of paramount concern to NGSAs and CLNG. Investment in measures to mitigate direct and possibly even indirect emissions associated with pipeline projects will increase costs on all stakeholders. Pipeline companies have the

¹³² Draft GHG Policy Statement at P 128.

right to recover those costs via rates; therefore, increased costs will result in higher rates, which will ultimately be borne by energy consumers. The Commission must recognize that the policies in the Draft GHG Policy Statement will lead to higher costs and higher prices for consumers.

The Commission must consider how these higher costs will be passed on to transportation customers. Local distribution companies (“LDCs”), for example, typically secure contracts for firm transportation capacity on pipelines and those costs are embedded in the delivered commodity costs for the LDCs and directly passed on to the LDC-s’ ratepayers. LDCs typically pass on higher supply costs to consumers via a Purchased Gas Adjustment or some other recovery mechanism. Therefore, a pipeline’s higher transportation costs will result in higher retail costs for utility residential, commercial, and industrial customers.

With respect to projects supported by producer-shippers, producers typically secure long-term contracts for transportation on pipelines to ensure their natural gas can get to market. Higher mitigation costs will increase the transportation rates, which could make pipeline projects uneconomic resulting in less investment, and, thus, less supply, which in turn will lead to higher prices to the ultimate consumers.

Due to market dynamics for electric power, electric power generators are reluctant to enter into long-term firm transportation contracts on pipelines to supply their natural gas-fired power plants, oftentimes depending on less reliable interruptible service instead. If pipeline companies are required to implement costly mitigation measures, power generators will be even less likely to commit to long-term transportation agreements, undermining electric reliability. The increased costs are likely to exacerbate the problem

of electric generators not signing contracts for firm capacity, thus compounding the existing problems of electric generators relying on uncertain interruptible capacity with its attendant reliability risks. Similarly, industrial companies and manufacturers may contract for pipeline transportation capacity to ensure they have access to a reliable and continuous supply of natural gas, which is critical to many industrial processes. Higher costs for pipeline capacity will likely lead to higher costs for all manufactured goods.

Finally, U.S. natural gas has emerged as a global energy commodity which has become crucial to weaning our European allies off of Russian natural gas. For LNG project developers and terminal operators, access to upstream gas supply is critical for investment in an LNG facility. Pipelines are the necessary link between natural gas supplies and export terminal facilities. LNG terminal operators or capacity holders often contract for pipeline transportation capacity to ensure they have the reliable and continuous supply of feed gas to liquefy, store, and ultimately export, LNG to customers in every corner of the globe. As the world has witnessed with the events in Ukraine, U.S. LNG exports can be crucial to supporting U.S. allies abroad and increasing exports to Europe is a priority of this Administration.¹³³ The Commission must consider the additional costs of mitigation measures, and their effect on investment as part of its review of the Draft GHG Policy Statement.

The Commission must also consider the mechanism for recovery of GHG emissions mitigation costs through a pipeline's rates. If the GHG mitigation costs are

¹³³ “The United States will work with international partners and strive to ensure additional LNG volumes for the EU market of at least 15 bcm in 2022, with expected increases going forward.” *See* The White House, FACT SHEET: United States and European Commission Announce Task Force to Reduce Europe’s Dependence on Russian Fossil Fuels,” Statements and Releases (Mar. 25, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/25/fact-sheet-united-states-and-european-commission-announce-task-force-to-reduce-europes-dependence-on-russian-fossil-fuels/>.

capital expenditures, these costs may remain in the pipeline's rate base for decades. Pipelines will also be required to raise these funds in the capital markets.

The other way the Commission could allow recovery of these costs is through a surcharge or tracker. If a tracker is used, however, the Commission must ensure transparency in those costs and implement a true up mechanism, to ensure that the costs and revenues under a tracker are matched and the pipeline does not over, or under, recover its costs.

Uncertainty as to the nature and magnitude of these costs may be enough to scuttle projects altogether. Even assuming new projects can be built, these GHG mitigation costs could translate into dramatically and unpredictably higher rates for shippers. Given that one of the Commission's core responsibilities is to ensure that pipeline rates are "just and reasonable," the Commission must provide more explanation of how it will carry out this responsibility. Since the technical nature of cost of mitigation and cost recovery in rates was not the specific focus of this proceeding, the Commission may want to consider a separate proceeding to examine rate treatment of any GHG mitigation costs, including how to provide shippers sufficient rate certainty to enable the firm capacity commitments needed to underpin financing and construction of new natural gas pipeline projects.

IV. CONCLUSION

For the reasons discussed above, NGSa and CLNG encourage the Commission to consider our concerns with the Draft GHG Policy Statement and provide clarity in any final policy statement. NGSa and CLNG support the Commission's efforts to reduce GHG emissions associated with natural gas infrastructure; however, it should not be done in a manner that discourages future investment in natural gas projects or passes on unjust and unreasonable costs to pipeline shippers and the ultimate consumer.

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CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2021), I hereby certify that I have this 25th day of April 2022, served the forgoing document on each person designated on the official service list compiled by the Secretary in this proceeding.

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