

OPENING STATEMENT of MARK C. CHRISTIE
Senate Energy and Natural Resources Committee
United States Senate
Washington, DC
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Chairman Manchin, Ranking Member Barrasso, members of the Committee, thank you for your invitation to appear before you again.

You have asked us as members of the Federal Energy Regulatory Commission to address the Commission's new policy, adopted last month through two orders,¹ that governs applications under the Natural Gas Act for certificates to construct natural gas facilities, including pipelines.

I strongly dissented from that new policy,² which will significantly raise the costs and uncertainties of building natural gas facilities. By raising costs and uncertainties, it will undeniably act as a deterrent to building the facilities this country will need to keep our electric grid reliable, to heat people's homes in the winter, to provide manufacturers with the energy supply they need to keep manufacturing jobs here in the United States, and even to serve our national security, as current events in Europe and Ukraine graphically illustrate.

I agreed there were reasonable updates to the 1999 policy statement that we could have made. For example, I agreed that precedent agreements between corporate affiliates, because of the obvious potential for self-dealing, should not, by themselves, prove need.

I also agreed we should strengthen our procedures for guaranteeing due process to affected property owners and considering effects on communities.

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

² Certificate Policy Statement, 178 ¶ 61,107 (2022) (Christie, Comm'r, dissenting); GHG Policy Statement, 178 FERC ¶ 61,108 (2022) (Christie, Comm'r, dissenting). My dissent to both orders (Christie Policy Dissent) is available at: <https://www.ferc.gov/news-events/news/items-c-1-and-c-2-commissioner-christies-dissent-certificate-policy-and-interim>. Both orders are interrelated and I addressed them both in one dissent as I consider them two elements of the new policy.

Unfortunately, the new policy the majority imposed last month does not represent a reasonable update of the 1999 policy.

On the contrary, what the majority did was essentially assume it had the power to *rewrite* both the Natural Gas Act (NGA) and the National Environmental Policy Act (NEPA) under the rubric of addressing climate change. But that is a power that this Commission does *not* have; only you – the elected legislators in Congress – have that power and you have not delegated that power to us.

Importantly, while labeled “interim,” the new Green House Gas (GHG) policy – confusing as it is – is *not* temporary. It applies right now, not only to future applications, but to all *pending* applications, and it will inflict material harm on many pending applications right now. Changing the rules in the middle of the game violates any serious principle of due process, regulatory certainty, and just basic fairness.

The Commission’s new certificate policy did not happen in a vacuum. It is only the latest and most egregious example of a pattern over the past year during which actions have been taken that have caused delays and increased costs and uncertainties relative to pending certificate applications at the Commission.

To cite just one previous example, in January of this year, the majority imposed a new procedural rule in natural gas facility cases, one that allows unlimited late interventions by new parties, even after the Commission has already found a facility is needed to serve the public.³ I dissented from that new rule and said the new rule was not a “legal standard, but a legal weapon” that would be used against every natural gas pipeline, greatly raising the costs and uncertainties of ever getting such needed facilities constructed.⁴

If the new rule allowing unlimited late interventions was a legal weapon, this new certificate policy is the *mother of all legal weapons*. There is no question that it will be wielded against every major natural gas project, future or pending, making the costs and uncertainties of even pursuing a project exponentially more daunting.

³ *Adelphia Gateway, LLC*, 178 FERC ¶ 61,030, at P 10 (2022).

⁴ *Id.* (Christie, Comm’r, dissenting in part) (available at: [Item C-3: Commissioner Christie’s Partial Concurrence and Partial Dissent in Adelphia Gateway Extension of Time | Federal Energy Regulatory Commission \(ferc.gov\)](#)).

It is undeniable that there is a national campaign of legal warfare being waged against virtually every pipeline and other major natural-gas facilities in this country.⁵ This new FERC policy will provide a whole new array of avenues to attack natural gas pipelines and other facilities.

Finally, this debate over how climate impacts should be handled in certificate cases, is really over a *public policy* question, one with huge implications for millions of Americans.

I agree that reducing carbon emissions that impact the climate is a compelling national *policy* goal. But the Commission does not have an open-ended license under the U.S. Constitution or the Natural Gas Act to address climate change or any other problem the majority may wish to address.

Let me emphasize every person and organization pursuing the *policy* goal of banning the use of natural gas by blocking new facilities has a right under the First Amendment to advocate for such a national policy. However, this is a public policy question of immense importance, one that affects the lives and livelihoods of tens of millions of Americans and their communities. It even affects our national security.

So the real debate over the use of climate impact analyses in our certificate proceedings is far more about public policy than it is about law, and ultimately comes down to this question: *Who makes major decisions of public policy in our constitutional system?*

And in our democracy, it is only *you* – the legislators *elected by the people* – who have the *exclusive* power to decide the major policy questions that impact the lives of tens of millions of Americans, not an unelected administrative agency.

Thank you. I will be happy to answer your questions.

⁵ Christie Policy Dissent, *supra*, at PP 49-56, n. 97.