



FEDERAL ENERGY REGULATORY COMMISSION
Commissioner Mark C. Christie

April 7, 2022

The Honorable Joe Manchin, III
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

The Honorable John Barrasso, M.D.
Ranking Member
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

The Honorable James E. Risch
The Honorable Steve Daines
The Honorable John Hoeven
Members
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Re: Questions for the Record

Dear Senators Manchin, Barrasso, Risch, Daines, and Hoeven:

Enclosed please find my responses to the questions from your committee dated March 14, 2022. I have placed the questions themselves in italics, with my answers following in normal typeface.

I thank you for your questions and I stand ready to provide the Committee's members with any additional information or comments you may request.¹

Questions from Chairman Joe Manchin III

***Question 1:** The updated Certificate Policy Statement expands the impacts that FERC will consider without providing guidance on benefits that may be difficult to quantify.*

¹ The Certificate Policy Statements that were adopted on a 3-2 vote of the Commission on February 17, 2022 and were the subject of this Committee's March 3, 2022 hearing were suspended and converted into drafts seeking further public comment, by a 5-0 vote of the Commission on March 24, 2022. *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,197 (2022). Several of the questions in these Questions for the Record ask about my views on those Certificate Policy Statements. I have answered those questions herein while acknowledging the actions subsequently taken to suspend them and seek comment.



- a. *Does FERC currently consider a project's contribution to national security, energy independence and reliability a benefit?*

Generally considering those benefits to the nation would be consistent with the Natural Gas Act (NGA), the chief purpose of which is to “encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices”² Pipelines are the primary and safest means of transporting natural gas, so sufficient pipeline capacity, including essential components such as compressors, is therefore logically essential to national security, energy independence and reliability.

This explicit and broad policy purpose of the NGA rebuts claims that the Commission can use the NGA to reject a project solely due to its global climate impacts. Addressing global climate change is obviously a major policy issue and only Congress has the power to legislate on a policy issue of that magnitude, not an unelected administrative agency,³ nor unelected federal judges.⁴ Congress has not given the Commission that power in the NGA.

- b. *Assuming FERC will consider a project's contribution to national security, energy independence and reliability, how will FERC quantify and balance these benefits against environmental impacts?*

Under the NGA, FERC is required to determine whether a natural gas facility will serve the “public convenience and necessity.” While the broad policy goal of the NGA is to “encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices”⁵ a goal that is consistent with the broad goals of national security, energy independence and reliability, each determination in a specific case must be made based on the evidentiary record in that case. And, this is first and foremost an economic determination, given the NGA’s central purpose as described above. So, FERC’s *primary* duty in any certificate case is to ensure the public is served with adequate supplies of natural gas while protecting consumers from excessive rates for the transportation

² See *Nat'l Ass'n for Advancement of Colored People v. Fed. Power Comm'n*, 425 U.S. 662, 669-70 (1976) (“NAACP”).

³ Please see my dissent to the Certificate Policy Statements, *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Christie, Comm’r, dissenting); *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) (Christie, Comm’r, dissenting) (available online at <https://www.ferc.gov/news-events/news/items-c-1-and-c-2-commissioner-christies-dissent-certificate-policy-and-interim>), as well as my concurrence filed in three recent Commission orders approving individual certificates. *Columbia Gas Transmission, LLC*, 178 FERC ¶ 61,198 (2022) (Christie, Comm’r, concurring); *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022) (Christie, Comm’r, concurring); *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (Christie, Comm’r, concurring) (available online at <https://www.ferc.gov/news-events/news/items-c-2-c-3-and-c-4-commissioner-christies-concurrence-columbia-gulf>).

⁴ For a recent glaring example of judicial legislating on climate policy, see *350 Montana et al. v. Haaland et al.*, CA9, No. 20-35411, 2022 WL 999919 (Apr. 4, 2022) (finding that the Dept. of Interior violated NEPA by failing to provide a “convincing statement” in support of its conclusion that the GHG emissions of the project at issue were not significant). The dissent in that case got it right. (“The courts are ill-equipped to step into highly politicized scientific debates like this Indeed, we risk exceeding our own judicial authority in doing so. Rather than properly deferring to the other two branches of government . . . the majority now addresses this global issue better left in the first instance to the political branches, not the judicial branch.”) (Nelson, J., Dissenting) (citation omitted).

⁵ *NAACP*, 425 U.S. at 669-70.



service.⁶ FERC, like every other federal agency, also has a duty under the National Environmental Policy Act (NEPA) to gather information on, and consider, the environmental impacts of its major actions. However, through the NGA, Congress has made it clear that if a project is needed to provide the public with an adequate and affordable supply of natural gas for purposes that include the reliability of the electric grid as well as meeting the needs of residential and industrial consumers, then FERC is *not* authorized to reject that project solely due to the GHG impact on global climate change. The remedy for any environmental impact is to require reasonable mitigation of any impacts that are *under the Commission's jurisdiction*, such as *direct* impacts from the facility itself. Direct impacts are inevitable with *every* infrastructure project built and are not, in and of themselves, a justification to reject a project that is needed to serve the public. Such a major policy change would require an amendment to the NGA and only Congress can do that; not FERC and not the federal courts.

More specifically, to illustrate how unhinged from reality it would be for FERC to reject a needed natural gas project due to the alleged global climate impacts, consider that FERC has, of course, *no* jurisdiction over other countries which are also affecting climate change. For example, currently the power capacity of China's massive fleet of coal-fired generating stations is alone roughly *equal to the total installed generation capacity of the entire U.S. power system*, and China is moving forward with plans to expand that already huge coal fleet by another 25%, many of which are already under construction.⁷ Nor is China alone in continuing *to expand, not retire*, coal-fired generation. Other countries, including India, Vietnam and Indonesia, have plans to build more coal generation.⁸ Compared to the volume of climate-impacting GHG emissions continuously being produced by the coal fleets of China, India, and other large consumers of power, any purported GHG impact that can be ascribed to a single natural gas pipeline in the United States is, quite literally, *infinitesimal*. Rejecting an individual pipeline based on that relatively infinitesimal impact on global climate would be not just frivolous, but worse, it would be an act of self-destructive energy policy. It would deny to Americans affordable natural gas supplies needed to heat homes, run factories, and maintain reliable power service. If such a monumental *policy* decision were to be made, it must be made by the elected legislators in Congress, not by the unelected members of an administrative agency or federal court.

- c. *How and when will FERC provide applicants further guidance on how they should quantify or otherwise present benefits in a certificate application?*

The Commission's agenda and schedule are under the purview of the Chairman, including when specific draft rulemakings or draft orders are brought to the Commission and in what form.

⁶ I am not pre-judging herein any individual case, pending now or in the future; rather I am speaking generally.

⁷ See, e.g., Kenneth B. Medlock III, *China's Coal Habit Will Be Hard to Kick*, BARRON'S (Oct. 6, 2021); see also, Amy Gunia, *China Is Planning to Build 43 New Coal-Fired Power Plants. Can It Still Keep Its Promises to Cut Emissions?* [ed.: No, it cannot and will not.], TIME (Aug. 20, 2021) ("Gunia"); see also, Michael O'Boyle, *China Doesn't Need Another Coal Power Plant*, FORBES (Aug. 18, 2021).

⁸ Gunia, *supra*, n. 3.



Question 2: *The Interim Greenhouse Gas Policy Statement recommends that applicants propose upstream, downstream, operational, and construction emissions mitigation measures and notes that costs associated with the mitigation may be recoverable to the same extent as other construction and operational expenses.*

- a. *How does FERC intend to move forward on the rate-making process to allow for cost recovery of these expenses?*

As noted immediately above, the Commission's agenda and schedule are under the purview of the Chairman, including when specific draft rulemakings or draft orders are brought to the Commission and in what form.

- b. *How will applicants know what mitigation expenses FERC will find prudent and recoverable especially for upstream and downstream emissions?*

Please see answer to Question 2.a, above.

Question 3: *FERC's new policy statements will apply retroactively to applications currently pending before FERC, which has created uncertainty for project developers and a bottleneck in the approval of projects.*

- a. *Since these policies apply retroactively, are you concerned that applying them retroactively will impact the financing and timeliness of project applications? Why or why not?*

Absolutely it will. As I stated in my dissent to the Certificate Policy Statements adopted in February⁹ and as I testified to your committee on March 3, 2022, retroactive application to gas project applications that have been pending for years is patently unfair and also a huge obstacle to investment in any future projects as well.

Questions from Ranking Member John Barrasso

Question 1: *Chairman Glick, Commissioner Clements and Commissioner Phillips repeatedly stated that recent court decisions required issuance of the Policy Statements the Commission issued on February 18, 2022 ("the Policy Statements"). You and Commissioner Danly took the contrary view. Please provide the case, pin cite, and precise quotation of each judicial precedent that in your view requires:*

- a. *The issuance at all of either one or both of the Policy Statements;*

There is no court decision requiring the issuance of the Certificate Policy Statements in the forms that were approved at the Commission's February 18, 2022 meeting.

⁹ I previously provided my February 18, 2022 dissent on March 1, 2022 as an attachment to my response to Ranking Member Barrasso's letter of February 15, 2022 and via hyperlink to my prepared testimony at the March 3, 2022 hearing. It is also accessible at <https://www.ferc.gov/news-events/news/items-c-1-and-c-2-commissioner-christies-dissent-certificate-policy-and-interim>.



b. *The issuance now of either one or both of the Policy Statements;*

There is no court decision requiring the issuance now of the Certificate Policy Statements in the forms that were approved at the Commission's February 18, 2022 meeting.

c. *The elevation of non-economic considerations in assessing need (in all cases not just those involving affiliate transactions) under the Natural Gas Act (NGA);*

Under the NGA, FERC is required to determine whether a natural gas facility will serve the "public convenience and necessity." As described above in my answers to Senator Manchin's Questions 1.a and 1.b, that is first and foremost an *economic* analysis, since the NGA's purpose is to "encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices . . ."¹⁰

d. *The establishment of a 100,000 ton threshold to presume significance of greenhouse gas emissions (GHGs);*

I am not aware of any such court decision.

e. *The use of an Environmental Impact Statement (EIS) instead of an Environmental Assessment (EA) as the default NEPA document;*

The question whether to subject a certificate application to a full EIS or to a less costly and less time-consuming EA is a question relevant to the NEPA review. I am not aware of any court decision ordering a specific numerical formula as a bright line for determining when the Commission must perform either an EA or the more costly and time-consuming EIS.

f. *The consideration of downstream and upstream greenhouse gas emissions beyond Sabal Trail requirements as described in Appalachian Voices v. FERC WL 847199 (2019) (Affirming the Commission's determination and writing that Sabal Trail required that "FERC must either quantify and consider the project's downstream carbon emissions or explain in more detail why it cannot do so."); and*

Under *Sabal Trail*,¹¹ the Commission is required to estimate the quantity of indirect downstream GHG emissions from certain projects or explain why it cannot.¹² In the subsequent case of *Appalachian Voices* referenced in your question, the court approved the Commission's

¹⁰ *NAACP*, 425 U.S. at 669-70. I also discussed in some detail the limits of non-economic "public interest" considerations under the NGA's public convenience and necessity analysis in my dissent from the Policy Statements. *See Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Christie, Comm'r, dissenting, at PP 11-22); *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) (Christie, Comm'r, dissenting, at PP 11-22).

¹¹ *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017) ("*Sabal Trail*").

¹² *Id.* at 1375 ("FERC must either quantify and consider the project's downstream carbon emissions or explain in more detail why it cannot do so.")



estimate of an upper-bound quantification and ruled such an upper-bound estimate was sufficient to meet the Commission's NEPA duties, *including the requirement set forth in the earlier case of Sabal Trail*.¹³

g. *The seizure of jurisdiction over the entire natural gas industry from well head to end use.*

There is no such court ruling. Such an action by FERC would violate the NGA and invade jurisdiction over activities upstream and downstream that are under state jurisdiction.

Question 2: *During the hearing, a majority of Commissioners argued that the Policy Statements were required because the majority was concerned that current and future projects would be remanded or vacated by the courts. However, many certificates have been approved since Sabal Trail.*

Please specify the cases in which certificate orders were vacated or remanded because of a failure to prepare an EIS instead of an EA in accordance with Sabal Trail as outlined by Appalachian Voices v. FERC WL 847199 (2019) ("FERC must either quantify and consider the project's downstream carbon emissions or explain in more detail why it cannot do so.") Please limit your answer to FERC certificate orders issued under section 7 and not cases where cooperating agencies have been reversed on appeal. Please provide this information in chart form. Please include in the chart certificate cases that have been upheld since the issuance of Sabal Trail.

I am aware of certificates that were remanded on procedural grounds involving the Administrative Procedure Act (APA) or NEPA, such as *Sabal Trail*, over the past several years. I am also aware that over the same time period other certificates were upheld on appeal. I do not have this information in granular detail.

Question 3: *All three Commissioners who voted for the Policy Statements argued in this hearing that the Commission acted to establish regulatory certainty. However, the record of this hearing includes multiple statements that indicate the Policy Statements lead to greater uncertainty and not more certainty.*

a. *How can ambiguous and open-ended Policy Statements with no benchmarks encourage certainty in the heavily regulated and capital intensive interstate natural gas sector?*

They cannot and will not.

b. *If you disagree that the Policy Statements are ambiguous and open-ended, please identify specifically the standards that you think they establish. Please include a reference to the Paragraph(s) in either or both of the Policy Statements that support your view.*

I agree that many provisions of the Policy Statements are ambiguous and open-ended, most egregiously the framework for "encouraging" applicants to propose mitigation plans for indirect downstream GHG emissions from activities that are not even under FERC's jurisdiction. While

¹³ *Appalachian Voices*, 2019 WL 847199 at *2 ("FERC provided an estimate of the upper bound of emissions resulting from end-use combustion, and it gave several reasons why it believed petitioners' preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes.") (citing *Sabal Trail*, *supra*, n.12).



framed as a “voluntary” submission of mitigation plans, it is transparently a mechanism to coerce applicants to attempt to do *indirectly* what FERC has no authority to order *directly*.

c. *Why do you think the recent Policy Statements have spurred such a high level of concern?*

Please see my dissent to the Policy Statements,¹⁴ as well as my testimony to the committee on March 3, 2022.

Question 4: *During the hearing in response to Chairman Manchin, you and Chairman Glick expressed differing views about when and under what circumstances the full Commission has had or will have an opportunity to vote on pipeline orders. Chairman Glick has been consistent in correspondence beginning as long ago as May 2021 and continuing as recently as in a letter to me on March 1, 2022 that he would not and has not put any application then under review on hold while the Commission completed its work on the Policy Statements that were issued on February 18. During the hearing, after asking Chairman Manchin for leave to respond to your comment, Chairman Glick testified:*

“I have put orders up that I’ve disagreed with. As a Chair, I would never — I’m not going to stand in the way — even if I disagree with the majority of commissioner votes, I’m always going to put . . . the orders up for a vote even if I don’t agree with the order.”

a. *Please provide the facts as you know them (or with reasonable diligence can discern them) whether the full Commission’s consideration of an Order on an application under section 7 or an authorization under section 3 of the Natural Gas Act in any proceeding was delayed (for example, even after the completion of an Environmental Impact Statement) awaiting the Policy Statements that were issued on February 18. For any such application, please state the facts that support your view in support of or contrary to a claim of delay.*

I am not in possession of information sufficient to answer this question as to intentional delay. Commissioner Danly, in his letter to you dated February 1, 2022, detailed the many applications pending under Sections 3 and 7 of the NGA and the amount of time each has been waiting for action. This information speaks for itself.

b. *Looking forward, please comment on Chairman Glick’s statement in his letter to me of March 1, 2022 (as part of his response to the first question in my letter of February 15, 2022) that the Commission will not “hold up orders that are ready to issue and are supported by any majority of Commissioners based on these policy statements or work related thereto.” Is there any Commission rule that either prohibits or expressly permits orders that are ready to issue but are not supported by any majority of Commissioners based on any policy statement or work related to such policy statement to be held off the Commission’s agenda for a vote?*

In my comments to your Committee, I simply quoted Chairman Glick using the exact words in his letter referenced in your question and I simply applied the plain meaning of those words. The

¹⁴ *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Christie, Comm’r, dissenting); *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) (Christie, Comm’r, dissenting). My dissent to both orders is available at <https://www.ferc.gov/news-events/news/items-c-1-and-c-2-commissioner-christies-dissent-certificate-policy-and-interim>.



Chairman has the authority to set the Commission's voting agenda, but I am unaware of any Commission rule saying that a vote cannot be taken on a certificate application unless there is a majority in favor. I would note there are indeed instances when additional time before scheduling a vote may produce an eventual compromise on a matter that can command four or five votes and a delay to try to obtain such a compromise may be worthwhile. I am not opposed to trying to achieve a compromise and holding up a vote as long as there is a reasonable prospect of finding a compromise in an expeditious time frame. In general, however, my view is that *all* pending matters should be timely voted up or down and not left in regulatory limbo for months or years just because there is no majority in favor of a certificate. Commissioners always should be willing to go on the record with their votes and take ownership of them, whether they vote yes or no. Time is money to applicants who have to raise substantial capital to pay for projects and applicants deserve a timely decision from the regulator. That is just good regulatory practice. In my 17 years as a utility commissioner in Virginia, our typical practice was to vote on certificate applications on a timely basis and we would not hold up voting on a matter just because a majority was opposed to the application. If applicants go to the time, trouble and expense of filing an application for a certificate to construct a facility, they deserve a timely resolution of their case, even if the outcome is not to their liking. They can then accept the result or appeal, but at least they have an answer. For this reason, I strongly favor statutory deadlines to force administrative agencies to vote and deliver decisions on a timely basis.

- c. *Wouldn't a practice to hold up orders not supported by a majority of Commissioners based on a particular policy statement in effect deny an applicant the opportunity to have a resolution of its application? If so, wouldn't that be unfair?*

Please see my answer to your Question 4.b just above.

Question 5: *Commission staff has repeatedly said that it is unable to assess the impact of an individual project on climate change. In the Delta Lateral Order (CP21-197) issued this week, Commission staff again stated that "FERC staff is unable to determine significance with regards to climate change impacts." Why is the Commission still unable to make a determination on the impact of greenhouse gases after the issuance of a Policy Statement that was designed to do just that? Why, and if so when, is it reasonable to expect this situation to change?*

I cannot comment on the specific pending matter you identify in the question.

As to the much broader issue of whether the Commission can characterize the impact of a *single* natural gas facility in the United States on the *global* climate, the short and self-evident answer is no. Logically, it is absurd to claim the Commission can gauge such a global impact, for the reasons I discussed in my concurrence in three recent certificate orders.¹⁵ Further, such an attempted characterization should provide no basis for the Commission to reject a natural gas facility

¹⁵ *Columbia Gas Transmission, LLC*, 178 FERC ¶ 61,198 (2022) (Christie, Comm'r, concurring at PP 9-12); *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022) (Christie, Comm'r, concurring at PP 9-12); *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (Christie, Comm'r, concurring at PP 9-12). This concurrence – which is the same in all three orders – can be accessed at <https://www.ferc.gov/news-events/news/items-c-2-c-3-and-c-4-commissioner-christies-concurrence-columbia-gulf>.



application under the NGA. Any court that ordered the Commission to do so would be making a public-policy choice that is reserved exclusively to Congress. Please see also my answer to Senator Manchin’s Question 1.b above.

Question 6: *Assuming that the Commission has applied the Policy Statements issued on February 18, if a natural gas project purchased carbon credits or funded environmental restoration in satisfaction of a commitment it made as part of its certificate application (a commitment it made in response to the Commission’s “encouragement” and to increase the likelihood that the Commission would approve its application), would the Commission allow for recovery of the costs in rates of satisfying such mitigation commitments? If so, how would the Commission evaluate such costs for recovery?*

This question is speculative and I cannot answer it nor may I engage in pre-judgment. The February 2022 Policy Statements were suspended on March 24, 2022, and, to date, have not been applied to any project application.

Question 7: *Should the Interim GHG Policy Statement be revised to provide specific guidance on cost recovery for mitigation measures?*

a. *If so, does the Commission or its staff have particular methodologies under consideration?*

The Interim GHG Policy Statement in the form adopted in February (I dissented¹⁶) has been suspended,¹⁷ and in my opinion provides no basis at all for future action on any revision of the 1999 Policy Statement. It exceeds FERC’s legal authority by several orders of magnitude. If it ever did go into effect, it would also represent terrible energy policy for the American people, as described in my answers to Senator Manchin’s Questions 1.a and 1.b. Accordingly, it is premature to speculate on possible cost recovery mechanisms under that Policy Statement, nor do I wish to appear to engage in any prejudgment.

b. *If not, why not?*

Please see my answer to Question 7.a. immediately above.

c. *When and in what form will the Commission disclose these methodologies to the public?*

Please see answer to Question 7.a. above.

¹⁶ *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Christie, Comm’r, dissenting); *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) (Christie, Comm’r, dissenting). My dissent to both orders is available at <https://www.ferc.gov/news-events/news/items-c-1-and-c-2-commissioner-christies-dissent-certificate-policy-and-interim>.

¹⁷ *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,197 (2022) (rendering the February policy statements “drafts” and suspending their effectiveness).



- d. Please keep me informed of progress on the specific requirements for cost recovery for mitigation measures approved by the Commission.

I promise (consistent with respecting any applicable deliberative process and *ex parte* protocols) to keep you and the Committee informed.

Question 8: *The Department of Energy has an extensive program to promote hydrogen as an input fuel for the United States economy, including the energy sector. Hydrogen as an input for electricity generation, industrial processes, and domestic uses can help reduce emissions of greenhouse gases. Existing natural gas pipelines could help to deliver hydrogen in the future. How can the Commission enable the interstate natural gas pipeline system to: i) adapt to the greater use and transport of hydrogen; and, ii) help strengthen the reliability of an electric grid that will be expected to depend on primary energy inputs that have lower carbon emissions than today, including a greater contribution from intermittent sources of electric generation?*

There has been much written and said about the possibility of replacing, mixing or using various forms of hydrogen (“blue” or “green”) in existing pipeline facilities. It appears to hold significant promise as a technological innovation that could reduce methane emissions while delivering the reliability benefits of natural gas. Such technology has not yet developed to a commercial scale at a cost that benefits consumers. I hope it does. As with any technology that holds significant promise to lower GHG emissions at an affordable cost to consumers when fully developed, such as modular nuclear reactors or battery storage, in my opinion the preferable way to fund the basic research and development on those technologies is through direct appropriations of public funds by Congress, not by charging captive customers of a monopoly in their retail power and heating bills.

Question 9: *In the Northeast, many natural gas utilities have been forced to place a moratorium on new service hookups because of insufficient gas supply. Many existing interstate pipelines are operating at maximum capacity and still cannot keep pace with demand.*

The North American Electric Reliability Corporation’s 2021 Long-Term Reliability Assessment states: “In New England, limited natural gas pipeline capacity leads to a reliance on fuel oil and imported liquefied natural gas (LNG) to meet winter peak loads. Limited natural gas pipeline capacity and lack of redundancy is a concern for electric reliability in normal winter and a serious risk in a long-duration, extreme cold conditions.”¹⁸ How should and will the Commission help to address these problems?

NERC has warned repeatedly that natural gas-fired generation will be even *more* essential to keep the lights on as more intermittent (weather dependent) resources such as wind and solar are injected into the power resource mix. NERC has made it clear that the need for more natural gas supply will continue for decades, not just a few years, and that is across the United States, not just in New England. The United States Energy Information Administration (EIA) recently predicted that

¹⁸ https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2021.pdf.



in the year 2050 natural gas will still remain one of the largest components of the U.S. energy mix.¹⁹ But the dependability of natural gas supply depends on pipelines, which are the primary means of transporting natural gas from producers to consumers. That requires adequate natural gas pipeline capacity and infrastructure.

Along with NERC, the Independent System Operator – New England (ISO-NE) has also recently warned that a lack of pipeline capacity into New England is a serious threat to maintaining a reliable electrical power system, not to mention providing affordable gas for home heating and industrial uses.²⁰ The pipeline constraints currently threatening the reliability of power in New England and driving up prices to consumers are the direct result of policy decisions made by policy makers in New England and the State of New York over the past decade or more to oppose the construction of new pipeline capacity,²¹ ban the production of available and proximate natural gas supply,²² and reduce the use of natural gas-fired generation.

¹⁹ UNITED STATES ENERGY INFORMATION ADMINISTRATION, ANNUAL ENERGY OUTLOOK 2022 (AEO2022) (March 3, 2022) (“Petroleum and natural gas remain the most-consumed sources of energy in the United States through 2050...”) (available at <https://www.eia.gov/outlooks/aeo/>).

²⁰ See *Harsh Weather Conditions Could Pose Challenges to New England’s Power System This Winter*, ISO NEWSWIRE (Dec. 6, 2021) (available at https://isonewswire.com/2021/12/06/harsh-weather-conditions-could-pose-challenges-to-new-englands-power-system-this-winter/?utm_source=isonewswire&utm_medium=newsfeed) (“Well-documented natural gas pipeline constraints, coupled with global supply chain issues related to deliveries of oil and liquefied natural gas (LNG), are placing New England’s power system at heightened risk heading into the winter season, according to ISO New England, Inc., operator of the region’s power grid.”); see also *New England ISO: Winter reliability risks include “controlled outages,”* THE ENERGY DAILY (Dec. 8, 2021) (“the ISO once again noted that the region’s long-standing failure to expand its gas pipeline network means fuel supply for gas-fired power plants may be curtailed in extreme weather if limited gas supplies are strained by strong demand for home heating.”); Jared Anderson, *ISO New England sees precarious power reliability heading into winter*, MEGAWATT DAILY (Dec. 6, 2021) (“New England has been dealing with winter energy security concerns for several years and ISO-NE sometimes sees power system conditions running up to the edge of reliability during winter”); Miranda Willson, *Northeast grid “vulnerable” this winter amid gas squeeze*, ENERGYWIRE (Dec. 7, 2021) (“ISO New England . . . said it expects to be able to meet demand for power this winter, assuming current forecasts predicting a mild winter hold true. *But the region’s limited natural gas pipeline system could make it difficult to get enough gas into New England when it is most needed.*”) (emphasis added).

²¹ See, e.g., Vivian Wang and Michael Adno, *New York Rejects Keystone-Like Pipeline in Fierce Battle Over the State’s Energy Future: Regulators denied an application for a \$1 billion natural gas pipeline that environmentalists said would set back the fight against climate change*, THE NEW YORK TIMES (May 15, 2019). (“But the activists’ critiques extended beyond demand, to the broader threat of climate change. Federal officials had also expressed concern on that front. Though [FERC] . . . authorized the project to proceed, one of the four commissioners, Richard Glick, said the body had failed to ‘give climate change the serious consideration it deserves.’ . . . Activists used that argument to pressure [Governor] Cuomo politically with protests and phone-banking campaigns, warning that his progressive credentials would be imperiled if he allowed state regulators to approve the pipeline. ‘Banning fracking is a great step in the right direction,’ said Robert Howarth, an ecology and environmental biology professor at Cornell University. ‘Allowing a build-out of gas infrastructure — I think that would just be a very sad addition to that, undercutting the governor’s legacy for sure.’ . . . ‘The state has made it clear that dangerous gas pipelines have no place in New York,’ Kimberly Ong, a senior attorney at the Natural Resources Defense Council, said.”)

²² Daniel Luzer, *Gov. Cuomo Bans Fracking in New York State*, GOVERNING (Dec. 17, 2014), available at <https://www.governing.com/archive/citing-health-risks-andrew-cuomo.html>.



Let me emphasize that under our constitutional framework, it is the states which have primary responsibility for setting their own energy and environmental policies, and FERC must and should recognize and respect the states' proper authority in this regard, but state policy makers should accept accountability for the logical and foreseeable consequences of their policy choices. Of course, in a democracy the ultimate recourse of the people of each state for the policy choices made by their elected policy makers is to the ballot box.

Question 10: *What analysis, if any, did the Commission perform to assess the potential impact of the policies articulated in the Policy Statements on i) the sufficiency or reliability of natural gas or electric service; or ii) the cost of natural gas or electricity?*

I have no idea what – if any – such analysis was done. The two Policy Statements you reference, to which I dissented, obviously introduce huge new legal and economic obstacles to constructing necessary pipeline capacity. Preventing the construction of needed pipeline capacity will drive up prices to consumers who heat their homes with natural gas and threaten the reliability of our electric grid since natural gas is a critical balancing fuel, as NERC has warned (see my answer to Question 9 above).

a. *If such analyses were performed, what did they show?*

Please see my answer above to Question 10.

b. *If such analyses were not performed, why were they not performed?*

Please see my answer above to Question 10.

c. *Is there any plan to perform such an analysis going forward?*

I have no idea. The Commission's agenda, schedule and the direction to staff to perform analyses are under the purview of the Commission chair.

Question 11: *Should the immediate applicability of the Policy Statements issued on February 18 to currently pending applications for certificates under section 7 of the NGA be a reason to delay or deny requests for route changes or technical changes in a natural gas project? If so, please provide the reasons for your view. If not, when will or should the Commission act on such applications or provide assurance to applicants that action will be forthcoming?*

I dissented from the two Policy Statements and they have been suspended, as discussed at length above.

Question 12: *What remedies should parties seek in courts or at the Commission in response to these Policy Statements and when should they seek them?*

Please see my answer above to Question 11.



Question 13: *Considering recent events in Ukraine, what steps should the Commission and Congress take to enable the United States to expand exports of natural gas in order to help supply our European allies with natural gas?*

The Commission should process and act upon applications to construct natural gas facilities expeditiously, fairly, based on the evidentiary record in each proceeding, and in accordance with the Natural Gas Act's broad policy purpose, which is to "encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices."²³

Question 14: *When questioning Chairman Glick, Senator King said,*

"NEPA [the National Environmental Policy Act] says that any federal agency shall identify and develop methods and procedures which will ensure that . . . environmental amenities and values may be given appropriate consideration -- the environmental impact of proposed actions. You [have] got to do that, that's the law."

Later, as part of his questioning of Chairman Glick but referring to you, Senator King said,

"[D]on't say NEPA is a procedural law. NEPA is one of the most important substantive laws that we have in this country to protect . . . our environment."

Senator King concluded his references to NEPA in his exchange with Chairman Glick by observing,

"[I]f we don't take this step [of adopting the Policy Statements] the courts are going to keep kicking your decisions back if you don't comply with NEPA."

Please consider each of the foregoing statements by Senator King. Please tell me whether you agree or disagree with Senator King as to each statement and provide your reasons.

I was accurate in characterizing NEPA as a procedural law (as is the APA), in that it prescribes a *process* for environmental review, *not* substantive outcomes. As the D.C. Circuit said in *Sabal Trail*, NEPA is "primarily information-forcing."²⁴ The Supreme Court itself has said that it also is "well-settled that NEPA does not mandate particular *results*, but simply prescribes the necessary *process*. . . . NEPA merely prohibits uninformed – rather than unwise – agency action."²⁵

I fully agree with Senator King and my colleagues that FERC has an obligation to meet its NEPA duties in certificate application cases and should be diligent in doing so; however the two Policy Statements adopted in February, now suspended, went far, far beyond the Commission's NEPA obligations. The two Policy Statements attempted to turn the Natural Gas Act into a license

²³ *NAACP*, 425 U.S. at 669-70.

²⁴ *Sabal Trail*, 867 F.3d at 1367.

²⁵ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989) (citations omitted; emphases added).



to address global climate change and FERC into a climate change policy-maker, and that is not what Congress intended.

Questions from Senator James E. Risch

Question 1: Does FERC have the statutory authority to implement the changes in these two policy statements?

No. Please see my dissent, which I provided previously to the Committee.²⁶

Question 2: Given the significant implications of these policy statements, do you think it is more appropriate for congress to legislate these changes rather than an unelected commission?

Yes. Please see my dissent referenced in response to your Question 1. Please see also my recent concurrences in three individual certificate cases.²⁷

Question 3: The two policy statements that FERC issued last week seem short-sighted in a very important way, in that they don't address the volatility that will result from what could amount to a freeze on pipeline development. And now we have the added instability that the Russia-Ukrainian crisis has imposed on energy worldwide. Can you please explain to the American people how FERC has not threatened this country's energy security by issuing the two policy statements last week?

Please see my answers to Senator Manchin's Question 1, both subparts "a" and "b."

Questions from Senator Steve Daines

Question 1: Commissioner Christie, do you believe that the actions by FERC will lead to a longer permitting process for applicants?

Assuming this is a reference to the Policy Statements approved in February, yes. These have now been suspended.²⁸

²⁶ *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Christie, Comm'r, dissenting at PP 6-48); *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) (Christie, Comm'r, dissenting at PP 6-48). My dissent to both orders was provided on March 1, 2022 in response to Sen. Barasso's letter of February 15, 2022. It is also available at <https://www.ferc.gov/news-events/news/items-c-1-and-c-2-commissioner-christies-dissent-certificate-policy-and-interim>.

²⁷ *Columbia Gas Transmission, LLC*, 178 FERC ¶ 61,198 (2022) (Christie, Comm'r, concurring at PP 2-4, 12); *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022) (Christie, Comm'r, concurring at PP 2-4, 12); *Iroquois Gas Transmission Sys., L.P.*, 178 FERC ¶ 61,200 (2022) (Christie, Comm'r, concurring at PP 2-4, 12). This concurrence – which is the same in all three orders – can be accessed at <https://www.ferc.gov/news-events/news/items-c-2-c-3-and-c-4-commissioner-christies-concurrence-columbia-gulf>.

²⁸ *Certification of New Natural Gas Facilities and Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,197 (2022) (rendering the February policy statements "drafts" and suspending their effectiveness).



Question 2: Commissioner Christie, do you believe that the actions by FERC will lead to fewer or more approved pipeline certificates?

Fewer.

Question 3: Commissioner Christie, what effect on consumer prices do you believe will result from FERC's recent actions?

A policy to make it harder and more costly to finance and construct needed natural gas pipeline capacity will drive natural gas prices higher by limiting supply. It will contribute to even more inflation, now at a 40-year high, because energy prices drive so many other sectors of the economy, including food production and manufacturing.

Prices are set by supply and demand. That is basic economics. A pipeline is a transportation service that is essential to provide natural gas supplies to consumers, both residential and industrial. If needed transportation services are blocked from construction, the supply of natural gas available to consumers will shrink and as supply shrinks that will undoubtedly cause prices to go up.

Question 4: Commissioner Christie, do you believe that the actions taken by FERC could lead to less development, consumption and exports of U.S. natural gas and LNG?

Yes. Less.

Question 5: Commissioner Christie, do you believe that the policy statements passed by FERC constitute a "rule" under the Congressional Rule Act?

That is a parliamentary question of legislative procedure that I am not qualified to answer.

Questions from Senator John Hoeven

Question 1: My constituents want to ensure that they have access to the affordable, plentiful natural gas being produced at home in North Dakota.

Our state has made it a priority to develop new gas pipelines, which would likely connect to the interstate pipeline network, and thus be FERC jurisdictional, to deliver natural gas from western North Dakota to communities in eastern North Dakota.

How can FERC help support our state's energy goals, in light of these two new policy statements that will make it exceptionally difficult for my state to achieve those goals?



The two Policy Statements, if they went into effect (they have been suspended²⁹) would undoubtedly obstruct your state's energy goal of developing new gas pipelines.

Question 2: *The FERC majority has insisted that the courts forced FERC to revise its policy statement to bring legal durability to FERC's natural gas certification process.*

Do you agree that the courts required FERC to make the changes in its new party-line policy statements, and do you believe the changes will bring more or less certainty for developers of new projects?

Please see my answers to Senator Barrasso's Question 1.a and 1.b. No, the courts did not mandate the two Policy Statements in the form they were approved in February and the changes will cause much more uncertainty.

Question 3: *Under the revised policy statement, will pipeline project developers have a clear idea of what "mitigation" efforts will be necessary to obtain the Commission's approval to proceed to construction of a project?*

No. As I testified to your Committee on March 3, 2022, the basic construct of the Policy Statements is to tell an applicant, "We have no authority to force you to mitigate indirect emissions, upstream or downstream, but despite our lack of authority, you must submit such a mitigation plan to do exactly that and if you don't, you probably will get your application rejected. And, by the way, we won't even tell you in advance what plan will be good enough to get your application approved."

Question 4: *The Supreme Court has affirmed that the Natural Gas Act requires FERC to enact policies that enhance the orderly development of plentiful supplies of natural gas at reasonable prices for American consumers. Yet, the record makes clear the Commission's new policy statements will make it very difficult for needed pipeline projects to be constructed.*

Do you believe that the Commission's recent policy statements run counter to the Natural Gas Act?

Yes. Please see my dissent from the certificate policy statements orders, which I have provided previously to the Committee.³⁰

Question 5: *In your dissenting statement, you discussed the use of "coercive deficiency letters" that could lead to "a de facto rejection by rendering the project unfeasible."*

²⁹ *Certification of New Natural Gas Facilities and Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,197 (2022) (rendering the February policy statements "drafts" and suspending their effectiveness).

³⁰ *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Christie, Comm'r, dissenting at PP 11-28); *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) (Christie, Comm'r, dissenting at PP 11-28). My dissent to both orders is available at <https://www.ferc.gov/news-events/news/items-c-1-and-c-2-commissioner-christies-dissent-certificate-policy-and-interim>.



Will you expand on your concern, and have you noticed an uptick in the use of “coercive deficiency” letters by the Commission?

Deficiency letters are usually—and always should be—good-faith efforts by Commission staff (who work under the direction of the Chairman’s office) to seek more information on an application for a certificate or tariff filing so the Commission can make a well-informed decision. But the potential exists for deficiency letters to be used to demand that an applicant agree or try to perform certain actions to get an application approved that would render the project essentially unfeasible from an economic or even engineering standpoint. That would be tantamount to a rejection. I am not personally aware of any such instances heretofore, but see my answer to your Question 3.

Sincerely,

/s/ Mark C. Christie

Commissioner Mark C. Christie