

U.S. Senate Committee on Energy and Natural Resources
March 3, 2022 Hearing: *A Review of Recent Actions of the Federal Energy Regulatory Commission*
Relating To Permitting, Construction and Operation of Interstate Natural Gas Pipelines
and Other Natural Gas Infrastructure Projects
Questions for the Record Submitted to the Honorable Willie L. Phillips

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.

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

Answer: Yes. Our public interest determination requires “the Commission to evaluate all factors bearing on the public interest.” *Atlantic Refining Company v. Pub. Serv. Comm’n of New York*, 360 U.S. 378, at 391 (1959). Thus, FERC balances the benefits and the adverse effects of that project, which include national security implications, energy independence, and reliability if relevant to a project under consideration.

- 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?

Answer: When these issues are relevant to a project under consideration, the Commission will review, consider, and balance those factors with any others present including environmental impacts. However, to my knowledge, the Commission has not historically quantified a project’s benefits or adverse impacts in our balancing under section 7 of the Natural Gas Act.

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

Answer: On March 24, 2022, the Commission issued an order making both the Updated Certificate Policy Statement and the Interim GHG Policy Statement issued on February 17, 2022, draft policy statements. In the March 24 Order, the Commission also invited public comments on the draft policy statements. The Commission is currently receiving comments on the now-Draft Updated Certificate Policy Statement and I look forward to reviewing the comments and considering how best to provide additional guidance on this critical issue.

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?

Answer: When the Commission approves a certificate application, it also sets initial rates for a new service related to the authorized facilities. Under section 7(e) of the Natural Gas Act, the Commission may “attach to the issuance of the certificate . . . such reasonable terms and conditions” as are required by the public convenience and necessity, including a rate ceiling for the new service based on the pipeline’s estimates of costs

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and revenues. The Commission has permitted pipelines to establish a tracker to recover both mandatory and voluntary greenhouse gas cost offsets in its initial rates in certificate proceedings. *Ruby Pipeline, L.L.C.*, 131 FERC ¶ 61,007, at PP 34, 36 (2010). Consistent with this precedent, the Commission noted in the now-Draft Interim GHG Policy Statement that GHG mitigation costs would consider mitigation cost recovery in individual certificate proceedings.

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

Answer: In the now-Draft Interim GHG Policy Statement, the Commission provided several criteria that the Commission may consider when assessing whether GHG mitigation is in the public interest and, therefore those costs should be recoverable, including whether proposed mitigation or offsets are unencumbered and result in trackable, real and additional emissions reductions that the seller of the offsets had the exclusive right to sell. I look forward to receiving feedback on this proposal during the comment period.

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?

Answer: As a result of the concern expressed by this Committee and stakeholders, the Commission issued an order making both policy statements drafts and stated that it “will not apply the Updated Draft Certificate Policy Statement or the Draft GHG Policy Statement to new or pending applications.”

Questions from Ranking Member Barrasso

Question 1: You, Chairman Glick and Commissioner Clements repeatedly stated that recent court decisions required issuance of the Policy Statements the Commission issued on February 18, 2022 (“the Policy Statements”). Commissioners Danly and Christie 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;

Answer: No specific court precedent requires either statements’ issuance. I supported the now-draft policy statements as an initial step to provide additional clarity and certainty for parties regarding proposals under the NGA, and to allow for FERC to move forward with those proposals that are now pending.

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

Answer: As noted, no specific court precedent requires either statements’ issuance now.

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- 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);

Answer: Section 7(e) of the Natural Gas Act directs the Commission to issue applications to construct natural gas pipelines that are required by the public convenience and necessity, and the Commission may attach “reasonable terms and conditions” as required by this command. 15 U.S.C. § 717f(e). The Supreme Court explained that this is not limited to rates, but “7(e) [of the Natural Gas Act] requires the Commission to evaluate all factors bearing on the public interest.” *Atlantic Refining Company v. Pub. Serv. Comm’n of New York*, 360 U.S. 378, at 391 (1959). Echoing this finding, the Supreme Court has stated that this public interest evaluation under the NGA is meant to “encourage the orderly development of . . . natural gas at reasonable prices,” as well as meet other subsidiary purposes. *NAACP v. FPC*, 425 U.S. 662, 670 (1976). To make such a finding, the Commission has balanced a proposed project’s benefits, including need, against adverse impacts. In considering the public benefits of a project, the Commission has, and may, consider “meeting unserved demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, providing new interconnects that improve the interstate grid, providing competitive alternatives, increasing electric reliability, or advancing clean air objectives.” *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1309 (D.C. Cir. 2015). In considering any adverse impacts, the Commission has the authority to consider the project’s environmental impacts. *See Id.* (“[A]dverse effects may include increased rates for preexisting customers, degradation in service, unfair competition, or negative impact on the environment or landowners' property.”); *Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (explaining that the Commission has the authority to theoretically “deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment.”).

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

Answer: No court case explicitly requires that the Commission use a 100,000 ton threshold to presume significance. However, the National Environmental Policy Act does direct the Commission to assess the environmental impact of any major Federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332.

As noted above, the Commission issued an order making the GHG Policy Statement draft and indicated in recent orders that it will not make a significance finding while the Commission is still receiving public comment and considering approaches for assessing significance in a pending proceeding. *See Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2020) (Phillips and Christie, Comm’rs, concurring) (“We should continue to provide as much detail as possible in accordance with our NEPA requirements, but to the extent we make a determination that GHG impacts are significant or not – and an undue focus on drawing a bright line between “significance” and “insignificance” would appear to elevate form over substance – we would like to identify the factors considered or otherwise explain our determination.”).

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

Answer: No court precedent requires that an EIS is, as categorical matter, the default NEPA document. NEPA requires federal agencies to perform an EIS whenever the impacts of a proposed project will have a significant impact on the human environment. If it is unclear whether an EIS is required, then an agency may first prepare an EA. If the EA concludes that the agency action will not have a significant impact on the environment, no EIS is necessary. If an EA cannot conclude that the action will not have a significant impact, then it should prepare a supplemental NEPA document, such as an EIS.

- e. 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

Answer: *Appalachian Voices v. FERC*, is consistent with *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017) (*Sabal Trail*). As noted above, the Commission did not make a significance determination in its most recent certificate orders. See *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2020).

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

Answer: No court precedent supports this interpretation, which conflicts with the plain language of the Natural Gas Act.

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*.

Answer: The Chairman has prepared this information in his response and I defer to his response.

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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?

Answer: The Commission sought to update the framework outlined in the 1999 Certificate Policy Statement based on stakeholder feedback. Statements of policy are meant to be informal and non-binding. As the D.C. Circuit has explained, a policy statement only “announces the agency's tentative intentions for the future.” *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974). I supported the policy statements as an initial step to provide certainty for parties by creating more legally durable orders that will avoid years of protracted litigation. Nonetheless, as discussed, on March 24 a bipartisan Commission voted to make both the Updated Certificate Policy Statement and the Interim GHG Policy Statement drafts and we are currently considering comments and how best to revise the now draft policy statements.

- 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.

Answer: As discussed, we are currently considering comments on how best to proceed with the now draft policy statements; however, a policy statement, by design, “is merely an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications,” and will not itself establish binding standards. *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33 at 38.

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

Answer: I think there are applicants and stakeholders who were concerned that any change in our administration of section 7 of the Natural Gas Act may stall or lead to the denial of natural gas projects. A concern especially heightened with the current geopolitical instability associated with Russia’s invasion of Ukraine.

Question 4: During the hearing in response to Chairman Manchin, Chairman Glick and Commissioner Christie 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 Commissioner Christie, Chairman Glick testified:

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“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.

Answer: The Chairman is responsible for the executive and administrative operation of the Commission, including supervising personnel, distributing work, and controlling when orders are presented for a vote. I joined the Commission in December 2021, and voted for authorizations under sections 3 and 7 of the Natural Gas Act as they were presented.

- 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?

Answer: I am aware of no such rule or practice. My understanding is once an order is ready to issue, it is presented for voting.

- 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?

Answer: I would never agree to any informal policy, had there been one, to delay acting on pending proposals based on issuing a future policy statement. I acted to approve authorizations under the 1999 Certificate Policy Statement before and after acting on the now-draft policy statements.

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

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Policy Statement that was designed to do just that? Why, and if so when, is it reasonable to expect this situation to change?

Answer: My understanding is that the Delta Lateral EIS was finalized for printing before the now-draft policy statements were issued in February. The Commission unanimously approved several certificate applications at the March 24, 2022 Commission meeting, and, as noted above, indicated that it will not make a significance finding while the Commission considers approaches for assessing significance in a pending proceeding.

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?

Answer: The Commission has not applied the policy statements, which, as noted, are now drafts.

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?
- b. If not, why not?
- c. When and in what form will the Commission disclose these methodologies to the public?
- d. Please keep me informed of progress on the specific requirements for cost recovery for mitigation measures approved by the Commission.

Answer: These are issues that I will consider based on comments filed in the record. As noted, the Commission has permitted cost recovery in initial rates for mitigation measures.

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?

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Answer: The Commission oversees natural gas pipelines that seek to transport natural gas blended with hydrogen. If a natural gas company wishes to transport such fuel, it would revise its tariff governing its gas quality standards, subject to Commission review. My understanding is that no federal agency has authority over pure hydrogen pipelines analogous to the Commission's authority under the Natural Gas Act. I am aware of stakeholder interest in hydrogen fuel, as well the Department of Energy's investments in hydrogen technology, including hydrogen hubs.

I also recognize the role natural gas pipelines play to support generation and I am eager to work on efforts to improve gas-electric coordination. Enhancing the coordination between natural gas and electric systems will help to prevent winter blackouts and the kind of effects witnessed during Winter Storm Uri. Because of the interdependencies between the gas and electric sectors that came to light and the vulnerabilities of natural gas infrastructure that were exposed during the winter storm, I support natural gas facilities implementing and maintaining cold weather preparedness plans. During Uri, millions of Americans were dependent upon natural gas not only to heat their homes, but also to provide the fuel for the generating units that would provide the energy to consumers.

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."¹ How should and will the Commission help to address these problems?

Answer: As an initial matter, the Commission will consider the merits of any proposed pipeline that seeks to serve the Northeast. At our March Open Meeting, the Commission approved a recent project that will allow a moratorium on new natural gas service to lift outside of New York City. *Iroquois Gas Trans. Sys. L.P.*, 178 FERC ¶ 61,200 (2022). I also agree long-term reliability is a concern in ISO-NE and support efforts by the Commission to help address these issues through, for example, a Winter-Readiness Technical Conference on April 27-28, 2022, a review of forthcoming NERC energy assurance reliability standards, and other efforts to ensure market mechanisms are designed to address electric reliability.

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?

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

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- b. If such analyses were not performed, why were they not performed?
- c. Is there any plan to perform such an analysis going forward?

Answer: My understanding is that Commission staff did not conduct additional analysis but relied on the over 38,000 comments submitted to the Notices of Inquiry on updates to the 1999 Certificate Policy Statement. While Commission staff does not plan to perform the analysis you've identified, I will consider additional stakeholder feedback in the current comment period on the reliability risks associated with the now draft policy statements as well as the risks as associated with protracted litigation concerning FERC's orders.

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?

Answer: As noted, in the March 24, 2022 order designating the policy statements as draft policy statements, the Commission clarified that it will not apply the policy statements to pending applications.

Question 12: In an answer to Chairman Manchin's question, you said you are "committed to making sure that if there's a better framework, if there are reasonable, legally durable modifications that we can make to these policies, I'm committed to doing so." Chairman Glick asserted that the leading case that is requiring the Commission to consider downstream greenhouse gas emissions is *Sabal Trail*. According to Commissioner Dandy, *Sabal Trail* only requires the Commission "to give an upper bound estimate of the downstream GHG emissions that are reasonably foreseeable and explain why it is ... unable to assess the particular project's impacts on the environment ... due to the emissions from that particular project."

Answer: As noted, I recently issued a joint concurrence with Commissioner Christie outlining our approach to assessing GHG emissions pursuant to NEPA. As stated there, in the absence of an agreed upon threshold—which is currently under review in the now draft GHG policy statement—or any criteria to identify a project's specific effects on the climate, I believe we fulfill our NEPA obligations by disclosing a project's GHG emissions and putting those emissions into context. *See Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2020) (Phillips and Christie, Comm'rs, concurring) ("We should continue to provide as much detail as possible in accordance with our NEPA requirements, but to the extent we make a determination that GHG impacts are significant or not – and an undue focus on drawing a bright line between "significance" and "insignificance" would appear to elevate form over substance – we would like to identify the factors considered or otherwise explain our determination.").

Question 13: Paragraph 3 of the Commission's *Updated Policy Statement on Certification of New Interstate Natural Gas Facilities* provides that the Updated Policy Statement "does not establish binding rules and is

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intended to explain how the Commission will consider applications to construct new interstate natural gas transportation facilities.”

- a. How will you ensure that the Updated Policy Statement does not establish binding rules?
- b. If the Updated Policy Statement is merely hortatory, what is its value, how does it bring certainty to regulation?
- c. How will you ensure that the Updated Policy Statement or its application in a specific proceeding will not impair the reliability or sufficiency of interstate natural gas supply or the reliability or resilience of the nation’s electric grids?
- d. How will you ensure that the Updated Policy Statement or its application in a specific proceeding will not drive up the cost of natural gas or electricity?
- e. Please respond to each of the foregoing subparts of this question with respect to the Interim Policy Statement on GHG Emissions.
- f. How do you intend to monitor the impact of the Policy Statements issued on February 18 or their application to pending or yet-to-be filed certificate applications to ensure that energy reliability and affordability are protected?
- g. What types of information would be helpful to your analysis?
- h. In light of the commitments you made to Senator Manchin during the hearing, will you seek to modify or limit the application of the Policy Statements issued on February 18 if you find that energy reliability or affordability is unduly at risk? And, if so, what steps will you take?
- i. Do you believe that parties could be aggrieved by the Policy Statements issued on February 18? If not, why not? Please be specific. If so, what steps should such parties take to seek relief?

Answer: A Policy Statement cannot establish binding rules. General statements of policy under the Administrative Procedure Act are agency statements of general applicability, not binding on members of the public, “issued . . . to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.” As noted, in a March 24, 2022 order, the Commission designated the policy statements as draft policy statements and clarified that it will not apply the policy statements to pending applications. I look forward to considering comments and feedback during this period.

Question 14: Given your concerns about disadvantaged communities and the burden imposed on the people in those communities when energy is too expensive or unreliable, will you consider the impact on energy costs or

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the sufficiency and reliability of natural gas or electric service as part of your “environmental justice” review for a pipeline application?

Answer: In the now draft Updated Certificate Policy Statement, the Commission explained that it would consider adverse impacts to landowners and surrounding communities, including environmental justice communities, and would review these impacts pursuant to the National Environmental Policy Act. The draft indicated that the Commission would consider any benefits beyond demand supported in the record, and I will carefully consider your suggested criteria in reviewing comments for any revised final statement and its future application.

Question 15: At what point in time or under what circumstances does it become an injustice to make it more difficult to complete projects that will keep natural gas supply sufficient or lower the risk of electric outages? And at what point in time or under what circumstances does it become an injustice to expose people in disadvantaged communities to a greater risk of energy insecurity?

Answer: The Natural Gas Act requires the Commission to approve projects in the public interest to “encourage the orderly development of . . . natural gas at reasonable prices.” *NAACP v. FPC*, 425 U.S. 662, 670 (1976). I continue to support timely and legally durable authorizations of needed natural gas infrastructure projects to ensure the public has access to needed natural gas service. There is no instance in which I would not consider how our decisions ensure that benefits, including reliability and energy security, are passed along to everyone. Especially disadvantaged and environmental justice communities.

Questions from Senator Steve Daines

Question 1: Commissioner Phillips, when we spoke you mentioned that you believe it is important to evaluate the affordability and reliability of energy for consumers when making decisions. This action puts up additional roadblocks for consumers access to affordable and reliable energy and will arguably make access to energy harder and more expensive for rural states and consumers. Can you explain how increasing red tape and burdensome regulations leads to cheaper energy and will not lead to raising the costs of energy for Montanans?

Answer: On March 24, 2022, the Commission issued an order making both the Updated Certificate Policy Statement and the Interim GHG Policy Statement draft policy statements. In the March 24 Order, the Commission invited public comments on the now-draft policy statements. I remain committed to ensuring that our approach to certifying new natural gas infrastructure articulated in any finalized policy statement recognizes that investments are needed and that initial transportation rates are in the public interest to support the continued development of a reliable natural gas transportation system. I also welcome additional stakeholder feedback in the current comment period on the risks associated with protracted litigation concerning FERC’s orders under the NGA.

Question 2: Commissioner Phillips, do you believe that the actions by FERC will lead to a longer permitting process for applicants?

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Answer: As noted, the now draft policy statements are currently under consideration and I will carefully consider stakeholder concerns about a longer permitting process and the risks associated with protracted litigation.

Question 3: Commissioner Phillips, do you believe that the actions by FERC will lead to fewer or more approved pipeline certificates?

Answer: The now draft policy statements should not impact the number of pipeline projects being approved.

Question 4: Commissioner Phillips, what effect on consumer prices do you believe will result from FERC's recent actions?

Answer: The now draft policy statements should not impact consumer prices.

Question 5: Commissioner Phillips, what role did the effect on consumer prices play into your consideration of the two policy statements?

Answer: I considered the weight we should give to affiliate precedent agreements because of the possibility of manipulation with captive customers. In such situations, I support looking at additional evidence to determine whether the project is truly needed. I also planned to carefully consider the utility of, and costs associated with, mitigation, on a case-by-case basis as indicated in the now draft GHG Policy Statement. Additionally, I remain concerned about the cost associated with protracted litigation that ultimately are paid by consumers.

Question 6: Commissioner Phillips, do you believe that the actions taken by FERC could lead to less development, consumption and exports of U.S. natural gas and LNG?

Answer: No, I do not believe these draft policy statements will disrupt LNG exports or the natural gas industry generally. With regard to LNG, I recognize the geostrategic benefits associated with exporting increased LNG to our allies.

Question 7: Commissioner Phillips, do you believe that the policy statements passed by FERC constitute a "rule" under the Congressional Rule Act?

Answer: My understanding is that the CRA's definition of rule includes policy statements, including the Updated Certificate Policy Statement and Interim GHG Policy Statement. Both policy statements are now in draft form and we are soliciting comments.

Question 8: Commissioner Phillips, the 1999 policy statement was passed at FERC with bipartisan support. Do you believe that this partisan action by FERC weakens or undermines the rule, leaving it open to be rolled back at a future date?

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Answer: I agree bipartisan Commission action is more durable and I supported making the policy statements draft, in part, to try to reach bipartisan agreement. I look forward to working with all of my colleagues to finalize the now draft statements.

Question 9: Commissioner Phillips, with the crisis in Ukraine happening right now and energy prices increasing both domestically and internationally do you believe that it was prudent for FERC to take actions that make it more difficult for the United States to increase domestic and international transportation of natural gas?

Answer: I agree the Commission needs to consider any impacts of these policies on affordability, especially in the wake of the Russian invasion of Ukraine.

Question from Senator John Hoeven

Question: 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?

Answer: On March 24, 2022, the Commission issued an order making both the Updated Certificate Policy Statement and the Interim GHG Policy Statement draft policy statements. In the March 24 Order, the Commission invited public comments on the draft policy statements. The Commission is currently considering this issue in the now-Draft Updated Certificate Policy Statement and I look forward to considering how best to modernize the 1999 Certificate Policy Statement to continue to support needed projects in your state.