

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 Richard Glick

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. In reviewing applications for certificates of public convenience pursuant to section 7 of the Natural Gas Act, the Commission is required "to evaluate all factors bearing on the public interest." *Atlantic Refining Co. v. Pub. Serv. Comm'n of New York*, 360 U.S. 378, 391 (1959). Accordingly, pursuant to that requirement, where the record shows that a project will contribute to national security, energy independence, or reliability, the Commission will take that into 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: The Commission relies on the record before it in identifying, evaluating, and, where possible, quantifying benefits and impacts. Each Commissioner is expected to use their judgement to balance those benefits and impacts. When undertaking such an assessment, I agree that when the record shows a project will contribute to national security, energy independence and reliability, those factors, while challenging to quantify, should be taken into account in the balancing required when assessing a project under 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: At its February open meeting, the Commission issued an Updated Pipeline Certificate Policy Statement and an Interim GHG Emissions Policy Statement. Subsequent to these issuances, I heard concerns from numerous industry stakeholders who were seeking additional clarification on several issues. As I stated during the March 3rd hearing before your Committee, the Commission undertook these policy statements to provide greater certainty in the face of repeated defeats in the courts. Industry's calls for additional clarification were a signal that the Commission needed to do more to provide regulatory certainty.

At its March 24, 2022 meeting, the Commission issued an order re-designating the policy statements as draft policy statements and inviting public comment. While I cannot speak to when the draft policy statements will be finalized, I can assure you I am committed to working with my colleagues to do so. It is my intention that any final policy statements will provide guidance of the kind contemplated in your question so that industry has the needed certainty, including regarding the types of evidence that project sponsors should submit to show that their projects are needed and in the public interest. In the meantime, the draft policy statements will not be applied to pending project applications and applications filed since the February meeting and until the draft policy statements are final.

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 Richard Glick

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: As stated in the now-Draft GHG Emissions Policy Statement, pipelines may seek to recover the costs of any greenhouse gas (GHG) mitigation measures in the rates of the individual project under the Commission's existing ratemaking process. The Commission is seeking comment on these matters and I look forward to reviewing any comments received on how the Commission will address specific cost recovery for proposed GHG mitigation measures. The Commission has invited comments on the draft policy statements by April 25, 2022 and reply comments by May 25, 2022.

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

Answer: As a general matter, the Commission has approved requests for recovery of costs prudently incurred for mitigation of environmental impacts. As to emissions specifically, the Draft GHG Emissions Policy Statement lists four criteria that GHG mitigation must meet for expenses to be recoverable. GHG mitigation mechanisms should be:

- a. real and additional – the emissions reductions would not have otherwise happened unless the proposed reduction mechanism was implemented, and the associated reductions occur beyond regulatory requirements;
- b. quantifiable – any emissions reductions must be calculated using a transparent and replicable methodology;
- c. unencumbered – the seller has clear ownership of or exclusive rights to the benefits of the greenhouse gas reduction; and
- d. trackable – the project sponsor must also propose means for the Commission to monitor and track compliance with the proposed mitigation measures for the life of the project.

I encourage all stakeholders to submit additional comments on the four criteria listed above and look forward to reviewing those comments as we consider the best path toward finalizing the Draft GHG Emissions Policy Statement. I expect that any final policy statements will include additional detail and guidance regarding how the Commission will evaluate mitigation measures.

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?

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 Richard Glick

Answer: In our order re-designating the policy statements as draft policy statements, the Commission stated that the policy statements will not apply to any applications filed prior to the issuance of final policy statements. It is my goal that our commitment to apply final policy statements only prospectively will provide certainty for developers, including with respect to their financing.

Questions from Ranking Member John Barrasso

Question 1: You, 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”). 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 court case requires the issuance of either policy statement, which are discretionary documents intended to provide guidance on how the Commission will consider the issues addressed therein. As I noted at the March 3, 2022 hearing, the courts have remanded several cases to the Commission over the last few years for failing to adequately consider the GHG emissions caused by a proposed project, and the policy statements were intended, in part, to address the flaws identified in those cases. Those cases are:

- *Food & Water Watch v. FERC*, No. 20-1132, --- F.4th ---, slip op. at 10, 18 (D.C. Cir. Mar. 11, 2022) (“[W]e remand to the Commission in light of its failure to satisfy its NEPA obligations” requiring on “remand to the agency to perform a supplemental environmental assessment in which it must either quantify and consider the project’s downstream carbon emissions or explain in more detail why it cannot do so.”).
- *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1331 (D.C. Cir. 2021) (“[T]he Commission’s NEPA analyses of the projects’ impacts on climate change and environmental justice communities were deficient under the APA. The Commission’s determinations of public interest and convenience under the NGA were therefore deficient to the extent that they relied on its NEPA analyses of the projects’ impacts on climate change and environmental justice communities. On remand, the Commission must reconsider its determinations of public interest and convenience under Sections 3 and 7 of the NGA, along with its NEPA analyses of the projects’ impacts on climate change and environmental justice communities.”) (citations omitted).
- *Birckhead v. FERC*, 925 F.3d 510, 518 (D.C. Cir. 2019) (holding that because “[Petitioners] nowhere claim that the Commission’s failure to seek out additional information constitutes a violation of its obligations under NEPA. We are thus left with no basis for concluding that the Commission acted arbitrarily or capriciously or otherwise violated NEPA in declining to consider the environmental impacts of upstream gas production.”); *id.* at 518–19 (“the Commission is wrong to suggest that downstream emissions are not reasonably foreseeable simply because the gas transported by the Project may displace existing natural gas supplies or higher-emitting fuels. Indeed, that position is a total non-sequitur: as we explained in *Sierra Club*, if downstream greenhouse-gas emissions otherwise qualify as

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 Richard Glick

an indirect effect, the mere possibility that a project’s overall emissions calculation will be favorable because of an ‘offset ... elsewhere’ does not ‘excuse[]’ the Commission ‘from making emissions estimates’ in the first place.”).

- *Sierra Club v. FERC*, 867 F.3d 1357, 1363 (D.C. Cir. 2017) (*Sabal Trail*) (“We agree that FERC’s environmental impact statement did not contain enough information on the greenhouse-gas emissions that will result from burning the gas that the pipelines will carry.”).

In addition, the D.C. Circuit has also recently vacated and remanded another certificate order for failing to adequately scrutinize the need for the proposed pipeline.

- *Env’t Def. Fund v. FERC*, 2 F.4th 953, 960, 976 (D.C. Cir. 2021) (“We agree with [petitioners] that the Commission’s refusal to seriously engage with nonfrivolous arguments challenging the probative weight of the affiliated precedent agreement under the circumstances of this case did not evince reasoned and principled decisionmaking. In addition, we find that the Commission ignored record evidence of self-dealing and failed to seriously and thoroughly conduct the interest-balancing required by its own Certificate Policy Statement. . . . Given the identified deficiencies in the Commission’s orders, it is far from certain that FERC ‘chose correctly,’ in issuing a Certificate to Spire STL[,]” vacatur is appropriate as “we have identified serious deficiencies in the Certificate Order and Rehearing Order.”).

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

Answer: Because policy statements are discretionary documents, no court case expressly requires the Commission to issue policy statements. Nevertheless, in light of the growing number of cases that the Commission has lost on these issues, I believed it was necessary for the Commission to change course in order to avoid additional remands or vacatur of our decisions in the future, as well as the uncertainty and delay that those adverse decisions necessarily inflict.

- 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: In *Atlantic Refining Co. v. Pub. Serv. Comm’n of New York*, 360 U.S. 378, 391 (1959), the Supreme Court held that the Commission must consider all factors bearing on the public interest. And, in *Sabal Trail*, 867 F.3d at 1375, the D.C. Circuit made clear that the Commission must consider both the positive and negative consequences of proposed projects. No court case speaks to the weight the Commission must accord any particular factor. The D.C. Circuit held, in *Sabal Trail*, 867 F.3d at 1373, that the Commission can deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment, because the agency is the “legally relevant cause” of the direct and reasonably foreseeable environmental effects of the pipelines it approves. I will carefully review any comments submitted on this issue.

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

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 Richard Glick

Answer: No court case speaks directly to this issue. Administrative agencies are afforded considerable deference in the administration of NEPA, including how they assess the significance of adverse environmental impacts. I believe that, to the extent possible, clear and transparent thresholds provide certainty and predictably and are thus worth pursuing where we can. I anticipate that this issue will be addressed in the comments submitted in response to the now-draft policy statements, and I commit to carefully reviewing the comments on this issue.

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

Answer: Consistent with NEPA, guidance from the Council on Environmental Quality, and court precedent, the Commission prepares EISs in cases where it determines that the environmental impacts of a proposed action may be significant. *See, e.g., American Rivers v. FERC*, 895 F.3d 32, 49 (D.C. Cir. 2018) (“NEPA requires an Environmental Impact Statement for any major federal action that might ‘significantly’ affect the human environment.”) (citing [42 U.S.C. § 4332\(C\)](#)); *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983) (“If any ‘significant’ environmental impacts might result from the proposed agency action then an [Environmental Impact Statement] must be prepared *before* the action is taken.”). Where that is not the case, the Commission prepares an EA. The Commission has not established a default environmental document outside that framework.

- 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

Answer: In *Sabal Trail*, the court held that, on remand, the Commission’s environmental impact statement “needed to include a discussion of the ‘significance’” of the project’s reasonably foreseeable GHG emissions, which, in that case, included its downstream emissions. *Appalachian Voices* does not change that requirement. As an initial matter, as the D.C. Circuit itself noted in the *Spire* case, “*Appalachian Voices* was an unpublished opinion, meaning that the panel found its opinion to be of ‘no precedential value’” and it could not modify existing precedent. In any case, *Appalachian Voices* turned largely on the insufficient arguments advanced by the petitioners, namely their failure to present any means for considering the significance of a project’s reasonably foreseeable GHG emissions other than the Social Cost of Carbon, which the court held the Commission adequately addressed. By its own terms, *Appalachian Voices* did not establish a minimum standard for what the Commission must consider under NEPA and the NGA or what how it must do so.

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

Answer: I am aware of no such case, and I would not support any Commission action to do so because it would be contrary to law.

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 Richard Glick

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: As noted, under NEPA, a federal agency must prepare an EIS any time a project may have a significant adverse impact on the environment. The failure to do so is a basis for vacating the federal action in question. That has not yet happened to certificate orders issued by the Commission, although, in my view, that precedent presents a serious risk, whether the Commission evaluates the significance of GHG emissions or concludes it lacks the ability to do so (thereby preserving the question that those emissions *may* be significant). Because the Commission has not yet been remanded or vacated based on the failure to prepare an EIS based on a projects’ GHG emissions, I have not included the chart requested in your question. In the interest of being helpful and responsive to your question, I include the chart below, which lists all court decisions on appeals of FERC natural gas certificates since the *Sabal Trail* decision. As this chart indicates, for example, the Commission has lost its last three of these appeals based on findings that the Commission’s analysis was insufficient and its decisionmaking was arbitrary and capricious. I would be happy to provide any additional information that would be useful to you or your staff.

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 Richard Glick

Court Decisions in FERC Natural Gas Act Certification Cases Since *Sabal Trail* (Aug. 2017)

Case Name and Opinion Cite	Case Number	Subject Matter	Result	Decision Date
<u><i>Food & Water Watch and Berkshire Environmental Action Team v. FERC,</i></u> 2022 WL 727037 (D.C. Cir. Mar. 11, 2022)	DC Cir. No. 20-1132	Challenge to authorization of pipeline and compressor	Petition denied in part and granted in part; remanded for FERC to prepare a supplemental Environmental Impact Statement to quantify and consider downstream carbon emissions or explain in more detail why it cannot do so	March 11, 2022
<u><i>Vecinos para el Bienestar de la Comunidad Costera, et al. v. FERC,</i></u> 6 F.4th 1321 (D.C. Cir. 2021)	DC Cir. Nos. 20-1045, <i>et al.</i>	Challenge to authorization of LNG terminal and pipeline	Petitions denied in part and granted in part; remanded in part because court found Commission's analysis of projects' impacts on climate change and environmental justice communities deficient and because Commission failed to justify its Natural Gas Act sections 3 and 7 public interest and convenience determinations	August 3, 2021
<u><i>Environmental Defense Fund v. FERC,</i></u> 2 F.4th 953 (D.C. Cir. 2021)	DC Cir. 20-1016	Challenge to FERC orders approving Spire pipeline project	Petition granted; remanded and vacated regarding the Commission's market need findings and public benefits and adverse impacts balancing	June 22, 2021
<u><i>New York State Department of</i></u>	2d Cir. Nos. 19-1610, <i>et al.</i>	Challenge to orders finding NY DEC had	Petitions denied	March 23, 2021

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 Richard Glick

<u>Environmental Conservation and Sierra Club v. FERC,</u> 991 F.3d 439 (2nd Cir. 2021)		waived authority to deny water quality certification for natural gas pipeline		
<u>Allegheny Defense Project, et al. v. FERC,</u> 964 F.3d 1 (D.C. Cir. 2020) (<i>en banc</i>)	DC Cir. No 17-1098	Challenge to FERC orders interpreting Natural Gas Act to permit issuance of “tolling orders” in response to rehearing requests	Petitions for review denied on the merits, but court determined that tolling orders are not the kind of action on a rehearing application that can fend off a deemed denial and the opportunity for judicial review	June 30, 2020
<u>Gulf South Pipeline Company, LLP v. FERC,</u> 955 F.3d 1001 (D.C. Cir. 2020)	DC Cir. No. 19-1074	Challenge to FERC orders addressing rates to be charged on pipeline expansion project	Petition denied in part and granted and vacated in part; remanded and vacated regarding rejection of incremental-plus rates	April 10, 2020
<u>Narragansett Indian Tribal Historic Preservation Office v. FERC,</u> 949 F.3d 8 (D.C. Cir. 2020)	DC Cir. No. 19-1009	Challenge to FERC orders denying intervention in proceeding regarding pipeline expansion project	Petitions dismissed for lack of standing	February 7, 2020
<u>City of Oberlin, Ohio v. FERC,</u> 937 F.3d 599 (D.C. Cir. 2019)	DC Cir. Nos. 18-1248	Challenge to FERC orders authorizing natural gas pipeline	Petitions denied in part and granted in part; remanded to FERC regarding market demand showing	September 6, 2019

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 Richard Glick

<u><i>Lori Birckhead, et al. v. FERC,</i></u> 925 F.3d 510 (D.C. Cir. 2019)	DC Cir. No. 18-1218	Challenge to FERC orders authorizing natural gas compression facilities	Petition denied, but court criticized Commission consideration of greenhouse gases	June 4, 2019
<u><i>Otsego 2000, et al. v. FERC,</i></u> 767 Fed. Appx. 19 (D.C. Cir. May 9, 2019)	DC Cir. No. 18-1188	Challenge to FERC orders authorizing natural gas compression facilities	Petition dismissed for lack of standing	May 9, 2019
<u><i>North Carolina Utilities Commission v. FERC,</i></u> 761 Fed. Appx. 9 (D.C. Cir. Apr. 3, 2019)	DC Cir. No. 18-1018	Challenge to FERC orders regarding rates to be charged on new natural gas pipeline projects	Petition dismissed for lack of standing	April 3, 2019
<u><i>Appalachian Voices, et al. v. FERC,</i></u> 2019 WL 847199 (D.C. Cir. Feb. 19, 2019)	DC Cir. No. 17-1271	Challenge to FERC orders authorizing natural gas pipeline project	Petition denied	February 19, 2019
<u><i>City of Clarksville, Tennessee v. FERC,</i></u> 888 F.3d 477 (D.C. Cir. 2018)	DC Cir. No. 16-1244	Challenge to orders finding Commission had jurisdiction over municipality's transportation and sale of natural gas for resale	Petition granted	April 24, 2018
<u><i>Delaware Riverkeeper Network and Maya Van Rossum, The Delaware Riverkeeper v. FERC,</i></u>	DC Cir. No. 18-1108	Challenge to FERC orders authorizing natural gas pipeline project	Petition denied	December 27, 2018

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 Richard Glick

748 Fed. Appx. 346 (D.C. Cir. 2018)				
<u><i>The Town of Weymouth, Massachusetts, et al. v. FERC,</i></u> 2018 WL 6921213 (D.C. Cir. Dec. 27, 2018)	DC Cir. 17-1135	Challenge to FERC orders authorizing natural gas compression facilities	Petition denied	December 27, 2018
<u><i>City of Boston Delegation v. FERC,</i></u> 897 F.3d 241 (D.C. Cir. 2018)	DC Cir. No. 167-1081	Challenge to FERC orders authorizing natural gas pipeline project	Petitions dismissed in part for lack of standing and denied in part on the merits	July 27, 2018
<u><i>Big Bend Conservation Alliance v. FERC,</i></u> 896 F.3d 418 (D.C. Cir. 2018)	DC Cir. No. 17-1002	Challenge to FERC orders authorizing natural gas export facilities	Petition denied	July 17, 2018
<u><i>New York State Department of Environmental Conservation v. FERC,</i></u> 884 F.3d 450 (2nd Cir. 2018)	2d Cir. No. 17-3770	Challenge to orders finding NY DEC had waived authority to deny water quality certification for natural gas pipeline	Petition denied	March 12, 2018

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 Richard Glick

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: Like the Commission's 1999 Certificate Policy Statement, the now-draft policy statements are intended to establish a framework for how the Commission will evaluate certificate applications. Nevertheless, policy statements, by their nature, must deal in some generality in order to provide the flexibility needed to address individual applications on a case-by-case basis. This was the case for the 1999 Certificate Policy Statement and will likely also be true for any final policy statements that the Commission issues in response to these drafts. I look forward to reviewing the comments submitted in response to the draft policy statements and considering where additional detail may be appropriate.

- 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 noted in response to your previous question, like the 1999 Certificate Policy Statement, the intended purpose of the now draft policy statements was to establish a framework for how the Commission will evaluate certificate applications. For example, in the now draft Updated Certificate Policy Statement, the Commission reaffirmed that precedent agreements remain strong evidence of need but also identified several factors it would consider, such as the circumstances surrounding the precedent agreements (e.g., whether the agreements were entered into before or after an open season and the results of the open season, including the number of bidders, whether the agreements were entered into in response to LDC or generator requests for proposals (RFP) and, if so, the details around that RFP process, including the length of time from RFP to execution of the agreement), as well as other evidence of need, including, for example, demand projections underlying the capacity subscribed, estimated capacity utilization rates, potential cost savings to customers, regional assessments, and filings or statements from state regulatory commissions or LDCs on the proposed project.

This approach was similar to the 1999 Certificate Policy Statement, where the Commission explained that it would "consider all relevant factors reflecting on the need for the project . . . includ[ing], but . . . not . . . limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market."

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

Answer: I cannot speak for others, but I can certainly understand how revisiting policies that have been in place for some time can raise concerns for some stakeholders, particularly those with experience operating

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 Richard Glick

under those policies. As I have explained, however, I strongly believe that the draft policy statements will ultimately bring needed clarity to ensure our nation’s energy infrastructure is permitted in a manner that reduces legal risk, delays, and costs. I can assure you that, as we move forward with consideration of the draft policy statements, I will continue to carefully review stakeholder concerns and take them into account.

Question 4: During the hearing in response to Chairman Manchin, you 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. You have 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, you 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.

Answer: Where a majority—*any* majority—of Commissioners supported an outcome in a certificate proceeding, I have put a draft order reflecting that outcome up for a vote, even if I disagreed with that outcome and, therefore, dissented.¹ That is a marked contrast to my two immediate predecessors who, on multiple occasions each, refused to bring up draft orders that were supported by a majority of Commissioners because the Chairman was on the losing side. That approach frustrated me, as I do not believe that it is the Chairman’s right to block the will of a majority of Commissioners or deprive parties of the certainty an order would provide. As noted, I have not—and will not—follow that approach as Chairman.

Nevertheless, in instances where a majority of Commissioners did not support any particular outcome in a certificate proceeding, I have not put a draft order up for a vote because such a vote would not have resulted in Commission action. I reiterate my commitment that I did not delay Commission action in certificate proceedings where a draft order supported by a majority of Commissioners was ready for a vote.

- b. Looking forward, please comment on your statement in your 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

¹ See, e.g., *WBI Energy Transmission, Inc.*, 175 FERC ¶ 61,182 (2021); *Tuscarora Gas Trans. Co.*, 175 FERC ¶ 61,147 (2021); *Northern Natural Gas Company*, 175 FERC ¶ 61,146 (2021).

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 Richard Glick

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: As a multi-member body, the Commission can only issue orders when they are supported by a majority of Commissioners. That is, without a majority, the Commission cannot act. For example, if the Commissioners are divided 2-2 on a particular order, there is, in my view, no point in putting a draft order up for a Commission vote because that vote cannot give stakeholders a determination one way or the other.

As I noted in my letter, I will put up for a vote any order that has a majority, even where I disagree with the outcome and dissent. In fact, I have done that multiple times since becoming Chair. *See, e.g., WBI Energy Transmission, Inc.*, 175 FERC ¶ 61,182 (2021); *Tuscarora Gas Trans. Co.*, 175 FERC ¶ 61,147 (2021); *Northern Natural Gas Company*, 175 FERC ¶ 61,146 (2021).

- 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: As noted above, where an order is not supported by a majority of Commissioners—e.g., when the Commission is divided 2-2 among the sitting Commissioners—there is no action that the Commission can take and, thus, no resolution it can provide the applicant. Although Congress provided that certain filings under the FPA and NGA will go into effect by operation of law where the Commission does not act within a specified time, it did not establish a similar mechanism for facilities permitted under NGA section 3 or section 7, so the statutory scheme requires that a vote be supported by a majority of Commissioners before the Commission can act.

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?

Answer: The document to which you refer is an EIS issued by Commission staff. The document was finalized for printing before issuance of the policy statements in February, which are now designated as draft policy statements. Staff may update its approach in light of Commission orders or guidance from other federal agencies.

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

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 Richard Glick

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 will consider applications for cost recovery on a case-by-case basis. Nevertheless, it is my personal view that mitigation costs should be presumptively recoverable, provided that they are prudently incurred.

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?

Answer: This is an issue that I will consider carefully based on the comments filed in response to the draft policy statements. Generally, the Commission considers these issues on a case-by-case basis, but it may be appropriate to provide further guidance in a final policy statement.

b. If not, why not?

Answer: Please see my previous answer.

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

Answer: I believe that the Commission is most likely to provide such guidance in a final policy statement, although it retains the option to provide further in a certificate order in a proceeding where this issue is litigated prior to the issuance of any final policy statement.

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

Answer: I would be happy to keep your office apprised of any further developments.

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?

Answer: Regarding your first question, I believe that the Natural Gas Act provides the Commission's authority over hydrogen blending with natural gas on interstate natural gas pipelines. If a pipeline wanted to revise the gas quality provisions of its tariff to accommodate increased hydrogen levels, it could make a filing with the Commission seeking approval. The Commission would review the proposed tariff changes to ensure that they

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 Richard Glick

follow the Commission's Policy Statement on Gas Quality and Interchangeability. The Commission has generally allowed interstate natural gas pipelines to exercise their discretion to waive gas quality limits when operating conditions allow, and to enforce such limits when operating conditions require stricter measures, as long as it is done in a not unduly discriminatory manner. Currently, relatively few Commission-jurisdictional interstate gas pipelines enumerate hydrogen limits in their gas quality specifications, and hydrogen is typically limited to very small concentrations in those pipeline tariffs.

While no federal statute explicitly authorizes an agency to regulate the transportation of hydrogen by pipeline in a manner comparable to the Natural Gas Act, the Commission's experience with issues relating to siting interstate natural gas pipelines, and with regulating the rates, terms, and conditions of transportation service on interstate natural gas pipelines, may be analogous to the expertise needed for the regulation of hydrogen pipelines.

Regarding your second question, the operations of the interstate pipeline system and the bulk power system are increasingly interrelated such that an unreliable interstate pipeline system can adversely impact the operation of the bulk power system. I continue to believe that mandatory and enforceable standards for the interstate natural gas pipeline system, overseen by a single federal agency, will strengthen the reliability of the bulk power system particularly as the resource mix changes.

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."² How should and will the Commission help to address these problems?

Answer: The Commission recognizes the critical role that pipeline capacity and redundancy play in ensuring electric reliability across New England during normal and extreme winter conditions. Commission staff works together with the North American Electric Reliability Corporation (NERC) on initiatives such as gas and electric working groups and energy assurance guidelines. Commission staff also works with industry by continuing to drive industry-wide discussions and improvements. For example, the Commission will convene a Winter-Readiness Technical Conference on April 27-28, 2022, which is open to the public and comprises panels of industry representatives. In addition, the Commission is carefully monitoring NERC efforts to develop a new reliability standard related to energy assurance that would be applicable to registered entities across North America, including entities in New England. Commission staff is also monitoring a recently proposed North American Electric Standards Board standard that aims to improve electric/gas pipeline coordination as it pertains to wholesale electric power generation. Finally, in recent years, the Commission

² https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2021.pdf.

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 Richard Glick

approved market mechanisms designed to address electric reliability issues specific to the New England region such as ISO New England Inc.'s Pay for Performance initiative.

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?

Answer: No additional studies were performed. The Commission received over 38,000 comments in response to the Notice of Inquiry on the 1999 Policy Statement. The Commission also held a technical conference on November 19, 2021 to discuss methods natural gas companies may use to mitigate the effects of direct and indirect greenhouse gas emissions resulting from NGA sections 3 and 7 authorizations. That conference included compliance and cost recovery as a panel topic. Following the technical conference, the Commission offered an extended public comment period to consider additional information submitted by stakeholders.

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

Answer: The draft policy statements do not set specific standards, but rather are intended to identify factors, such as greenhouse gas emissions, that the Commission will consider in certificate cases. This will inform stakeholders of the types of evidence that the Commission may consider on issues such as need and potential mitigation. We look forward to receiving additional comments that will also inform next steps on the draft policy statements.

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

Answer: Not at this time. I suspect that these issues will be discussed in detail in the comments on the now-draft policy statements, and I will carefully review those comments.

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: In its March 24, 2022 order designating the policy statements as draft policy statements, the Commission clarified that it will not apply the policy statements to applications filed before the issuance of final policy statements. As such, the situation contemplated in your question should not arise.

Question 12: During the hearing, you stated: "FERC has approved 18 LNG facilities, only 9 of them have been built."

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 Richard Glick

- a. Please provide a list of the 18 LNG facilities to which you referred and any others that have been approved by the Commission.

Answer: The following projects are the 18 LNG export terminals approved by the Commission:

- Alaska LNG
- Cameron LNG
- Corpus Christi Liquefaction
- Dominion Cove Point LNG
- Driftwood LNG
- Eagle LNG Partners Jacksonville LLC
- Freeport LNG Development
- Golden Pass LNG
- Gulf LNG Liquefaction
- Lake Charles LNG
- Magnolia LNG
- Port Arthur LNG
- Rio Grande LNG, LLC (remanded)
- Sabine Pass Liquefaction
- Southern LNG
- Texas LNG Brownsville LLC (remanded)
- Venture Global Calcasieu Pass
- Venture Global Plaquemines LNG

Of these approved projects, six are constructed and are in operation (Cameron LNG; Corpus Christi Liquefaction; Dominion Cove Point LNG; Freeport LNG Development; Sabine Pass Liquefaction; and Southern LNG). Additionally, three are currently under construction (Venture Global Calcasieu Pass, Golden Pass LNG, and Venture Global Plaquemines LNG).

- b. Do you or does the Commission staff know of the construction of any LNG export facility that has been delayed or cancelled because natural gas could not reasonably be delivered to supply such facility? If so, please list the facility and the reasons that natural gas could not reasonably be delivered. If not, what would be the best way to collect such information?

Answer: I am not aware of any such project.

Questions from Senator Steve Daines

Question 1: Chairman Glick, senators on this committee recently sent you a letter urging you to expedite approvals of a backlog of natural gas pipelines. Instead of following that request, FERC is now making it harder and more complicated for projects to be approved that have been stuck at FERC for months. What effect will FERC's new actions have on existing projects that are already going through the approval process at FERC?

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 Richard Glick

Answer: In its March 24, 2022 order designating the policy statements as draft policy statements, the Commission clarified that it will not apply the policy statements to applications filed before the issuance of final policy statements. Accordingly, existing applications will not be affected by the draft policy statements.

Question 2: Chairman Glick, do you believe that the policy statements passed by FERC constitute a “rule” under the Congressional Rule Act?

Answer: Based on OMB Memorandum M-19-14, Guidance on Compliance with the Congressional Review Act (April 11, 2019), I believe that the policy statements would have constituted rules for purposes of the Congressional Review Act. As they have now been redesignated as draft policy statements, they no longer qualify as “rules” for that purpose.

Question 3: Chairman Glick, as it relates to Greenhouse Gas Emissions, where does the 100,000 ton per-year cap figure originate from and about what percent of projects will fall under this new cap?

Answer: As discussed in the draft policy statement, that threshold was based on how other federal and state agencies have approached similar emissions thresholds under relevant federal and state law. In addition, as I noted in my concurrence to certain of the certificate orders issued by the Commission on the March 24, 2022 open meeting, in my view, the 100,000-ton threshold was “a deliberately conservative number intended to ensure that the Commission did not lead projects developers down the path of an environmental assessment, only to subsequently change course and require an environmental impact statement in the event that the Commission were to establish a lower threshold in a final GHG policy statement than it did in the then-interim, now-draft policy statement.” I expect that this issue will be addressed in some detail in the comments on the Draft Policy Statements, and I will carefully review those materials.

Question 4: Chairman Glick, do you believe that the actions by FERC will lead to a longer permitting process for applicants?

Answer: I do not believe that the draft policy statements would significantly change the time it takes for the Commission to complete the permitting process for new natural gas infrastructure. The Commission has recently issued more environmental impact statements, as opposed to environment assessments, in large part to consider appropriately the impacts of potential GHG emissions. While that may add a few additional months to the permitting process, which I recognize can be important to certain applicants, I believe the benefits—and greater legal durability of that approach—outweigh that additional time.

Question 5: Chairman Glick, do you believe that the actions by FERC will lead to fewer or more approved pipeline certificates?

Answer: I believe that the primary effect of the Commission’s actions is to help ensure that the Commission’s decisions are more likely to be affirmed by the courts and provide greater regulatory certainty for pipeline companies and other stakeholders.

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 Richard Glick

Question 6: Chairman Glick, what effect on consumer prices do you believe will result from FERC's recent actions?

Answer: I have no reason to believe that issuance of the draft policy statements will have a significant impact on consumer prices, either in the interim or once finalized. But, as I have noted, the Commission is seeking additional comment on the draft policy statements, and I encourage all stakeholders to address this matter in their comments with the Commission. The Commission has invited comments on the draft policy statements by April 25, 2022 and reply comments by May 25, 2022.

Question 7: Chairman Glick, what role did the effect on consumer prices play into your consideration of the two policy statements?

Answer: The Draft Updated Certificate Policy Statement retains consumer protection measures, such as the Commission's policy that existing customers cannot subsidize new projects. Additionally, we will give greater scrutiny to proposed projects with affiliate precedent agreements. Market need can be easily manipulated when there is a corporate affiliation between the proponent of a new pipeline and shippers who have entered into a precedent agreement, especially shippers with captive customers. Where that occurs, it can create unneeded capacity that only raises customer costs. I also remain committed to ensuring that the Commission meets its obligations under Sections 4 and 5 of the Natural Gas Act to ensure that rates charges by pipeline companies are just and reasonable. It would be helpful if Congress were to enact legislation enabling the Commission to require refunds when overcharges occur.

Question 8: Chairman Glick, 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 fully recognize the geostrategic importance of natural gas for our energy security and that of our allies, and I believe that providing clarity and consistency in the permitting process will benefit all stakeholders in the natural gas markets, including our nation's allies.

Question 9: Chairman Glick, 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?

Answer: Approximately 90 percent of all of FERC's orders are unanimous and approximately 95 percent of our orders are supported by commissioners representing both parties. I always strive for as much consensus or at least bipartisanship as possible. I believe that our now-draft policy statements are well-supported and consistent with law, and it is my hope and expectation that any final policy statements on which they are based will provide a durable foundation for the Commission's review of applications to develop new natural gas infrastructure. .

Question 10: Chairman Glick, 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?

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 Richard Glick

Answer: I do not believe that the draft policy statements will make it more difficult for the United States to increase domestic and international transportation of natural gas.

Question 11: Chairman Glick, it is my understanding that the policy statements are in effect immediately but are also subject to change after public comments are received. In order to provide clarity for companies seeking a certificate, should they apply under the current standards or wait until the updated statements are published?

Answer: As noted above, the Commission has redesignated both policy statements as draft policy statements and clarified that it will not apply them to pending applications or applications filed before the Commission issues any final guidance in these dockets.

Question 12: Chairman Glick, if a company has an existing application pending at FERC or will be applying for one before the publication of the future updated statements, what will be required for those applications to be approved?

Answer: Please see my previous answer.

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: I believe that the reforms contemplated in the draft policy statements would help to bring the Commission's practice into better alignment with statutory and judicial requirements. In my view, reforms along these lines can help provide certainty and legal durability to the Commission's review of new natural gas infrastructure, which would help, not hinder, the goals contemplated in your question.