October 19, 2021

Chairman Richard Glick
Commissioners James Danly, Allison Clements, and Mark Christie
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: FERC Review of the 1999 Natural Gas Policy Statement, PL18-1-000

Dear Chairman Glick and Commissioners Danly, Clements, and Christie:

On April 19, 2018, the Federal Energy Regulatory Commission opened its first Notice of Inquiry regarding its 1999 Natural Gas Policy Statement. When first announcing the Notice of Inquiry, then Chairman Kevin McIntyre wisely observed, “Much has changed in the energy world since 1999, and it is incumbent upon us to take another look at the way in which we assess the value and viability of our pipeline applications.”

The 2018 Notice of Inquiry focused on four issues: evaluating pipeline need; eminent domain and landowner concerns; identifying and assessing a project’s environmental impacts; and improving regulatory certainty and efficiency. In July 2018, the Commission received thousands of comments in response—from industry participants; non-profit organizations (including a coalition comment filed by NRDC and the Sustainable FERC Project and joined by 60 other organizations); government officials, including Tribal leaders; and individuals—calling on the Commission to revise the Policy Statement to reflect current needs.

NRDC, the Sustainable FERC Project, and 17 other organizations filed supplemental comments in October 2018, which responded to the initial comments and reiterated the need for reform.

Nevertheless, the Commission took no action on the Notice on Inquiry between its issuance and February 2021. Within that time, the Commission issued or upheld on rehearing certificates that the U.S. Court of Appeals for the D.C. Circuit has since found to be legally infirm under either the Natural Gas Act or the National Environmental Policy Act.


5 For a summary of the major comments filed, see “Comments of Susan Tierney, Ph.D.,” Docket No. PL18-1-000, Accession No. 20210526-5269, May 26, 2021.

6 See, e.g., Vecinos para el Bienestar de la Comunidad Costera v. FERC, 6 F.4th 1321 (D.C. Cir. 2021) (remanding due to the Commission’s legally insufficient assessment of climate and environmental justice); Environmental Defense Fund v. FERC, 2 F.4th 953 (D.C. Cir. 2021) (vacating and remanding due to the Commission’s legally insufficient need assessment); City of Oberlin, Ohio v. FERC, 937 F.3d 599 (D.C. Cir. 2019) (remanding due to the Commission’s failure to properly explain the factors it considered in its need assessment). In other cases, the D.C. Circuit has upheld the certificate on procedural grounds but has raised serious concerns about
On February 18, 2021, the Commission issued a supplemental Notice of Inquiry. The 2021 Notice of Inquiry invited new stakeholders to answer the questions presented in 2018, but also requested comment on several additional questions, with a focus on climate and environmental justice. The 2021 Notice of Inquiry yielded hundreds of additional comments, including a new NRDC and Sustainable FERC Project-led coalition comment joined by over 50 organizations. While the Commission has begun to evaluate some project impacts in individual cases, as of this writing, it has yet to issue a robust response to the thousands of comments the Commission has received over the past 3.5 years.

Every day that the Commission fails to address its misapplied and outdated Policy Statement, it compounds the legal errors and injustices of its actions. These risks are not hypothetical. For example, the Commission’s failure to consider evidence challenging the need for the Spire STL Pipeline has forced it into unchartered territory and likely has caused permanent environmental and economic damage on landowners and Spire consumers. Continuing to apply a failed need assessment risks greenlighting another Spire. Similarly, the Commission’s continued failure to properly identify and consider all of a proposed gas project’s reasonably foreseeable climate and environmental justice effects has allowed it to disassociate itself from the consequences of its actions and has added layers of litigation and regulatory review. As we noted in 2018, it does not benefit anyone for a project to be held up in protracted litigation because the Commission did not perform a legally sound initial review.

While we continue to applaud the Commission for its dedication to this proceeding, the time to fix these infirmities was yesterday—not months from now. Accordingly, we call on the Commission to redouble its efforts to issue a revised Policy Statement as soon as practically possible.

Thank you for your attention to this matter.

Sincerely,

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the robustness of the Commission’s review. E.g., Birckhead v. FERC, 925 F.3d 510 (D.C. Cir. 2019) (noting the Commission’s “decidedly less-than-dogged” climate review).

7 Certification of New Interstate Natural Gas Pipeline Facilities, Notice of Inquiry, 174 FERC ¶ 61,125 (2021), Docket No. PL18-1-000.

