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PIPE LINE AWARENESS NETWORK
FOR
THE **NORTH EAST**

July 24, 2018

Chairman Kevin McIntyre
Commissioners Cheryl LaFleur, Neil Chatterjee, Robert Powelson, and Richard Glick
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: Certification of New Interstate Natural Gas Pipeline Facilities
PL18-1-000

Dear Chairman McIntyre and Commissioners LaFleur, Chatterjee, Powelson, and Glick,

The Pipe Line Awareness Network for the Northeast submits these comments to provide recommendations regarding updates to the Commission's 1999 policy for certification of new natural gas transportation facilities. We are a nonprofit organization working to prevent the overbuild of natural gas infrastructure and to champion sustainable energy solutions.

The Commission tacitly acknowledges, through the questions it poses in this proceeding, that the current “public convenience and necessity” inquiry – with its narrow focus on the existence of precedent agreements – is misguided. Today's threshold for certifying a project must be made much higher than it has historically been for several reasons, including: complex corporate structures that incentivize overbuild; qualitatively different and more damaging impacts arising from today's gas production techniques; and the availability of affordable, lower-impact energy alternatives not contemplated in the 1930s (or even in 1999).

Our organization has spent a considerable amount of time over the past several years explaining to people that when FERC makes a determination of public convenience and necessity, the determinative inquiry for the Commission is not actually a balancing of consumer “need” for the gas versus the “inconvenience” of the pipeline or LNG project to the communities it impacts, but whether contracts have been entered into for capacity on the proposed project. These contracts are generally between two investor-owned, for-profit entities.¹ Thus by sleight of hand, corporate shareholders' profit motives are substituted for the public interest.

While historically – in the 1930s – it may have been understandable to consider promotion of “the orderly development of plentiful supplies of ... natural gas at reasonable prices” to be in the public interest,² today's realities demand a reassessment of that fundamental “public interest”

1 If one of the parties is a state-regulated utility, the state regulator generally defers to the utility's judgment, and does not consider the environmental impacts or seriously consider alternatives to the contract. Typically, the state utility commissions accept (generally overblown) demand forecasts as presented by the utilities; these approved forecasts then form the basis for precedents agreements that the state agencies are predisposed to approve. No robust analysis of need or alternatives occurs at the state or federal level.

2 See *Fed. Power Comm'n v. Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 23 (1961).

determination. Having seen pipeline company presentations to local officials, we know that the company reps speak of “need” with a strong sales pitch, but their corporate “need” – to build as much new gas capacity in their systems as possible – is at odds with local needs and sensibilities. Local needs, impacts, and sensibilities are what the Commissions should consider when it evaluates public “convenience”.

The mere existence of precedent agreements should not be considered enough to warrant a certificate of public convenience and necessity. Instead, precedent agreements that demonstrate an actual, substantial consumer demand for the proposed infrastructure should be the *beginning* of the inquiry of public need. The subsequent, fuller inquiry will likely vary based on the type of project proposed; several guiding principles are as follows:

- Affiliate transactions should elicit heightened Commission scrutiny, to protect against self-dealing and unjustified risks to ratepayers.³
- Projects should not be certified when they are fundamentally driven by a “supply push” rather than a “demand pull”. The driving force behind many recent projects is the newly available and currently cheap Marcellus shale gas in Pennsylvania, not a lack of affordable energy options for consumers.
- Utilizing existing unconstrained pipelines should be favored over building new gas infrastructure, because new infrastructure brings risks to ratepayers, communities, and the environment that can be avoided. In the case of Kinder Morgan's failed Northeast Energy Direct (NED) project, much of the anchor shippers' “need” for the pipeline was ginned up by abandoning contracts on existing pipelines and then contracting for capacity on NED. (The propriety of this irresponsible practice was not considered by the Commission because Kinder Morgan withdrew its NED application prior to any determination by the Commission.)
- Demand management solutions should be given serious and preferential consideration, for both electrical generation and thermal markets, when evaluating project need.

Only if a project's need has been established based on rigorous critical inquiry should the Commission proceed to determining whether the benefits of the project outweigh its negative impacts. The central aim of the Commission at that juncture should be to avoid impacts where possible, and otherwise to minimize (and as necessary mitigate) the impacts:

- The multiple negative impacts of gas infrastructure projects on water resources cannot be ignored. Critically, most water used for hydraulic fracturing is “disposed deep underground, almost entirely removed from the water cycle and never to be used again.”⁴

3 See generally “Art of the Self-Deal: How Regulatory Failure Lets Gas Pipeline Companies Fabricate Need And Fleece Ratepayers,” Oil Change International in collaboration with Public Citizen and the Sierra Club, September 2017 (priceofoil.org/content/uploads/2017/09/Gas_Pipeline_Ratepayer_Report.pdf).

4 “Water Use Rises as Fracking Expands,” B. Magill, *Scientific American* (July 1, 2015) (available at <https://www.scientificamerican.com/article/water-use-rises-as-fracking-expands/>).

This loss of water from the water cycle is compounded by impacts and risks to drinking water supplies where gas is extracted,⁵ as well as along the path of a gas transportation project.⁶

- Environmental impact analysis should examine not just less damaging routes, but also examine less damaging energy alternatives from a greenhouse gas perspective.⁷
- Eminent domain takings are not an acceptable impact when projects are fundamentally for export or private gain.

Thank you for considering these suggestions for improvements to the Commission's approach to certification of new interstate natural gas facilities.



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5 See “Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States,” U.S. Environmental Protection Agency, Dec. 2016 (available at <https://www.epa.gov/hfstudy>).

6 See generally NY Dep't of Env'tl. Conservation Notice of Denial to Constitution Pipeline Company LLC of Section 401 Water Quality Certification, etc., Apr. 22, 2016 (available at http://www.dec.ny.gov/docs/administration_pdf/constitutionwc42016.pdf).

7 See generally “Using more cheap natural gas in future decades won't slow global warming, new study projects,” U.S. News & World Report, October 15, 2014 (<http://www.usnews.com/news/science/news/articles/2014/10/15/study-natural-gas-surge-wont-slow-global-warming>); Union of Concerned Scientists, “Environmental Impacts of Natural Gas” (<https://www.ucsusa.org/clean-energy/coal-and-other-fossil-fuels/environmental-impacts-of-natural-gas>) (last visited July 23, 2018).