

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Certification of New Interstate Natural Gas Facilities)

Docket No. PL18-1-000

COMMENTS OF THE NORTHEAST GAS ASSOCIATION

The Northeast Gas Association¹ (NGA or Northeast Gas) appreciates the opportunity to provide comments in the above-referenced proceeding regarding the Federal Energy Regulatory Commission's (FERC's or the Commission's) review of its approach to the certification of new interstate natural gas pipelines. This proceeding is particularly timely as the U.S. has emerged as the largest producer of natural gas in the world in recent years, and as demand for natural gas continues to grow in national and regional markets. The certification, development and siting of new natural gas facilities is a critical issue for the U.S. economy, an issue facing considerable challenges but also providing substantial opportunities.

As a regional trade association based in the Northeast U.S., the development of new natural gas infrastructure remains a significant issue and one central to our region's economic growth, with implications for energy reliability, energy affordability, and the attainment of environmental goals.

Northeast Gas believes that the current Commission Policy Statement, issued in 1999, remains relevant, practical, flexible and appropriate, even as the nation's natural gas market has been transformed in many ways over the last two decades. We do not believe that any significant changes are needed to the 1999 statement, but we do appreciate the opportunity in this docket to highlight some opportunities, challenges and concerns.

In our comments we discuss the four topical areas identified in the April 2018 Notice of Inquiry (NOI) and offer general comments. The challenges to new interstate pipeline infrastructure are certainly increasing, particularly in our region of the U.S., which represents a highly-populated, highly-congested, and high-priced energy market. Nevertheless, the FERC's certification process

¹ NGA is a regional trade association that focuses on education and training, technology research and development, operations, planning, and increasing public awareness of natural gas in the Northeast U.S. NGA represents natural gas distribution companies, transmission companies, liquefied natural gas importers and associate member companies. Its member companies provide natural gas service to over 13 million customers in 9 states (CT, ME, MA, NH, NJ, NY, PA, RI, VT).

has remained steady and focused and true to the originating Natural Gas Act (NGA) and the 1999 Policy Statement. The difficulties with siting are well-known, and the Northeast, especially New England, also has to contend with the challenge of its largest consuming end-use sector – power generation – being constrained by a power market design that has led to continued underinvestment in gas transportation capacity by power generators. These issues to some extent fall outside of the subject area of this NOI but deserve continued attention, in our view, by the Commission.

The Commission correctly identifies a number of the key market changes since the 1999 policy statement, as noted on page 2 of the NOI:

“(1) a revolution in natural gas production technology leading to dramatic increases in production; (2) new areas of major natural gas production; (3) flows on pipeline systems becoming bidirectional or reversing; (4) customers routinely entering into long-term precedent agreements for firm service during the formative stage of potential projects and the use of those precedent agreements as applicants’ principal evidence of the need for their projects; (5) the increased use of natural gas as a fuel source for electric generation, resulting in a closer relationship between natural gas transportation and natural gas-fired electric generation; (6) increased concern expressed by landowners and communities potentially affected by proposed projects; (7) an increased interest regarding the Commission’s evaluation of the impact that greenhouse gas (GHG) emissions associated with a proposed project have on global climate change; (8) an increased focus on environmental concerns within the NGA public interest determination; and (9) a desire to generally expand or limit the Commission’s evaluation under the National Environmental Policy Act of 1969 (NEPA).”

In our Northeast region, these trends are equally as compelling. In 1999, annual natural gas production in Pennsylvania, for instance, totaled 174 billion cubic feet (Bcf); by 2017, it had grown to 5,400 Bcf, or 5.4 trillion cubic feet (Tcf). The Northeast region is now one of the largest producing areas of natural gas in the U.S., a complete transformation of traditional supply patterns. The build-out of infrastructure in the region to access these new, more “local” supplies has resulted in new pipeline capacity in many areas, but delayed and inhibited projects in several states in our region, which continues to be frustrating to the market and costly for businesses and consumers. The Northeast region has added over a million new natural gas customers in the last decade. The share of power generation fueled by natural gas has grown to 58% in New York State, 48% in New England, 63% in New Jersey, and 30% in Pennsylvania. PJM reports that natural gas power generation represents over 90% of proposed units in the queue in both New Jersey and Pennsylvania. Design day demand by natural gas utilities in the region continues to grow as new customers are added. The recent cold weather period of late December 2017/early January 2018 was marked by many new sendout records by gas utilities throughout the region. Pollutant air emissions have declined significantly throughout the Northeast over the last two decades for all major pollutants, including carbon dioxide, with the increased use of natural gas and the reduced use of oil and coal in power generation among the key factors.

The Northeast U.S. continues to see growing demand for natural gas. Natural gas is an essential part of the mix as the states in our region strive to increase the penetration of clean energy technologies. Natural gas infrastructure built to meet demand and enhance energy system reliability remains pivotal to the success of our energy market development and transition. The Commission's role in assessing project applications and determining certification is essential to an efficient and balanced process for all parties.

NGA is now pleased to offer more specific comments on the four general areas of examination in this inquiry.

1.) The Reliance on Precedent Agreements to Demonstrate Need for a Proposed Project

The NOI provides a clear explication of the Commission's authority and scope regarding pipeline certification.

"Section 7c of the Natural Gas Act (NGA) requires that any person seeking to construct or operate a facility for the transportation of natural gas in interstate commerce must obtain a certificate of convenience and necessity from the Commission" (p. 4). "As part of its decision-making process, the Commission, in accord with the Policy Statement, determines whether there is a need for a proposed project" (p. 6). "The Commission's powers under NGA section 7 are limited. The Commission can issue a certificate for a proposed project, subject to 'such reasonable terms and conditions as the public convenience and necessity may require'" (pp. 6-7).

Furthermore, "the Policy Statement explains that relevant factors reflecting the need for the project might include, but would not be 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 while adverse effects include economic, competitive, environmental, or other effects on the relevant interests" (p. 7).

We find that these guidelines continue to be appropriate, encompassing, and responsive to changing market dynamics.

Precedent agreements serve as a clear indicator of market interest and demand. Agreements with prospective customers supported by financial commitments and identified capacity requirements remain key, and have served the market well over many decades.

(A persistent challenge in restructured electric markets such as New England's is the mismatch between gas and electric markets which leaves the power market increasingly reliant on gas-fired generation at the same time as it is reluctant/unable/unwilling to commit to firm transportation arrangements. Resolving that mismatch is more appropriate to a gas-electric coordination docket but is a point that bears note.)

The definition of public benefits served by a project are multiple, as the Commission notes: “(1) meeting unserved demand; (2) eliminating bottlenecks; (3) providing access to new supplies; (4) lowering costs to consumers; (5) providing new interconnects that improve the interstate pipeline network; (6) providing competitive alternatives; (7) increasing electric reliability; and (8) advancing clean air objectives” (p. 29). We find this list to be comprehensive and well-balanced, addressing energy, reliability, economic and environmental needs. The current approach of the Policy Statement, to “allow an applicant to rely on a variety of operational, economic, and environmental factors to determine need” (pp. 31-31), remains a sensible, balanced, fair and appropriate framework, in our view.

We find that the determining factors in assessing need regarding end uses are already appropriately considered in the current Commission process. These include LDC demand to serve domestic use, as well as power generation needs, marketer transport to move gas from a production area to a liquid trading point, projects for reliability and/or resilience, and projects to an export facility, all as outlined on page 48 of the NOI.

End use demand may change over the long term, it is true, depending on new technology developments, regulatory measures, and efficiency inroads, for example, but this should not prohibit the Commission from determining project demand for the near-term, mid-term *and* long-term market. Delaying projects based on uncertain and potential shifts in long-term market conditions would contribute to higher costs and reliability concerns for the market.

As to the prospect of multiple pipelines competing within the same geographic area over project development, we do not find that the Commission needs to revise fundamentally its focus on market need. There is precedent in New England, for example, of the Commission supporting a joint facilities portion of infrastructure growth, as was done in the late 1990s with the development of the Portland Natural Gas Transmission System and the Maritimes & Northeast Pipeline. However, this is best approached on a case-by-case basis, as currently. Serving market need remains the ultimate factor.

2.) The Potential Exercise of Eminent Domain and Landowner Interests

The NOI provides a clear review of the Commission’s approach to address landowner and community impacts associated with a pipeline route. This issue has received heightened attention in just the past few years by opponents to new project developments. It is a sensitive issue but one that the Commission in our view has handled well, as it seeks to balance multiple interests.

The Policy Statement notes that “landowner property rights issues are different in character from other environmental issues considered under [NEPA]” (pp. 28).

The NOI observes that “economic impacts on landowners and surrounding communities can be, and often are, mitigated, for example, through alternative routing of the proposed rights-of-way, co-location with existing utility corridors, and negotiating the purchase of rights-of-way” (p. 28).

A concern noted in the NOI is that “recently, the Commission has been seeing more proposed projects where applicants are unable to access potential rights-of-way prior to the Commission’s decision on an application, which limits the information that can be included in an application” (p. 28). We share this concern.

We do not believe that projects should be impeded by circumstances outside the applicant’s ability such as an individual landowner’s refusal to accommodate general planning requirements. We believe that the current Commission policy works well while noting the right of individuals to express their positions.

3.) The Commission’s evaluation of alternative and environmental effects under NEPA and NGA

We believe that the existing Policy Statement sufficiently addresses environmental impacts and issues involved in interstate pipeline certification.

The issue of environmental review continues to garner greater and greater attention within the pipeline certification process. There are legitimate environmental issues and concerns today as there have been in the past. We find however that the Commission process addresses these issues in a comprehensive and balanced manner consistent with the NGA and NEPA.

The NOI notes that “in reviewing an application, the Commission currently performs a lengthy NEPA review, including numerous opportunities for public involvement, consultation with other federal, state, and local agencies, and an independent evaluation of the environmental impacts of a proposed project” (p. 35).

The role and authority of the Commission is distinct and while it includes an environmental review process, the Commission’s authority in that regard is and must be focused. As stated on page 6 of the NOI:

“As part of its decision-making process, the Commission, in accord with the Policy Statement, determines whether there is a need for a proposed project. This analysis is distinct from that required by the Council on Environmental Quality (CEQ) regulations, which specify that environmental documents contain a ‘purpose and need statement’ used to determine the objectives of the proposed action and then to identify and consider reasonable alternative actions.’ Under the NGA, the Commission will take into account all information in the record from the applicant, parties to the proceeding, commenters, and the environmental document to determine whether a proposed project is required by the public convenience and necessity.”

The NOI notes that “Commission NEPA documents address impacts on various environmental resources, including geology, soils, groundwater, surface water, wetlands, aquatic resources, vegetation, wildlife, special status species, cultural resources, land use, recreation, aesthetics,

socioeconomics, air quality, climate change, noise, and reliability and safety” (p. 36). We find this list to be exhaustive and comprehensive. Projects are rigorously assessed and held to high standards throughout the current process.

The Commission does address greenhouse gas (GHG) and climate change issues already within its current process. The NOI contains a summary of the efforts by the Commission and its staff over recent years in particular to reflect GHG impacts. “Over the past seven years, Commission staff has expanded its efforts to address GHG emissions and climate change by including GHG emission estimates from project construction (e.g., tailpipe emissions from construction equipment) and operations (e.g., fuel combustion from compressor stations and gas venting and leaks). The Commission’s NEPA documents also currently include any mitigation measures the applicant will employ to reduce GHG emissions, including mitigation of methane leaks” (p. 39).

The NOI notes additional steps and actions that the Commission has taken to address GHG issues. It notes that “to the extent there exist relevant federal, state, tribal, or local plans, policies or laws for GHG emissions reductions or climate adaptations, the Commission’s NEPA documents address the consistency of a propose project’s direct impacts (e.g., compressor station emissions) with those known climate goals” (p. 40).

We find that the scope of the Commission’s review of GHG issues as currently framed is appropriate. The Commission’s environmental review process is comprehensive and balanced and within the scope of its authority. Expanding its focus substantially beyond its current statutory role is not appropriate or necessary, in our view.

4.) The Efficiency and Effectiveness of the Commission’s Certificate Processes

The Commission is seeking comments on ways to “improve the transparency, timing, and predictability of the Commission’s certification process” (p. 53).

We find that the existing process generally works well and fairly to all parties. The length of proceedings related to interstate pipeline certification has certainly been extended starting in recent years, but less so due to the Commission’s process itself than to external forces impacting the ultimate timing.

An issue we would comment on relates to a question as to how “the Commission [might] work more efficiently and effectively with other agencies, federal and state, that have a role in the certificate review process” (p. 54).

The most vexing issue in recent years has been state environmental reviews under the Clean Water Act and the Coastal Zone Management Act. The states do have authority to conduct their reviews. But regrettably, as evidenced by some examples in the Northeast region, the state review process can at times appear arbitrary and dilatory, and result in considerable delays and

costs. The impact of one state's delaying actions on a regional market can also be distorting to overall energy market dynamics and prove unfair to the consumers of the entire region.

The differing roles of federal and state authority and their variances represent in our view the most challenging issue in today's pipeline certification process.

It might be helpful for the Commission to work with the National Association of Regulatory Utility Commissioners (NARUC) and the Environmental Council of the States (ECOS), among other entities, to undertake a review of the varying roles and responsibilities of federal and state agencies and to consider jointly ways to address both federal and state process issues in a constructive dialogue.