



FEDERAL ENERGY REGULATORY COMMISSION
Office of Commissioner Allison Clements

September 24, 2021

The Honorable John Barrasso, M.D.
Ranking Member
Committee on Energy and Natural Resources
United States Senate
304 Dirksen Senate Building
Washington, D.C. 20510

Dear Ranking Member Barrasso,

Thank you for your September 15, 2021 letter, as well as your recognition of the Commission's important role and responsibilities. I address below the broader issues raised in your letter, while avoiding comment on the merits of pending contested proceedings consistent with the Commission's ex parte rules. I also defer to the Chairman's answers to the specific questions in the appendix to your letter.

Natural Gas Pipeline Certificate Proceedings

I am eager to achieve a legally durable framework for considering certificate applications under section 7 of the Natural Gas Act – one that provides consistency and regulatory certainty to both project sponsors and the public we are pledged to serve. The Commission's outstanding notice of inquiry (NOI) on updating our 1999 Policy Statement on the Certification of New Interstate Natural Gas Facilities (1999 Policy Statement) provides a robust record to consider the perspectives of stakeholders across the energy sector towards this goal.

While we are considering the NOI record, we must implement the 1999 Policy Statement consistent with our statutory obligations as interpreted by the D.C. Circuit Court of Appeals. The court has made clear that the Commission is obligated under both the Natural Gas Act (NGA) and the National Environmental Policy Act (NEPA) to carefully consider a project's potential environmental impacts from greenhouse gas (GHG) emissions, as well as impacts on environmental justice communities. *Vecinos Para El Bienestar De La Comunidad Costera v. FERC*, 6 F.4th 1321, 1329-31 (D.C. Cir. 2021) (remanding Commission orders approving liquefied natural gas facilities based on inadequate analysis of GHG and environmental justice impacts under NGA and NEPA); *Birckhead v. FERC*, 925 F.3d 510, 519-21 (D.C. Cir. 2019) (Commission has authority under NGA to deny certificate based on environmental impacts, making approval of a proposed pipeline a "legally relevant cause" of downstream GHG emissions for NEPA purposes); *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*) (vacating and remanding Commission order authorizing natural gas pipeline facilities for inadequate analysis of impacts of downstream GHG emissions). So too the Commission must fully consider need in its determination of public convenience and necessity under the NGA, and not rely solely on affiliate precedent agreements. *Environmental Defense Fund v. FERC*, 2 F.4th 953, 976 (D.C. Cir. 2021) (*Spire*) (vacating and remanding Commission decision granting certificate to Spire Pipeline STL for impermissible reliance on affiliate precedent agreement). The D.C. Circuit's vacatur of the Commission's decision in the *Spire* case demonstrates



the severe harms that may befall both project developers and consumers when the Commission's decisional process falls short.

I appreciate your concern regarding the timetable for the Commission to process and decide on natural gas pipeline certificate applications. While we must work as efficiently as reasonably possible, we must also ensure that our decision-making process complies with the D.C. Circuit's directives. For that reason, I support the decision to issue environmental impact statements (EISs) for projects with potentially significant GHG impacts – a critical step in the process intended to satisfy the instructions from the D.C. Circuit, beginning with its 2017 opinion in *Sabal Trail*. I understand that the Commission has received extensive comments in some of these proceedings, which must be considered in preparing final EISs. In exceptional cases, the comments are so voluminous or complex that the schedule for issuing the final EIS must be extended, as happened in the Iroquois Gas Transmission matter (Docket No. CP20-48-000) cited in your letter. Taking the time to fully develop and consider the administrative record will result in better and more legally durable decisions, benefiting all stakeholders interested in the outcomes.

Spire STL Pipeline LLC (Spire) Limited-Term Certificate

Although the Commission's ex parte rules preclude me from commenting on the merits of the Spire NGA section 7 certificate matter, I assure you that I fully appreciate the seriousness of the issues and interests at stake. The Commission must carefully consider the substantial record in this docket to reach a final decision on Spire's certificate application. Our statutory duty to serve the public interest demands it. In the meantime, Spire's existing certificate remains in place, both as a consequence of the Commission's September 14 order and of Spire's petition to the D.C. Circuit to stay issuance of the court's mandate.

Proposed Southeast Energy Exchange Market (EEM)

Although our ex parte rules prevent me from commenting on the merits of the pending Southeast EEM matter, I also fully appreciate its importance and am giving the EEM proposal careful consideration. The additional information submitted in response to staff's deficiency letter has provided a more complete record that will better inform our decision-making process. The Commission must act by the statutory deadline of October 8, 2021, and I am committed to continuing to work with my colleagues on the Commission to reach a decision.

Thank you again for the opportunity to address these important questions.

Sincerely,

Allison Clements

Commissioner Allison Clements