



FEDERAL ENERGY REGULATORY COMMISSION

April 6, 2023

The Honorable Cathy McMorris Rodgers
Chair of Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jeff Duncan
Chair of Subcommittee on Energy, Climate, and Grid Security
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairs McMorris Rodgers and Duncan,

Thank you for the March 16, 2023 letter¹ expressing your concerns about how the Commission will follow its authorizing statutes in issuing permits for both natural gas and electric transmission infrastructure following the issuance of the Council on Environmental Quality's (CEQ) interim guidance, "National Environmental Policy Act (NEPA) Guidance on Consideration of Greenhouse Gas Emissions [(GHGs)] and Climate Change."²

In your letter, you observe that "NEPA, and especially the CEQ guidance, does not supplant the Commission's core statutes for siting or permitting natural gas or electric transmission projects."³ You also request that my colleagues and I answer a series of questions regarding our interpretation of CEQ's Guidance, our authority under the Natural Gas Act (NGA), and potential future actions the Commission might take to implement the guidance.

Below, please find my responses to your questions.

1. Is it your opinion that the CEQ guidance requires the Commission to quantify upstream and downstream emissions from natural gas projects? If so, how will the Commission apply this in its regulations?

It is apparent that the CEQ Guidance, if implemented fully and according to its plain terms, would have the Commission quantify all GHGs emitted by *any* activity upstream and downstream of natural gas pipeline infrastructure projects. The CEQ Guidance states this plainly: "natural gas pipeline infrastructure creates the economic conditions for additional natural gas production and

¹ Chairs McMorris Rodgers & Duncan March 16, 2023 Letter at 1-2 (Letter).

² 88 Fed. Reg. 1196-01 (CEQ Guidance or Guidance).

³ Letter at 2.



consumption, including both domestically and internationally, *which produce indirect (both upstream and downstream) GHG emissions* that contribute to climate change.”⁴ The CEQ Guidance also states that “agencies should . . . [q]uantify the reasonably foreseeable GHG emissions (including direct and *indirect emissions*) of a proposed action”⁵

Despite this language, CEQ’s “guidance” cannot, by definition, establish requirements that agencies are bound to follow. The CEQ Guidance acknowledges that it “is not a rule or regulation . . . and is not legally enforceable.”⁶ The Commission is under no obligation to follow what amount to CEQ’s recommendations.⁷

At this point, it is not clear whether the Commission will implement the recommendations in the CEQ Guidance. The Chairman, who controls the administrative activities of the Commission, could choose to direct Commission staff to implement some or all of the recommendations contained within the CEQ Guidance. Regardless of what he decides, he is not entitled to direct compliance with those elements of the CEQ Guidance that the Commission’s organic statutes do not authorize or with which they conflict. To date, the CEQ Guidance has not been implemented by Commission staff. Since the publication of the CEQ Guidance in the Federal Register on January 9, 2023, the Commission has published nine NEPA documents for natural gas infrastructure projects, none of which cite the CEQ Guidance or estimate GHGs emitted by activities upstream of the proposed natural gas infrastructure.⁸ Yet, while it is true that the

⁴ 88 Fed. Reg. at 1204 n.86 (emphasis added).

⁵ *Id.* at 1200 (emphasis added).

⁶ *Id.* at 1197 n.4.

⁷ Some may argue that courts could find the CEQ Guidance to be persuasive authority for determining whether an effect is an indirect effect of a proposed project. But CEQ’s views regarding the Commission’s authority under the NGA are entitled to no deference. *See Waterkeepers Chesapeake v. FERC*, 56 F.4th 45, 48 (D.C. Cir. 2022) (stating that an agency’s interpretation of a statute is not entitled to deference if another agency is charged with administering that statute). Moreover, only “the well-reasoned views of the agencies implementing a statute ‘constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.’” *Bragdon v. Abbott*, 524 U.S. 624, 642 (1998) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (*Skidmore*)); *Skidmore*, 323 U.S. at 140 (“The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.”). No weight should be given to a recommendation which, as I explain below, directly contravenes both Supreme Court and appellate case law.

⁸ *See* FERC Staff, Final EIS for Northern Lights 2023 Expansion Project, Docket No. CP22-138-000 (Mar. 10, 2023) (no citation to CEQ Guidance and declines to estimate upstream emissions); FERC Staff, EA for BSC Compression Replacement Project, Boardwalk Storage Co. LLC, Docket No. CP22-494-000 (Mar. 3, 2023) (does not cite CEQ Guidance); FERC Staff, Final



Commission has not announced whether it will adopt any policy changes to implement the CEQ Guidance, it has certainly implied that compliance may be forthcoming.⁹

In my view, the Commission must decline to follow CEQ's recommendations and instead explain in its issuances that it is categorically *not required* to quantify GHGs emitted by upstream activities and must quantify downstream GHGs only when the proposed natural gas facility will transport natural gas exclusively to discrete, identifiable natural-gas fired electric generators—that is, under the narrow set of facts in *Sierra Club v. FERC (Sabal Trail)*.¹⁰

EIS for Southside Reliability Enhancement Project, Transcontinental Gas Pipe Line Co., LLC, Docket No. CP22-461-000 (Feb. 24, 2023) (no citation to CEQ Guidance and declines to estimate upstream emissions); FERC Staff, Final EIS for Venice Extension Project, Texas Eastern Transmission LP, Docket No. CP22-15-000 (Feb. 17, 2023) (no citation to CEQ Guidance and declines to estimate upstream emissions); FERC Staff, EA for Appalachia to Market II and Entriken HP Replacement Project, Texas Eastern Transmission, LP, Docket No. CP22-486-000 (Feb. 10, 2023) (no citation to CEQ Guidance); FERC Staff, Draft EIS for Cumberland Project, Tennessee Gas Pipeline Co., LLC, Docket No. CP22-493-000 (Feb. 3, 2023) (no citation to CEQ Guidance); FERC Staff, Final EIS for Ohio Valley Connector Expansion Project, Equitrans, LP, Docket No. CP22-44-000 (Jan. 20, 2023) (no citation to CEQ Guidance and declines to estimate upstream emissions); FERC Staff, Draft EIS for CP2 LNG and CP Express Project, Venture Global CP2 LNG, LLC, Docket Nos. CP22-22-000 & CP22-21-000 (Jan. 19, 2023) (no citation to CEQ Guidance and declines to estimate upstream emissions); FERC Staff, Final EIS for Three Rivers Interconnection Project, Alliance Pipeline L.P., Docket No. CP21-113-000 (Jan. 13, 2023) (no citation to CEQ Guidance and declines to estimate upstream emissions).

⁹ See, e.g., *Columbia Gas Transmission, LLC*, 182 FERC ¶ 61,171, at P 40 n.73 (2023) (“We note that on January 9, 2023, CEQ issued interim guidance to assist agencies in analyzing GHG and climate change effects under NEPA. CEQ states that agencies should use this guidance to inform NEPA review for all new proposed actions, but agencies are not expected to apply this guidance to concluded NEPA reviews and actions for which a final EIS or environmental assessment has been issued. Because the Commission issued the EA prior to the publication of this guidance, the Commission is not applying the guidance to the instant action.”) (citations omitted); see also Miranda Wilson, *Republicans ask FERC how it will implement climate guidance*, ENERGYWIRE, Mar. 21, 2023 (“The framework is nonbinding, but FERC has previously indicated that it follows White House guidance. FERC acting Chair Willie Phillips, a Democrat, has also said he believes the agency’s process for considering and measuring greenhouse gas emissions is already largely in line with the White House’s draft guidance. ‘Of course, we look forward to taking closer look to determine where we can improve our process,’ Phillips told reporters in January.”).

¹⁰ 867 F.3d 1357 (D.C. Cir. 2017).



To understand an agency’s obligations under NEPA, one must turn to the landmark Supreme Court case *Department of Transportation v. Public Citizen (Public Citizen)*¹¹—a case that the CEQ Guidance does not mention even once. *Public Citizen* held that, under NEPA, agencies are only obligated to consider environmental effects for which the agency itself is the legal proximate cause.¹² As characterized by the Court of Appeals for the D.C. Circuit (D.C. Circuit), *Public Citizen* holds that when “an agency ‘has no ability to prevent a certain effect due to’ that agency’s ‘limited statutory authority over the relevant action[], then that action ‘cannot be considered a legally relevant “cause” of the effect’ for NEPA purposes” and, accordingly, that the effect of that action need not be considered in an agency’s NEPA analysis.¹³ Based on *Public Citizen*, for example, the D.C. Circuit has held that the Commission is not required to consider the indirect effects of the anticipated export of natural gas because “the Department of Energy, not the Commission, has sole authority to license the export of any natural gas going through the [LNG export] facilities.”¹⁴

Effects must also be reasonably foreseeable to fall within the scope of NEPA. In *Delaware Riverkeeper Network v. FERC*¹⁵—which, again, the CEQ Guidance does not mention—the D.C. Circuit affirmed the Commission’s conclusion that emissions from upstream activities and “unknown end use[s]” were not reasonably foreseeable and therefore not required to be considered under NEPA.¹⁶ The court also recognized that “there will inevitably be some limits on the foreseeability of emissions, and the court has rejected the notion that downstream emissions are always reasonably foreseeable effects of a pipeline project.”¹⁷

Applying *Public Citizen* and relevant case law, the Commission is categorically *not required* to consider emissions from upstream activities because it has no ability to prevent them—upstream activities lie wholly outside of the Commission’s jurisdiction, by the plain terms of our statute. The

¹¹ 541 U.S. 752 (2004).

¹² *Id.* at 767.

¹³ *Sierra Club v. FERC*, 827 F.3d 36, 47 (D.C. Cir. 2016) (*Freeport*).

¹⁴ *Id.*

¹⁵ 45 F.4th 104 (D.C. Cir. 2022).

¹⁶ *Id.* at 109-11.

¹⁷ *Id.* 109 (citing *Birckhead v. FERC*, 925 F.3d 510, 518-19 (D.C. Cir. 2019)).



NGA unambiguously states that “[t]he provisions of this chapter . . . shall not apply . . . to the production or gathering of natural gas.”¹⁸

Similarly, the Commission should categorically *not be required* to quantify emissions from downstream activities. These effects are also wholly outside our jurisdiction. We neither license end-use facilities nor control the purchase or manner of consumption of natural gas. The Commission’s authority under the NGA does not apply to “the local distribution of natural gas or to the facilities used for such distribution.”¹⁹ Nor has the Commission any authority “over facilities used for the generation of electric energy.”²⁰ Despite this limited statutory authority over downstream activities, in *Sabal Trail*, the D.C. Circuit found that, in its view, NEPA requires the Commission to consider downstream emissions when a natural gas facility will transport gas to discrete power generators.²¹ *Sabal Trail* has been roundly criticized for its obvious conflict with *Public Citizen* and the D.C. Circuit’s own precedent.²² Nevertheless, it is binding precedent for the D.C. Circuit, and the Commission must follow it, but only under the specific facts of the case—that narrow set of circumstances in which a natural gas pipeline delivers gas to discrete, identifiable gas-fired electric generators. Then, and only then, should the Commission quantify downstream emissions.²³

¹⁸ 15 U.S.C. § 717(b). I have recently written on this subject matter in my concurrence for *Transcontinental Gas Pipe Line Co., LLC*, 182 FERC ¶ 61,148 (2023) (Danly, Comm’r, concurring at PP 4-5).

¹⁹ 15 U.S.C. § 717(b); *see also Missouri v. Kan. Gas Co.*, 265 U.S. 298, 308 (1924) (“With the delivery of the gas to distributing companies, however, the interstate movement ends. Its subsequent sale and delivery by these companies to their customers at retail is intrastate business and subject to state regulation. In such a case the effect on interstate commerce, if there be any, is indirect and incidental.”) (citations omitted).

²⁰ 16 U.S.C. § 824(b)(1).

²¹ 867 F.3d at 1374.

²² *Ctr. for Biological Diversity v. U.S. Army Corps of Eng’rs*, 941 F.3d 1288, 1300 (11th Cir. 2019) (“[T]he legal analysis in *Sabal Trail* is questionable at best. It fails to take seriously the rule of reason announced in *Public Citizen* or to account for the untenable consequences of its decision.”); 867 F.3d at 1383 (Brown, J., concurring in part and dissenting in part) (“Thus, just as FERC in the [Department of Energy] cases and the Federal Motor Carrier Safety Administration in *Public Citizen* did not have the legal power to prevent certain environmental effects, the Commission here has no authority to prevent the emission of greenhouse gases through newly-constructed or expanded power plants approved by the Board.”); *id.*

²³ I acknowledge that the D.C. Circuit in *Birckhead v. FERC* stated that “[b]ut contrary to the Commission’s position, [*Sabal Trail*] hardly suggests that downstream emissions are an indirect effect of a project only when the project’s ‘entire purpose’ is to transport gas to be burned at ‘specifically-



When next such a circumstance arises, the Commission should comply with *Sabal Trail* and explain that downstream activities are outside its jurisdiction under the NGA. Offering such an explanation would be proper because, as the Supreme Court held in *National Cable & Telecommunications Association v. Brand X Internet Services*, even following a binding judicial issuance, agencies remain free in subsequent proceedings to offer reasonable interpretations of the jurisdiction conferred upon them by their organic statutes.²⁴

2. Is the CEQ guidance consistent with facilitating the orderly development of plentiful supplies of natural gas at reasonable prices, as is the intent of the Natural Gas Act? If so, please elaborate. If not, how can the Commission legally implement the guidance?

The recommendation in the CEQ Guidance to “mitigate [direct and indirect] GHG emissions associated with [agency] proposed actions to the greatest extent possible”²⁵ is inconsistent with facilitating the orderly development of plentiful supplies of natural gas at reasonable prices—which is to say, following the CEQ guidance would impede the Commission’s ability to carry out the primary purpose of the NGA.²⁶

The CEQ Guidance offers no explanation of what authority gives agencies the power to mitigate GHG emissions. It is black letter law that NEPA is a procedural statute and cannot expand a federal agency’s jurisdiction.²⁷ The only way that the Commission can require mitigation is to use

identified’ destinations,” 925 F.3d at 519, and the justification “that [the Commission] need not consider downstream greenhouse-gas emissions if it ‘cannot be considered a legally relevant cause’ of such emissions due to its lack of jurisdiction over an entity other than the pipeline applicant . . . gets the Commission nowhere.” *Id.* This statement, however, is dicta. The courts only holding in that case was that it lacked jurisdiction to resolve arguments regarding the development of the record that informed the Commission’s determination that the downstream emissions at issue were not reasonably foreseeable. *Id.* at 520.

²⁴ 545 U.S. 967, 982-83 (2005).

²⁵ 88 Fed. Reg. at 1197.

²⁶ *NAACP v. FPC*, 425 U.S. 662, 669-70 (1976) (*NAACP*) (“it is clear that the principal purpose of [the Natural Gas Act] was to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices”) (citations omitted).

²⁷ *Nat. Res. Def. Council, Inc. v. EPA*, 822 F.2d 104, 129 (D.C. Cir. 1987) (“NEPA, as a procedural device, does not work a broadening of the agency’s substantive powers. Whatever action the agency chooses to take must, of course, be within its province in the first instance.”) (citations omitted); *Cape May Greene, Inc. v. Warren*, 698 F.2d 179, 188 (3d Cir. 1983) (“The National Environmental Policy Act does not expand the jurisdiction of an agency beyond that set forth in its organic statute.”) (citations omitted); *Gage v. U.S. Atomic Energy Comm’n*, 479 F.2d 1214, 1220 n.19 (D.C. Cir. 1973) (“NEPA does not mandate action which goes beyond the agency’s organic



the Commission’s authority to attach conditions to certain of its authorizations. The NGA empowers the Commission “to attach to the issuance of a certificate . . . *reasonable terms and conditions as the public convenience and necessity may require.*”²⁸ The Commission’s conditioning authority does not give it *carte blanche* to condition pipelines however it wishes; the NGA’s conditioning authority is constrained by the text and purpose of the statute. First, the conditions must be “reasonable.” Presumably, if mitigation is imposed by means of certificate conditions so onerous that the project is no longer commercially viable, or if the conditions are so technically burdensome that they amount to the infeasible, they would not be “reasonable.” Second, the Commission can only exercise its conditioning authority in a manner consistent with the purpose of the NGA which, again, is “to promote the orderly production of plentiful supplies of . . . natural gas at just and reasonable rates.”²⁹ It is probable that courts would look with skepticism upon any condition attached to a natural gas pipeline certificate that did not bear a direct relation to the harms caused by the construction and operation of the facility itself and the Commission would be risking the reversal of any order that conditioned a pipeline certificate upon speculative third-party activities. Put simply, any burdensome conditions that seek to achieve public policy goals that are at odds with ensuing the development of infrastructure that would otherwise be in the public convenience and necessity would almost certainly be unlawful under the NGA.

Last year, the Commission issued its Interim GHG Policy Statement—which it very quickly rescinded—containing a nearly identical proposal:

the Commission’s priority is for project sponsors to mitigate, to the greatest extent possible, a project’s direct GHG emissions. The Commission also encourages project sponsors to propose mitigation of reasonably foreseeable indirect emissions, and will take such proposals into account in assessing the extent of a project’s adverse impacts.³⁰

jurisdiction.”) (citation omitted); *see also Flint Ridge Dev. Co. v. Scenic Rivers Ass’n of Okla.*, 426 U.S. 776, 788 (1976) (“where a clear and unavoidable conflict in statutory authority exists, NEPA must give way”).

²⁸ 15 U.S.C. § 717f(e) (emphasis added); *see also id.* § 717b(a) (stating that in acting on applications to export or import natural gas the “Commission may by its order grant such application, in whole or in part, with such modifications and upon such terms and conditions as the Commission may find necessary or appropriate.”); *id.* § 717b(e)(3)(A) (stating “the Commission may approve an application [to site, construct, expand, or operate an LNG terminal], in whole or part, with such modifications and upon such terms and conditions as the Commission find necessary or appropriate.”).

²⁹ *NAACP*, 425 U.S. at 670.

³⁰ *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Revs.*, 178 FERC ¶ 61,108, at P 105 (2022) (Interim GHG Policy Statement), *order making policy a draft*, 178 FERC ¶ 61,197 (2022).



I dissented from the order on the basis that “the Commission’s conditioning authority cannot be used in ways that would be directly contrary to the purpose of the NGA—to promote the production of plentiful supplies of natural gas at reasonable rates” and that “the majority may not rewrite the purpose of the NGA to instead charge the Commission with the mission of discouraging the production and use of natural gas.”³¹ My views have not changed and they are not idiosyncratic. Several requests for rehearing of the Interim GHG Policy Statement made similar arguments.³² As should be obvious, the Commission may not implement NEPA in a manner that is inconsistent with its statutory requirements under the NGA because the NGA, unlike NEPA, is the substantive law that the Commission is charged with administering.³³

The CEQ guidance makes another recommendation that appears, on its face, inconsistent with the purpose of the NGA. That recommendation is for “agencies [to] evaluate reasonable alternatives that may have lower GHG emissions, which could include technically and economically feasible clean energy alternatives to proposed fossil fuel-related projects.”³⁴ The CEQ guidance says that it does not “require the decision maker to select the alternative with the lowest net GHG emissions or climate costs or the greatest net climate benefits” but to “use the information provided through the NEPA process to help inform decisions that align with climate change commitments and goals.”³⁵ Put differently, CEQ seems to suggest that the Commission consider renewable energy or energy efficiency as alternatives to authorizing the construction and operation of a proposed

³¹ Interim GHG Policy Statement, 178 FERC ¶ 61,108 (Danly, Comm’r, dissenting at P 40).

³² See TC Energy March 18, 2022 Request for Rehearing, Docket Nos. PL21-3, et al., at 25-26 (Accession No. 20220318-5218) (“[I]mposing mitigation . . . would have negative impacts on the production and use of natural gas by third parties not subject to the Commission’s NGA jurisdiction. Such negative impacts would be contrary to the statutory purpose of the NGA: encouraging the orderly development of plentiful supplies of natural gas at reasonable prices.”); Boardwalk March 18, 2022 Request for Rehearing, Docket Nos. PL21-3-000, et al., at 33-34 (Accession No. 20220318-5211) (“Mitigation by the pipeline would dramatically increase the cost of a pipeline project and the delivered price of the natural gas transported on that project, which is inconsistent with the Commission’s congressional mandate to facilitate plentiful gas supplies at reasonable prices.”) (footnote omitted).

³³ 18 C.F.R. § 380.1 (“The Commission will comply with the regulations of the Council on Environmental Quality except where those regulations are inconsistent with the statutory requirements of the Commission.”). “[T]he principal purpose of [the NGA] was to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.” *NAACP*, 425 U.S. at 669-70 (citations omitted).

³⁴ 88 Fed. Reg. at 1204.

³⁵ *Id.*



pipeline facility to meet demand for natural gas as part of its determination of whether a proposed facility is in the public convenience and necessity.

The CEQ Guidance acknowledges that the “range of reasonable alternatives” must be “consistent with . . . the purpose and need for the proposed action”³⁶ and that “[t]he purpose and need for action usually reflects the extent of the agency’s statutory authority and its policies.”³⁷ Indeed, courts have also held that “there is no need to consider . . . alternatives which could only be implemented after significant changes in governmental policy or legislation.”³⁸ The NGA requires that the Commission promote the orderly development of *natural gas* at reasonable prices, not alternative energy sources. Congress has declared that “the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest.”³⁹ Having made its decision and codified it into law, Congress has determined that the Commission’s duty under the NGA is to promote natural gas infrastructure. And we are bound to follow the statute as enacted by Congress.⁴⁰ The Commission has no authority to investigate whether renewable energy or energy efficiency could substitute for gas, and we are without authority to promote other policies when to do so would violate the purpose of our own statute.

3. Does the Commission intend to revise and reissue its natural gas policy statements (Docket Nos. PL21-3-000 and PL18-1-000) in order to incorporate this CEQ guidance? Please explain.

As a Commissioner, I do not control the agenda. The Chairman is generally in control of the Commission’s agenda and thus the decision whether to finalize the 2022 Draft Policy Statements rests largely with him.

It is worth noting that, last March, Chairman Phillips, then Commissioner, stated in a letter to Senator Barrasso, “I support [the Updated Certificate Policy Statement⁴¹ and Interim GHG Policy Statement] as an initial step to act on pending proposals under the NGA, and I will consider modifying the GHG Policy Statement in response to any applicable federal guidance, future

³⁶ *Id.*

³⁷ *Id.* 1204 n.76.

³⁸ *Nat. Res. Def. Council, Inc. v. Callaway*, 524 F.2d 79, 93 (2d Cir. 1975).

³⁹ 15 U.S.C. § 717(a).

⁴⁰ *NAACP*, 425 U.S. at 669-70 (“[I]t is clear that the principal purpose of [the NGA] was to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”) (citations omitted).

⁴¹ *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Updated Certificate Policy Statement).



developments, or public comments.”⁴² In addition, this past January, Chairman Phillips is reported as having “indicated that he was prepared to move forward with changes to the pipeline policy, even if FERC is not operating with its full complement of five commissioners.”⁴³

In its recent issuances, the Commission has not announced what policy changes it might make to implement the CEQ Guidance but, as mentioned above, has implied that the agency’s compliance with the guidance may be forthcoming.⁴⁴ Despite my repeated calls to do so, my colleagues have not seen fit to close the proceeding in Docket No. PL21-3-000, leaving open the possibility that the now-draft Interim GHG Policy Statement could be finalized.⁴⁵

4. *Does the Commission plan to undertake an analysis or solicit public feedback on how implementing this CEQ guidance could affect the price or availability of natural gas and electricity, or the effect on the economy as a whole?*

I am not aware of any plan for the Commission to undertake an analysis or solicit public feedback on how implementing CEQ guidance could affect the price or availability of natural gas and electricity or the effect that implementing the CEQ Guidance would have on the general economy. Senator Barrasso has asked similar questions in other settings.⁴⁶

⁴² Commissioner Phillips March 1, 2022 Letter to Senator Barrasso at 1 (Accession No. 20220304-4003).

⁴³ Chris Knight, *FERC chair seeks consensus on new pipeline policy*, ARGUS MEDIA, Jan. 19, 2023.

⁴⁴ *See supra* note 9.

⁴⁵ *See Cameron LNG, LLC*, 182 FERC ¶ 61,173 (2023) (Danly, Comm’r, concurring in the result at P 3) (“The Interim GHG Policy Statement has been in draft form for nearly a year. The regulated industry needs certainty that the Commission’s moment of misguided whims will not resurface. My colleagues should simply terminate the proceeding in Docket No. PL21-3-000.”); *Alliance Pipeline L.P.*, 182 FERC ¶ 61,172 (2023) (Danly, Comm’r, concurring in the result at P 3) (same); *Columbia Gas Transmission, LLC*, 182 FERC ¶ 61,171 (2023) (Danly, Comm’r, concurring in the result at P 3) (same); *Fla. Gas Transmission Co., LLC*, 182 FERC ¶ 61,170 (2023) (Danly, Comm’r, concurring in the result at P 3) (same).

⁴⁶ Senator Barrasso September 6, 2022 Letter at 5 (Accession No. 20220908-4001) (“Has the Commission conducted a study (or studies) or sought comment on the potential impact of the 2022 Policy Statements on i) the cost of natural gas; ii) the availability of natural gas; iii) the cost, reliability or resilience of electricity; iv) employment in or beyond the energy sector; v) employment generally; or vi) the broader economy? If so, what are the results? If not, why not?”); Senator Barrasso September 15, 2021 Letter at App. (Accession No. 20210915-5184) (“How will the Commission meet the purposes of the Natural Gas Act to encourage the development of plentiful supplies of natural gas at reasonable prices if and as it adjusts its practice with respect to NEPA compliance? In light of the changes to FERC’s administration of its certificate program as a result of changes in its



Assessing the effects of implementing the CEQ guidance on the cost and availability of natural gas and electricity would certainly aid the Commission in determining whether the proposals would, in fact, achieve the NGA’s purpose which, as you correctly state, is to “encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”⁴⁷ Such a study could also inform the Commission on how to discharge our duties to oversee the establishment of mandatory reliability standards under section 215 of the Federal Power Act (FPA).⁴⁸ In that role, the Commission oversees the North American Electric Reliability Corporation (NERC) which has consistently emphasized the importance of natural gas, referring to it as “the reliability ‘fuel that keeps the lights on.’”⁴⁹ NERC has counseled that “natural gas policy must reflect this reality.”⁵⁰ Indeed, in comments on the 2022 Policy Statements, PJM Interconnection, L.L.C. (PJM) and the Midcontinent Independent System Operator, Inc. (MISO) “urge[d] the Commission to keep in mind that the continued availability of natural gas and associated infrastructure is a key component in ensuring long-term resource adequacy, and by extension, in meeting PJM and MISO’s significant reliability responsibilities under Section 215 of the [FPA].”⁵¹ It would be difficult, indeed, to justify the implementation of sweeping changes in conformity with CEQ’s non-binding guidance absent such a study. To do so would virtually guarantee that we are undertaking drastic action absent the information necessary to make an informed decision.

As the Energy Information Administration has reported, 2022 saw the addition of the smallest quantity of new, additional interstate natural gas pipeline capacity in any year since it began

approach to NEPA compliance or other issues, does the Commission intend to conduct an analysis of the impact on the reliability and affordability of natural gas and electricity or on jobs? If not, why not?”); Senator Barrasso March 30, 2021 Letter at 3 (Accession No. 20210330-4000) (“Has FERC undertaken an analysis on the impacts to reliability and affordability of natural gas and electric service or the impacts to jobs if pipeline projects that the Commission has found to be necessary can be collaterally attacked after the Commission has issued a certificate for such projects? If not, does the Commission have plans to conduct such an analysis.”).

⁴⁷ *NAACP*, 425 U.S. at 669-70; *accord Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1307 (D.C. Cir. 2015) (quoting *NAACP*, 425 U.S. at 669-70).

⁴⁸ 16 U.S.C. § 824o.

⁴⁹ *2021 Long-Term Reliability Assessment*, NERC, at 5 (Dec. 2021), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2021.pdf.

⁵⁰ *Id.*

⁵¹ PJM Interconnection, L.L.C., et al., May 25, 2022 Limited Reply Comments, Docket Nos. PL21-3-000, at 2 (citation omitted) (Accession No. 20220525-5045).



tracking this statistic in 1995.⁵² This is an indictment of the Commission’s actions over the last two years, which have stultified the ability of pipeline developers to attract and deploy the capital needed to build these critical pieces of American infrastructure.

* * *

Thank you for the opportunity to share my thoughts on CEQ’s Guidance. If I can be of any further assistance with these issues or any other Commission matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "James Danly". The signature is written in a cursive, flowing style.

James P. Danly
Commissioner

⁵² U.S. Energy Information Administration, Today in Energy, at 1 (“The least U.S. interstate natural gas pipeline capacity on record was added in 2022[.]”) (Mar. 2, 2023), <https://www.eia.gov/todayinenergy/detail.php?id=55699>.