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Thank you for the opportunity to comment on potential changes to the Commission's 1999 Natural Gas Policy Statement. The current Commission is to be commended for taking this action. Past Commissions have failed to address this critical problem despite radical changes in the industry, the environment, and society. Notice of Inquiry PL18-1 appears to acknowledge that policy change is necessary, and seeks input on what these changes should be, and justification for them.

In my comments below, I draw from my personal experience as an affected landowner within the proceedings of PF14-22, the proposed Kinder Morgen Northeast Energy Direct Project. I filed a comment in that proceeding (Accession # 20150226-5118) where I addressed my concern about the need to readdress FERC's 1999 Policy Statement. I incorporate that by reference here, and expand on my thoughts below.

1) Potential Adjustments to Determination of "Public Convenience and Necessity – A1-A10

The Case for Change: An Unfortunate Evolution

Over time, the Commission has evolved to use the word "need" as proxy for the phrase "…required by the present or future public convenience and necessity" as specified in the Natural Gas Act of 1938. Establishing whether a proposal is required by public convenience and necessity is intended to be the core of the FERC process. If the process does not allow for a robust examination of a proposal's genuine "public convenience and necessity," the Commission fails in its mission under the Act.

The Natural Gas Act of 1938 was adopted in part to ensure the "public convenience and necessity" had access to an efficient market for transportation of relatively sparse natural gas supplies during the emergence of interstate natural gas commerce. Today, gas in America is abundant, and the interstate gas transportation market is well-developed. The driving factors of "public convenience and necessity" are radically different than in 1938.

As the domestic natural gas market matured over the past eighty years, FERC (and the agencies that preceded it) evolved the interpretation of "public convenience and necessity" to give overwhelming weight to market opportunity. This focus on market opportunity is the basis of the Commission's dominant use of precedent agreements when determining "public convenience and necessity." The threshold requirement in the 1999 Policy statement is simply that a project must be financed without subsidies from existing customers. The apparent underlying assumption is that anything that advances the use of natural gas is a "public

benefit." This assumption is faulty and provides dis-incentives for meeting the true public need in 2018.

The public need is for energy. The Commission's use of precedent agreements as proxy for "public convenience and necessity" yields a distorted process where a benefit is presumed to be in the public interest simply because it expands the gas market. Precedent agreements involving affiliated parties are an even worse. Shippers no longer need be protected from greedy pipeline operators as in 1938. They are now often one and the same.

Precedent agreements for the export market are arguably even further afield of public interest. Neither the 1938 NGA nor the 1999 Policy Statement envisioned the United States as a gas exporter. Yet, precedent agreements for export seem to bear the same weight for FERC as any other agreement. Populists would argue that export is never a public "need," and is in fact, a harm. Excess gas supplies would best benefit Americans by staying in the ground. Exporting American gas will raise prices to American consumers and deprive future generations of Americans of readily accessible supply if they need it. If there is a national security issue that compels us to provide our gas to our allies, it must be spelled out clearly for the American public to understand and assess.

FERC has evolved its interpretation of the NGA regarding gas industry interests over these 80 years, but it has made no parallel provision to consider how the larger public interest has changed (short of what NEPA requires). This Notice of Inquiry cites cases from 1961 and 1976 to explain why it is unable to consider the broader public interest in its process today. These court cases, which even pre-date FERC's formation, could not have anticipated the current abundant domestic gas supply, the threat of climate change, or the commercialization of renewables as viable energy sources. Perhaps the Commission has inadvertently strayed from its mission. The public outcry over FERC demonstrates that it is time to right the course.

A seismic change is required in the way that FERC evaluates public convenience and necessity.

Essential Elements:

1) The specific facts the Commission uses to determine "public convenience and necessity" must be open to public review and challenge. Today's process which relies on confidential precedent agreements is not only an inadequate way to determine "public convenience and necessity," it reinforces the public's view that the process is rigged and pre-determined. How can the Commission presume to know more than the public about what is in the public interest?

2) The process must address "public convenience and necessity" with a regional view, including "all relevant factors." Each region has specific characteristics of environment, economy, and energy balance. The process should include all energy interests at play in a given region, not just natural gas. If FERC believes such a process exceeds its scope, it must demand such a process be created. It is impossible for FERC to fulfill its mission

under the NGA without a comprehensive determination of public convenience and necessity.

A Proposed Model:

In an ideal regional process, FERC itself would work openly and proactively alongside RTO's, ISO's, LDC's and state officials to determine which energy needs in a region can be best met by pipelines, incorporating state and region-specific GHG goals. This process would account for all downstream environmental effects. FERC could issue an RFP to meet any specific need for a pipeline as identified by this process. Pipeline companies could then compete for the best result considering the cost and environmental impact of upstream factors, in addition to traditional impacts and financing requirements considered in the legacy certification process. The fact that many pipeline operators are now also shippers makes this process more straightforward.

The outcome of this process would constitute the best argument for need, which could subsequently be laid against the environmental and other upstream costs of the winning proposal. This change in process would benefit pipeline proponents because they could focus on their core business of building pipelines vs. lobbying for support of controversial projects. It would clearly benefit the public, who would be reassured that their broader interests have been addressed.

Alternatively, FERC could direct a proponent to demonstrate a need specifically for energy sourced from national gas in a region. The proponent would conduct an assessment similar to that described above, clarifying how the its own proposed capacity increase furthers the regional goals. A drawback to this process is that competition is not explicitly part of the process. Another drawback is that the agencies may be forced to deal with multiple prospective developers. But, today's process has the same drawbacks.

To those who look at this process as too unwieldy for pipeline developers, please consider the deep responsibility of the Commission when addressing "public convenience and necessity" in today's environment. Certificates must be granted based solely on meeting the public's actual need for energy, not on facilitating the quickest route to a market opportunity regardless of public cost.

The public will continue to push for this result.

Exercise of Eminent Domain B1-B5

Good government demands that takings of private land be essential and rare, not only for the benefit of landowners, but to ensure the public's trust of government. The public's trust of FERC in this regard is arguably very low. A more robust and inclusive analysis of what comprises "public convenience and necessity" as described above could give more credence to outcomes when takings are necessary.

An open and comprehensive process, which accounts for region-specific energy needs matched against environmental and economic costs would lead to greater public understanding when land must be taken. This impact should not be under-estimated. A more robust analysis would diminish the risk that a taking will be for naught if a market isn't realized. It would ensure that the taking does not harm the public good by undercutting the development of alternative energy sources. It would diminish the likelihood that the taking serves the export market to the detriment of current and future American gas customers. No one wants their land taken from them, but downstream factors add insult to injury, and elicit public outcry.

Other actions that create additional resentment around takings are issuing conditional certificates, granting notices to proceed without all state and local approvals, and refusing to hold timely re-hearings via the use of tolling orders. The public perception and the reality must be that the taking is truly to meet a public need vs. facilitate a market opportunity for the gas industry.

The public will continue to push for this result.

The Commission's Consideration of Environmental Impacts C1-C7

The time for the Commission to consider climate change, the most serious environmental issue of our time (and arguably, of all time) is long since passed. Climate change is the ultimate public inconvenience. Science is increasingly clear on this topic, yet government continues to fail the public on this issue.

It appears that FERC has handcuffed itself on all environmental issues saying it can't act on a broad definition of public good, relying on a case from 1961 (as cited in footnote 16 in NOI PL18-1). This case pre-dates climate change awareness, the certification process, and even FERC. FERC develops Environmental Impact Statements as required by NEPA. But, under NEPA, an EIS provides advice and input to decision makers. It is restricted to identifying environmental impacts. It may suggest, but it may not direct alternatives.

FERC itself develops the EIS. If FERC is not empowered and accountable for making decisions for the broad public good regarding certifications, then who is? How can the Commission, who sees this issue most clearly, allow this to happen? Why has it continued to cling to a narrow scope and consistently disregard that broad public good?

In a Separate Statement on February 3, 2017, on an Order Granting Abandonment and Issuing Certificates for National Fuel Gas Supply Corporation and Empire Pipeline, Inc., (CP15-115) former FERC chair Norman Bay urged the Commission to consider upstream and downstream environment impacts "in the interest of good government." What more compelling role exists for Commissioners than to act on behalf of the public against an overwhelming problem on a global level? This Statement was issued on Bay's last day as Commissioner. Will current Commissioners step up to this responsibility as a result of this policy review while they still have the power to make a difference?

Even under the archaic model of using precedent agreements as proxy for public convenience and necessity, upstream and downstream impacts can and must be identified. If a proponent is subscribed, it should be able to identify end users and assess new vs. replacement impacts. The Social Cost of Carbon and Social Cost of Methane tools are available to give guidance and quantify options.

The public's view of FERC is not bolstered when it summarily dismisses a remand of the Appeals Court, as it did a month before issuing its Notice of Inquiry. FERC reinstated a certificate which the court had vacated for inadequate consideration of greenhouse gas effects (162 FERC ¶ 61,233). FERC stated that its analysts "could not reach a finding." This "can't do" attitude is a great betrayal of public trust and reinforces public sentiment that the Commission cares about the short term economics of natural gas industry players to the detriment of society at large. A Commission with greater power than the President in its area of authority surely should commit itself to doing better in the face of climate change.

The public will continue to push for this result.

Improvements to the Certification Process D1-D4

The NOI refers to Executive Order 13807 which encourages agencies to make decisions on major infrastructure projects within 2 years. The underlying suggestion is that government takes too long to review projects, to the detriment of developers/proponents (whose interests FERC presumes to be the public interest). In the case of complicated pipeline projects, some of this blame lies clearly with proponents who initiate government involvement prematurely, and then abuse the processes creating more public distrust.

In the case of Kinder Morgan Northeast Energy Direct (PF14-22 CP16-21) KM studied its planned pipeline for over 2 years before going public early in 2014. In April 2016, it suspended all work on the project. During those 26 months, KM used the pre-filing process concurrently with its own internal planning, revising the route and strategy several times. The project consumed a significant amount of the Commission's staff time, and even more state and local agency time, all at the public's expense. KM's withdrawal was not due to an administrative burden imposed by the government, it was due to their failure to formulate a plan that was viable. If the project had been approved within 2 years, it would have been at great cost to both Kinder Morgan and the public. If the plan had been rejected by FERC sooner for failure to follow the processes as defined, it would have saved public expense, and saved Kinder Morgan expense caused by its own poor planning.

FERC failed the public in the pre-filing process with Kinder Morgan, and presumably in other projects by allowing it to go through the motions of the process rather than to engage and inform stakeholders. FERC ignored Kinder Morgan's failings when it missed deadlines, included incomplete results, and provided misleading data. At the same time, FERC refused to grant intervenor status to landowners whom Kinder Morgan had neglected to notify until after the

notice date. The public perception is that FERC bends the process for proponents and stiffens the process for the public.

The current pre-filing process has merit, but only if FERC insists that applicants come prepared to uphold the spirit of the process by being forthcoming about plans, by being genuinely open to public input, and by actually addressing questions and comments. Similarly, FERC must not allow applicants to short-cut the process by allowing timelines to proceed with incomplete information given in a format to confuse the public rather than inform it.

The more robust the planning process, the smoother the implementation process. If FERC were to upend the certificate process to one where proponents compete to satisfy a need that is pre-determined to be for the public good as suggested above, it would unquestionably accelerate the approval process, and shorten the overall time from conception to build.

The public will continue to push for this result.

Thank you for the opportunity to comment.

Document Content(s)