

JOE MANCHIN III, WEST VIRGINIA, *Chairman*  
 RON WYDEN, Oregon  
 MARIA CANTWELL, Washington  
 BERNARD SANDERS, Vermont  
 MARTIN HEINRICH, New Mexico  
 MAZIE HIRONO, Hawaii  
 ANGUS S. KING, JR., Maine  
 CATHERINE CORTEZ MASTO, Nevada  
 MARK KELLY, Arizona  
 JOHN W. HICKENLOOPER, Colorado

JOHN BARRASSO, Wyoming  
 JAMES E. RISCH, Idaho  
 MIKE LEE, Utah  
 STEVE DAINES, Montana  
 LISA MURKOWSKI, Alaska  
 JOHN HOEVEN, North Dakota  
 JAMES LANKFORD, Oklahoma  
 BILL CASSIDY, Louisiana  
 CINDY HYDE-SMITH, Mississippi  
 ROGER MARSHALL, Kansas

RENAE BLACK, STAFF DIRECTOR  
 SAM E. FOWLER, CHIEF COUNSEL  
 RICHARD M. RUSSELL, REPUBLICAN STAFF DIRECTOR  
 MATTHEW H. LEGGETT, REPUBLICAN CHIEF COUNSEL

# United States Senate

COMMITTEE ON  
 ENERGY AND NATURAL RESOURCES  
 WASHINGTON, DC 20510-6150

WWW.ENERGY.SENATE.GOV

September 6, 2022

The Honorable Richard Glick  
 Chairman

The Honorable James Danly  
 Commissioner

The Honorable Allison Clements  
 Commissioner

The Honorable Mark C. Christie  
 Commissioner

The Honorable Willie L. Phillips  
 Commissioner

Federal Energy Regulatory Commission  
 888 First Street NE  
 Washington, D.C. 20426

Dear Chairman Glick and Commissioners:

It has been more than six months since the Committee on Energy and Natural Resources (“the Committee”) conducted its *Full Committee Hearing to Review the Federal Energy Regulatory Commission’s Recent Guidance on Natural Gas Pipelines* (“March 3 hearing”). Since the March 3 hearing and the issuance of the policy statements that prompted it,<sup>1</sup> inflation has shown no signs of slowing down, energy prices have spiked, and Putin’s war of aggression in Ukraine rages on.

The United States government must do its part to address these challenges and the Federal Energy Regulatory Commission (“the Commission” or “FERC”) must contribute. In addition to FERC’s vital role regulating natural gas infrastructure, the Commission also has a significant impact on electricity costs and the quality of electric service for Americans. Your recent actions that affect the interrelated natural gas and electric sectors prompt questions.

<sup>1</sup> *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,107 (2022), *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) (“2022 Policy Statements”).

**RECEIVED**

By The Federal Energy Regulatory Commission Office of External Affairs at 12:17 pm, Sep 08, 2022

Since the March 3 hearing, the Commission has taken some steps in the right direction with respect to natural gas. On March 24, the Commission made both of the policy statements “drafts” and sought further public comments.<sup>2</sup> The Commission also issued orders on a number of pending applications necessary for natural gas projects. Nevertheless, Chairman Glick has made it clear that he intends to put the policy statements on the Commission’s agenda soon. If the final policy statements are anything like the now-draft policy statements or some of the orders the Commission has issued since March, reliable transportation of natural gas within the United States will remain at risk and production of natural gas will continue to face unacceptable headwinds. In that event, not only will the reliability and affordability of domestic energy suffer, but our nation also will be significantly less likely to support our allies and friends in Europe, who are in desperate need of American natural gas.

The purpose of this letter is to learn about the development of—and necessary changes in—FERC policy on natural gas and electricity as reflected in the Commission’s actions and agenda since March 3. Please answer the following questions completely and promptly. Please address the progress you believe the Commission has made and, to the extent that the Commission’s rules permit, steps you intend to take or believe the Commission will take between now and the end of this year.

1. It appears that the Commission has applied the same counterproductive policies found within the 2022 Policy Statements to individual proceedings on its natural gas docket. This is not entirely surprising. For example, in their respective tenures on the Commission, Chairman Glick (nearly five years) and Commissioner Clements (nearly two years) each has developed a robust record clearly expressing the conviction that the Commission—even without the 2022 Policy Statements—has the authority (if not the duty) to require or “encourage” the calculation and mitigation of downstream and upstream greenhouse gas emissions.
  - a. In your view, since March 3, 2022, has the Commission applied any one or more of the policies announced in either of the 2022 Policy Statements in any individual proceeding? If not, why not?
  - b. If so, please list in the form that you believe will be most clear and effective for the public record: i) the relevant proceeding and Order; and ii) the policy that the Commission applied that was also articulated in either one or both of the 2022 Policy Statements.
2. Even before the 2022 Policy Statements were issued or converted to drafts, it appeared that a number of projects were delayed, thus impacting their ability to remain commercially viable. While it was promising that the Commission approved the Clear Creek Natural Gas Storage Project, it appears that other projects did not receive the same attention. Do you agree or disagree? Please provide the basis for your view with reference to specific proceedings to the extent that you have access to such information.

---

<sup>2</sup> *Order on Draft Policy Statements*, 178 FERC ¶ 61,197 (2022).

3. Since March 3, 2022, the Commission has approved matters pending on its natural gas docket. This is a good sign. Nevertheless, what evidence is there that these approvals are indicative of a broader, long-term practice at the Commission that would lead to more prompt disposition of applications on the Commission's natural gas docket?
- a. Does the pace and direction of Orders addressing matters pending on the Commission's natural gas docket since March 3, 2022, reflect a change by comparison to the pace and direction of Orders addressing matters pending on FERC's natural gas docket between January 21, 2021, and March 3, 2022? If so, please provide the basis for your view including, to the extent practicable, citations to specific proceedings. If not, please provide the basis for your view including, to the extent practicable, citations to specific proceedings.
  - b. For Chairman Glick only: at any time during your tenure as Chairman have you, directly or indirectly, suggested, encouraged, requested, directed, or otherwise indicated to any member of the Commission or any member of the staff of the Commission that the Commission's consideration of any application or any other matter pending on the Commission's natural gas docket that was otherwise ready for decision or on a path to be ready for decision in the ordinary course of business should be delayed? If so, please explain the circumstances and, to the extent the matter has been disposed of, please identify the matter.
  - c. With respect to applications for facilities to export liquefied natural gas ("LNG"), has there been progress in the time required for the Commission to take action? Please provide evidence to support your conclusion, including, to the extent practicable, citations to specific proceedings.
    - i. For example, Texas LNG is an export facility being developed in Brownsville, Texas. It received its initial FERC certificate in 2019. The certificate was challenged in the United States Court of Appeals for the D.C. Circuit.<sup>3</sup> The project appears to have had most of its key development and construction contracts in place.<sup>4</sup> It appears there are willing buyers of LNG, particularly in Europe.<sup>5</sup> The commercial environment and the opportunity to provide energy security to strategic allies has been highlighted even by the Biden administration. The D.C. Circuit remanded the Commission's initial Order approximately one year ago. Under these circumstances, without a final order on remand, no developer could start detailed engineering planning or initiate construction. LNG exports are not only vital to our national interest, they are critical in supporting U.S. allies abroad.

---

<sup>3</sup> *Vecinos Para El Bienestar De La Comunidad Costera v. Federal Energy Regulatory Commission*, No. 20-1045 (D.C. Cir. 2021).

<sup>4</sup> *Texas LNG Asserts Delay at FERC Affects Commercial Talks, Project Execution*, Inside FERC, S&P Global (August 19, 2022) at 15.

<sup>5</sup> *Id.*

- ii. Are there other LNG projects currently pending before FERC that have been awaiting final action for a substantial period of time (*e.g.*, more than 120 days)?
  - iii. If so, please list the project and briefly explain the source of the delay for Commission action with respect to these projects?
  - iv. Why hasn't FERC processed these projects with more deliberate speed, especially given the need for U.S. exports in Europe?
  - v. What is the status of Texas LNG and other LNG projects now pending before FERC?
  - vi. When does the Commission expect to issue orders on these projects?
4. During the March 3 hearing, Chairman Manchin asked each Commissioner and Chairman Glick if all five Commission Members had “lengthy discussion[s] ... to work your differences out . . . as a group.”<sup>6</sup> Because the 1999 Natural Gas Policy Statement has been applied in proceedings on the Commission’s natural gas docket for decades, many assume that the 2022 Policy Statements or their replacements will be similarly durable. In that event, policies having the support of all five or nearly all five Commissioners would be more likely to produce a clearer and fairer set of standards. Moreover, the adoption of Policy Statements on a non-partisan basis would reflect the intent of Congress that the Commission demonstrate that it is non-partisan and independent.

Since March 3, 2022, several Commissioners have been quoted in press accounts and espousing in speeches Chairman Manchin’s view that the Commissioners should deliberate collectively with the hope, if not the expectation, that the Commission’s Order’s reflect a non-partisan approach to the its work. For example, in a speech before the Energy Bar Association on May 18, 2022, Commissioner Phillips said he “look[s] forward to working with [his] colleagues on this in a bipartisan basis to resolve this issue.”<sup>7</sup>

---

<sup>6</sup> United States Senate Energy and Natural Resources Committee, *Full Committee Hearing to Review Federal Energy Regulatory Commission’s Recent Guidance on Natural Gas Pipelines* (March 3, 2022).

Senator Manchin: “Did you all have a lengthy discussion and work about, try to work your differences out at all as a group, the five of you? And did you—was there any compromise at all thinking that—and I’ll give you the one compromise that seems [a] very, very easy lift—that is, just delaying your effective date.”

<sup>7</sup> EBA 2022 Annual Meeting, *Lunch with Commissioner Willie L Phillips* (May 18, 2022) at 33:30 – 34:59. Commissioner Phillips: “I want you to know that my intention in supporting these policy statements was to ensure that we would move forward on acting on needed gas projects consistent with recent court and Commission precedent and when we ultimately approve a project that that project would be built to withstand legal review. Now my staff and I, we are still reviewing comments but I will say this; any framework we use going forward, any solution that can be successful has to have buy-in from our stakeholders. Going forward, I want to ensure that any change in our pipeline review is responsive to feedback, provides a roadmap for project development and is both legally durable and practical. I look forward to working with my colleagues on this [on] a bipartisan basis, to resolve this issue, and as always I will seek to advance my own priorities in this space. (1) That natural gas projects provide needed service to ensure reliability and reliability required projects will be built. (2) That impacts to environmental justice communities are considered and (3) that we account, as much as we can in a legally durable way for climate impacts.”

- a. In your view, is it important for issuances such as the 2022 Policy Statements and other major Orders to be adopted on a vote that is not a 3-2 vote along partisan lines? If so, why? If not, why not?
  - b. What efforts have been made or are underway to issue significant Orders on other than a 3-2 vote along partisan lines?
  - c. As you see it, how should the Commission deliberate in its proceedings? Should major Orders reflect the input of all Commissioners to the extent practicable? What are and should be the norms for Commission deliberation?
5. The 2022 Policy Statements, or their replacements, will have a significant and demonstrable impact on the economy of the United States, as well as individual states such as Wyoming and West Virginia. These, and other energy producing states, rely on robust infrastructure development to be able to transport natural gas to other states and regions that have a dramatic need for this resource at reasonable prices.
  - a. 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?
  - b. What do you personally believe will be the impact when applied in specific proceedings of the 2022 Policy Statements on local, state, and national economies? Will the burden be shared equally? Will specific regions benefit or suffer more than others? If so, how?
6. During the March 3 hearing and in his dissents to the 2022 Policy Statements, Commissioner Christie argued that the major questions doctrine precludes the Commission from regulating both upstream and downstream greenhouse gas emissions. The major questions doctrine, as explained by Commissioner Christie, “presumes that Congress reserves major issues to itself, so unless a grant of authority to address a major issue is explicit in a statute administered by an agency, [the authority] cannot be inferred to have been granted.”<sup>8</sup>

In *West Virginia v. EPA*, the Supreme Court recently relied upon the major questions doctrine to strike down a regulation designed to “compel the transfer of power generating capacity from existing sources to wind and solar.”<sup>9</sup> The court’s opinion stated, “the Government must—under the major questions doctrine—point to clear congressional authorization to regulate in that manner.”<sup>10</sup> The court found no clear statement within the Clean Air Act. Instead, the court found that the Environmental Protection Agency

---

<sup>8</sup> *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) Commissioner Christie Dissenting at 12.

<sup>9</sup> *West Virginia v. Environmental Protection Agency*, 597 U.S. (2022) at 10.

<sup>10</sup> *Id.* at 28 (internal quotation marks omitted).

(“EPA”) claimed an authority that “conveniently enabled it to enact a program that, long after the dangers posed by greenhouse gas emissions had become well known, Congress had considered and rejected” multiple times.<sup>11</sup>

EPA stepped well beyond the authority that the Clean Air Act conferred by effectively requiring fuel switching under the guise of mitigation. Although the court agreed that climate change is a significant issue, “a decision [to impose a rule] of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body.”<sup>12</sup>

- a. What is the “clear statement” in statute (*e.g.*, what federal law) by which Congress authorized the Federal Energy Regulatory Commission to require or “encourage”<sup>13</sup> mitigation of non-jurisdictional upstream and downstream greenhouse gas emissions? What is the law that allows the Commission to determine that a natural gas project will not have a significant impact if it allows a region to fuel switch, *i.e.*, take coal-fired units offline?<sup>14</sup>
  - b. How is the EPA program at issue in *West Virginia v. EPA* similar to, and different from, the 2022 Natural Gas Policy Statements and FERC’s program and efforts that would flow from those or similar policy statements?
  - c. How should the Supreme Court’s opinion in *West Virginia v. EPA* bear on the scope of any final mitigation requirements to be imposed or “encouraged” by the Commission in accordance with the 2022 Policy Statements or their replacement? How should the Commission take into account *West Virginia v. EPA* as it considers revisions to the 2022 Policy Statements?
7. The Commission has issued several notices of proposed rulemakings (“NOPR”) concerning issues related to electric transmission.
- a. Should any state be coerced to reflect, in rates or charges levied pursuant to its jurisdiction, costs imposed by or resulting from compliance with the policies of another state?
  - b. Do you agree that “identifying a cost allocation method that is perceived as fair, especially within transmission planning regions that encompass several states,

<sup>11</sup> *Id.* at 27 (internal quotation marks omitted).

<sup>12</sup> *Id.* at 31.

<sup>13</sup> *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) at ¶ 105.

<sup>14</sup> *Kern River Gas Transmission Co.*, 179 FERC ¶ 61,121, (May 19, 2022) Joint Concurrence of Chairman Glick and Commissioner Clements. (“Second, the Delta Lateral Project would result in a substantial net decrease in downstream GHG emissions. Here, Kern River submitted a study showing that the Delta Lateral Project would result in a net reduction of 4.17 million metric tpy in downstream GHG emissions due to Intermountain Power Agency’s replacement of coal-fired generation with gas-fired generation. Even under the alternative methodology offered by EPA, there would still be a net reduction of downstream emissions of 2.64 million metric tpy.”)

remains challenging?”<sup>15</sup> If not, why not? If so, isn’t this challenge exactly why the Commission must prevent states from adopting or bearing the burden of cost allocation methods that shift the costs of one state’s public policies on to customers in another state?

- c. What do you foresee as the practical outcome if the NOPRs are adopted as proposed and states do not agree to a cost allocation method?
  - d. Beyond the terms of the current NOPRs, what steps should the Commission take to ensure that states will not be coerced into agreement on cost allocation? Are procedural protections necessary for the benefit of states that do not reach agreement on a cost allocation method?
  - e. One of the options proposed in the NOPRs is for the Commission to assume “responsibility to establish the Long-Term Regional Transmission Cost Allocation Method” instead of the states.<sup>16</sup> If this path is chosen, under what conditions would it take effect?
8. It is fitting that the Commission will hold its *New England Winter Gas-Electric Forum* (“the Forum”) on September 8, 2022.<sup>17</sup> Please respond to the following with respect to the Forum.
- a. With respect to New England, what did you learn from the Forum about:
    - i. The sufficiency of FERC-jurisdictional infrastructure for the delivery of natural gas to and in the region;
    - ii. The relationship of FERC-jurisdictional infrastructure for the delivery of natural gas (to and in New England) to the reliability and resilience of the local distribution of natural gas in the region;
    - iii. The relationship of FERC-jurisdictional infrastructure for the delivery of natural gas (to and in New England) and the local distribution of natural gas in the region to the reliability and resilience of electric service in the region; and
    - iv. The state of wholesale electric capacity and energy sales or purchases, electric transmission, and electric reliability and resilience in the region?
  - b. In your judgment:
    - i. Is FERC-jurisdictional infrastructure for the delivery of natural gas to and within New England sufficient today to assure that natural gas is sufficiently available, reliable, and affordable?

---

<sup>15</sup> “Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection” RM21-17-000 at 235.

<sup>16</sup> “Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection” RM21-17-000 at 245.

<sup>17</sup> *Supplemental Notice of New England Winter Gas-Electric Forum* (August 22, 2022) Docket No. AD22-9-000.

- ii. Is today's FERC-jurisdictional infrastructure for the delivery of natural gas to and within New England sufficient to assure that electric generation and delivery within the region is and can remain reliable and resilient?
- iii. Are the FERC-approved arrangements for the wholesale sale and purchase of electricity (capacity and energy) in New England sufficient to assure the reliability, resilience, and affordability of electric service within the region? If not, why not?
- iv. Given all of the issues at stake in New England's wholesale market, should the single clearing price potentially be reconsidered?
- v. How does the cost of electricity in New England's wholesale market compare to wholesale costs in other regions? How does the cost of electricity delivered to retail customers compare with delivered costs of electricity in other regions?
- vi. Is there sufficient interstate natural gas pipeline capacity serving New England today? If not, why not? If so, what is the basis for your view?
- vii. Are you confident that there will be sufficient interstate natural gas pipeline capacity to serve New England's needs for gas and electricity in 2025? In 2030? In 2040? If so, what is the basis for your confidence? If not, why not?
- viii. Are you confident that there will be sufficient electric generation capacity to serve New England's needs for electricity in 2025? In 2030? In 2040? If so, what is the basis for your confidence? If not, why not?
- ix. Are you confident that there will be sufficient electric transmission capacity to serve New England's needs for electricity in 2025? In 2030? In 2040? If so, what is the basis for your confidence? If not, why not?
- x. Put most plainly, given the warnings of North American Electric Reliability Corporation and ISO New England for years now:
  - 1. Is there enough interstate natural gas capacity serving New England today? Please explain the basis for your answer.
  - 2. Is there enough electric generation capacity to generate electricity as and when it is needed available in New England today? If so, what are the prospects that this situation can persist for the foreseeable future? Please explain the basis for your answer.
  - 3. Is the FERC-jurisdictional wholesale market for electricity in New England with its current physical capacity and energy profile and its other characteristics sufficient to assure reliable, resilient, and affordable electric service? If so, what are the prospects that this situation will persist for the foreseeable future? Please explain the basis for your answer.
  - 4. Given the geographic proximity of West Virginia, Pennsylvania, and Ohio natural gas, and the willingness of natural gas producers in those states to serve New England, why does the price of natural gas in New England remain high? Would more interstate natural gas capacity provide immediate relief to consumers?



- xi. Compared with your goals ahead of the Forum, how satisfied are you that the record of the Forum points the way to meaningful and measurable reforms? Whether you are satisfied with the record of the Forum or not, what do you advocate as FERC's next steps for addressing issues that were apparent before or from the record of the Forum?
9. I have long called for reform of federal statutes and regulations to enable more certain and prompt permitting of energy production and delivery infrastructure.
- a. Please express specifically, and in detail, your ideas for changes in federal statutes and regulations to enable more certain and more prompt permitting of energy production and delivery infrastructure.
  - b. What changes, if any, in the Natural Gas Act, the Federal Power Act, or other federal statutes, are necessary to enable FERC in all of its functions (including as the lead agency under the National Environmental Policy Act) to act more swiftly and give applicants greater certainty with respect to proposed new or upgraded FERC-jurisdictional facilities (*e.g.*, natural gas pipelines, LNG facilities, and electric transmission lines)?

Thank you for your consideration of these questions. Please provide your answers as promptly as possible.

Sincerely,



John Barrasso, M.D.  
Ranking Member

Document Content(s)

incoming letter 2022-00061.pdf.....1