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United States Senate

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

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September 15, 2021

The Honorable Richard Glick
Chairman

The Honorable James Danly
Commissioner

The Honorable Alison Clements
Commissioner

The Honorable Mark Christie
Commissioner

Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Dear Chairman Glick and Commissioners:

You and I share the conviction that the Federal Energy Regulatory Commission (“the Commission” or “FERC”) is one of the most significant federal agencies. Among your broad responsibilities, you are charged with economic and safety regulation of critical domestic energy infrastructure. Americans look to you to regulate those who produce and deliver energy such that they can carry out their work keeping affordable energy flowing and the lights on.

The purpose of this letter is to call attention to what appear to be irregularities in the processing of important proceedings on both the Commission’s natural gas and electric dockets. Several proceedings illustrate the concern. I write to seek your assurance that you intend to resolve matters before you as expeditiously as possible and that you are not delaying the infrastructure at issue in the proceedings highlighted below.

Pending Natural Gas Pipeline Certificate Proceedings -- On April 29, 2021, I, along with twenty five other Senators, urged you to apply the Commission’s current Policy Statement on the Certification of New Interstate Natural Gas Facilities (1999 Policy Statement) and take action without delay on new natural gas infrastructure projects that the Commission now has under consideration. I joined my colleagues because the Commission had recently reopened its review of the 1999 Policy Statement. I was concerned that these pending projects may be held up and then evaluated under a new Policy Statement.¹

¹ Letter from 26 Senators to Chairman Glick, April 30, 2021.

Chairman Glick's reply of May 21, 2021 provided several notable assurances. It acknowledged that "the Commission should not delay action on these Certificates [awaiting action] during the pendency of [its] ongoing inquiry;" asserted that "the Commission will not wait to act on Certificate applications while we consider options for improving the process;" and noted the issuance of "orders approving Certificates for proposed pipeline projects in Minnesota and Nevada" on May 20.²

Nevertheless, just days after Chairman Glick's letter of May 21, the Commission issued nearly identical notices in five pending natural gas project certificate proceedings of its intention to expand its completed environmental analysis of these projects and extend the schedule for environmental review ("May 27 Notices").³ Since then, there have been more than a few other pipeline certificate proceedings that have met the same fate. Moreover, in one of the proceedings subject to a May 27 Notice, the schedule for issuance of the Environmental Impact Statement was recently postponed from September 3, 2021 until November 12, 2021, further delaying the project under review.⁴

Taken together, the May 27 Notices and the actions that have followed in similar proceedings indicate that the Commission is now requiring an EIS in all certificate proceedings and extending schedules for environmental review. I continue to be concerned about delays in certificate proceedings and the imposition of new and as-yet-undefined requirements on certificate applications already under review. At a minimum, it appears that FERC has already extended or will extend more than a few certificate proceedings.

Temporary Emergency Certificate to avoid potential gas supply shortages for metropolitan St. Louis, Missouri – On June 22, 2021, the United States Court of Appeals for the D.C. Circuit in *Environmental Defense Fund v. FERC*⁵ remanded the Commission's order granting a Certificate of Convenience and Necessity for an interstate natural gas pipeline system, serving St. Louis, Missouri. The court also took the rare step of vacating the Certificate in force for that operating facility, an action that will take effect only when the court issues its mandate. Fortunately the Commission issued a Temporary Certificate yesterday ("the September 14 Order"), as it noted, "out of an abundance of caution and to ensure adequate supply, at least temporarily, to the St. Louis region."⁶ Nevertheless, it is not clear why the Commission did not act sooner or more definitively to address the issues in this proceeding; nor is it clear that the Commission is yet on a path to a timely resolution of this matter to assure that adequate natural gas supplies will be available in St. Louis during the entire 2021-2022 winter season.

The pipeline owner, Spire STL Pipeline LLC, filed an Application for a Temporary Emergency Certificate, or, in the alternative, a Limited-Term Certificate on July 26, 2021. Curiously, on August 6, the Commission established a schedule according to which reply comments are not even due until October 5. In a subsequent communication cited in the September 14 Order, the Missouri Public Service Commission "encouraged FERC to take expeditious action on the [pending] Application before the Court issues a mandate that may effectuate its order to vacate the pipeline CCN."⁷ Without getting into the merits of the underlying case on remand, it is imperative that the Commission act promptly and clearly to ensure the continuation of reliable and affordable natural gas service. Not only is this a matter of urgent concern for the potentially impacted area, as the

² Letter from Chairman Glick to Senator John Barrasso, May 21, 2021.

³ See Notices issued May 27, 2021 in Docket No. CP20-27-000 (North Baja Pipeline LLC); Docket No. CP20-48-000 (Iroquois Gas Transmission System LP); Docket No. CP20-493-000 (Tennessee Gas Pipeline Co. LLC); Docket No. CP20-527-000 (Columbia Gulf Transmission LLC); and CP21-14-000 (Adelphia Gateway LLC).

⁴ *Notice of Revised Schedule for Environmental Review of the Enhancement by Compression Project*, Docket No. CP20-48-000 (Iroquois Gas Transmission System LP) (September 2, 2021).

⁵ No. 20-1016, 2021 WL 2546672 (D.C. Cir. June 22, 2021).

⁶ *Order Issuing Temporary Certificate*, Docket No. CP17-40-009 (September 14, 2021).

⁷ See September 14 Order at note 7 citing Missouri Public Service Commission Staff Investigation Report, Staff's Investigation of Spire STL Pipeline's Application at FERC for a Temporary Certificate to Operate, Case No. Go-2022-0022 (August 16, 2021) at 8. Docket No. CP17-40-000 (Spire STL Pipeline LLC).

September 14 Order acknowledges; it is also a matter of national interest because the Commission must demonstrate that it can and will do its work on a schedule that assures continued reliable natural gas service.

Proposed Southeast Energy Exchange Market – From the public record, it appears that the Commission is unnecessarily delaying or impeding voluntary efforts to improve the functioning of the wholesale electric market in the southeastern United States.⁸ For example, the Commission staff took 60 days to submit three questions to the filing utilities volunteering to establish the Southeast Energy Exchange Market. Without speaking to the merits of this particular proposal, I am in favor of *voluntary* efforts of this type. I urge the Commission to rule promptly in this matter. By allowing incremental voluntary improvements, the Commission can enable continuous and orderly market and facility development. Proceeding in this way is time-tested and has enabled the world's most extensive array of electric infrastructure largely paid for by equity and debt investors to be deployed in the United States.

Please provide a prompt response to my questions in the enclosed Appendix. Please address these general policy questions in the most expeditious and appropriate manner that you determine the Commission's rules will permit. It is my intention to respect the Commission's rule governing *ex parte* communications.

In each of the foregoing examples and on every matter pending on the Commission's docket, I urge the Commission to move promptly and fairly. There is simply no reason to delay the resolution of these matters.

Thank you for your consideration and I look forward to your prompt response.

Sincerely,



John Barrasso, M.D.

Ranking Member

⁸ See Deficiency Letter from FERC Staff, Docket Nos. ER21-1111-001, *et al* (August 6, 2021).

Appendix/Questions

Concerning Pending Pipeline Certificate cases --

1. Please provide a chart showing the status of Certificate Applications currently under consideration by the Commission, showing the date on which each application was filed, and the current stage of review for each, and the standard of review that applies to each application and notice, if any, that the applicant had of changes in the standard. (*E.g.*, please identify those Applications for which staff's review under National Environmental Policy Act (NEPA) has resulted in the publication of a draft or final Environmental Impact Statement, Environmental Assessment, or other form of documentation of the Commission's review of the project for the purposes of the Commission's compliance with NEPA, whether the NEPA requirement has changed since the application was filed.)
2. Has the Commission adopted a generally-applicable requirement for an EIS "to assist the Commission in its consideration of [a natural gas pipeline] Project's contribution to Climate Change and [its] decision-making process to determine whether [a] proposed Project is in the public convenience and necessity"?⁹
 - a. If so, what standards has or will the Commission apply to determine that an EIS (*e.g.*, in the place of or as a supplement to an Environmental Assessment) addressing a "Project's contribution to Climate Change" is necessary?
 - b. If not, in what context and for what purpose were the May 27 Notices issued or subsequent similar actions taken?
 - c. What significance do actions such as the May 27 Notices hold for other projects under review or that may be filed before the Commission has concluded its review of the 1999 Policy Statement and announced any changes?
3. Has the Commission determined that NEPA or any other law requires it to consider greenhouse gas emissions downstream or upstream of any or all interstate natural gas projects prior to the issuance of a Certificate?
 - a. If so, please list and explain the relevant Commission precedent.
 - b. If not, please
 - i. cite the specific authorities that require any such determination(s) and thoroughly explain your reasoning as to the basis for and scope of such determination(s); and
 - ii. explain why it is reasonable and appropriate to announce its intention to make such determination(s) in individual proceedings rather than in a generic proceeding.
4. 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 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?
5. Is a 60-day comment cycle common for emergency certificate applications of the type filed by Spire STL Pipeline LLC? If so, why? If not, how frequently has a 60-day comment cycle been established for an emergency certificate application? In a proceeding where a 60-day comment cycle was established for an emergency certificate application, was such a schedule adjusted in response to comments from state regulators, other state officials, customers, or others pointing to potential adverse effects of failing to act more quickly?

⁹ *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed North Baja Xpress Project and Schedule for Environmental Review* issued May 27, 2021 in Docket No. CP-27-000 at 1. Each of the May 27 Notices contains words that are substantially identical to those quoted.

6. Why did the Commission staff take 60 days to submit three questions to the utilities volunteering to establish the Southeast Energy Exchange Market?