



April 25, 2022

Submitted via ferconline.ferc.gov

Re: Policy Statement on Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews, Docket No. PL21-3-000.

Dear Sir/Madam:

Western Energy Alliance submits these comments in response to the Federal Energy Regulatory Commission's (FERC) draft policy statement entitled Consideration of Greenhouse Gas (GHG) Emissions in Natural Gas Infrastructure Project Reviews (draft policy statement). We have serious concerns with the proposal and urge FERC not to finalize an updated policy in its current form.

Western Energy Alliance represents 200 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independents, the majority of which are small businesses with an average of fourteen employees.

On February 18th of this year, FERC issued an Interim Guidance document detailing how it would immediately begin to analyze and consider GHG emissions during its review of pending and future applications submitted pursuant to the Natural Gas Act. Due to substantial and bipartisan pushback from impacted stakeholders, on March 24th FERC announced that the guidance document would no longer be applied to pending applications, and in the future, it would only apply the guidance after a public comment period and finalization of the Policy Statement.

Alliance members would be significantly impacted by this major policy revision, and the Alliance has concerns with the proposed changes. We appreciate that FERC reconsidered implementing the February document and instead re-issued it as a draft, and we urge the agency to fully consider comments from impacted stakeholders before finalizing any new policy. The Alliance incorporates by reference the comments of the American Petroleum Institute, which identify and discuss numerous issues with the draft policy statement in great detail, and below we further highlight several provisions of the proposal that are concerning to Alliance members.

The Alliance disagrees with FERC's decision to expand the emissions analysis for proposed projects to include both the upstream and downstream emissions that may or may not occur following approval of a midstream project. The National Environmental Policy Act (NEPA) does not require an agency to analyze the environmental impacts of actions that are outside the agency's jurisdiction. *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004). As the federal agency charged with regulating the interstate transmission of oil and natural gas, FERC has authority to approve pipeline and other related midstream projects.

It does not, however, have authority over upstream oil and natural gas production or downstream combustion of the products that pass through approved pipelines, so analyzing emissions from those other sectors both requires speculative calculations and is outside FERC's jurisdiction.

Further, the market for oil and natural gas commodities is global. Approving or disapproving individual pipelines will not have a significant effect on upstream or downstream GHG emissions in any meaningful way because the global market will provide substitute supplies. Where domestic production is therefore constrained, these substitute supplies will likely originate from Russia or other OPEC countries that, unlike the United States, do not have robust regulatory programs and environmental protections to ensure they produce and transport oil and natural gas in an environmentally responsible manner. In this respect, FERC's denial would potentially cause an increase in global GHG emissions, rather than decreasing them.

Additionally, other federal agencies (along with several state agencies) are required to conduct NEPA or similar analyses and evaluate potential GHG emissions for the upstream and downstream sectors, so FERC's analysis is duplicative of those reviews and will be either contradictory to or a double-counting of those potential emissions.

Rather than seeking to calculate cumulative emission levels, any final policy statement should instead provide an explanation of national and global market factors and the limitations on FERC's ability to influence worldwide production and consumption of oil and natural gas. For purposes of NEPA analyses, FERC should recognize that individual projects will not have a significant impact on global GHG emissions.

Furthermore, in the draft policy statement, FERC establishes a 100,000 metric tons per year (mtpy) CO₂e emissions threshold as the trigger for a "significant effect" determination under the National Environmental Policy Act (NEPA). Projects that exceed this level will automatically be required to undergo an environmental impact statement (EIS), the most extensive review required by NEPA.

Requiring an EIS based on one speculative factor such as theoretical cumulative CO₂e emissions will immediately increase the time needed to complete the analysis. This will delay needed natural gas pipelines at a time when energy prices are highly elevated and domestic supply continues to expand.

FERC deferred to the U.S. Environmental Protection Agency (EPA) when it selected the 100,000 mtpy emission threshold. EPA set this threshold when it promulgated its Tailoring Rule, which required facilities emitting more than 100,000 mtpy of GHGs to obtain a Prevention of Significant Deterioration permit. Yet the EPA did not select that threshold because it was scientifically proven to have a significant climatic effect. EPA's rationale for selecting that threshold was purely to manage administrative burden upon the agency, and it is an arbitrary number with no basis or relevance to a significant effect as it relates

to NEPA or global GHG emissions. FERC should not rely on EPA's decision in setting this arbitrary threshold for significance.

Finally, the Alliance is concerned by the proposed mitigation requirements in the draft policy statement. It is unclear what GHG mitigation requirements FERC will consider sufficient in order to approve an application and issue a certificate. FERC is leaving a consequential decision in the hands of applicants while providing no guidance to assist their decision-making, adding ambiguity in the full process, and giving no expectation of the costs to be incurred. This creates great uncertainty regarding whether FERC will impose penalties or revoke a permit during the project's lifetime due to circumstances outside an applicant's control. The draft mitigation provision will discourage companies from seeking certificates due to the risk it creates.

NEPA does not require that all environmental impacts be mitigated – the benefit of the project must simply outweigh the impacts. By enacting an arbitrary standard for mitigation requirements, FERC leaves open the possibility that projects will be rejected despite otherwise being in compliance with all applicable laws and regulations, merely because they application did not satisfy FERC's desire for more mitigation. We urge the agency to reconsider its proposed mitigation requirements.

Western Energy Alliance appreciates the opportunity to submit these comments on FERC's draft policy statement for consideration of GHG emissions in project reviews. Please do not hesitate to contact me with any questions.

Sincerely,



Tripp Parks
Vice President of Government Affairs