

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Certification of New Interstate )      Docket No. PL18-1-000  
Natural Gas Facilities            )**

**COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION**

The Electric Power Supply Association (“EPSA”)<sup>1</sup> respectfully submits the following comments<sup>2</sup> in response to the Notice of Inquiry (“NOI”)<sup>3</sup> issued on April 19, 2018, by the Federal Energy Regulatory Commission (“FERC” or “Commission”) in the above-referenced docket. In the NOI, the Commission seeks information and stakeholder perspectives to help the Commission explore whether, and if so how, it should revise its approach under the currently effective Policy Statement on the certification of new natural gas transportation facilities to determine whether a proposed natural gas project is or will be required by the present or future public convenience and necessity, as that standard is established in section 7 of the Natural Gas Act (“NGA”).<sup>4</sup> As discussed below, the current Policy Statement framework remains sound and is flexible enough to address concerns and issues when they arise with respect to consideration of the public convenience and necessity standard of a natural gas infrastructure project. While no major reforms are required, any modifications to the current Policy Statement should focus on making the process and

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<sup>1</sup> Launched over 20 years ago, EPSA is the national trade association representing leading independent power producers and marketers. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. Power supplied on a competitive basis collectively accounts for 40 percent of the U.S. installed generating capacity. EPSA seeks to bring the benefits of competition to all power customers.

<sup>2</sup> This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

<sup>3</sup> *Certification of New Interstate Natural Gas Facilities*, Notice of Inquiry, Docket No. PL18-1-000, (issued April 19, 2018) (“NOI”).

<sup>4</sup> *Id.* at 1. Also, *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), clarified, 90 FERC ¶ 61,128, further clarified, 92 FERC ¶ 61,094 (2000) (“Policy Statement”).

procedures more efficient, transparent, and less adversarial. Among other things, a predictable certificate review process is needed to help support electric reliability by ensuring sufficient natural gas infrastructure development as the electric markets increasingly utilize natural gas for power generation, and ultimately to benefit consumers' continued access to least-cost supplies of natural gas and electricity.

## I. **BACKGROUND**

In December 2017 the Commission announced it would examine its Policy Statement, issued in 1999, as part of Chairman Kevin McIntyre's pledge during his Senate confirmation to take a fresh look at all aspects of the agency's work. At the April 19, 2018 FERC open meeting, the Commission unanimously approved the NOI initiating a review of FERC's Policy Statement on the certification of new natural gas transportation facilities. The NOI requests input in four broad areas on whether, and if so how, the Commission should modify its current approach for evaluating proposed projects including: (1) method for determining project need, including consideration of precedent agreements and contracts as evidence of need; (2) consideration of the potential exercise of eminent domain and of landowner interests related to a proposed project; and (3) evaluation of the environmental impacts. Also, FERC asks (4) if there are specific changes the Commission could consider implementing to improve the efficiency and effectiveness of its certificate processes including pre-filing, post-filing, and post-order issuance. The Commission will decide any next steps regarding review of the Policy Statement after consideration of the NOI comments.

## II. COMMENTS

EPSA members are among the largest competitive suppliers in the ISO/RTO regions, having invested billions of dollars in these electric markets based on strong investment signals that have been present in robust competitive wholesale markets, including development, ownership and operation of natural-gas fired generation facilities. EPSA and its members advocate for competitive market policies and principles, as this results in well-functioning and reliable markets and operations; the competitive wholesale electric markets and interstate natural gas infrastructure and transportation markets are clearly reflective of such outcomes. The electric and natural gas markets have become increasingly intertwined, and the shale gas revolution, along with environmental and other policy changes or preferences, has driven transformative change across these industries, particularly in the last decade. The Commission has initiated several proceedings over the last several years that reflect the intertwined nature of the industries, and EPSA has been actively engaged in these proceedings, including on important matters related to gas-electric coordination, scheduling and communication, and electric grid resilience. Work on these and other operational issues is also ongoing at the ISOs/RTOs and NERC, among others, to ensure the continued high level of reliability and security across the gas and electric industries.

EPSA commends the Commission's review of its current Policy Statement and agrees such evaluations of policies and procedures are valuable and provide an opportunity to consider improvements that may be needed. Overall, the certificate review process under the current Policy Statement has worked well during a period of significant change across the energy industry to ensure that a natural gas project receiving a certificate is required for the public convenience and necessity, or to serve the broader public interest.

At a recent hearing before the Senate Committee on Energy and Natural Resources, panelists provided compelling testimony on the range of policy issues facing interstate energy delivery networks.<sup>5</sup> As emphasized by former FERC Chairman Joseph T. Kelliher,

It is important that regulatory policy governing investment and siting decisions be highly merits-based and nonpolitical, and that there be a reasonable level of regulatory certainty, that decisions be fairly predictable, and that decisions also be timely. FERC is ideally suited to make infrastructure decisions because of its longstanding commitment to merit-based decisionmaking and its status as an independent agency not subject to control by the political branches. FERC's long history of merits-based decisions has helped produce our strong interstate natural gas pipeline network and interstate power grid.<sup>6</sup>

EPSA further notes that an report was recently released by the Department of Energy ("DOE") on the Commission's Natural Gas Certification Process.<sup>7</sup> DOE stated the audit was undertaken "[b]ecause of significant growth of the natural gas industry, increased public awareness of FERC's role in the application review process, and heightened controversy over pipeline projects, the public has been more involved in the development and siting of natural gas facilities."<sup>8</sup> Further, given the importance and complexity of FERC's mission for

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<sup>5</sup> See Senate Energy and Natural Resources, Full Committee Hearing to Examine Interstate Delivery Networks for Natural Gas and Electricity, July 12, 2018, ("SEN July 12 Hearing") *available at* <https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=75021636-B35C-42B3-9394-74D69AA98C22>.

See in particular the testimony of Mr. J. Curtis Moffatt whose testimony provides an important overview of, among other things, the Role of Natural Gas in the US Economy, Congressional Recognition of the Importance of Natural Gas, and Details of the Natural Gas Pipeline Development and Permitting Process: *Testimony of J. Curtis Moffatt, Vice President and General Counsel, Kinder Morgan, Inc., Senate Energy and Natural Resources Committee*, SEN July 12 Hearing, [https://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=9B038110-1239-4551-9E42-459416CDAABC](https://www.energy.senate.gov/public/index.cfm/files/serve?File_id=9B038110-1239-4551-9E42-459416CDAABC).

<sup>6</sup> *Testimony of The Honorable Joseph T. Kelliher, Executive Vice President-Federal Regulatory Affairs, NextEra Energy, Inc.*, at 2, SEN July 12 Hearing, [https://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=D2BB4F13-82CF-41D2-A8D9-37C28E990F78](https://www.energy.senate.gov/public/index.cfm/files/serve?File_id=D2BB4F13-82CF-41D2-A8D9-37C28E990F78).

<sup>7</sup> US Department of Energy, Office of Inspector General, Audit Report, "The Federal Energy Regulatory Commission's Natural Gas Certification Process," DOE-OIG-18-33, (May 2018), *available at* <https://www.energy.gov/sites/prod/files/2018/05/f52/DOE-OIG-18-33.pdf>.

<sup>8</sup> *Id.* at 1.

reviewing natural gas applications and issuing certificates of public convenience and necessity, as well as the significance of recent Congressional attention, DOE initiated the audit to determine whether FERC's natural gas certificate process was performed in accordance with relevant laws, regulations, policies, and procedures, to include timeliness and stakeholder input. Importantly, the DOE audit results state that nothing came to DOE's attention to indicate that the Commission had not generally performed the natural gas certificate process in accordance with applicable laws, regulations, policies, and procedures, including the NGA and the Energy Policy Act of 2005 ("EPAAct 2005"), or that FERC had not performed its due diligence in reviewing and making determinations on natural gas certificate applications based on a consideration of the public benefits and adverse impacts of the proposed projects. However, the DOE audit did make certain findings and recommendations to the certificate review process to provide additional efficiency and process transparency, and to provide additional enhancements to facilitate stakeholders' ability to use FERC's eLibrary system. EPSA supports the DOE recommendations and findings, and believes these changes would assist stakeholders in tracking status and would enhance their understanding of the certificate review process.

Additionally, EPSA believes the assessment of project need should continue to be based on precedent agreements (i.e., contracts with pipeline project customers), which remain the most objective evidence of market demand for pipeline capacity.<sup>9</sup> Such agreements represent a measurable, financial commitment to a project. Other requirements for determining need may be more subjective and harder to evaluate on a consistent or

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<sup>9</sup> Energy Law Journal, Volume 38, No. 1 (2017), "Considering The Public Convenience And Necessity In Pipeline Certificate Cases Under The Natural Gas Act," by Robert Christin, Paul Korman, and Michael Pincus, pgs 115-132, available at [https://www.eba-net.org/assets/1/6/20-115-132-Christin,\\_Korman,\\_Pincus\\_-\\_FINAL.pdf](https://www.eba-net.org/assets/1/6/20-115-132-Christin,_Korman,_Pincus_-_FINAL.pdf).

equivalent basis across proposed projects. A clear, predictable measure for assessing the commercial viability of new or expanded natural gas pipeline facilities is critical at all times, particularly in this era of increasingly abundant and affordable domestic natural gas supply. The benefits of our nation's ever-increasing energy independence continue to mount for consumers and U.S. businesses, creating a concomitant demand for sufficient, safe, reliable natural gas transportation needed to deliver available natural gas for all end-use opportunities. The current Statement Policy provides a reasonable, flexible framework to meet these needs in a manner that comports with the Natural Gas Act's requirement that pipeline certificates approved by the Commission have been found to be in the public convenience and necessity.

EPSA urges the Commission not to make the certificate review process more unwieldy or challenging at this time in which significant investment in infrastructure will be needed to meet expected demand and ensure reliability, including from the growing electric power generation demand.

III. **CONCLUSION**

**WHEREFORE**, EPSA requests that the Commission consider these comments as part of the current Policy Statement review.

Respectfully submitted,

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