UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews	)	**Docket No. PL21-3-000**

COMMENTS OF
AMERICAN PETROLEUM INSTITUTE

I. Introduction

The American Petroleum Institute ("API") submits these Comments in response to the Federal Energy Regulatory Commission's ("FERC" or "Commission") February 18, 2022 draft policy statement, "Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews" ("Draft GHG Emissions Policy Statement").[1]

In the Draft GHG Emissions Policy Statement, FERC "describes its new procedures for evaluating climate impacts under NEPA" and "describes how the Commission will integrate climate considerations into its public interest determinations under the NGA."[2] In issuing this draft policy, FERC notes that it "seek[s] comment on all aspects of the interim policy statement."[3]

API is a national trade association representing nearly 600 member companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API advances its market development priorities by

[1] Interim Policy Statement, *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 (2022) [hereinafter *Draft GHG Emissions Policy Statement*].
[2] *Draft GHG Emissions Policy Statement* at P 2.
[3] *Id.* at P 1.

working with industry, government, and customer stakeholders to promote continued availability of our nation's clean abundant natural gas resources for a cleaner and more secure energy future. Following Russia's invasion of Ukraine, the U.S. has agreed with its allies in the European Union ("EU") to "strive to ensure additional [U.S.] LNG volumes for the EU market of at least 15bcm in 2022, with expected increases going forward…toward the goal of ensuring, until at least 2030, demand for approximately 50 bcm/year of additional U.S. LNG that is consistent with our shared net-zero goals."[4] As part of its mission, API frequently participates in proceedings before FERC and other federal agencies, as well as in litigation in state and federal courts. Therefore, API has an interest in any changes to the Commission's policy regarding its evaluation of climate change impacts from natural gas pipeline and liquefied natural gas ("LNG") infrastructure projects.

API previously sought rehearing of the Interim GHG Emissions Policy Statement before it was re-designated as a draft. In seeking rehearing of the Draft GHG Emissions Policy Statement, API contended that the Commission's rationale behind the policy's 100,000 metric ton per year ("mtpy") significance threshold was arbitrary and capricious, and not the product of reasoned decision making, as it simply adopted a significance threshold-without an explanation of why it was an appropriate threshold for gas pipeline or LNG projects.[5] In addition, API asserted that the fact that the 100,000 mtpy significance threshold would encompass a majority of FERC-jurisdictional projects was not a sufficient justification for the threshold.[6] API further explained that by setting such an arbitrarily low significance threshold, and mandating that an

[4] White House, *FACT SHEET: United States and European Commission Announce Task Force to Reduce Europe's Dependence on Russian Fossil Fuels*, (March 25, 2022), *available at* https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/25/fact-sheet-united-states-and-european-commission-announce-task-force-to-reduce-europes-dependence-on-russian-fossil-fuels/.
[5] API's March 18, 2022 Request for Rehearing at 10-12 ("Rehearing Request").
[6] *Id.* at 11-12.

environmental impact statement ("EIS") be prepared wherever the threshold was exceeded, the Interim GHG Emissions Policy Statement effectively amended the Commission's regulations governing when an EIS must be prepared, without observing the required notice and comment procedures, in violation of the Administrative Procedure Act.[7]

While API's comments in this proceeding are dedicated to responding solely to the Commission's discussion of mitigating GHG emissions, the association urges FERC to revisit API's previously submitted comments regarding the limitations of its statutory authority to impose such measures.[8] As API's prior comments expressed, FERC should not dictate mitigation where the jurisdiction required to do so has been delegated to other agencies and to state bodies. This is particularly important for upstream or downstream activities, which as API has explained, are outside of FERC's jurisdiction, generally too speculative and generated by third party activity beyond the ownership and control of the project developer, and are otherwise best addressed by other federal and state regulatory mechanisms.[9] Further, API has expressed its belief that neither the NGA nor NEPA provides FERC authority to regulate environmental impacts that are within the jurisdiction of another agency or otherwise not adequately causally linked to a proposed natural gas pipeline project.[10]

API supports efforts to address climate change through the reduction of greenhouse gas ("GHG") emissions, and accurate accounting of these emissions is paramount to these goals. In its current form, however, API does not believe the Draft GHG Emissions Policy Statement

[7] *Id.* at 13-14.
[8] *2021 NOI Comments* at 29-30; *see also* API's January 7, 2022 Comments Regarding FERC's November 16, 2021 Technical Conference at 5-6 ("Technical Conference Comments).
[9] *Technical Conference Comments* at 5.
[10] *Id.* at 5-6.

achieves its goal of providing clarity, certainty, or predictability to the industry, and thus cannot achieve the goals that the Commission identifies.

API is particularly concerned about the Commission's rationale behind setting the bright-line 100,000 metric ton per year ("mtpy") significance threshold, and the lack of guidance provided to industry regarding what level or what type of emissions mitigation the Commission will find acceptable or unacceptable, as well as how the Draft GHG Emissions Policy Statement has been implemented to date. API encourages the Commission to revise its significance threshold, provide industry further clarity as to what the Commission will expect vis-à-vis GHG emissions mitigation, and implement its GHG policy in a manner which allows our industry to continue to provide the nation and the world with vitally needed U.S.-based natural gas infrastructure, while maintaining compliance with FERC requirements.[11] U.S. natural gas abundance is a strategic asset that we must continue to utilize to strengthen our energy security. Our industry seeks to continue to provide America, and the world, with reliable and affordable natural gas; however, a predictable, rational, and truly legally durable regulatory framework is essential to this goal.

II. Background

As the Commission acknowledges in the Draft GHG Emissions Policy Statement, FERC's treatment of GHG emissions in recent years has been inconsistent, shifting not only with changes in Commission leadership, but often from proceeding to proceeding. FERC's GHG policy has gone from only considering direct GHG emissions from construction and operation, to considering direct and indirect emissions from full-burn downstream emissions and "broad

[11] API notes that any such FERC requirements must be within FERC's statutory and regulatory authority to ensure robust supplies of reasonably priced natural gas.

estimates" of upstream emissions, to then essentially eliminating considerations of upstream and downstream emissions altogether.[12] For years, the natural gas and LNG industries have had to attempt to hit a moving target and deal with the inevitable delays in processing of applications as FERC debated and modified its GHG emissions policy. To that end, API encourages FERC to implement a well-articulated, legally sound, and clearly defined policy for consideration of GHG emissions, so that our industry can ensure compliance while securing authorizations for much-needed energy infrastructure. As discussed below, however, API remains concerned that the Draft GHG Emissions Policy does not successfully achieve these goals.

III. Comments

A. The Significance Threshold is Fundamentally Flawed.

In establishing the 100,000 mtpy significance threshold, the Commission in the Draft GHG Emissions Policy Statement explains that such a threshold is appropriate as it would "capture[] the majority of annual emissions generated by Commission authorized projects,"[13] and is substantially similar to the approach the U.S. Environmental Protection Agency ("EPA") has taken in establishing a GHG emissions threshold via its Tailoring Rule.[14] Neither justification, however, adequately demonstrates that a significance threshold of 100,000 mtpy for natural gas pipelines is appropriate.

1. The Significance Threshold is Premised on an EPA Rule Which is Not Applicable to Pipeline Projects.

Under the Tailoring Rule, EPA established GHG emissions thresholds of 75,000 mtpy and 100,000 mtpy from single emissions sources (*i.e.*, individual facilities) to determine whether

[12] *Draft GHG Emissions Policy Statement* at PP 10-13.
[13] *Id.* at P 80.
[14] Prevention of Significant Deterioration and the Title V Greenhouse Gas Tailoring Rule, 75 FR 31514 (June 3, 2010). ("Tailoring Rule").

these emitters' GHG emissions would be subject to the permitting requirements of the Clean Air Act, specifically the Prevention of Significant Deterioration and Title V Major Source permitting programs.[15] In addition to limiting its focus to GHG emissions from a single source, EPA's Tailoring Rule also focuses exclusively on direct GHG emissions from that single source. By contrast, FERC's Draft GHG Emissions Policy Statement establishes a 100,000 mtpy significance threshold that accounts not simply for an individual interstate natural gas pipeline's direct (i.e. construction and operation) emissions, but also the numerous sources (i.e multiple end users) of indirect emissions associated with the pipeline. EPA's establishment of an emissions threshold under the Tailoring Rule for individual emitters is, therefore, inapplicable to an interstate natural gas pipeline, which in nearly every instance is serving multiple end-users. Moreover, a pipeline's multiple end-users can range from individual facilities (*e.g.*, industrial users or power plants) to utilities and local distribution companies, which may distribute gas to hundreds or thousands of individual consumers, to marketers, who may not know where the natural gas that is transported or the capacity they are subscribing to will be combusted.

FERC has misappropriated and misapplied the significance threshold of the Tailoring Rule. The Draft GHG Emissions Policy Statement's broad application of the EPA's Tailoring Rule threshold to pipeline projects, combined with its full-burn assessment of the pipeline's direct and indirect upstream and downstream GHG emissions, results in a significance threshold which is in practice substantially lower than the Tailoring Rule threshold, which FERC seeks to imitate. The Draft GHG Emissions Policy Statement essentially applies a threshold intended for a single source of GHG emissions and makes it potentially applicable to multiple sources of direct and indirect GHG emissions (i.e. direct emissions of an interstate natural gas pipeline and

[15] *Draft GHG Emissions Policy Statement* at PP 90-93.

indirect emissions of the pipeline's numerous, downstream end-users) without correspondingly increasing the threshold. API does not believe FERC's reliance on EPA's Tailoring Rule GHG emissions threshold is proper, both in regards to how the Tailoring Rule was intended to be implemented, or the fundamentals of interstate natural gas pipeline operations.

2. The Full-Burn Utilization Rate is an Improper, Unrealistic Metric.

Regarding the Policy Statement's use of the full-burn rate for determining whether projects will exceed the 100,000 mtpy significance threshold, API notes that full-burn emissions are of little practical value, and reliance on these emissions is ill-advised and unrealistic. As an initial matter, FERC itself states that when calculating emissions in its NEPA review (but not for the significance threshold), FERC staff will look at the projected utilization rate, as opposed to full-burn emissions as "most projects do not operate at 100% utilization at all times," and projects may be designed to address peak demand.[16] Thus, in certain instances, FERC seems to appreciate the inherent difficulties in forecasting, with any degree of certainty, how much gas a pipeline will transport on a given day and to whom the gas will be delivered. In other instances, however, such as determining whether a project meets the significance threshold,[17] or whether a project is in the public convenience and necessity,[18] FERC insists that project proponents be held to the maximum usage of their facilities, regardless of whether or not it is a realistic estimate.[19]

API believes that a more realistic approach would be for the Commission to adopt a consistent approach for determining whether a project meets the significance threshold recognizing practical limitations in imposing a full-burn requirement. In the alternative, it would

[16] *Id.* at P 49.
[17] *Id.* at P 79.
[18] 2022 Draft Certificate Policy Statement at PP 55-61.
[19] *Id.* at PP 53-61. API believes that the more pipelines are required to justify each dekatherm of proposed capacity, lest the project proponent be found to be overbuilding, pipeline developers will be forced to construct additional facilities each and every time a shipper desires capacity on their system, resulting in more, not less, natural gas pipeline projects and environmental disruption.

be helpful if FERC provides a more fulsome explanation regarding why it believes it is appropriate to utilize a broad full-burn assessment solely for purposes of determining significance, but then to abandon this full burn requirement and look at additional factors when calculating actual emissions.

It is also unclear when FERC refers to the 100,000 mtpy threshold covering 99% of emissions, what emissions FERC is referring to—99% of direct construction and operation emissions, or 99% of direct and indirect upstream or downstream emissions? FERC should not incorporate indirect upstream and/or downstream emissions in reaching that threshold because these emissions are subject to other federal and state regulatory authority and government policies in the U.S. and beyond. It is only FERC's responsibility and legal duty to address the GHG emissions that are produced directly by natural gas pipeline and LNG infrastructure projects.

B. **The Draft GHG Emissions Policy Statement Fails to Afford Industry with Guidance, Certainty, or Predictability Regarding Mitigation.**

Too rigid an adherence to a case-by-case consideration of the level of and mechanisms for GHG mitigation can result in a complete lack of objective standards for industry to observe and achieve, which API fears is the case with the Draft GHG Emissions Policy Statement in its current form.

API notes that foundation shippers for proposed natural gas infrastructure projects subscribe to project capacity after lengthy negotiations, with specific estimates of costs, pipeline routing, the term of the transportation service, and other key commercial factors. Customers and pipelines should have the assurance that FERC will not impose *additional* mitigation measures in

instances where the applicant is in full compliance with other state and federal environmental regulations.

API further believes that the Commission, when considering a project's GHG mitigation measures, should take into account the inherent GHG emissions reductions enabled by the continued buildout of natural gas infrastructure and LNG export facilities, as well as the efforts led by our industry. New natural gas pipelines often are able to incorporate better emissions detection and control technology, and can be routed to access sources of renewable natural gas ("RNG"), and hydrogen for blending into the natural gas stream, reducing the carbon intensity of the natural gas transported. Further, cleaner burning natural gas often displaces coal, fuel oil, and wood burning stoves, and when used to generate electricity, can help accelerate the incorporation of renewable resources into the power grid.[20]

API notes that these GHG reduction efforts have been spearheaded by market demand and our industry, not mandated by government regulators.[21] The continued growth of our nation's natural gas infrastructure provides myriad benefits, reduction in GHG emissions among them. These resources are more important than ever in the current geopolitical environment, and API urges that FERC not hinder America's natural gas resources from being deployed to aide in solving energy security crises at home and abroad by implementing policy that is beyond the scope of its legal authority and inconsistent with its Congressionally delegated jurisdiction.[22]

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[20] The Brattle Group, *Diversity of Reliability Attributes: A Key Component of the Modern Grid* (May 17, 2017), *available at* https://www.brattle.com/wp-content/uploads/2017/10/5655_diversity_of_reliability_attributes.pdf.
[21] For further information on industry's efforts to reduce GHG emissions, *see* American Petroleum Institute, *Climate Action Framework*, *available at* https://www.api.org/climate#carbon-price.
[22] *See, e.g.* Washington Post *Another Energy Crisis is here. The U.S. must be realistic about what's next* (Washington Post Editorial Board, March 9, 2022) (advocating for the full deployment of the U.S. natural gas industry in response to the war in Ukraine and rising natural gas prices), *available at* *https://www.washingtonpost.com/opinions/2022/03/09/another-energy-crisis-is-here-us-must-be-realistic-about-whats-next/*.

The primary goal of the certificate authority that Congress granted to FERC under the NGA is to ensure public access to plentiful natural gas resources.[23]

To this end, Secretary of Energy Granholm recently has called on our industry to maximize output in response to the tragic and disruptive events in Europe and the resulting impacts on the oil and gas industry.[24] On March 25, 2022, President Biden announced an agreement with the European Union and the establishment of a task force focused on deploying more U.S. natural gas to Europe as LNG.[25] A key part of this agreement provides that both sides of the Atlantic "will undertake efforts to reduce the greenhouse gas intensity of all new LNG infrastructure and associated pipelines." This is an important objective, but getting these vital resources to both foreign and domestic markets, will be exceedingly difficult if our industry must attempt to comply with unclear, policies, and where such failure to comply can result in severe, detrimental consequences for infrastructure developers.

API is particularly concerned with the Draft GHG Emissions Policy Statement stating specifically that "the Commission will consider evidence from commenters and protestors supporting or challenging such estimates and assumptions."[26] Certainly, interested parties are free to challenge applicants' estimates of GHG emissions, offsets, and mitigation measures. However, FERC should clarify that prior to considering comments in opposition, FERC Staff will verify the accuracy of the information submitted in opposition.

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[23] *City of Clarksville, Tenn. v. FERC*, 888 F.3d 477, 479 (D.C. Cir. 2018) (quoting *NAACP v. FPC*, 425 U.S. 662, 669-70 (1976) and *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 610 (1944)).

[24] CNBC, *U.S. Energy Secretary Granholm calls on oil and gas companies to raise output*, (Pippa Stevens, March 9, 2022) *available at* https://www.cnbc.com/2022/03/09/us-energy-secretary-granholm-calls-on-oil-and-gas-companies-to-raise-output.html.

[25] White House Press Release, *FACT SHEET: United States and European Commission Announce Task Force to Reduce Europe's Dependence on Russian Fossil Fuels*, https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/25/fact-sheet-united-states-and-european-commission-announce-task-force-to-reduce-europes-dependence-on-russian-fossil-fuels/ (Mar. 25, 2022).

[26] *Draft GHG Emissions Policy Statement* at P 52.

API further requests FERC Staff clarify that project proponents and supporters will be permitted to rebut such evidence submitted in opposition. Allowing opponents of our industry to provide volumes of unverified information that alleges harmful environmental impacts or purports to disprove applicants' mitigation measures and often appear intended to overwhelm FERC's resources and delay the regulatory process, with no opportunity for applicants to defend their mitigation measures and GHG calculations, would impose a substantial burden on applicants trying to comply with FERC's GHG policy and meet customers' demand.

As written, it seems the majority of future applicants must prepare GHG emissions mitigation plans, hope they are enough to satisfy FERC, and if not, wait to see what mitigation measures FERC Staff imposes through its conditioning authority. Applicants must determine the level of emissions mitigation measures that their project can sustain while remaining economical. NEPA only requires agencies to look at environmental impacts. NEPA does not require that environmental impacts be completely mitigated. Whatever impacts are considered, project benefits should be considered as an offset to such impacts. If a level of mitigation is deemed insufficient, FERC may well then impose mitigation measures which render projects uneconomic. Moreover, by not providing any analysis of whether emissions reductions associated with mitigation measures or fuel switching would be sufficient until the final order has been issued, FERC Staff's environmental analysis provides project proponents with no ability to determine whether additional GHG mitigation was or is needed.

IV. Conclusion

FERC GHG Emissions Policy Statement leaves the affected industry essentially in the dark when it comes to questions of how actual emissions will be calculated, including mitigation measures and fuel-switching, and how these emissions will be assessed. This is an untenable

approach. These are fundamental aspects of the GHG policy, and FERC has failed to provide any meaningful clarity for our industry which would present a path for compliance with the policy. As noted herein, API supports efforts to reduce GHG emissions in an effort to combat climate change. However, FERC must do so in a manner that is consistent with its statutory mission to ensure access to reliable supplies of natural gas at fair prices. API is concerned that the Draft GHG Emissions Policy Statement could be applied in such a way that could render projects uneconomic, reduce the availability of natural gas for critical needs (domestic and globally), and otherwise chill investment in natural gas infrastructure, impact the reliability of natural gas supply and ultimately hurt our ability to combat climate change impacts globally and to provide needed energy security to the United States and abroad. API does not believe that reducing GHG emissions from our industry, while ensuring reliable access to fairly priced natural gas are incompatible goals. API appreciates FERC engaging the impacted industry in developing such a consequential policy, and looks forward to working with the Commission and FERC Staff in the future to develop a workable GHG emissions policy which provides clarity and certainty to our industry.

Respectfully submitted,

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