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FERC Updates Gas Pipeline Certificate Policy Statement and Issues Interim Policy Statement on GHG Emissions

On February 17, 2022, the Federal Energy Regulatory Commission issued an updated policy statement on the certification of new interstate natural gas facilities (Updated Policy Statement). This Updated Policy Statement replaces the Commission's previous policy statement issued in 1999, which relied primarily on the existence of precedent agreements between the pipeline applicant and its shippers to establish evidence of need for a proposed interstate natural gas facility. Under the previous policy statement, if a proposed natural gas pipeline project was able to establish through precedent agreements with shippers that there was demand for the increased capacity, the Commission generally found that the proposed project was in the public interest and issued the certificate.

The Commission, through the Updated Policy Statement, emphasized that it will evaluate all factors bearing on the public interest in the consideration of whether a proposed project is required by the public convenience and necessity. These factors include (A) the interests of the applicant's existing customers, (B) the interests of existing pipelines and their captive customers, (C) environmental interests, and (D) the interests of landowners and surrounding communities, including environmental justice communities. Precedent agreements alone may not be sufficient to establish need for a proposed project, and applicants may need to provide specific information demonstrating the ultimate use for the gas transported by the project, why the project is needed to market demand for gas transportation, and the amount of capacity expected to be utilized.

With regard to the interests of any existing customers of the applicant, the Commission stated that it will continue to examine whether a proposed pipeline project can be financially supported in the absence of subsidization from the pipeline's existing customer base. Notably, the Commission stated that it will no longer use subsidization as a threshold issue, which opens the possibility that the Commission could permit a project that required some level of subsidization by the existing customer base.

The Commission stated that it would also continue to evaluate potential impacts on existing pipelines and their customer base of a proposed project. The Commission emphasized that while it would not protect existing pipelines from proposed fair competition, it must consider any possible harmful impacts on an existing pipeline's captive customer base resulting from a new pipeline.

The Updated Policy Statement provides that the Commission will consider a greater range of issues affecting landowners in the path of a proposed project. Previously, the Commission had focused its evaluation on economic harm to landowners resulting from a proposed project. Under the Updated Policy Statement, the Commission will examine impacts on the broader community near a proposed project, including impacts on environmental justice communities. The Commission stated that it will give due consideration to proposals to mitigate or eliminate any potential adverse impacts of a proposed project on the surrounding communities, but any proposed mitigation must be tailored to the needs of the different community groups that could be impacted by a project.

Importantly, the Updated Policy Statement provides for consideration of environmental impacts stemming from a proposed project and any potential mitigation of those impacts. The Commission will consider greenhouse gas emissions not only from the operation of the project, such as from operation of compressor stations, but may also consider greenhouse gas emissions caused by the upstream production of the gas (upstream emissions) as well as the end use of the gas transported by the project (downstream emissions). Guiding the Commission's consideration of environmental impacts is the new Interim Policy Statement on Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews, also released today (Interim GHG Policy Statement). In the Interim GHG Policy Statement, the Commission details the types of information that it would consider in determining whether approval of a project is in the public convenience and necessity.

The Interim GHG Policy Statement clarifies how the Commission will apply this information to its analysis under the National Environmental Policy Act (NEPA). Whereas the vast majority of proposed pipeline projects under the prior policy statement only received an environmental assessment (EA), the Commission created a presumption that proposed projects with estimated greenhouse gas emissions of 100,000 metric tons per year of CO₂ equivalent will have a significant impact on the environment. The Commission stated that it would use this as a threshold trigger to determine whether a more intensive environmental impact statement (EIS) would be necessary.

Under the Interim GHG Policy Statement, the Commission will consider proposed mitigation of direct GHG emissions, as well as reasonably foreseeable upstream and downstream emissions associated with proposed projects. The Commission stated that it would consider mitigation on a case-by-case basis and could condition approval of a proposed project on actions taken to mitigate GHG impacts.

What this means to you

Both the Updated Policy Statement and the Interim GHG Policy Statement apply to all pending or new certificate applications for interstate natural gas facilities. While the Commission has not explicitly required submission of additional information in any certificate docket, applicants who fail to provide the information highlighted in the Updated Policy Statement and the Interim GHG Policy Statement risk rejection of their certificate applications if the Commission chooses to apply those policy statements in those certificate dockets.

The new policy statements combine to dramatically enhance the amount of information that a project applicant may be required to present to secure Commission approval of a new interstate natural gas facility. Furthermore, the Interim GHG Policy Statement provides for an unprecedented expansion of FERC's consideration of environmental impacts of proposed projects. Application of these policy statements in individual certificate dockets will undoubtedly be subject to judicial challenge.

With regard to the Interim GHG Policy Statement, the Commission is inviting comments from the public no later than April 4, 2022. No comment period was announced for the Updated Policy Statement. Stay tuned for further updates on these important developments in energy regulatory policy.

Contact us

If you would like more information on this new policy or have any questions, please contact Fred Jauss or another member of Husch Blackwell's Energy Regulatory team.