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Comments of the Institute for Energy Economics and Financial Analysis (IEEFA)
to the Federal Energy Regulatory Commission (FERC)
Docket No. PL 18-1-000
Regarding Certificate Policy Statement on new fossil gas pipelines
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The Federal Energy Regulatory Commission (FERC), which is responsible for deciding whether to certify proposed interstate gas pipeline projects for construction, has been basing its pipeline necessity determinations on the applicant's business contracts rather than on an independent analysis of actual energy needs or the public interest. In doing so, it neglects to analyze the sweeping energy market changes that should inform its decisions.

The Institute for Energy Economics and Financial Analysis (IEEFA) welcomes the opportunity to share with FERC the results of its analysis regarding why FERC must scrutinize energy market forces when making a determination of "public convenience and necessity" for a proposed pipeline project.

FERC has invited public comment on its guideline for deciding whether an interstate pipeline project qualifies for a "Certificate of Public Convenience and Necessity" under the Natural Gas Act.[1] The current policy allows FERC to rely solely on precedent contracts between a pipeline owner and a utility or other receiver to justify the need for a pipeline to be built.[2] IEEFA's report—*FERC's Failure to Analyze Energy Market Forces*—details how over-reliance on the mere existence of business contracts for gas prompts FERC to approve pipelines that don't make financial sense for the public and investors.[3]

The current approach fails because it relies on a false premise in assessing a proposed pipeline's necessity—that the mere existence of business contracts for the gas means the public needs it. This reliance is not justified. The interests of the parties to pipeline contracts are not the same as the interests of the public. As explained in IEEFA's report, utility ratepayers may ultimately bear pipeline construction costs whether the gas is needed or not.

[1] 15 U.S.C. §717f(c)(1).
[2] FERC. Statement of Policy on Certification of New Interstate Natural Gas Pipeline Facilities ("Certificate Policy Statement"). 88 FERC ¶ 61,227 (September 15, 1999), clarified, 90 FERC ¶ 61,128(February 9, 2000), further clarified, 92 FERC ¶ 61,094(July 28, 2000)
[3] IEEFA. FERC's Failure to Analyze Energy Market Forces: Risks to Ratepayers, Landowners and the Overall Economy. December 2020.

Moreover, the oil and gas industry has been missing the mark in adjusting to changes in the energy market. The oil and gas industry is in a decline that pre-dates the COVID-19 pandemic by several years. The leading companies of the oil and gas transport sector, like that of the oil and gas sector generally, have lagged in the Standard and Poor's 500-stock index for most of the last decade.[4] In 2020, the energy sector continued its trend of placing last in the S&P 500, losing 41 percent against the market's 10 percent increase for the year to date.[5]

The problems facing the gas market today are rooted in an oversupply of gas coupled with shrinking demand due to energy efficiency and growing competition from renewables. Today's investments in the oil and gas sector are high-risk with low returns. When too much capacity chases too little demand, decisions to add pipelines should require rigorous justification for the burdens and sacrifices forced on property owners and the public interest.

FERC's failed approach has significant adverse consequences.

- Three major gas pipelines—the **Constitution**, the **Northeast Supply Enhancement Project**, and the **Atlantic Coast Pipeline**—were scrapped or rejected by states in 2020 after winning FERC approval, due in large part to factors that FERC should have identified and analyzed at the outset. The pipeline developers had missed the mark regarding the changing energy landscape, pressing forward with projects ill-suited for today's market.
- Poor decisions result in massive projects that impose unjustified costs on "captive" ratepaying utility customers, locking them into long-term dependence on gas when the rate of demand growth for gas is dropping and energy alternatives are cleaner and less expensive.
- FERC's approach allows developers to take private property for deals that should not have been approved. It even rubber-stamps projects that rely on precedent contracts for international gas export without analyzing the uncertainties associated with the international market targeted. The federal Natural Gas Act authorizes the taking of the land, but FERC is supposed to analyze and balance the interests.[6] Instead, it allows pipeline developers to take private land for a project that is unnecessary and not in the public interest.

FERC must modernize its outmoded policy to make responsible decisions regarding the certification of new gas pipelines. FERC needs to reform its approach to focus on raising questions, conducting analyses and making decisions about proposed pipeline projects based on actual market conditions.

Note: Accompanying these comments is a copy of the IEEFA report referenced herein.

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[4] IEEFA, *op. cit.*, Figure 1, p. 8.

[5] Yardeni Research. Performance 2020 S&P 500 Sectors & Industries. December 4, 2020. As of May 20, 2021, the energy sector is losing 36 percent against the market's 10.7 percent increase for the year to date. Yardeni Research. Performance 2021 S&P 500 Sectors and Industry. May 20, 2021.

[6] The Natural Gas Act was amended nine years after it was passed to grant the private corporation holding a certificate of public convenience and necessity the power of eminent domain to take any land, or an easement on such land, that lies in the developer's chosen pipeline pathway. 15 U.S.C. § 717f(h).