

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

)	
Gas Transmission Northwest, LLC)	Docket No. CP22-2-000
)	

**JOINT MOTION TO INTERVENE AND PROTEST BY THE
STATES OF WASHINGTON, OREGON AND CALIFORNIA**

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INTRODUCTION

The Attorneys General for three of the four States the GTN Xpress Project intends to serve hereby move to intervene and request the Commission deny the application. This Project proposes to expand supply of methane gas in a region that is rapidly transitioning off fossil fuels and reducing greenhouse gas emissions. There is insufficient evidence the Project serves a public necessity or the public interest. Instead, the evidence indicates that existing customers will subsidize the expansion, and the Project will primarily serve the interests of Canadian gas producers in gaining market share, not the needs of American consumers. The Project conflicts with state laws to reduce emissions and transition to renewable energy, and it will worsen environmental harms from climate change by locking in over 3.47 million metric tons of Carbon Dioxide equivalent (CO₂e) emissions per year for at least the next thirty years. For these and other reasons, the Commission should find the project is improperly subsidized, does not serve a public necessity, and is not in the public interest.

FACTUAL BACKGROUND

A. Washington, Oregon, and California Have Strong Interests in Reducing Reliance on Methane Gas to Protect Their Residents From Climate Change.

Climate change is causing “[w]idespread, pervasive impacts to ecosystems, people, settlements, and infrastructure.” Hans-O. Portner, ET AL., *Summary for Policymakers*, IPCC, 9 (2022).¹ These impacts include “heat-related human mortality . . . [o]bserved increases in areas burned by wildfires [and] [a]dverse impacts from tropical cyclones, with related losses and damages . . . Increasing weather and climate extreme

¹ https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf.

events have exposed millions of people to acute food insecurity and reduced water security.” *Id.* Climate change is causing mass extinctions of species and “increasingly irreversible” damage to ecosystems. *Id.* While many losses are unavoidable, actions to limit global warming to close to 1.5° Celsius in the next twenty years “would substantially reduce projected losses and damages related to climate change in human systems and ecosystems.” *Id.* at 13.

Climate change is no stranger to Washington, Oregon, and California. Hotter, drier summers make forests more vulnerable to pests and disease and lead to more frequent and severe wildfire in the region. Climate change “is likely to more than double the area in the Northwest burned by forest fires during an average year by the end of the 21st century.” ENV. PROT. AGENCY, *What Climate Change Means for Washington* (2016).² Warmer winters are reducing mountain snowpack – a critical source of drinking water and irrigation water for agriculture. *See id.* Washington produces two-thirds of the nation’s supply of apples, but global warming of 1.5°C will cause a twenty-three percent decline in summer streamflow, resulting in irrigation shortages for this and other crops. *See id.*; WASH. REV. CODE § 70A.45.020, Intent - 2020 c 79 (2020). Ocean acidification threatens marine ecosystems, including fisheries and shellfish industries critical to local economies and culture. *See id.* These are just a few of the ways climate change already affects the States.

To protect their citizens, economies, and way of life, State legislatures have prioritized actions to reduce emissions and avoid the most catastrophic impacts of climate

²<https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-wa.pdf>; *See also* ENV. PROT. AGENCY, *What Climate Change Means for Oregon* (2016), <https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-or.pdf>.

change. In Washington, the legislature found that avoiding warming of 1.5°C “is possible only if global greenhouse gas emissions start to decline precipitously, and as soon as possible,” across all sectors of the economy. *See* WASH. REV. CODE § 70A.45.020, Intent-2020 c 79(7). Washington has set incremental limits on statewide emissions, which by 2050 will be 95 percent below 1990 levels. § 70A.45.020(1). In the electric sector, all retail sales of electricity to Washington customers must be greenhouse gas neutral by 2030. § 19.405.040 (2019). By 2045, retail electricity must be 100 percent renewable. § 19.405.050 (2019). Other sectors also must cap emissions and reduce them over time, consistent with Washington’s emission limits. § 70A.65.060 (2021). For buildings, Washington code will restrict the use of methane or other fossil fuels for HVAC systems in new buildings beginning July 1, 2023, *see* WASH. ADMIN. CODE § 51-11C-40314 (2023), and the Washington Department of Commerce has set energy performance standards to reduce energy use in large buildings, *see* WASH. ADMIN. CODE § 194-50 (implementing Washington State Energy Performance Standard, WASH. REV. CODE § 19.27A.210 (2021)).

Oregon has similarly adopted laws and programs to significantly reduce its greenhouse gas emissions. Oregon has required its major investor-owned utilities, PGE and PacifiCorp, to transition to 100 percent renewable electricity by 2040. OR. REV. STAT. § 469A.410 (2021). Those utilities represent 87.8 percent of greenhouse gases that electricity suppliers emitted as of 2020. *See* Oregon Department of Environmental Quality, *Greenhouse Gas Emissions from Electricity Use 2010-2020*, (15,065,072 metric tons of CO₂e from PGE and PacifiCorp compared to a statewide total of 17,155,607).³

³ <https://www.oregon.gov/deq/ghgp/Documents/ghgElectricityEms.xlsx>

Oregon has also adopted regulations requiring reductions in greenhouse gas emissions from fossil fuels used throughout Oregon in transportation, residential, commercial and industrial settings (for purposes other than electricity generation). OR. ADMIN. R. Ch. 340, Div. 271. Those regulations impose a declining cap that will require an 89 percent reduction in greenhouse gas emissions from those sources by 2050. The overall cap declines from 28,081,335 metric tons of CO₂e in 2022 to 15,021,080 in 2035 and to 3,004,216 in 2050. OR. ADMIN. R. 340-271-9000 (2021), Table 2.

California also has enacted numerous climate policies and programs. In 2006, the legislature required California to reduce its overall greenhouse gas emissions to 1990 levels by 2020 and 40 percent below 1990 levels by 2030. *See* California Global Warming Solutions Act of 2006, AB-32, § 1 (2006). To meet the 2030 reductions, the California Air Resources Board established a Cap and Trade program and developed a Climate Change Scoping Plan that outlines the state's approach to achieving greenhouse gas reduction targets. *See* CAL. CODE REGS., tit. 7, § 95800, *et seq.*; CAL. AIR RES. BD., *AB 32 Climate Change Scoping Plan*.⁴ The Draft 2022 Scoping Plan Update includes the goal of carbon neutrality by 2045. *See* CAL. AIR RES. BD., Draft 2022 Scoping Plan Update (May 10, 2022).⁵ Other recent laws and policies include Senate Bill 100 and Senate Bill 350, requiring the State to procure 60 percent of all electricity from renewable sources by 2030 and 100 percent carbon-free sources by 2045, and the Green Building Standard, providing energy efficiency standards for new construction and retrofitting of existing buildings.⁶

⁴ <https://ww2.arb.ca.gov/our-work/programs/ab-32-climate-change-scoping-plan>.

⁵ <https://ww2.arb.ca.gov/sites/default/files/2022-05/2022-draft-sp.pdf>.

⁶ *See* California Renewables Portfolio Standard Program: Emissions of Greenhouse Gasses, SB-100 (2018); Clean Energy and Pollution Reduction Act of 2015, SB-350 (2015); CAL. ENERGY COMM'N, *Renewables*

These laws and policies will lead to “significant declines in the region’s gas consumption.” *See* Ex. C, Energy Futures Report at 39, *see also id.* at 49-57. Electric generation accounts for one-third of the region’s gas consumption, but Washington, Oregon, and California’s clean electricity laws will require electricity generators to limit, reduce, and retire their methane gas-fired power plants to achieve those limits. *See id.* at 54. This alone “indicate[s] significant reductions in gas fired generation . . . and the reductions in gas consumption are likely to exceed projected growth . . . cited by GTN in the application.” *Id.* at 56. Further reductions in regional gas demand are possible as trends in “customer choice and market dynamics, the potential for existing customers to electrify, [and] the potential for local or state governments to limit or prohibit gas service for new construction.” *Id.* at 46; *see also* Ex. A at 5-9 (listing laws limiting or prohibiting new gas service). Governments and companies are developing renewable energy projects to replace fossil fuels in all three States. *See id.* at 9-12.

B. GTN Plans to Increase Methane Supply in the Pacific Northwest.

In November 2019, GTN announced a \$335 million project, GTN Xpress, to “both increase the reliability of existing transportation service and provide up to 250,000 [Dekatherms per day (“Dth/d”)] of additional firm transportation service.” *See* Ex. D, TC Pipelines Press Release (Nov. 1, 2019). GTN Xpress would “enhance market access and reliability for growing Western Canadian Sedimentary Basin (WCSB) supplies.” *Id.* at 79. The Project would replace horsepower at existing compressor stations, which would cover “more than three-quarters of the project cost [\$251 million]” and be recovered entirely from existing ratepayers. *Id.* at 80. GTN would then upgrade those same

Portfolio Standard – RPS, <https://www.energy.ca.gov/programs-and-topics/programs/renewables-portfolio-standard>; CAL. GREEN BUILDING STANDARDS CODE, tit. 24, part 11 (2019).

compressor stations to increase capacity. *See* Application at 6-7. GTN presented the project to the Commission piecemeal, first in March 2020 with notices of routine replacements of its compressor units, then in October 2021 with a request to expand capacity by upgrading those same units.

In March 2020, GTN filed three “Advance Notification[s] of Natural Gas Facilities Replacement Pursuant to Section 18 CFR 2.55(b)(1)(iii)” with the Commission to replace compressor units at the Athol Station located in Idaho, the Starbuck Station in Washington, and the Kent Station in Oregon. *See* Notification, Athol Compressor Station, Dkt. CP20-82-000, (Mar. 10, 2020); Notification, Kent Compressor Station, Dkt. CP20-85-000, (Mar. 10, 2020); Notification, Starbuck Compressor Station, Dkt. CP20-86-000, (Mar. 10, 2020). As GTN previewed in its press release announcing the expansion, the total cost of these three replacements was \$251 million. *See id.*; Ex. B, Declaration of Gregory Lander at 15. GTN claimed 18 C.F.R. § 2.55(b) justified the replacements. *See id.* Section 2.55(b) permits replacement of deteriorated or obsolete facilities that “will have a substantially equivalent designed delivery capacity.” It does not authorize replacements that create incremental capacity. 18 C.F.R. § 157.202(b)(2)(i) (1982).

GTN told the Commission the replacements were necessary “to prevent a potential reliability risk to the system.” *See* Notification, Athol Compressor Station, Dkt. CP20-82-000, (Mar. 10, 2020); Notification, Kent Compressor Station, Dkt. CP20-85-000, (Mar. 10, 2020); Notification, Starbuck Compressor Station, Dkt. CP20-86-000, (Mar. 10, 2020). GTN stated the new units “would be site rated at the existing certificated ISO horsepower of 14,300.” *Id.* GTN further claimed “[t]he replacement unit configuration is the nearest reliable size available to the unit being replaced” and, “with

the controls being put in place[,] will have a substantially equivalent designed delivery capacity.” *Id.* GTN did not disclose that the new units were substantially larger than the old units (23,470 compared to 14,300 horsepower), that it intended to use the new compressors to expand capacity, or that it already contracted to sell the expanded capacity the new units would create. *Id.* GTN completed the replacements in October 2021. *See* Mot. for Leave to File Answer to Protests, and Answer to Protests and Opposition to Late Interventions at 7 (Dec. 16, 2021).

Also in October 2021, GTN filed its current application to expand capacity, which it largely plans to do via software upgrade on the recently-replaced compressor units at Athol, Kent, and Starbuck. *See* Application at 6-7. Though GTN presented the project to investors as “enhanc[ing] market access” for Canadian producers, Ex. D at 79, it told the Commission the project was developed to serve growing load demand in the Pacific Northwest, Application at 3-4. Additionally, while GTN told investors the project would increase capacity by 250,000 Dth/d at a cost of \$335 million, its application before the Commission seeks authorization only for 150,000 Dth/d at a cost of \$75.1 million. *Compare* Ex. D (Nov. 1, 2019 Press Release) *with* Application 6-8.⁷ GTN claims that the other 100,000 Dth/d would be provided using “existing capacity.” *Id.* at 8 n.6. GTN has not explained how it increased capacity on its existing system by 100,000 Dth/d without modifying facilities. *See* Mot. to Intervene Out-of-Time and Protest of Puget Sound Energy, Inc. at 4-5 (Nov. 17, 2021).

For the 150,000 Dth/d increase in GTN’s current application, GTN summarized three precedent agreements:

⁷ The remaining \$251 million project cost was for the 2020 Advance Notification replacements, but GTN seeks to charge existing ratepayers for this cost. *See supra* p.6.

Project Shipper	Transportation Demand of Project Capacity (Dth/d)	Primary Term (Years)	Projected End Use
Cascade Natural Gas (“Cascade”)	20,000	31	Residential, Commercial, & Industrial Uses
Intermountain Gas Company (“Intermountain”)	79,000	30	Residential, Commercial, & Industrial Uses
Tourmaline Oil Marketing Corp. (“Tourmaline”)	51,000	33	West Coast Natural Gas Markets

See Application at 9. GTN did not disclose the negotiated rates each project shipper would pay for the new capacity, but requested to roll in the costs of the expansion into existing rates. *See id.* at 13-15.

MOTION TO INTERVENE

The Commission should grant the motion to intervene by the Attorneys General of Washington, Oregon, and California (collectively, the States) because GTN Xpress directly and adversely affects State interests. Rule 214 permits intervention where the movant files a timely motion and “has or represents an interest which may be directly affected by the outcome of the proceeding” or “the movant’s participation is in the public interest.” 18 C.F.R. § 385.214 (2008). Motions to intervene on environmental grounds are timely if filed during the comment period on Draft Environmental Impact Statement. *See* 18 C.F.R. §§ 380.10(a)(1) (2006), 157.10(a)(2) (2003).

The States have an urgent and compelling interest in reducing air pollution and protecting the environment in their territory, especially in controlling greenhouse gas emissions that cause climate change. Rising sea levels threaten the States’ collective

1,293 miles of shoreline.⁸ Extreme drought and heat are turning the State forests into tinderboxes. Lost mountain snowpack threatens the water supply of millions of State residents. *See supra* pp.1-2. Given these wide-ranging threats, it is “well settled that the states have a legitimate interest in combating the adverse effects of climate change on their residents.” *Am. Fuel & Petrochemical Mfrs v. O’Keeffe*, 903 F.3d 903, 913 (9th Cir. 2018) (citing *Mass. v. EPA*, 549 U.S. 497, 522–23 (2007)).

GTN Xpress directly harms the States’ interest in fighting climate change, reducing air pollution, protecting their natural resources, and preserving their citizens’ health and welfare. *See* 18 C.F.R. § 385.214(b)(2)(ii). State and local laws seeking to protect these interests require emission reductions and replacing fossil fuels with renewable energy. *See supra* pp. 2-4. Contrary to these laws, GTN proposes to increase emissions and lock in reliance on methane for at least another thirty years. *See* Application at 9. The project also threatens consumer interests, since increasing methane gas infrastructure during this transition will result in costly stranded assets for ratepayers. *See infra* pp. 17-19. Doubling the capacity of the compressor stations will increase noxious pollutants like ozone and PM 2.5 in nearby communities, some of which are already overburdened by pollution. *See* Ex. H, Environmental Health Disparities Maps; Draft Environmental Impact Statement, 4-35 – 4-40 (June 30, 2022) (“Draft EIS”).

The States’ participation also is in the public interest. *See* 18 C.F.R. § 385.214(b)(2)(iii). The States represent the public and consumers in three of the four States that GTN serves with this project. Two compressor stations that the project will expand are in Washington and Oregon. The States are responsible for addressing the

⁸ Janice Cheryl Beaver, *CRS Report for Congress: U.S. International Borders: Brief Facts* (Nov. 9, 2006), THE LIBR. OF CONG., <https://sgp.fas.org/crs/misc/RS21729.pdf>.

impact of these stations on their environment and consumers – relevant state agencies may intervene as of right for this reason. *See* 18 C.F.R. § 385.214(a)(2). Further, the public has a strong interest in enforcing its state laws to limit emissions. *Cf. Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 164 (2016) (Sotomayor, J., concurring) (recognizing “the importance of protecting the States’ ability to contribute, within their regulatory domain, to the Federal Power Act’s goal of ensuring a sustainable supply of efficient and price-effective energy”)⁹; 15 U.S.C. § 717 (reserving state authority to regulate intrastate transportation and sale of methane gas).

Finally, the States’ motion is timely. The States seek intervention on environmental grounds within the comment period of the draft EIS. *See* 18 C.F.R. §§ 380.10(a)(1), 157.10(a)(2).

COMMUNICATIONS

All communications, correspondence, and documents related to this proceeding should be served on the following persons:¹⁰

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⁹ Although *Hughes* addresses the Federal Power Act, not the Natural Gas Act, the Supreme Court “has routinely relied on NGA cases in determining the scope of the [Federal Power Act], and vice versa.” 136 S.Ct. at 1298 n.10.

¹⁰ The States of Washington, Oregon, and California respectfully request waiver of Rule 2010(k)(1) of the Commission’s Rules of Practice and Procedure to allow each of the listed representatives to be added to the official service list in this proceeding. 18 C.F.R. § 385.2010(k)(1) (2021).

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PROTEST

Under Section 7 of the Natural Gas Act, the Commission must find a project is or will be required by the “public convenience or necessity.” 15 U.S.C. § 717f(c), (e). The Commission’s 1999 Policy Statement guides this decision. *See* 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) (“1999 Policy Statement”).

Under the 1999 Policy Statement, the Commission first answers a threshold question: Is the project subsidized by existing customers? If yes, the project application should be denied without further analysis. Next, the Commission balances the public benefits against the adverse effects. This step primarily considers the economic costs and benefits from the project, including whether the project serves a public need. If the economic benefits outweigh the adverse economic effects, the Commission conducts an environmental analysis under the National Environmental Policy Act. The GTN Xpress project fails under each step of this analysis, and each is sufficient to deny the Project.

A. The Application Should Be Denied Because Existing Customers Will Subsidize the Project.

The Commission should reject GTN’s proposal because GTN has not made the threshold showing that existing customers will not subsidize the expansion. Under the

1999 Policy Statement, “[t]he threshold requirement . . . for existing pipelines proposing an expansion project is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers.” 1999 Policy Statement at 19. The existence of a subsidy indicates a lack of market-based need for a project. *Id.* at 22. Instead, subsidization can lead to “overbuilding and inefficient investment.” *Algonquin Gas Transmission, LLC*, 130 FERC ¶ 61,011, 61,033 (2010).

GTN has not shown that its new customers will pay the full costs of its expansion. As Puget Sound Energy and Pacific Gas and Electric previously noted, the \$75.1 million project cost in the instant application excludes \$251 million GTN already spent replacing compressor units at the Athol, Kent, and Starbuck stations. *See* Mot. to Intervene Out-of-Time and Protest of Puget Sound Energy, Inc. at 5-6 (Nov. 17, 2021); Mot. to Intervene and Protest of Pacific Gas and Electric Co. at 4 (Nov. 9, 2021); Application, Ex. K (Cost of Facilities). In response, GTN wrongly claimed the \$251 million replacements were justified under the Commission’s Prior Notice regulation, 18 C.F.R. § 2.55(b), but that regulation did not allow GTN’s actions here. *See* Mot. for Leave by Gas Transmission Northwest to File Answer to Protests at 5-6 (Dec. 16, 2021).

GTN cannot rely on Section 2.55(b) to exclude the \$251 million it spent to replace existing compressors because those replacements increased capacity of the pipeline. Section 2.55(b) permits replacement of deteriorated or obsolete facilities that “will have a substantially equivalent designed delivery capacity.” The replacement cannot result in an “incidental increase in capacity.” 18 C.F.R. § 157.202(b)(2)(i). But that is exactly what happened here. GTN’s replacements resulted in increased capacity – this was a primary purpose of the replacement. *See* Ex. D, TC Pipelines Press Release.

Just as GTN omits relevant facts in this application about the full costs of its expansion project, it failed to disclose relevant facts in its prior notice applications. *See* 18 C.F.R. § 385.203(a)(6) (2008) (stating pleadings must include all “relevant facts”). GTN did not disclose it was replacing the existing 14,300 horsepower units with new units that were substantially larger (23,470). *See id.*; Application at 6-7. GTN further claimed the new units were “the nearest reliable size available to the unit being replaced.” *See* Notification, Athol Compressor Station, Dkt. CP20-82-000, (Mar. 10, 2020); Notification, Kent Compressor Station, Dkt. CP20-85-000, (Mar. 10, 2020); Notification, Starbuck Compressor Station, Dkt. CP20-86-000, (Mar. 10, 2020). Not so. The same manufacturer makes smaller compressor units. *See* Ex. B, Lander Decl. at 15. Finally, GTN did not disclose its intent to use the new, larger units to expand capacity. Instead, GTN waited until one month after completing the replacements to apply to the Commission for expanded capacity using the new compressors. The result of GTN’s omissions in the current and prior applications is an improperly segmented review, hiding the full scope of environmental impacts and costs to consumers. *See* Comments on the Draft EIS by the States of Washington, Oregon, and California at 23-24 (“States’ Draft EIS Comments”).

As expert Gregory Lander describes, when even a portion of the cost to replace these compressors is included in the project costs, GTN’s projected revenues do not exceed costs. *See* Ex. B, Lander Decl. at 16-18. It also further highlights GTN’s likely inability to recover the full costs of the project, which it already projects to last until 2072 – well past the States’ transition to a clean economy. *See* Ex. C, Energy Futures Report at 62-64; *infra* pp.17-19. As a result, the Commission should deny the application.

GTN claims the Commission can simply defer this issue to GTN's next rate case. *See* Mot. for Leave by Gas Transmission Northwest to File Answer to Protests at 11 (Dec. 16, 2021). But rate treatment should be resolved *before* construction begins. 1999 Policy Statement at 21; *see also Tennessee Gas Pipeline Co., L.L.C.*, 140 FERC ¶ 61,120, 61,595 (2012) (describing Commission practice of making “an upfront determination on the rate treatment for expansion projects”). Further, the existence of a subsidy is grounds to deny an application. It also indicates a lack of market need or public interest in an expansion project, which, as discussed below, are additional reasons to deny the Project. *See* 1999 Policy Statement at 20.

B. GTN's Expansion Does Not Serve a Public Necessity.

The Commission may only approve projects that serve a public necessity. *See* 15 U.S.C. § 717f(c). “In analyzing the need for a particular project, the [1999] Policy Statement makes it clear that the Commission will consider *all* relevant factors.” *Env't Def. Fund v. FERC*, 2 F.4th 953, 959 (D.C. Cir. 2021), *cert. denied sub nom. Spire Missouri Inc. v. Env't Def. Fund*, 142 S. Ct. 1668 (2022). The 1999 Policy Statement recognized that exclusive reliance on precedent agreements did not provide a full picture of a project's benefits or adverse effects, such as a particular fuel's “environmental advantages” or “community interests.” 1999 Policy Statement at 16, 25-26. Further, showing a company will buy the capacity, but does not intend to buy the gas (as in the case of a gas producer), does not indicate public need. *Id.* at 25. Thus, while precedent agreements remain “important evidence” of public need they are not conclusive. *Id.*; *see also Env't Def. Fund*, 2 F.4th at 959 (noting the difference between “saying that precedent agreements are always *important* versus saying that they are

always *sufficient*”). Instead, necessary evidence “will usually include a market study . . . Vague assertions of public benefits will not be sufficient.” 1999 Policy Statement 25.

The Commission should reject GTN’s application to expand pipeline capacity because there is no public necessity for it. State policies will significantly reduce regional demand for methane, so increasing fixed costs for methane infrastructure will harm consumers in the long term. GTN’s application ignores these policies and summarizes two contracts with utilities, neither of which establish need for increased capacity, and a contract with a Canadian gas producer, which is not evidence of a domestic need for gas.

1. State energy policies drive need for gas in the region.

In this case, an essential component of the Commission’s need inquiry is the state energy policies that are effecting a declining market for methane gas in the Pacific Northwest. In assessing the future need for methane in the region, the Commission cannot ignore the future effect of these policies. As the D.C. Circuit explained:

The public convenience and necessity for which regulatory agencies issue certificates are the convenience and necessity of the future. The needs of yesterday require no fulfillment if they be not the needs of tomorrow. . . . Every new bus route, new airplane service, new radio station, new stock issue, new pipe line, new power project, and so on, seeks its permissive certificate upon the basis of future possibilities.

City of Pittsburgh v. Fed. Power Comm’n, 237 F.2d 741, 752 (D.C. Cir. 1956) (quoting *American Airlines, Inc. v. Civil Aeronautics Board*, 192 F.2d 417 (1951)). See also 1999 Policy Statement at 23 (directing Commission to consider “all relevant factors”).

A key component to these laws and policies is transitioning from methane electricity generation to a 100 percent renewable grid. Methane-powered generation accounts for 32 percent of total methane use in the region. See Ex. C, Energy Futures Report at 54. As the States transition to 100 percent clean electricity, the amount of

methane needed for electricity generation will decline, freeing up capacity for other uses or reducing overall need. *See id.* The States are working to meet their renewable electricity targets. This spring, California passed a major milestone in its route to a clean electric grid by 2045: for the first time, renewables briefly powered 103 percent of energy on the grid.¹¹ Oregon has more than seventeen major wind and solar projects in development, with a combined capacity of nearly 4,000 MW. *See* Ex. A at 10-11. For comparison, all of Oregon's methane generation produces 3,149 MW as baseload, and 954 MW peaking capacity. *See id.* at 11. Eighty-three percent of Washington's electricity comes from renewable sources,¹² and Washington has at least nine major wind and solar projects in development, with a combined capacity of 2,110 MW, *see* Ex. A at 9.

GTN claims the majority of its expansion will serve demand for residential and commercial uses other than electricity generation, *see* Application at 9, but Washington, Oregon, and California have laws restricting methane use for those purposes as well, *see* Ex. A at 1-9. Washington's building code prohibits methane heating in new multi-family residences and most commercial buildings as of 2023. WASH. ADMIN. CODE § 51-11C-40314. In California, all newly built homes must install solar systems, and fifty-nine cities and counties have adopted building ordinance codes to reduce reliance on methane. *See* Ex. A at 9; CAL. CODE REGS. tit. 24, Pt 6 (CA Building Standards Energy Code). As noted above, Oregon regulations require reductions in greenhouse gas emissions from

¹¹ CALIFORNIA ISO, *Monthly Renewables Performance Report* (May 2022), <https://www.caiso.com/Documents/MonthlyRenewablesPerformanceReport-May2022.html>; Eric Gimon, *California Can Reliably Hit 85% Clean Energy By 2030 Without Risking Outages – En Route To A 100% Clean Grid*, FORBES (May 11, 2022, 7:15 AM), <https://www.forbes.com/sites/energyinnovation/2022/05/11/california-can-reliably-hit-85-clean-energy-by-2030-without-risking-outages--en-route-to-a-100-clean-grid/?sh=3b540ac03b44>.

¹² U.S. Energy Information Administration, *Washington: State Profile and Energy Estimates*, <https://www.eia.gov/state/analysis.php?sid=WA#:~:text=Renewable%20energy,total%20hydroelectric%20generation%20in%202020> (last visited Aug. 18, 2022).

fossil fuels used throughout Oregon in transportation, residential, commercial and industrial settings (for purposes other than electricity generation). OR. ADMIN. R. Ch. 340, Div. 271. As energy planning expert David Hill noted, the utility demand forecasts that GTN cites improperly equate a growing population with increased gas consumption. *See* Ex. C, Energy Futures Report at 45-46. The demand forecasts “do not reflect potential reductions in new gas hookups due to customer choice and market dynamics, the potential for existing customers to electrify, nor the potential for local and state governments to limit or prohibit gas service for new construction.” *Id.* at 46. The Commission’s assessment of public need must be broader than these limited projections by private companies. *See Pittsburgh*, 237 F.2d at 752; 1999 Policy Statement at 23, 25.

Consideration of these State laws is also vital to fulfill the Commission’s duty to “protect consumers against exploitation at the hands of natural gas companies” and ensure “reasonable prices.” *City of Clarksville v. FERC*, 888 F.3d 477, 479, 485 (D.C. Cir. 2018). Increasing fixed costs from new infrastructure poses an unacceptable risk of stranded assets, which could lead to higher prices for the remaining future consumers of methane. As expert David Hill explains, using GTN’s proposed annual depreciation expenses, it will require roughly 47 years for the \$75.1 million project cost to be fully depreciated – until 2072.¹³ Ex. C at 62-64. Thirty percent of total costs will be recovered in the last thirty years of the project, from 2042-2072. *Id.* This is twenty-two years past 2050, when the nation aims to be net zero, and when the States project significantly reduced use of methane. *See id.* at 25-27; *supra* pp. 2-5.

¹³ The time to recover costs may be even longer, since GTN is improperly excluding \$251 million it spent upgrading the compressor units for this project. *See supra* pp. 11-14.

Assuming GTN will be able to continue operating its pipeline at near-full capacity through 2072 is dangerously speculative – both for our climate and for consumers. To put this in context, if GTN continues business as usual with its pipeline in 2050, that would represent 48 percent of the region’s target GHG emissions *from all sources*. See Ex. C, Energy Futures Report at 61. For the remaining consumers of methane gas in 2050, this asset “may impose increasing costs on remaining customers, which in-turn will encourage even more of them to exit the gas system. The proposed cost recovery period also risks placing an unfair burden on customers for whom transitioning . . . to other options may be most difficult due to financing, up-front costs, or other barriers.” *Id.* at 64. The Commission must consider the impact of imposing these costs on future methane consumers.

State regulators already are taking these factors in account to protect consumers. For example, the California Energy Commission recommends “halt[ing] expansion of the gas system . . . Insofar as throughput declines and customer exits can be expected, additional obligations (from new investments in expanded gas infrastructure) will increase the cost of gas service for remaining customers.” *Id.* at 52. Similarly, the Washington Utility and Transportation Commission substantially decreased allowances to extend pipelines to serve new customers. The agency based its decision in part on “the likelihood that natural gas lines will not be serving customers in Washington in perpetuity, [state climate policies, and] ensuring that utility tariffs do not increase the likelihood of stranded assets in the future.” See Order 01 Authorizing and Requiring Tariff Revisions, Wash. Util. and Transp. Comm’n, Dkt. UG-210729, 6-7 (Oct. 29,

2021). Like state regulators, the Commission must consider state climate laws to prevent unreasonably high costs for future customers.

2. GTN’s summary of its precedent agreements are not sufficient evidence of a public need.

While GTN ignores the clear trend to reduce fossil fuel use in the Pacific Northwest, it claims the Commission can find evidence of public need by summarizing three precedent agreements – two with utilities, Cascade Natural Gas Corporation and Intermountain Natural Gas Company, and one with a Canadian gas producer, Tourmaline Oil Marketing Corporation. *See* Application at 9. None of these agreements demonstrate a public need.

a. Cascade’s demand projections are outdated and do not show a need for more pipeline capacity.

Regarding Cascade, GTN claims the contract is necessary to serve growing demand in Oregon and that Cascade is “faced with peak day supply shortfalls in Oregon, expected as early as 2024, as well as an annual average load growth rate of 2.12% in Zone GTN of Cascade’s system.” Application at 11 (citing CASCADE NATURAL GAS, *2020 Integrated Resource Plan* (Feb. 26, 2021)¹⁴ (hereinafter “Cascade 2020 IRP”)). GTN is not presenting the full picture of demand on Cascade’s system.

First, Cascade’s 2020 IRP does not take into account “carbon legislation [and] building code changes” that took effect after the 2020 IRP was published (and after this precedent agreement was executed). 2020 Cascade IRP at 3-21; *see also* Ex. C, Energy Futures Report at 46. Cascade noted then that its future projections were “particularly difficult” in light of the then-pending legislation. 2020 Cascade IRP at 3-21. Those laws

¹⁴ <https://www.cngc.com/wp-content/uploads/PDFs/IRP/2020/washington/final/2020-Cascade-Integrated-Resource-Plan.pdf>

and rules were enacted in 2021 and 2022: Oregon and Washington created cap-and-reduce emissions programs and Washington amended its building code to restrict methane gas hookups in most new buildings. *See* Ex. A at 4-7. As Cascade noted in its 2020 IRP, these programs will significantly affect its 2020 demand projections. 2020 Cascade IRP at 3-19; *see also* Staff Comments on Cascade's 2020 IRP, Wash. Util. and Transp. Comm'n, Dkt UG-190714, 5, (May 27, 2021) (directing Cascade to evaluate the impacts of Washington climate laws in its next IRP). In addition, Cascade's demand forecast methods are overly simplistic and ignore evidence of market dynamics, customer choice, and state and local laws favoring electrification. *See* Ex. C, Energy Futures Report at 45-46. For these reasons, Cascade's IRP is not reliable evidence of need for GTN's expansion project.

Even considering Cascade's 2020 IRP projections at full value, however, they do not show a need for more capacity on GTN's pipeline. In its 2020 IRP, Cascade forecasted a rising need for gas up to 387,764.5 Dth/d on Peak Days¹⁵ in 2040. *See* Ex. B, Lander Decl. at 20. But it already has sufficient capacity under contract to meet that need (it has 596,181 Dth/d). *Id.* While Cascade does anticipate shortfalls in Peak Day demand in its Zone GTN (the area that GTN's pipeline serves), it does not anticipate those shortfalls to exceed the 20,000 Dth/d it contracted for until well past 2040. *Id.* at 19. In other words, Cascade does not project a need for all of the Project's additional capacity for at least seventeen years. Further, that projection assumes annual growth continues

¹⁵ Peak day represents a day with extreme demand for methane gas, typically the coldest days of the year. For Cascade's projections, Cascade assumed the coldest day recorded in the past thirty years. *See* Cascade 2020 IRP at 3-6.

which, as discussed above, does not account for probable changes in demand resulting from state transitions to renewable energy and market dynamics.

b. Intermountain's contract replaces capacity on another pipeline.

GTN also cites the Intermountain contract as evidence the expansion project is necessary to serve rising customer demand in Idaho. *See* Application at 12. While Intermountain anticipates growing customer demand in its service area, Intermountain “is not subscribing to the GTN capacity to meet growing demand, but rather, to replace a supply source to feed its NWPL capacity.” *See* Ex. B, Lander Decl. at 21. In its most recent IRP, Intermountain states its capacity shortfall is “created by expiring contracts.” INTERMOUNTAIN GAS COMPANY, *Integrated Resource Plan 2021-2026*, 165 (Dec. 17, 2021)¹⁶ (“Intermountain 2021 IRP”). Intermountain describes three options for addressing the shortfall: renewing existing contracts for capacity on the Northwest Pipeline, replacing the contracts with capacity on GTN, or purchasing biogas (also termed “renewable natural gas”). *See id.*

The Intermountain contract does not support a finding of need. Under the 1999 Policy Statement, projects designed “to serve markets already served by another pipeline” require a greater showing of need and public benefits. 1999 Policy Statement at 25. That is precisely what is happening here: GTN’s expanded capacity competes with existing pipeline capacity on the Northwest Pipeline. As a result, GTN must satisfy a higher burden to show public need and benefit. GTN does not meet that burden here, especially since GTN’s existing customers are subsidizing the expansion. *See supra* pp. 11-13. As the Commission recognized, “[e]xisting pipelines should not have to compete against

¹⁶ <https://www.intgas.com/wp-content/uploads/PDFs/regulatory/2021/2021-Integrated-Resource-Plan.pdf>.

new entrants into their markets whose projects receive a financial subsidy (via rolled-in rates), and neither pipeline's captive customers should have to shoulder the costs of unused capacity that results from competing projects that are not financially viable." 1999 Policy Statement at 20. In short, the Intermountain contract provides little, if any, support, for a finding of public need here.

c. A Canadian gas producer's interest in securing market share is not evidence of public need.

Finally, GTN summarizes a contract with Tourmaline Oil Marketing Corporation, but this too is not an indicator of public need. Tourmaline is a Canadian gas producer, not an American gas consumer, and, per GTN's application, Tourmaline intends to sell the gas in West Coast markets. Application at 13. Since Tourmaline does not intend to buy or use the gas it transports on GTN's pipeline, its contract is not sufficient evidence of need. See 1999 Policy Statement at 16.

GTN nonetheless contends Tourmaline's contract "is evidence of need in primarily West Coast markets," including "Northern California markets needing natural gas for electricity generation." Application at 13. To support this assertion, GTN only cites a confidential market report. See *id.*, n.15. Citing a confidential report is not sufficient evidence, since that report is not publicly available to test its conclusions, reasoning, or underlying data.

Significantly, California gas utilities do not project any shortfall in gas supply, as the State has access to multiple gas-producing regions. See CAL. GAS AND ELEC. UTIL., 2022 California Gas Report, 76¹⁷ ("Most industry forecasts continue to predict that gas

¹⁷ https://www.socalgas.com/sites/default/files/Joint_Utility_Biennial_Comprehensive_California_Gas_Report_2022.pdf.

production will meet most demand outlooks in the future.”). California’s gas utilities also did not state a need for increased pipeline capacity. *See id.* at 77 (stating the El Paso, Mojave, Transwestern, GTN, Paiute Pipeline Company, Ruby, and Kern River pipelines serve northern and central California, which provide access to gas-producing regions in the U.S. Southwest and Rocky Mountain areas, and in Western Canada). In sum, the expected declines in methane demand from state policies and GTN’s own evidence do not show a public necessity for more methane infrastructure.

C. Adding Methane Infrastructure in a Region that is Rapidly Transitioning to Renewable Energy is not in the Public Interest.

Expanding methane gas in the Pacific Northwest is not in the public interest.

Where an “application on its face or on presentation of evidence signals the existence of a situation that probably would not be in the public interest,” the Commission should not issue a certificate. *Atl. Ref. Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, 391 (1959). In determining where the public interest lies, Section 7 of the Natural Gas Act “requires the Commission to evaluate all factors bearing on the public interest.” *Id.*

Environmental protection is a key factor in determining the public interest.

Environmental considerations include emissions from the production and use of the gas for which the Commission authorizes transport. *See Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (affirming the Commission may deny a pipeline certificate because of harmful environmental effects, such as downstream greenhouse gas emissions); *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1331 (D.C. Cir. 2021) (holding Commission’s public interest finding was deficient because it did not fully consider impacts on climate change and environmental justice).

Another key factor is how the gas will be used, and whether alternative energy sources are more suitable for that use. The Commission has a long history of considering whether supplying methane gas for a particular use serves the public's interest in conservation and environmental protection. As the Supreme Court stated, the Commission cannot "blind itself to the effects of the purchase and use of the gas when its authority to certificate the transportation of the gas was invoked." *Fed. Power Comm'n v. Transcontinental Gas Pipeline Co.*, 365 U.S. 1, 7 (1961); *see also Hope Nat. Gas Co.*, 4 FPC 59, 66-67 (1944) (stating "considerations of conservation are material to the issuance of certificates of public convenience and necessity under section 7" and authorizing a project in large part because of the particular end use of the gas); *Transwestern Pipeline Co.*, 36 FPC 176, 185-186 (1966) (affirming the "end use of gas was properly of concern to [the Commission], and . . . air pollution was a relevant consideration"); *cf. Am. La. Pipe Line Co.*, 16 FPC 897, 899-900 (1956).

If an alternative energy source would better serve the proposed end use of the transported gas, then supplying methane for that purpose may not serve the public interest, even if it is an alternative the Commission cannot command. *See Pittsburgh*, 237 F.2d at 745. For example, in *Transcontinental Gas Pipeline*, the Commission considered whether using methane gas for industrial uses was "wasteful," given that other energy sources that could meet the need. 365 U.S. at 7. The Supreme Court held this was a proper component of the public interest inquiry. *Id.* In the instant case, the Project has adverse impacts on climate change, will conflict with state law, and will increase local air pollution. These adverse impacts outweigh any public benefit, particularly given available alternatives.

1. The Project has adverse effects because it will conflict with State laws, worsen climate change, and increase air pollution.

The Commission must consider the interests of a community surrounding a proposed project. *See* 1999 Policy Statement at 24. State and local governments often represent those community interests. *See id.* In this case, the attorneys general from three of the four states the project intends to serve oppose this project. Additionally, over 1,000 community members wrote to the Commission in opposition. *See* Columbia Riverkeeper Member & Supporter Comments (Feb. 22, 2022).

Our State Legislatures have recognized a strong public interest in reducing consumption of methane gas. *See* Ex. A. The citizens of our States have seen the harmful impacts of climate change on their economy, way of life, and environment. *See supra* p.2. When presented with the ever-growing costs of the climate crisis, state elected officials determined it was in the public's interest to reduce consumption of fossil fuels. *See, e.g.,* WASH. REV. CODE § 70A.65.005; STATE OF OR., OFF. OF THE GOVERNOR, *Executive Order No. 20-04* (2020)¹⁸; Global Warming Solutions Act of 2006 (AB 32), sec. 38501. Authorizing expanded infrastructure to bring more methane into our States is against the public's interest, manifest in their state and local laws.

The public also has a strong interest in the successful implementation of those laws. As discussed in the States' comments on the Draft EIS, expanding methane emissions conflicts with state laws to cap and reduce those emissions. *See* States' Draft EIS Comments at 5-8. The States play a critical role in "ensuring a sustainable supply of efficient and price-effective energy" within their regulatory domain, and federal approval

¹⁸ https://www.oregon.gov/gov/Documents/executive_orders/eo_20-04.pdf.

of a project that conflicts with State efforts should not be taken lightly. *See Hughes*, 578 U.S. at 164 (2016) (Sotomayor, J., concurring).

Another serious adverse factor in this case is the **3.47 million** metric tons of CO₂ this project will emit, each year, until at least 2052. Draft EIS at 4-37 – 4-40. That equals adding over 754,000 cars on the road each year.¹⁹ The harm these emissions will cause to the public is substantial – the Draft EIS estimates they would cause approximately twelve billion dollars in damages. *See* Draft EIS 4-47; States’ Draft EIS Comments at 4-5. And these numbers do not account for upstream emissions, since the gas must be produced somewhere, and that production will also cause emissions. *See* States’ Draft EIS Comments at 10-12. Increasing emissions now, and continuing them through at least 2052, will worsen climate change exponentially. As the Intergovernmental Panel on Climate Change states: “[t]he magnitude and rate of climate change and associated risks depend strongly on near-term mitigation and adaptation actions, and projected adverse impacts and related losses and damages escalate with every increment of global warming.” Hans-O. Portner, ET AL., *Summary for Policymakers*, IPCC, 14 (2022).²⁰ These damages include mass extinction of species, water scarcity, food insecurity, and placing more than a billion people “at risk from coastal-specific hazards,” such as sea level rise and flooding. *Id.* at 15.

Finally, the project will increase local air pollution, but the Commission has not made sufficient efforts to engage nearby communities. The Commission recently

¹⁹ ENV. PROT. AGENCY, *Greenhouse Gas Emissions from a Typical Passenger Vehicle*, <https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle#:~:text=typical%20passenger%20vehicle%3F-A%20typical%20passenger%20vehicle%20emits%20about%204.6%20metric%20tons%20of,around%2011%20C500%20miles%20per%20year> (last visited Aug. 19, 2022).

²⁰https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf.

identified its Section 7 siting decisions as a key area for improving its consideration of environmental justice in order to “foster greater public trust and help the Commission carry out its duty to serve the public interest.” FERC, Equity Action Plan, 9 (April 15, 2022)²¹. At minimum, the Commission must “identif[y] and address[] disproportionately high and adverse human health or environmental effects . . . on minority populations and low-income populations.” E.O. 12898 of Feb. 16, 1994: Federal Actions to Address Environmental Justice, 59 Fed. Reg. 7629, 7629. It can do so here by weighing the adverse impacts on the community surrounding the Starbuck station in its public interest determination.

As discussed in the States’ comments on the EIS, the area around the Starbuck Station has disproportionately high rates of air pollution. *See* Ex. G, EJ Screen Report. This project will add to the problem, by “result[ing] in long-term impacts on air quality” in the area. Draft EIS 4-31. The Draft EIS further notes that a predominately Latinx community lives within one mile of the Starbuck station. Draft EIS 4-23, 25. Increasing pollution in a community of color overburdened by pollution is against the public interest. This is especially true given the lack of meaningful outreach to the surrounding community. *See* Draft EIS 4-21 (noting that “the record does not demonstrate that [opportunities for public involvement] were targeted at engaging environmental justice communities”).

2. Any benefits do not outweigh the adverse effects because there is scant evidence of need, and there are cleaner alternatives.

The record shows minimal, if any, public benefits from the project. As discussed above, there is scant evidence of a public need for the methane gas the project will

²¹ <https://www.ferc.gov/news-events/news/ferc-issues-equity-action-plan>.

transport. The lack of need alone is sufficient to deny the certificate. *See* 15 U.S.C. § 717f; *Atl. Refin. Co.*, 360 U.S. at 394 (Harlan J., concurring) (rejecting Commission’s certificate in part because there was no evidence that the public had an urgent need for the gas supplies).

Even if GTN had presented evidence of growing demand for methane gas, that would give only minimal weight in favor of a certificate because there are renewable alternatives that can meet public demand for energy with fewer risks to the climate or consumers. *See* Ex. C, Energy Futures Report at 57-64; States’ Draft EIS Comments at 19-23. Just as the Commission considered alternative energy sources for the designated end-use of gas in *Transcontinental*, it must consider here whether alternative technologies exist that can better serve consumers need for energy. *See* 365 U.S. at 7. As discussed above, pp. 15-17, state laws will lead to the replacement of methane-generated electricity with renewable resources. Generating electricity from lower-emission, renewable sources is preferable to burning methane, which contributes to climate change and air pollution. Another significant use of methane gas in the region is for residential space and water heating, but electric heat pumps can heat more efficiently and cheaply than methane equipment. *See* Ex. C, Energy Futures Report at 54, 58. Other alternatives that State regulators have considered to reduce peak day demand include selective electrification or limiting new gas connections. *See id.* at 58.

On balance, the record shows a certificate is not in the public interest. In light of the climate crisis, the Commission should not approve expanded gas supplies that do not meet a significant public need and will worsen the effects of climate change, particularly

where alternative energy sources can serve consumer need for energy more efficiently, cheaply, and with fewer environmental risks.

CONCLUSION

For these reasons, the Commission should grant the States' motion to intervene and deny GTN's application to expand methane gas infrastructure in a region transitioning off the fuel.

DATED: August 22, 2022

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document and attached exhibits upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 22nd day of August, 2022.

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