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**Comments of the Pipeline Safety Trust
on the Commission's Notice of Inquiry Regarding
the Certification of New Interstate Natural Gas Facilities Docket PL18-1-000**

The Pipeline Safety Trust is a public interest nonprofit organization dedicated to improving pipeline safety throughout the country. It was formed by the families of three young men killed in the Olympic Pipeline rupture and explosion on June 10, 1999 in Bellingham, Washington. Its initial funding came from part of the criminal penalties paid by the operator responsible for that tragedy. Our interests are focused on improving the safety of pipelines, and toward that end, to ensure that public and environmental safety are considered first in every agency and operator decision about a pipeline during its entire life cycle.

We believe there are several important changes that the Commission should make to the certification process to reduce the risks to communities and the environment from FERC-certificated projects.

The somewhat artificial jurisdictional separation of siting and certification (FERC) from the safety of pipeline design, construction, and operations, (PHMSA), creates a situation that requires careful and frequent coordination between the agencies to ensure that safety considerations are more than an afterthought in the FERC's review of proposed pipelines. That coordination, to the extent it occurs now, must be drastically improved. PHMSA's review of designs and of risk assessments produced by and for FERC must be a timely, required pre-condition to Commission approvals of new pipelines.

Compliance with PHMSA safety regulations should not be presumed. The Commission should make ongoing compliance with applicable PHMSA regulations a condition of each certification, and violation of that condition by violating PHMSA regulations should carry consequences to the operator's Commission certification. Penalties for violating PHMSA regulations are woefully inadequate, and are simply insufficient to create an incentive for operators to ensure the safety of their pipelines. By tying the operator's ongoing regulatory compliance to its certification, the Commission can help motivate operators to improve their safety performance. Violations found by PHMSA or a court of appropriate jurisdiction should result in enforcement action by FERC for violation of a certificate condition.

Similarly, the pipeline safety and construction safety records of applicants should be made a part of the NEPA review for any new facility application before the Commission. The Commission should consider previous safety failings of an applicant as posing an increased risk to the communities through which a new pipeline is proposed to travel or where a facility is proposed to be built. Particularly when previous safety regulation violations or where reportable incidents have occurred, the Commission should not presume future regulatory

compliance, and the heightened risk we ask communities to assume should be evaluated in the NEPA process accordingly.

The use of eminent domain should be strongly curtailed, and it should *never* be permitted before a facility is fully certified and permitted. It is, or should be, violative of public policy to allow a company to obtain a right of way by eminent domain, and then to undertake destructive and disruptive pre-construction activities on that easement before a project is fully permitted, meaning the project may never be built. Where rights of way are obtained, whether by eminent domain or purchase, and a project fails to be constructed or go into operation, those rights of way should be automatically extinguished and all rights should revert to the landowner. Private landowners should not bear the burden of permanently clouded titles and irrevocably damaged crops, landscapes and soils, simply because an operator made a faulty judgment about market demand or pricing or the cost of construction and later decides not to construct or operate the line. Similarly, when a line is abandoned, rights of way should automatically be terminated. Easements, whether by eminent domain or agreement, should require terms clearly laying out how the abandoned pipeline will be removed or abandoned in place. The power differential in right of way negotiations means that these things that will affect the landowner's property forever are rarely addressed. The Commission has the opportunity to remedy that here.

We look forward to the efforts of the Office of Public Participation improving the Commission's outreach to landowners and communities and elevating the role of public participants in Commission proceedings.

We further encourage the Commission to adopt the recommendations included in the comments filed today by the Environmental Defense Fund, restated briefly here. We refer the Commission to EDF's full comments for a more complete explanation of these recommendations: https://elibrary.ferc.gov/eLibrary/filelist?accession_num=20210526-5239. Parentheticals refer to the Commission's questions as posed in its Notices of Inquiry.

1. The Commission should modify the threshold "no financial subsidies" requirement to require a more detailed review of the justification for the proposed project and should apply this requirement to all applications (A1 and A2);
2. As part of this modified threshold requirement, the applicant should be required to demonstrate that any asserted "need" cannot be met by existing infrastructure, including through more efficient utilization of existing infrastructure, and the Commission should create incentives for such efficient utilization (A1 and A2);
3. The Commission should conduct a more thorough balancing of the potential benefits of the proposed project against its potential adverse impacts and Commission Staff should issue a Draft Balancing Analysis for comment prior to the Commission rendering a decision, similar to the Draft Environmental Impact Statement issued for comment as part of the National Environmental Policy Act review process (A1 and A2);

4. The Commission should update the requirements for Exhibit I of the application, regarding market data, and should strictly apply the informational requirements for Exhibit I and other required exhibits (A3);
5. The Commission should consider all information relevant to the useful life of a pipeline in its need and depreciation analyses, including federal and state decarbonization requirements (A3 and A6);
6. The Commission should require that applicants filing precedent agreements with affiliated shippers, particularly where those affiliated shippers have captive customers, provide evidence that the proposed pipelines provide material cost savings to customers of the affiliated shipper, based on alternatives solicited through a fair and open process (A4);
7. The Commission should employ a comparative hearing process when faced with multiple pipeline applications to provide service in the same geographic area (A9);
8. The Commission should give greater weight to the concerns of impacted landowners and communities and should use the Office of Public Participation (“OPP”) to ensure that those stakeholders have effective outreach and opportunity to participate in Commission proceedings (B3);
9. The Commission should impose more detailed certificate conditions related to impact on and remediation of land affected by pre-construction, construction, and post-construction activities (B4);
10. The Commission should increase monitoring of remediation activities and take action when remediation is insufficient (B4); and
11. The Commission should recognize its past failures to appropriately address environmental justice issues and work with environmental justice communities and advocates to improve its identification of and response to adverse impacts and place greater weight on environmental justice concerns (E1 and E2)

Respectfully submitted this 26 day of May, 2021.

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