UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Certification of New Interstate Natural Gas Facilities	))))	Docket No. PL18-1-000

COMMENTS OF THE
AMERICAN PUBLIC GAS ASSOCIATION

The American Public Gas Association ("APGA") submits these comments pursuant to the Notice of Inquiry ("NOI") issued by the Federal Energy Regulatory Commission ("Commission") concerning its policy on the certification of new natural gas transportation facilities,[1] especially as concerns its 1999 Policy Statement.[2]

I. BACKGROUND

APGA is the national, non-profit association of publicly owned natural gas distribution systems, with over 730 members in 36 states. Overall, there are approximately 1,000 publicly owned systems in the United States. Publicly owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities.

APGA members purchase interstate natural gas transportation services from pipelines at rates and under terms and conditions that are regulated by the Commission. APGA therefore has an interest in ensuring that new pipeline proposals are properly analyzed and that the costs of such projects are properly allocated.

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1 *Certification of New Interstate Natural Gas Facilities*, 83 Fed. Reg. 18,020 (April 25, 2018) (NOI).
2 *Certification of New Interstate Natural Gas Pipeline Facilities,* 88 FERC ¶ 61,227 (1999) (Policy Statement), *clarified,* 90 FERC ¶ 61,128, *further clarified,* 92 FERC ¶ 61,094 (2000).

II. COMMENTS

APGA appreciates that the Commission has launched this review—not so much as a concern about the Commission's environmental reviews but as concerns the interests of captive shippers, which are the bulk of APGA's membership.[3] It is imperative that the Commission stand fast on the existing policy's protections for captive shippers that are at the heart of the Policy Statement.[4] This virtual firebreak is being tested. The Commission is overseeing a massive expansion of the Nation's interstate gas pipeline network. Some experts predict that by 2035 the U.S. will add between 264,000 and 329,000 miles of pipeline (including both gathering and transport lines)—enough to circle the earth more than ten times.[5] And a large chunk of this effort is being constructed to serve the LNG export market, which targets an unpredictable competitive worldwide market that is completely different from the markets traditionally served by domestic pipelines built to serve secure public utility markets. APGA believes that there are a few modifications to the current policy and procedures that can make the process more transparent and the risk to captive shippers slightly lower.

A. The Commission Should Look Beyond Precedent Agreements in Analyzing Project Need

The first and primary issue of the NOI is whether, and if so how, the Commission should adjust Its methodology for determining whether there is a need for a proposed project, including the Commission's consideration of precedent agreements and contracts for service as evidence of such need. The current Commission policy is to refrain from looking behind service

3 Since pipeline restructuring, the Commission has held that captive customers or captive shippers that have no meaningful choice to be served by competing pipelines should be subject to special protections. *E.g.,* Order No. 636*, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations,* FERC Stats. & Regs. [Regs. Preambles 1991-1996] (CCH) at 30,446-48 (1992).

4 Policy Statement at p. 61,743.

5 Interstate Natural Gas Association of America Foundation, Inc., "North American Midstream Infrastructure Through 2035: Leaning into the Headwinds," at p. 10 (April 12, 2016).

agreements (precedent agreements) to make judgments about the needs of individual shippers.[6]

In its Policy Statement, the Commission criticized the over-reliance on capacity contracts or precedent agreements to establish the need for a proposed project.[7] The Commission noted the drawbacks of such an approach, including the fact that it does not appear to minimize adverse impacts on any of the relevant interests.[8] The Policy Statement therefore announced that the new focus would be on "the impact of the project on the relevant interests balanced against the benefits to be gained from the project."[9] The types of benefits noted by the Commission included meeting unserved demand, eliminating bottlenecks, accessing new supplies, lowering costs to consumers, and providing new interconnects that improve the interstate grid. As the Commission explained, this new approach would replace the then-current practice of relying primarily on "one test" to establish project need.[10]

Nearly two decades later, it appears to be déjà vu all over again. The Commission has reverted to a simplified analysis. In his well-known separate statement in the *National Fuel* proceeding, Commissioner Bay made clear just how this is true:

> The certificate policy statement, which was issued in 1999, lists a litany of factors for the Commission to consider in evaluating need. Yet, in practice, the Commission has largely relied on the extent to which potential shippers have signed precedent agreements for capacity on the proposed pipeline. This is a useful proxy for need, because presumably

[6] *Tennessee Gas Pipeline Co., LLC,* 163 FERC ¶61,190 (2018). *See generally Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at PP 54, 60 (2017) (noting that any attempt by the Commission to look behind the precedent agreements might infringe upon the role of state regulators in determining the prudence of expenditures by the utilities that they regulate); *see also* NOI at P 52 (2018) (noting that in practice, the Commission does not look "behind" or "beyond" precedent agreements when making a determination about the need for new projects). Further, the D.C. Circuit has held that nothing in the Policy Statement or in any precedent construing it suggests that the policy statement requires, rather than permits, the Commission to assess a project's benefits by looking beyond the market need reflected by the applicant's precedent agreements with shippers. *Minisink Residents for Envtl. Pres & Safety v. FERC*, 762 F.3d 97, 110 n.10 (D.C. Cir. 2014); *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 183 F.3d 1301, 1311 (D.C. Cir. 2015).

[7] Policy Statement at pp. 61,744, 61,749-50.

[8] *Id.*

[9] *Id.* at p. 61,748.

[10] *Id.*

> shippers would not sign up for capacity unless it was needed. But focusing on precedent agreements may not take into account a variety of other considerations, including, among others: whether the capacity is needed to ensure deliverability to new or existing natural gas-fired generators, whether there is a significant reliability or resiliency benefit; whether the additional capacity promotes competitive markets; whether the precedent agreements are largely signed by affiliates; or whether there is any concern that anticipated markets may fail to materialize.[11]

Similarly, in a recent dissent, Commissioner LaFleur suggested that the Commission has focused too narrowly on precedent agreements and not enough on other relevant factors, including the specific end use of the delivered gas within the context of regional needs.[12] Commissioner Bay also explained how exclusive reliance on precedent agreements may lead to over building and stranded assets that cause captive shippers to pay higher rates:

> There are other long-term issues that weigh in favor of examining whether other evidence, in addition to precedent agreements, can help the Commission evaluate project need. It is in the public interest to foster competition for pipeline capacity but also to ensure that the industry remains a healthy one, not subject to costly boom-and-bust cycles. Pipelines are capital intensive and long-lived assets. It is inefficient to build pipelines that may not be needed over the long term and that become stranded assets. Overbuilding may subject ratepayers to increased costs of shipping gas on legacy systems. If a new pipeline takes customers from a legacy system, the remaining captive customers on the system may pay higher rates. Under such circumstances, a cost-benefit analysis may not support building the pipeline. [13]

This impact of this policy reversion on captive shippers is APGA's prime concern. The Commission should take this opportunity to make clear that it will, in analyzing project need, look well beyond the mere existence of precedent agreements. Among the top factors the Commission should consider are the stability of the prospective shippers and the proposed end use of the gas. As Commissioner Bay explained, "pipeline developers may now be exposed to

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11 *National Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145 (2017) (Commissioner Bay, separate statement).
12 *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (2017) (Commissioner LaFleur, dissenting).
13 *National Fuel*, 158 FERC ¶ 61,145 (Commissioner Bay, separate statement).

market risk not present with shippers that are local distribution companies with a reliable rate base and predictable revenue stream."[14]

More recently, in a partial dissent, Commissioner Glick criticized the Commission's conclusion that precedent agreements between affiliated companies are enough to demonstrate a need for a pipeline project. "Instead ... the Commission must look behind the precedent agreements and consider other indicia of need," he said.[15]

The Commission asks in its NOI whether, if it were to look beyond precedent agreements, what types of additional or alternative evidence should the Commission examine to determine project need? APGA submits that the Commission should consider the posture of the shippers, especially whether they are affiliates (see below). The Commission should inquire into and measure the financial strength of the shipper. Creditworthiness tariff policies apply to all contracts and may trigger credit support obligations by financially failing shippers. But those provisions have not been tested by and large. And pipeline contracts last far longer than basis spreads can be predicted in most markets. Price-sensitive producers may default because holding the capacity just no longer makes sense. At least one producer-shipper has defaulted *before* a recent project was built.[16] Relatedly, the Commission asks whether the Commission should, in an effort to check overbuilding and capacity turnback, take a harder look at proposals that are designed to compete for existing market share rather than bring service to a new customer base. APGA believes that increased scrutiny of these projects is very warranted because of the risk that overbuilding has on captive shippers' rates.

[14] *Id.*

[15] *Florida Southeast Connection, LLC*, 163 FERC ¶ 61,158 (2018) (Commissioner Glick, dissenting).

[16] Accounting for 26% of the project, the producer failed to post a letter of credit required by its precedent agreement as it neared bankruptcy and was dropped from the project, which was certificated regardless. *Texas Gas Transmission, LLC,* 154 FERC ¶ 61,235 (2016).

Overall, the agency must take a hard look at projects as it has shown it can do, sometimes dissecting pipeline proofs and substituting its own.[17] Finally, APGA recommends that the Commission initiate a rulemaking to codify additional relevant factors in its regulations governing certificate approvals. This will help to ensure that the important factors continue remain at the forefront and that it will not be necessary to once again revisit the issue 20 years from now.

B. The Commission Should Reconsider Its Pipeline Discount Policy In Light of Potential Pipeline Overbuidling

The NOI pauses to note that its pro-competitive approach in approving new projects is related to its discount adjustment precedents:

> There have been few instances where companies or their customers have raised concerns over the impact that the construction of a new project would have on an existing pipeline system or its captive customers. In those instances, competitor pipelines have argued that their captive shippers would be burdened with stranded costs or discount adjustments. The Commission has historically not been persuaded by the objections, finding that a new pipeline would benefit consumers through increased competition.[18]

The first pipeline response to a failed project is discounting the stranded capacity. FERC must not allow pipelines to use the selective discounting policy to shift the cost of failed new projects to captive shippers—even if they had been granted a predetermination of roll in. Especially if pipelines are able to put new services into effect at contract rates below maximum rates, pipelines must not be allowed to create discounted volume adjustments in their future rate cases. APGA requests that this be a component of any policy restatement.

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[17] *Texas Gas Transmission, LLC,* 154 FERC ¶ 61,235 (2016) (denying request for a predetermination of rolled-in rate treatment); *Texas Gas Transmission, LLC,* 152 FERC ¶ 61,160 at P 33 (2015) (recalculating projected incremental revenues).

[18] NOI at P 29 (footnotes omitted).

C. Projects Built for Affiliates Deserve a Higher Level of Scrutiny When the Project Purpose is to Export LNG

The NOI asks whether the Commission should apply a different standard to precedent agreements or contracts with affiliates as opposed to those with non-affiliates. APGA believes that the answer is "yes."

First, as noted above, the Commission should look well beyond the mere existence of precedent agreements to find need. Second, mere precedent agreements with affiliates are even less of a basis of reliance. Yet this is FERC's current policy: "The mere fact that Florida Power & Light is an affiliate of Florida Southeast does not call into question the need for the project or otherwise diminish the showing of market support."[19]

Further scrutiny also should be made of huge investments to serve LNG export markets. It is not enough to simply "trust" the free market in this circumstance. The long-term viability of the LNG export business remains uncertain. As recently summarized by Platts:

> The biggest question that remains for the industry is the scope of the buildout, with some developers struggling to secure enough long term contracts with offtakers. Many buyers are seeking shorter, more flexible terms, making it difficult for developers to satisfy the banks they hope will finance construction of their terminals.[20]

If that LNG export market fails to materialize, the resulting supply glut will keep commodity prices low; financially stressed producers may fail to pay on their new pipeline contracts.[21] Failure of an incremental project harms the pipeline's financial health, which can lead to higher recourse rates. Failure of a rolled-in project leads to higher rates for captive shippers. The Commission should be considerate of these potentials when examining certificate applications.

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[19] *Florida Southeast Connection, LLC,* 163 FERC ¶ 61,158 P 23 (2018).

[20] "Utilization at US LNG export facilities ebbs, flows as peak summer demand season nears," *Gas Daily* at p. 3 (May 22, 2018).

[21] *See generally* J. Gregg, "The Rising Cost of Natural Gas Transport," *The Source*, at pp. 24-25 (Fall 2016)

D. The Commission Should Reform Its Rate-of-Return Policy for Expansion Projects to Better Reflect Current Financial Market Conditions

In a series of recent orders, the Commission reaffirmed its policy that, in Section 7 proceedings, incremental recourse rates for expansion capacity must be designed using the rate of return from the pipeline's most recent general rate case in which a specified rate of return was used to calculate the rates.[22] Due to the prevalence of rate-case settlements that do not result in specified returns, this policy often leads to expansion rates that are based on severely outdated returns, some from more than a decade ago. The Commission's rationale for maintaining the policy is not sound. Accordingly, APGA recommends that the Commission take a more forward-looking approach to returns in certificate proceedings.

The factual circumstances of certain Transco proceedings and the Commission's response perfectly illustrate the problem. The certificate applications for three projects were filed in 2015. For each, the pipeline calculated incremental recourse rates using a pre-tax return of 15.34 percent, which was the specified return from Transco's general rate case approved by the Commission back in *2002*. That 13-year-old return was used despite evidence indicating that then-current financial market conditions supported a return on equity of less than 11 percent.[23]

In rejecting arguments by state commissions that the use of the old return was improper, the Commission first noted that in certificate proceedings it reviews initial rates for service under the "public convenience and necessity" standard of Section 7 of the Natural Gas Act, which is less rigorous than the just-and-reasonable standard under Sections 4 and 5. The Commission

[22] *Transcontinental Gas Pipe Line Co., LLC*, 156 FERC ¶ 61,022 (2016), *reh'g denied*, 161 FERC ¶ 61,212 (2017); *Transcontinental Gas Pipe Line Co., LLC*, 156 FERC ¶ 61,092 (2016), *reh'g denied*, 161 FERC ¶ 61,211 (2017); *Transcontinental Gas Pipe Line Co., LLC*, 158 FERC ¶ 61,125, *order on reh'g*, 161 FERC ¶ 61,250 (2017). Petitions for review of all of these decisions have been filed with the U.S. Court of Appeals for the D.C. Circuit. APGA is not here taking a position on the legal merits of the decisions; rather, APGA is urging a change in Commission policy on a going-forward basis**.**

[23] *See, e.g., Transco*, 158 FERC ¶ 61,125 at PP 34-35.

then relied on an efficiency rationale in support of its policy of using the pipeline's last specified return rather than looking at recent data:

> [T]he Commission does not believe that conducting discounted cash flow analyses in individual certificate proceedings would be the most effective or efficient way for determining the appropriate ROEs for proposed pipeline expansions. While parties have the opportunity in section 4 rate proceedings to file and examine testimony with regard to the composition of the proxy group to use in the discounted cash flow analysis, the growth rates used in the analysis, and the pipeline's position within the zone of reasonableness with regard to risk, it would be difficult, if not impossible, to complete this type of analysis in section 7 certificate proceedings in a timely manner and attempting to do so would unnecessarily delay proposed projects with time sensitive in-service schedules. The Commission's current policy of calculating incremental rates for expansion capacity using the Commission-approved ROEs underlying pipelines' existing rates is an appropriate exercise of its discretion in section 7 certificate proceedings to approve initial rates that will "hold the line" until just and reasonable rates are adjudicated under section 4 or 5 of the NGA.[24]

The problem with the Commission's analysis is that it presents a false dichotomy in which the choice is between (i) conducting a time-consuming, labor-intensive investigation in each and every individual certificate proceeding or (ii) simply relying on a return that may be outdated by years or even decades. APGA submits that there is a third alternative that is superior to both.

As the Commission recognizes, precise ratemaking is not necessary in the context of certificate proceedings. That principle was affirmed by the U.S. Supreme Court, which explained that Section 7 procedures "hold the line awaiting adjudication of a just and reasonable rate."[25] In light of this, it is unnecessary for the parties to certificate proceedings to engage in detailed examinations of matters such as proxy group composition, growth rates, and risk positioning. On the other hand, the use of a extremely old rate of return that has absolutely no connection to the pipeline's current circumstances or to current market conditions in general is simply illogical.

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[24] *Id.* at P 39.
[25] *Atlantic Refining Co. v. Public Service Comm'n of N.Y.*, 360 U.S. 378 (1959).

Accordingly, APGA recommends that the Commission take a bifurcated approach to this issue. Specifically, in a certificate proceeding involving a natural gas company for which a fairly recent Commission-approved rate of return is readily available – for example, where a specified return for the company was set in a general rate case order issued less than five years prior to the filing of the certificate application – that return should be used in the certificate proceeding.

On the other hand, where no such recent return is readily available, an approach based on wider trends should be employed. The Commission could, for example, require the use of the average of the returns specified in the three most recent interstate pipeline cases in which a return was specified. While this would of course not take into account the specific circumstances of the company seeking the certificate authority, it would have far more connection to current realities and would therefore readily meet the statutory "public convenience and necessity" standard.

In the *Transco* orders, the Commission suggested that another option would be for parties to rate case settlements to agree upon a rate of return to be used in calculating initial rates in future certificate proceedings.[26] While this might be a workable solution for some specific pipelines and their customers, APGA sees at least two potential problems. First, the need to reach an agreement on rate of return in a rate case could derail efforts to settle the case through the black-box approach, thereby resulting in more litigation. Second, even if a return were agreed upon for purposes of certificate proceedings, it too would become stale after several years. By contrast, the approach that APGA recommends would avoid both of these problems.

[26] *See, e.g.,* 158 FERC ¶ 61,125 at P 40.

E. The Commission Should Require Pipelines to Maintain Cost Data for Projects Constructed Under Blanket Certificate Authority

A necessary – but by no means sufficient – condition to establishing market need for a project is a showing that the project is financially viable without subsidies from existing ratepayers. Such a threshold demonstration is therefore required for individually certificated pipeline projects.[27] By contrast, for projects that are constructed pursuant to blanket certificate authority, no such demonstration is required. In fact, the Commission has afforded all such projects the presumption that they will qualify for rolled-in rate treatment in a future rate proceeding.[28] The Commission's rationale is that blanket costs are presumed to be "so small as to have no more than a de minimis rate impact."[29]

While APGA does not object to this presumption, AGPA urges the Commission to amend its regulations to require pipelines to maintain records of the costs of projects constructed under a blanket certificate. This will ensure that the rate impact of roll-in can, in fact, be analyzed at the time of the future rate case.

Under the blanket certificate authority, a project, depending on its nature, is either (a) automatically authorized or (b) authorized following prior notice and the absence of a protest.[30] In either case, no Commission order is issued on the project and, therefore, the Commission does not condition its approval of the project on a requirement that the pipeline maintain its records so that customers will have access to cost data associated with the project when the pipeline ultimately files a rate case.

This lack of data has resulted in real-world adverse consequences. For example, a member of APGA recently participated in a rate case in which the pipeline had submitted six or more prior notice filings since its last rate case. In an attempt to determine the rate impact on

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[27] Policy Statement at pp. 61,746-47.

[28] *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, 117 FERC ¶ 61, 074 at P 36 (2006).

[29] *Id*.

[30] 18 C.F.R. §§ 157.203, 157.205.

non-expansion customers of rolling in the cost of the projects, the member requested cost data from the pipeline in order to perform a simple calculation of what the incremental rate for each project would be. The pipeline responded by claiming that it did not have the requested data, which forced the member to conduct its own laborious estimated calculations based on various assumptions that likely would have been disputed had they ended up in testimony.[31] This severely limited the ability of this shipper to challenge the presumption of rolled-in rate treatment.

To prevent such difficulties – and to ensure that the roll-in presumption is properly implemented – APGA urges the Commission to supplement its regulations with a new provision that obligates a pipeline constructing an expansion project under a blanket certificate to maintain its books and records in a manner that ensures that the incremental cost of service for the project will be readily available in a future rate case. This would not eliminate the presumption in favor of roll in. Rather, this reasonable recordkeeping requirement would give customers an opportunity to challenge the presumption were appropriate, which would bolster the Commission's policy in favor of subsidy-free financial stability.

F. The Cost-Revenue Analysis for Expansion Projects Should Exclude Revenues Associated with Existing Capacity

Pipelines often seek certificate authorization for expansion projects that include both new capacity to be constructed and existing reserved capacity. The Commission should ensure that the revenues from the existing capacity are excluded from the cost-revenue analysis submitted as Exhibit N to the certificate application for the project.[32] The failure to exclude such revenues results in a distorted picture of a proposed project's financial viability.

The Commission has so held, but the Commission distorted that precedent in a recent proceeding where a group of municipal customers commented that the pipeline's existing customers were already paying for the cost of the existing capacity through their rates and that it

[31] The parties to the rate case reached a settlement agreement, so no intervenor testimony was filed.
[32] 18 C.F.R. § 157.14(a)(17).

would not be equitable for the cost-revenue analysis to include the revenues for service over those existing facilities while ignoring the costs.[33] The municipal group cited a prior *Florida Gas* decision in support of its position, but the Commission rejected their argument, briefly stating as follows:

> We find that ANR used the appropriate costs and revenues in the cost-revenue analysis. The Commission's decision in *Florida Gas* is inapposite. In that proceeding, the Commission required the pipeline to eliminate revenues associated with service provided using solely existing capacity. In contrast, ANR's comparison includes only revenues generated using the contract volumes to be provided by the project.[34]

This analysis missed the mark. If a project includes both new and existing capacity, some of the project's revenue is – by its nature – being generated using existing facilities, even if the service is not provided using "solely" existing capacity. In other words, the fact that ANR's revenue comparison included only revenues from "contract volumes to be provided by the project" is irrelevant because "the project" included the existing facilities. The Commission's policy should be that only revenues generated from the new facilities may be included in request for a predetermination of roll in.

Allowing a pipeline to use revenues collected from the use of an already-purchased system to offset new expenditures on new facilities lowers the bar on roll in for no apparent reason. The Commission makes no deeper inquiry to determine whether presumed benefits to existing shippers are illusory in that situation. To take the Commission's reasoning to its logical conclusion, a pipeline could, for example, propose an expansion project consisting of 90 miles of existing reserved capacity and just 10 miles of new pipeline. It could then enter into contracts for the full capacity on the 100-mile project and attribute all of the revenue from those contracts to the project, while only attributing the cost of the 10 miles of new pipeline. A proper cost-benefit analysis, by contrast, would compare only the revenue from the contract volumes

[33] Motion to Intervene and Comments of the ANR Municipal Customer Group, Docket No. CP17-9-000, at 3 (Dec. 7, 2016) (citing *Florida Gas Transmission Co., LLC*, 154 FERC ¶ 61,256 at P 23 (2016)).

[34] *ANR Pipeline Co.*, 161 FERC ¶ 61,132 at P (2017) (internal footnote excluded).

provided by the *new* facilities – which in this case would be 10 percent of the total project revenues – with the cost of the 10 miles of new pipeline. That would be the true measure of the value of the incremental capacity to the system and its existing customers. At the very least the Commission should require a pipeline showing that the subscription of the so-called reserved capacity does not create an oversubscription of the pipeline's firm capacity. Often a pipeline's claim of system-wide benefits is vague and should not be relied upon to permit a presumption of roll in.[35]

The essential idea of incremental pricing is that existing customers using existing facilities do not contribute to, and thereby do not subsidize, the cost of constructing and operating new projects. That is simply unfair. To receive a predetermination favoring rolled-in rate treatment, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must show that the revenues to be generated by an expansion project will exceed the costs of the project. This "economic screen" designed to protect existing shippers and provide proper price signals for new construction (and indicate whether a project is financially viable) is diminished by the Commission's interpretation of *Florida Gas* in *ANR.* The fundamental protection for existing shippers is not provided by a semantic "test" without rigorous analysis of the economics of rolled-in rate treatment. The erroneous interpretation of *Florida Gas* prevents such a rigorous and fair analysis by placing a thumb on the scale in favor of eliminating the pipeline's risk of building a new project.

Rather, the Commission had it right the first time in *Florida Gas*:

> FGT's analysis includes revenues generated using the contract volumes for both the service being provided using the capacity made available by the project facilities and the service FGT is able to provide using only

[35] For example, APGA would disagree that a possible future benefit identified as a reduction in potential risk of decontracting is relevant to whether a presumption should be made at the outset versus after the time the potential for decontracting has passed and the incremental project can demonstrate an actual, measurable effect. *See Southern Natural Gas Co.,* 110 FERC ¶ 61,052 at P 62 (2005).

> existing capacity. A proper comparison requires excluding the revenues associated with service being provided using solely the existing capacity.[36]

Reforming the cost-revenue analysis in this respect would produce a much more accurate assessment of the financial viability of a proposed expansion project.

III. CONCLUSION

APGA entreats the Commission to maintain and augment the cornerstone of the present Policy Statement to "protect captive customers."[37]

Respectfully submitted,

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[36] 154 FERC ¶ 61,256 at P 23.
[37] Policy Statement at p. 61,743.