UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

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

ANSWER AND REQUEST FOR LEAVE TO RESPOND TO GTN'S ANSWER AND MOTION TO REJECT BY THE STATES OF WASHINGTON, OREGON, AND CALIFORNIA

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I. INTRODUCTION

The Attorneys General of Washington, Oregon, and California (collectively, "the States") moved to intervene in this proceeding to protect consumers and the environment in their territory. The States' intervention and protest are timely and based on serious environmental concerns about reducing emissions and ensuring an orderly transition to renewable energy. GTN's objections boil down to reframing the States' environmental concerns as economic ones, but the States have identified environmental grounds to support their participation as a party in this proceeding. Further, in the case of climate change and transitioning to renewable energy, environmental and economic concerns are inextricably intertwined. GTN further claims the States' concerns about the project should be disregarded in favor of exclusive reliance on GTN's contracts, but then seeks to prevent the States from explaining why GTN's reliance on the precedent agreements is unpersuasive. This approach conflicts with the Natural Gas Act, the Administrative Procedure Act, and the 1999 Policy[1], all of which require the Commission to consider the full picture of public need and interest in expanding GTN's pipeline. Because GTN's application fails to show a public need or interest, it should be denied.

II. ANSWER TO MOTION AND REQUEST FOR LEAVE TO RESPOND

GTN styles its response to the Joint Motion to Intervene and Protest as a Motion to Reject and Answer. *See* Answer and Mot. Reject GTN (Sept. 6, 2022) ("Answer"). The States respond to GTN's motion pursuant to Rule 213, 18 C.F.R. § 285.213. To clarify the issues and arguments before the Commission, the States also request leave to

[1] *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").

reply to GTN's answers to their motion to intervene and protest. Commission rules generally do not permit answers to answers. *See* 18 C.F.R. § 385.213(a)(2). But, the Commission may allow such answers for "good cause." § 385.101(e). Good cause exists here because GTN's filing conflates the States' arguments in their protest with their bases to intervene and mischaracterizes the States' arguments in their protest. The States' reply will clarify the issues and assist Commission decision-making. *See, e.g, PJM Interconnection, LLC,* 157 FERC ¶ 61,152, P 17 (2016).

III. THE STATES ARE ENTITLED TO INTERVENE

Contrary to GTN's arguments, the States' motion to intervene is timely under Commission rules and should be granted. *See* Answer 3-5. The Commission "automatically permit[s] late intervention when it issues a draft [Environmental Impact Statement ("EIS")]." *Cal. Trout v. FERC,* 572 F.3d 1003, 1016 (9th Cir. 2009). Section 157.10 of Commission regulations explains the requirements to intervene in Natural Gas Act Certificate proceedings are those "stated in § 380.10(a)(1)(i) of this chapter." 18 C.F.R. § 157.10(a)(2). Section 380.10(a)(1)(i) states "any person may file a motion to intervene in a Commission proceeding dealing with environmental issues **under the terms of [Rule 214]**." 18 C.F.R. § 380.10(a)(1)(i) (emphasis added). Rule 214 requires intervenors to have or represent "an interest which may be directly affected by the outcome of the proceeding," or show that their participation is in the public interest. 18 C.F.R. § 385.214(b)(2).

GTN does not dispute that the States' motion was filed during the Draft EIS intervention period or that the States satisfy Rule 214. Nor could it. Consistent with Rule 214, the States' motion asserts State interests in reducing air pollution and greenhouse

gas emissions that may be directly affected by the outcome of the proceeding and was filed concurrently with comments on the Draft EIS, detailing environmental concerns with the project. *See* States' Mot. Intervene and Protest at 8 (Aug. 22, 2022) ("State Mot."); States' Comments on Draft EIS (Aug. 22, 2022) ("State Comments"). Further, the States' participation is in the public interest, as they represent the public and consumers in three States affected by the project. *See* State Mot. 8–10.

GTN argues, however, that because some arguments raised in the States' accompanying *protest* are – per GTN – "economic" issues, then the States may not intervene even if they satisfy Rule 214. *See* Answer 3–7. GTN cites 18 C.F.R. § 157.10, but as described above, section 157.10 refers to the requirements in sections 380.10 and 214. Even if the States *were* required to raise environmental grounds, they have done so. *See* State Comments, State Mot. 8–10.

The Commission recently rejected a similar argument that intervenors must tie interventions to the draft EIS. In *Regional Energy Access Expansion*, two organizations moved to intervene during the draft EIS comment period, arguing the project would impede New Jersey's transition to renewable energy. *See* Mot. Intervene N.J. Conservation Found., CP21-94-000 (Apr. 25, 2022); Mot. Intervene N.J. League of Conservation Voters, CP21-94-000 (Apr. 25, 2022). The company argued the motions were untimely because they were based on "generalized opposition" and not the draft EIS. Answer of Transcontinental Pipeline Co., 5–6, CP21-94-000 (May 10, 2022). The Commission granted intervention because the movants "represent[ed] interests that may be affected by the outcome of this proceeding and identified environmental grounds for their interventions." *See* Notice Granting Interventions, CP21-94-000 (Sept. 7, 2022).

The States' motion to intervene, as well as their comments on the Draft EIS and protest, shows that standard is met here.

IV. THE STATES' PROTEST WAS TIMELY FILED DURING THE DRAFT EIS COMMENT PERIOD, OR, ALTERNATIVELY, SHOULD BE ACCEPTED BASED ON GOOD CAUSE

Just as the States are entitled to intervene, they also are entitled to submit arguments to the Commission explaining their position. *See* 18 C.F.R. § 385.214(b)(1). Contrary to GTN's unsubstantiated claims, Answer 1-2, the States' protest does not cause prejudice or disruption. *See infra* 6–7. The States' motion will ensure the Commission reviews all important aspects of the problem, including facts omitted in GTN's application. Further, while GTN argues the protest may only raise issues from the Draft EIS, Answer 4–5, the States' comments on the Draft EIS mirror the States' arguments in the protest: that State laws will reduce need for more gas and alternative energy sources must be considered. *See* State Comments 1–24.

A. The States Timely Filed Their Protest.

The States' protest was timely because they filed it during the Draft EIS comment period and the protest is based on the States' environmental concerns. The States oppose this project because it "conflicts with state laws to reduce emissions and transition to renewable energy, and it will worsen environmental harms from climate change." State Mot. 1. These are environmental issues.

The Commission should reject GTN's attempt to divorce considerations about public need for more methane from considerations about state laws that will "significantly reduce" demand for methane. State Mot. 15; *see* Answer 4–5. The need for an expanded pipeline relates directly to the transition to renewable energy and is

intertwined with the States' environmental concerns about climate change. *See* State Mot. 15–19, 25; Alexandra B. Klass, *Natural Gas Pipelines in an Age of Climate Change*, 39 YALE J. ON REG. 690 (Jul. 2022) (explaining how "new natural gas infrastructure paid for by captive ratepayers is often competing with or displacing new wind, solar, and battery storage investments either supported by the markets and, in some cases, mandated by a growing number of states."). The Commission must consider the project's impacts on climate change and state laws not only to avoid unnecessary environmental harm, but also to avoid overbuilding and ensure just and reasonable rates for consumers. *See id*. at 18; 15 U.S.C. § 717c, d, f. In particular, "[i]ncreasing fixed costs from new infrastructure poses an unacceptable risk of stranded assets, which could lead to higher prices for the remaining future consumers." State Mot. 17–18.

GTN claims the Commission need not address these concerns because it has precedent agreements for the project, but simultaneously seeks to prevent the States from challenging the value of these agreements. Answer 4–5, 7–9. To fully participate and advance their environmental concerns, the States cannot ignore GTN's arguments supporting a public need, even if those arguments are economic in nature.

The States are entitled to submit argument on their position to the Commission in their timely motion to intervene. *See* 18 C.F.R. § 385.214(b)(1). Moreover, because the States' opposition is rooted in environmental concerns about climate change and the transition to renewable energy, it is timely raised during the Draft EIS comment period. *See* 18 C.F.R. § 157.10(a)(2). Significantly, the States also urged the Commission to more thoroughly consider those same concerns in the Final EIS. *See* State Comments 1–24.

B. In the Alternative, The States Have Good Cause.

To the extent the Commission deems any of the States' arguments to be untimely, the States request they be accepted for good cause because the States could not file complete arguments before the Draft EIS was released and allowing the States' arguments will not disrupt the proceeding or prejudice the parties. *See* 18 C.F.R. §§157.10(a)(3); 385.101(e). Until the Commission released the Draft EIS, the States could not fully understand the extent of the project's harms or conflicts with State laws, nor could they weigh those harms against the project's alleged benefits. Additionally, GTN's failure to disclose facts relevant to the project cost in its Application, *see* States' Mot. 13, prevented the States from uncovering information about the project's subsidization more expediently.

Moreover, filing one protest, based on the full information from GTN's application and the Draft EIS, is more efficient and less burdensome on the Commission and the parties than requiring the States to file multiple protests as new information becomes available. *Cf.* Mot. for Leave of GTN to File Answer to Protests (Dec. 16, 2021) (requesting leave to file out-of-time to avoid "submitting piecemeal filings . . . and to promote adjudicative efficiency and expediency"). As the Commission stated when it accepted other late protests in this docket, "allowing the [filings] will not disrupt the proceeding or cause any prejudice to or additional burdens upon the existing parties as the issuance of the draft EIS will open a new intervention period." Notice Granting Late Interventions (Feb. 8, 2022).

The same is true here. GTN's claims of prejudice and delay are groundless. Answer 1–2. In the same breath as its unsupported claim of prejudice, GTN

acknowledges that the States do not introduce new issues and state it has "already rebutted" the States' arguments in prior filings. *See* Answer 2. Because the States were unable to file their arguments earlier and they do not cause disruption or prejudice, the Commission should accept any untimely arguments in the protest for good cause.

V. THE COMMISSION SHOULD DENY THE APPLICATION BECAUSE GTN FAILED TO SHOW A PUBLIC NEED OR INTEREST

The Commission's governing authority requires it to consider all relevant evidence of need for, or public interest in, a project. Because the evidence fails to meet either prong, the application should be denied.

A. The Natural Gas Act, the 1999 Policy, and the Administrative Procedure Act Require the Commission to Consider the States' Evidence.

GTN wrongly contends that the Commission should ignore the States' countervailing arguments on need and public interest. Such an approach conflicts with the Natural Gas Act, the Commission's 1999 Policy, and principles of reasoned decision making. The "primary aim" of the Natural Gas Act is to "protect consumers against exploitation at the hands of natural gas companies." *NAACP v. Fed. Pwr. Comm'n*, 425 U.S. 662, 670 n.5 (1976) (quoting *Fed. Pwr. Comm'n v. Hope Gas Co.*, 320 U.S. 591, 610 (1944) and citing legislative history of Natural Gas Act). To fulfill that mission, the Commission must consider all relevant evidence of need or public interest for a project. *See Atl. Ref. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959).

Contrary to GTN's claims, the Commission need not first find "plausible evidence of [ ] preferential treatment" to consider evidence relevant to need, nor is doing so a "break" with the 1999 Policy. *See* Answer 11. The 1999 Policy "imposes no bright-line rule about when precedent agreements may be persuasive evidence of market demand.

Instead, it lays out a flexible inquiry that allows the Commission to consider a wide variety of evidence." *City of Oberlin v. FERC*, 937 F.3d 599, 605 (D.C. Cir. 2019). Principles of reasoned decision-making also require the Commission to engage with evidence showing that a pipeline does not serve new demand. *Env't. Def. Fund v. FERC*, 2 F.4th 953, 975 (D.C. Cir. 2021).

In line with the Natural Gas Act, the Administrative Procedure Act, the 1999 Policy, and these precedents, the Commission must engage with the States' evidence of declining demand and critically assess GTN's contrary claims that the precedent agreements show growing consumer demand. If anything, the facts of this case necessitate additional scrutiny, since evidence suggests that existing customers are subsidizing the project. *See* State Mot. 13–14. The existence of a subsidy means precedent agreements do not accurately reflect market need. *See* 1999 Policy at 20. A subsidy means "the true costs of the project are not seen by the market or the new customers, leading to inefficient investment and contracting decisions." *Id*. at 17. Further, the utility companies' integrated resource plans indicate the precedent agreements do not serve growing market demand, as GTN claims. *See* State Mot. 19–23, Ex. B, Lander Decl., 19–22; Ex. C, Energy Futures Report, 39. Thus, while precedent agreements may evince need in some cases, they are insufficient here because: (1) there is a subsidy; (2) utility company projections of demand do not line up with GTN's alleged need; and (3) state and local laws that prohibit new gas hookups or require transitions from gas to renewable sources, as well as market trends toward electrification for space and water heating, portend a declining demand for methane gas. GTN is wrong to claim its precedent agreements are sufficient in light of these points.

GTN prefers the Commission to ignore these points and advocates an unlawful "ostrich-like approach" where the Commission considers the precedent agreements to the exclusion of all other evidence. *Env't. Def. Fund*, 2 F.4th at 975; Answer 7–9. But individual financial interests, not a desire to serve a public need or interest, motivate those agreements. *See* State Mot., Ex. C, Energy Futures Report, 48. A gas company may profit from a precedent agreement even when the consumer does not ultimately benefit. For example, a utility may sell capacity that consumers paid for and did not need in order to generate shareholder profit. *See* Comment on behalf of N.J. Conservation Found. Submitting Expert Report Regarding Capacity Sufficiency in Regional Access Energy Expansion, 15, CP21-94-000 (Sept. 9, 2022). Significantly, Intermountain acknowledges it has excess pipeline capacity that it sells on the short-term market. *See* Rogue Climate's Comments on the Draft EIS, 9–10 (Aug. 22, 2022). Precedent agreements may be important evidence, but since the Commission does not exist to protect profits of methane gas companies, it still must view them with a critical eye. *See NAACP*, 425 U.S. 669 n.5 (explaining the primary aim of the Natural Gas Act is to protect consumers from exploitation by methane gas companies).

GTN's other arguments are similarly unpersuasive. Answer 9–11. First, the utility company's comments it cites are vague and not filed under penalty of perjury. *See* Comments of Marcus Sellers-Vaughn, Cascade Natural Gas (Nov. 9, 2021); Comments of Intermountain Gas (Nov. 9, 2021). Those comments are entitled to less weight than the companies' Integrated Resource Plans, which independent regulators review and accept. Second, GTN incorrectly claims Tourmaline's motion to intervene states "increased Canadian gas reserves are vital to provide low cost natural gas supply and reliability to

West Coast markets, especially with the projected decline in volumes from the Rockies." Answer 12. Tourmaline's motion (which is argument, not evidence) does not say this. *See* Mot. Intervene and Comments of Tourmaline (Nov. 9, 2021). Third, GTN cited, an "IHS Markit" study but a citation to a confidential study unavailable for review is not evidence. Finally, GTN claims there is adequate demand because few existing shippers were willing to relinquish existing capacity. Answer 10–11. In fact GTN only offered rights of first refusal for 24 percent of its current capacity, or 733,422 Dth/d of its 3.1 million Dth/d total capacity. *See id*.; State Mot., Ex. C at 43 n.5.

This project is not justified by pre-existing demand, as was the case in *Tennessee Gas*. *See* Answer 12 (citing *Tennessee Gas Pipeline Co., L.L.C.*, 179 FERC ¶ 61,041, at P 17 (2022)). In *Tennessee Gas*, the pipeline company presented evidence that demand *already* exceeded existing pipeline capacity. The project shipper, a local utility, had implemented alternative measures to reduce gas demand and no alternative pipelines could meet that demand – the utility already imposed a moratorium on new customers and was trucking in compressed natural gas to meet existing demand. *Id*. P 6, 15. In contrast, GTN's evidence of need is based on outdated and inaccurate projections of future need, and fails to address evidence that alternative sources likely exist to meet new demand. *See* State Mot. 19–23, 27–29.

Tennessee Gas also considered only whether the project conflicted with state limits on emissions, which did not ban providing methane gas service. 179 FERC at P 17. Here, the States rely not only on emissions limits, but numerous state and local laws that ban gas hookups in new construction, mandate energy efficiency, and cap and reduce emissions from methane gas suppliers and compressor stations along GTN's pipeline. *See*

State Mot., Ex. A; State Comments 5–9. The Commission must consider the impact of those laws on market demand. Indeed, the D.C. Circuit recently reversed a Commission order for failing to take into account a state mandate of 100 percent zero-emission electricity by 2040 when reviewing methane gas infrastructure investments. *See Indep. Pwr. Producers of N.Y. v. FERC*, No. 21-1166, 2022 WL 3210362, *2 (D.C. Cir. Aug. 9, 2022).

B. The Intermountain Contract Does Not Justify GTN's Costly Expansion.

GTN appears to implicitly argue that the Intermountain contract is sufficient to justify the project since Idaho has not opposed the project. Answer 8, 15–16.[2] It is not. The Intermountain contract does not show sufficient need for a costly expansion and, even if it did show a need for more gas, the Commission has not considered alternative sources can meet that need—a consideration that also warrants analysis in the Final EIS, *see* State Comments 19–23.

GTN claims the Intermountain contract is evidence of need because Intermountain projects a 3.3 percent growth rate in its 2019 Integrated Resource Plan. Answer 17. GTN ignores, however, Intermountain's 2021 Integrated Resource Plan, which shows a lower growth rate *and* plainly states the purpose of the GTN contract is to swap capacity with another pipeline, not to serve new demand. *See* State Mot., Ex. B, Lander Decl., at 21–22; Ex. C, Energy Futures Group Report, at 47–48. Moreover, even

[2] GTN claims the States seek to impose their laws on the rest of the nation, Answer 15–16, but this is incorrect. The States' arguments are rooted in principles of reasoned decision-making under the Administrative Procedure Act and the Commission's statutory duties under the Natural Gas Act. They in no way implicate federal preemption or the Commerce Clause.

under the 2019 Plan, Intermountain admits it had excess pipeline capacity. *See* Intermountain Gas Co., Integrated Resource Plan 2019-2023, 57.[3]

Even assuming Intermountain's contract showed a need for more gas, the Commission has not considered whether alternative sources could meet that need. *See, e.g.*, *Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017) (upholding Commission reliance on precedent agreements in part because the Commission also explicitly found that alternative pipelines "will not satisfy the identified need"); *City of Oberlin*, 937 F.3d at 605 (upholding certificate with only 59 percent of capacity under contract because the Commission explicitly found other pipelines could not absorb that need). In this case, the Draft EIS fails to consider alternative pipelines or energy sources, such as electrification or demand response, which could meet some or all of new demand. *See* State Comments 19–24; State Mot. 15–17. It would be arbitrary and capricious to ignore whether alternative sources could meet the need, given the States' plans to transition to zero-emission electricity and that over thirty percent of regional gas consumption is for generating electricity. *See* State Mot. 15–16, Ex. C, Energy Futures Group, 54.[4] By asking the Commission to narrowly focus on Intermountain's contract, and close its eyes

[3] Available at: https://www.intgas.com/wp-content/uploads/PDFs/commission_filings/IRP-Write-Up-Book-2019.pdf.

[4] The States wish to correct imprecise statements in their Motion and Comments regarding Oregon's clean electricity laws. Oregon requires the state's major investor-owned utilities to reduce greenhouse gas emissions to zero by 2040 which may, theoretically, be done using carbon capture or another method. *See* OR. REV. STAT. § 469A.410(1)(a)-(c) (2021). The States' motion incorrectly described Oregon law as requiring "transition to 100% renewable electricity by 2040." State Mot. 3; *see also* State Comments 6 (same); Ex. A at 7 (incorrectly describing law as requiring utilities to phase out methane for electricity generation, since utilities may burn methane if they can do so without emissions).

to alternative sources or future regional demand, GTN asks the Commission to miss the forest for the trees.

C. GTN Xpress Is Not in the National Interest.

GTN claims the Commission must consider only the national interest in deciding the public interest, Answer 15, but the States' Protest explains why the project fails based on necessary components of a public interest determination under the Natural Gas Act. Those include state and national interests, as well as considerations of environmental protection, environmental justice, and available alternatives. *See* State Mot. 23–24. GTN does not argue these components do not belong in a public interest determination.

GTN argues only that state laws cannot dictate the "national interest." Answer 16–17. But GTN cannot sincerely argue that State efforts to reduce emissions and ensure an orderly transition to renewable energy is not also in the national interest. Reducing emissions is national policy. *See* State Comments 9 (explaining that GTN Xpress is inconsistent with national policy and international commitments). At best, GTN can argue that the alleged need for more gas supplies outweighs the serious environmental harms it will create. In this case, that means more than twelve billion dollars in environmental harms from climate change. *See* Draft EIS 4-47 (June 30, 2022). The States respectfully disagree with GTN's calculus, particularly given the scant evidence of need in this case, and the Commission should as well.

VI. CONCLUSION

For these reasons and those stated in the States' Motion to Intervene and Protest and Comments on the Draft EIS, the States request the Commission grant their motion to intervene, accept their protest as timely, and deny GTN's application.

DATED: Sept. 21, 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 21st day of September, 2022.

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