Industrial Energy Consumers of America (IECA)
The Voice of the Industrial Energy Consumers

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To: The Honorable Laura V. Swett, Chairman, FERC
The Honorable David Rosner, Commissioner, FERC
The Honorable Lindsay S. See, Commissioner, FERC
The Honorable Judy W. Chang, Commissioner, FERC
The Honorable David A. LaCerte, Commissioner, FERC

Subject: Request for Rulemaking Amendment to Modernize Natural Gas Pipeline Policy to Support Manufacturing Sector Investment and Job Creation

We respectfully submit this urgent request for the Federal Energy Regulatory Commission (Commission) to modernize its pipeline policies, regulations, and requirements in support of increased natural gas pipeline capacity and at contract terms and prices that support the manufacturing sector. The manufacturing sector's ability to keep operating, expand existing facilities and invest in new ones are at risk. This situation left unaddressed has national consequences.

We request the Commission open a Section 5 show cause proceeding to investigate whether natural gas pipelines are unduly discriminating against manufacturing and other potential shippers who want to bid in open seasons by requiring minimum terms. We propose a change in the open season rules that would provide certainty of supply via firm pipeline capacity contracts with 1-5 year duration.

The problem is that manufacturing companies cannot commit to 10-20 year capacity contracts with pipeline companies due to the nature of the manufacturing sector. The availability of excess pipeline capacity that has allowed manufacturers to access pipeline capacity at affordable prices for the last decade is now gone.

While pipelines are conducting open seasons for new pipeline capacity, they are requiring terms of service that manufactures cannot meet, so they are not able to bid for new capacity. Thus, we believe that the benefits of non-discriminatory open access over these essential facilities for delivery of natural gas supply will be lost for manufacturing due to restrictions in open seasons for bids for new capacity.

Other large buyers of natural gas have advantages that we do not. Electric utilities can make long-term commitments and pass on their costs to ratepayers. LNG exporters have contracts to supply their customers for periods of up to 20 years that allow them to lock in long-term pipeline capacity. The newest players are the data centers. While they are large energy users, the cost of energy is a relatively small cost to their business.

Action is even more important because electric utilities have announced they will shutdown an additional 15,000 MWs of coal-fired power generation by 2029. This will further reduce the availability of natural gas pipeline capacity for manufacturing companies.

The manufacturing sector is important.

The manufacturing sector employs 12.7 million people with family living wages and creates three non-manufacturing jobs for every one job in manufacturing. It contributes $2.9 trillion in value-added and is 9.7 percent of GDP. We consume 32 percent of U.S. natural gas and have 400,000 facilities. To put this into perspective, the entire oil and gas industry employs only 372 thousand people and the electric utility industry 598 thousand.

The U.S. manufacturing sector is at a crossroad.

Manufacturers cannot typically enter into 10-20 year pipeline transportation capacity contracts because the risks are too high due to the dynamics of the manufacturing sector. For example:

- Uncertainties of demand for the products that we produce impacts demand for natural gas.
- Typical customer contracts are usually one year or less in duration.
- Flexibility to shift production to other manufacturing facilities in response to product mix changes and economics is a necessity.
- Changes in customer products.
- Energy price sensitivity. Natural gas is consumed as a raw material (feedstock) or fuel or both. The cost of natural gas can be as high as 80 percent of the cost of producing products.
- We compete with global competition, including subsidized state-owned enterprises (SOEs), which limits our ability to pass on costs.

Over the past twenty years, natural gas-fired power generation has expanded significantly due to the addition of renewable energy, coal-fired, and nuclear generation retirements and the growth of power demand due to AI data center growth. Unlike manufacturers, regulated electric utilities and natural gas marketers can enter long-term firm transportation contracts and pass those costs directly to

ratepayers and customers. Due to insufficient pipeline capacity, this structural difference has enabled regulated electric utilities, local distribution companies (LDCs), and natural gas marketers to secure large volumes of pipeline capacity, tightening regional markets, and sharply increasing transportation costs for industrial consumers.

This is a national problem but Transco Zone 5 in the southeastern U.S. is an example to provide actual numbers to demonstrate the problem. In Transco Zone 5, annualized (January-December) released capacity that historically was priced under $0.50 per MMBtu now exceeds $1.75 per MMBtu. January capacity that sold for roughly $1.25 per MMBtu a decade ago, now trades at $4.25 to $5 per MMBtu and has exceeded $10 per MMBtu in recent peak periods. During recent Operational Flow Orders, incremental gas in this region has exceeded $150 per MMBtu, forcing many manufacturers to shutdown because costs surpassed monthly profits. These conditions collectively impose tens of billions of dollars in added annual expenses on manufacturers, contributing to reduced production, and facility closures.

Current Policy

The current natural gas policy focuses on open seasons where the pipeline can dictate the terms for new capacity and capacity release policies focused on awarding capacity to those that value it the most. Even if manufacturers are interested in new capacity or want to bid on existing capacity at maximum rates, they are unable to match the 10-20-year terms that these competitors can offer for capacity.

Under current practice, interstate pipeline expansions often have 100 percent of their new capacity subscribed through 20-year contracts before they are approved by the Commission, passing the risk from the pipeline company shareholders to the shippers. Nearly 100 percent of manufacturing companies cannot commit to this length, leaving them dependent upon released or excess capacity, an increasingly scarce resource due to the demands of power plants, data centers, and LNG exports.

While the existing policy and regulations provide financial certainty for pipeline developers when there was excess capacity and insufficient demand to fill it, they no longer align with the realities of today's natural gas market, where demand growth, customer mix, and regional constraints have shifted substantially.

Proposed Policy

While the Commission rejected caps on the terms for bids in open seasons, it did not consider whether a pipeline requiring a minimum term for open seasons would

be lawful, nor did it consider potential for an unequal ability of buyers to compete with each other. Rather, in eliminating caps of the terms for capacity allocation, the Commission assumed that the market would be perfectly competitive and that as demand rises, prices will rise in order to allocate the scarce supply to those who value it most. The Commission reasoned that in such circumstances, the bidding between two customers does not reflect the exercise of market power.[1] The problem that has developed is that manufacturers and smaller shippers are no longer on a level playing field as they have to compete with electric utilities, AI developers and LNG exporters that have the ability to enter into longer term contracts with their offtakers.

Also, the Commission reasoned that the danger that the pipeline might use market power to withhold capacity and create artificial scarcity to force buyers to accept longer terms than they wanted would not occur because the Commission's existing regulatory constraints on a pipeline's exercise of its market power minimize this danger.[2] The Commission noted that it establishes maximum just and reasonable rates that the pipeline can charge for its transportation services. In addition, the regulations require pipelines to sell all available capacity to shippers willing to pay maximum rates. The Commission concluded that these regulatory requirements assure that the pipeline cannot withhold its existing capacity in order to create scarcity and thereby use its market power to force shippers to bid longer terms. Rather, the Commission found that the only way the pipeline could withhold capacity to force shippers to accept long-term contracts would be to refuse to build additional capacity that shippers are willing to purchase at just and reasonable rates.[3] The Commission determined that that would not occur because pipelines would have every incentive to build new capacity to serve increased demand, because that is the only way the pipeline could increase its current revenue and profits.[4] By imposing minimum bid terms, the pipelines are effectively refusing to sell capacity to shippers who are willing to pay maximum rates, but with reduced terms. As noted above, the minimum terms of 10 years or longer make it impossible for manufacturing demand to be met because they cannot even bid in to the open season.[5]

Finally, the Commission assumed that there were no alternatives for allocation capacity other than “first in time” versus using an unlimited term to allocate capacity to the highest value bid. The Commission did not consider options such as

[1] Id. at p.10.
[2] Id.
[3] Id.
[4] Id.
[5] While the Commission expressed the view that pipelines needed longer-term commitments to finance the pipelines, there is no record to demonstrate that a combination of long-term and shorter-term contracts would not provide adequate demand for financing purposes.

pro-rated capacity awards for all shippers who are willing to pay maximum rates for a one-to-five year terms. This would allow the pipeline to allocate some capacity to all bidders as opposed to denying access to smaller customers or customers who need the capacity but cannot enter long-term commitments beyond a term of 1-5 years.

The approach would improve access to affordable natural gas for U.S. manufacturing, while maintaining fairness for long-term pipeline investors and operators. Pipeline expansion projects would ease constraints and lower delivered natural gas costs for manufacturers. An added benefit of this would be the reduction in Operational Flow Orders in the winter.

We also recommend establishing transparent open season and capacity release rules, including a maximum 5-year term and price transparency for pipeline capacity through an open trading platform for market participants and end users to improve market function and ensure compliance with FERC's statutory obligations.

Benefits to the U.S. Economy

The proposal could provide reliability of supply, save U.S. manufacturers tens of billions of dollars per year in natural gas costs, and result in increased investment and employment as we focus on the national priority of reshoring industry. These benefits would significantly strengthen U.S. supply chains, international competitiveness, reshoring of jobs, long-term stability, and future growth. This change is needed to secure our national defense. These are the same manufacturers that produce national defense products.

Adopting this reform will serve the broader public interest. We respectfully request the Commission's consideration of this needed rule modification.

Respectfully submitted,

Paul N. Cicio
Paul N. Cicio
President & CEO

cc: The Honorable Chris Wright, Secretary of Energy
The Honorable Doug Burgum, Secretary of the Interior
Senate Committee on Energy and Natural Resources
House Committee on Energy and Commerce

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with $1.3 trillion in annual sales, over 12,000 facilities nationwide, and with more than 1.9 million employees. One hundred percent of IECA members are manufacturing companies whose competitiveness is largely determined by the cost and reliability of natural gas and electricity. IECA's sole mission is to reduce and avoid energy costs and increase energy reliability through advocacy in Congress and regulatory agencies, such as the Federal Energy Regulatory Commission (FERC). IECA membership represents a diverse set of industries including chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, consumer goods, building products, automotive, independent oil refining, and cement.