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Docket No. CEQ-2019-0002

The Honorable Mary B. Neumayr
Chairman
Council on Environmental Quality
Attn: Docket No. CEQ-2019-0002
730 Jackson Place NW
Washington, DC 20503

Re: Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions, Docket No. CEQ-2019-0002, 84 Fed. Reg. 30097 (June 26, 2019)

Dear Madam Chairman,

The American Gas Association (AGA) respectfully submits these comments in response to the Council on Environmental Quality (CEQ) notice titled “Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions” (GHG) and published in the Federal Register on June 26, 2019. AGA appreciates the opportunity to comment on this draft guidance and supports the balanced approach taken by CEQ. If implemented, the draft Guidance will help clarify how federal agencies should consider the GHG emissions impacts of major project permitting decisions when conducting environmental reviews under the National Environmental Policy Act (NEPA).

The American Gas Association, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 74 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent — more than 71 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies and industry associates. Today, natural gas meets more than one-fourth of the United States' energy needs.

Natural gas utilities nationwide add, on average, nearly 630,000 customers each year, or one customer every minute. More homes and business in the United States use natural gas today than ever before, and the numbers continue to increase. In order to meet this increasing demand, AGA members require regulatory certainty to maintain existing infrastructure and develop new infrastructure. Streamlining and clarifying the permitting and environmental review process will help facilitate the environmentally-responsible construction of natural gas infrastructure and help AGA members provide timely, safe, reliable and affordable service to the 178 million Americans that enjoy the benefits of natural gas and the millions more that want it, but do not yet have access.

Uncertainty about when and how agencies should address GHG emissions in NEPA documents has contributed to delays in the permitting of important infrastructure projects and resulted in costly and time-

consuming litigation. CEQ's previous guidance regarding GHG emissions, issued in 2016,¹ was fundamentally flawed and was appropriately withdrawn in April 2017.² AGA believes that this draft Guidance will help reduce uncertainty for agencies and project proponents and advance the priorities identified in Executive Order 13868, which emphasize the need to "promote efficient permitting processes and reduce [the] regulatory uncertainties that currently make energy infrastructure projects expensive and discourage new investment,"³ in a manner consistent with the NEPA statute and without compromising environmental protection.

AGA is pleased that the draft Guidance responds favorably to several issues raised in joint AGA-INGAA comments filed on August 20, 2018 on CEQ's Advance Notice of Proposed Rulemaking to Revise Regulations Concerning the National Environmental Policy Act.⁴ Specifically, AGA supports CEQ's effort to focus federal agencies' GHG analysis on those impacts that are reasonably foreseeable, not overly speculative, and that have a sufficiently close causal relationship to the proposed action or permitting decision. Additionally, AGA is pleased that the draft guidance provides federal agencies the flexibility to use either quantitative or qualitative means to assess GHG impacts, depending on whether GHG emissions "are substantial enough to warrant quantification, and when it is practicable to quantify them using available data and GHG quantification tools." Finally, AGA is pleased that the draft Guidance recognizes that neither NEPA nor CEQ's implementing regulations require agencies to monetize costs and benefits of a proposed action. Specifically, AGA supports CEQ's determination that Social Cost of Carbon estimates, developed as macro-level assessment tools for broad rulemaking purposes, were not intended for socio-economic analysis under NEPA or for decision-making on individual actions, and are not required under NEPA. This determination should help minimize distortions in the federal permitting process, particularly minor natural gas line or compressor station projects.

Although AGA generally supports CEQ's proposed guidance, the following recommendations are offered to provide additional clarity and help ensure consistent implementation across federal agencies:

Recommendation 1: Part II.A of the Guidance provides that when determining the bounds of the NEPA analysis, "impacts of a proposed action should be discussed in proportion to their significance, and there should only be brief discussion of issues that are not significant."⁵ Moreover, the draft Guidance appropriately provides that agencies preparing NEPA documents "need not give greater consideration to potential effects from GHG emissions than to other potential effects on the human environment."⁶ The Guidance also provides that "[a]gencies should attempt to quantify a proposed action's projected direct and reasonably foreseeable indirect GHG emission when the amount of those emissions is substantial enough to warrant quantification, and when it is practicable to quantify them using

¹ 81 Fed. Reg. 51,866 (Aug. 5, 2016).

² 82 Fed. Reg. 16,576 (Apr. 5, 2017).

³ 84 Fed. Reg. 15,495 (Apr. 10, 2019).

⁴ 83 Fed. Reg. 28,591 (June 20, 2018), Docket No. CEQ-2018-0001.

⁵ See 84 Fed. Reg. 30,097, 30,098 (June 26, 2019).

⁶ *Id.*

available data and GHG quantification tools.”⁷ This approach is consistent with NEPA regulations and case law and should enable agencies to gain efficiencies in their NEPA processes by appropriately focusing their efforts on impacts determined to be significant.⁸ Although footnote 5 of the draft Guidance provides useful information identifying available GHG accounting tools and methods that agencies may consider using in their NEPA analysis, AGA suggests that CEQ provide additional clarity to federal agencies regarding how CEQ envisions its guidance being applied (e.g., by including examples of how federal agencies should assess significance).

Recommendation 2: The phrase “rule of reason” factors prominently in the draft Guidance, particularly in Part II.A. This phrase is commonly used, with varying meanings, in many areas of the law, including antitrust law, copyright law, and environmental law. In some cases, judges use the phrase broadly to indicate simply that a standard of “reasonableness” is being applied to the matter at hand. CEQ should include in its Guidance, for the benefit of federal agencies, project proponents, and the public, additional background on the “rule of reason” as applied to NEPA, including references to the leading U.S. Supreme Court cases on the NEPA “rule of reason” and the D.C. Circuit case that emphasizes the “overarching importance” of the rule of reason in NEPA cases. Specifically, AGA recommends adding the following sentence at the end of footnote 4: “For additional information regarding the “rule of reason” that bounds all NEPA analysis, see Dept. of Transportation v. Public Citizen, 541 U.S. 752 (2004); Marsh v. Oregon Natural Resources Council, 490 U.S. 360 (1989); and Friends of Capital Crescent Trail v. Federal Transit Administration, 877 F. 3rd 1051, 1062 (D.C. Cir. 2017)(emphasizing Marsh’s “rule of reason” as “the overarching principle governing judicial review of NEPA.”)”

Recommendation 3: In part II.A of the Guidance, CEQ states that agencies “need not undertake new research or analysis of potential climate effects and may rely on available information and relevant scientific literature.”⁹ As currently drafted, this sentence may create the impression that, unlike scientific literature, other “information” need not be relevant. AGA recommends inserting “relevant” after “available” in the sentence noted above. This change clarifies that federal agencies should only rely on “relevant information” and “relevant scientific literature.”

Recommendation 4: Part II.A of the Guidance appropriately provides that “a projection of a proposed action’s direct and reasonably foreseeable indirect GHG emissions may be used as a proxy for assessing potential climate effects.” The Guidance then goes on to provide the definitions of direct and indirect effects from CEQ’s NEPA regulations. The CEQ Guidance goes on to state:

⁷ *Id.*

⁸ See 40 C.F.R. 1508.8 (describing “indirect effects” as effects “which are caused by the action and are later in time or farther removed in distance, but still reasonably foreseeable.”).

⁹ 84 Fed. Reg. 30,098.

Where GHG inventory information is available, an agency may also reference local, regional, national, or sector-wide emission estimates to provide context for understanding the relative magnitude of a proposed action's GHG emissions. This approach, together with a qualitative summary discussion of the effects of GHG emissions based on an appropriate literature review, allows an agency to present the environmental impacts of a proposed action in clear terms and with sufficient information to make a reasoned choice among the alternatives.

AGA supports a uniform and streamlined approach to considering GHG emissions in NEPA reviews when those emissions constitute direct or indirect effects. AGA also agrees that agencies should not be required to quantify GHG emissions where doing so would be impracticable, speculative, or based on insubstantial emissions.¹⁰ Although CEQ should not limit agency discretion to determine when quantification would be impracticable or speculative, AGA recommends including examples in the Guidance to provide reference points for agencies, project proponents, and the public.

Recommendation 5: Footnote 6 of the draft Guidance currently consists of a short excerpt from 40 CFR 1502.23 and states “Section 1502.23 of the CEQ regulations also provides that monetary cost-benefit analysis ‘should not be [used] when there are important qualitative considerations.’” This partially restated statement may leave readers with the incorrect impression that CEQ broadly discourages the use of monetary cost-benefit analysis. Although CEQ is right to discourage use of Social Cost of Carbon estimates, CEQ should take care not to discourage agencies from using cost-benefit analysis, where appropriate, more generally. When 40 CFR 1502.23 is read in its entirety, it is apparent that the regulation is neutral about cost-benefit analysis, leaving decisions about its use to agency discretion. Therefore, AGA recommends that CEQ quote 40 CFR 1502.23 in full in footnote 6 in order to minimize any misunderstanding or confusion regarding the use of cost-benefit analysis in NEPA documents. Additionally, CEQ should highlight Executive Order 13783, sec. 5(a), which requires any cost-benefit estimates used in regulatory analysis be based on the best available science and economics.

Recommendation 6: When a federal agency determines that quantification of greenhouse gas emissions would be practicable and meaningfully inform the agency's decision-making, agency practice should be to streamline the quantification of GHG emissions and corresponding analysis to the extent possible under existing law and regulation. AGA commends CEQ for identifying a wide array of tools available to agencies to streamline these considerations in their draft Guidance. However, AGA recommends that CEQ require agencies to evaluate whether use of any of those tools would result in more efficient NEPA reviews. If certain tools would result in a more streamlined, consistent, and efficient process, agencies should amend their regulations implementing NEPA to require the use of those tools.

¹⁰ See, e.g., *Inland Empire Pub. Lands Council v. U.S. Forest Serv.*, 88 F.3d 754, 764 (9th Cir. 1996) (“NEPA does not require the government to do the impractical.”).

Our member natural gas pipeline and local distribution companies rely on timely, transparent federal permits and reviews to meet their construction, maintenance, emergency repair, replacement, and pipeline safety goals. This draft Guidance, with incorporation of the recommendations noted above, should improve the federal infrastructure permitting process by clarifying that detailed, time-consuming, and costly analysis of speculative and remote GHG effects is not required under NEPA. At the same time, this Guidance will provide a balanced and workable framework that enables federal agencies to adequately consider the potential impacts of GHG emissions resulting from proposed actions. Finally, AGA encourages CEQ to continue its work to improve the NEPA process by improving agency accountability, reducing the time and cost of completing environmental reviews, and providing predictability in review schedules.

AGA shares CEQ's commitment to environmental stewardship and appreciates the opportunity to comment on this proposed Guidance. If you have any questions, please contact me or Pam Lacey, AGA Chief Regulatory Counsel, at placey@aga.org.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'TP' followed by a long horizontal stroke.

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