

Administrator Michael Regan  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

cc: Brenda Mallory, Chair, White House Council on Environmental Quality  
cc: John Podesta, Senior Advisor to the President for Clean Energy Innovation and Implementation  
cc: Ali Zaidi, White House National Climate Advisor

Re: Urging EPA to Refer FERC's Approval of the GTN Xpress Pipeline Project to CEQ

Dear Administrator Regan,

We, the undersigned organizations, urge you to refer the Federal Energy Regulatory Commission's ("FERC's") approval of the GTN Xpress Pipeline Project (Docket No. CP22-2-000) to the White House Council on Environmental Quality ("CEQ"). Specifically, we urge you to make an explicit determination that FERC's National Environmental Policy Act ("NEPA") analysis and conclusions were unsatisfactory from the standpoint of public health, welfare or environmental quality, to publish that determination, and to refer that determination to CEQ, requesting that no action be taken to implement the project until CEQ acts upon the referral.<sup>1</sup>

The GTN Xpress Project, proposed by Gas Transmission Northwest LLC ("GTN"), a wholly owned subsidiary of Canadian pipeline company TC Energy, would expand the capacity of GTN's existing natural gas pipeline system by 150 million standard cubic feet of gas per day through modifying three compressor stations in Idaho, Oregon, and Washington. GTN has entered into agreements with three natural gas companies to supply that additional quantity of gas through the mid-2050s, notwithstanding the decarbonization commitments of Oregon, and Washington, along with neighboring California, and the extensively documented harms of methane combustion for people and our global climate's stability.<sup>23</sup>

The Environmental Protection Agency ("EPA") has the clear legal authority to refer this project's approval to CEQ under Section 309 of the Clean Air Act. Section 309 requires the EPA Administrator to review the environmental impact of major federal agency actions, and if an action is "unsatisfactory from the standpoint of public health or welfare or environmental quality," to publish that determination and

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<sup>1</sup> "Referral of inter-agency disagreements to CEQ under the National Environmental Policy Act," December 2016, <https://ceq.doe.gov/docs/nepa-practice/referrals-to-ceq-dec-2016.pdf>

<sup>2</sup> See the "Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking and Associated Gas and Oil Infrastructure," Ninth Edition, October 2023 for extensive documentation of the harms of natural gas extraction, transportation, and combustion. <https://concernedhealthny.org/wp-content/uploads/2023/10/CHPNY-Fracking-Science-Compendium-9.pdf>

<sup>3</sup> California joined Washington and Oregon in filing a joint motion to intervene and protest the GTN Xpress Project because the GTN Xpress Project would potentially also affect Northern California customers, and contravene California climate legislation. See Joint Motion to Intervene and Protest, Docket No. CP22-2 at page 22. [https://oag.ca.gov/system/files/attachments/press-docs/20220822-5118\\_2022.08.22\\_MotToInterveneAndProtest.pdf](https://oag.ca.gov/system/files/attachments/press-docs/20220822-5118_2022.08.22_MotToInterveneAndProtest.pdf)

refer the matter to CEQ.<sup>4</sup> EPA's authority is not time-barred, nor is it limited by the post-decisional stage of the process.<sup>5</sup> Previously, in 1996, EPA referred a final FERC rule to CEQ, and through that referral process attained a mutually satisfactory resolution, according to CEQ's resolution letter of June 14, 1996.<sup>6</sup> FERC is bound to comply with NEPA, and EPA plays a unique role in facilitating and advising on other agencies' NEPA procedures, while CEQ is charged with overseeing NEPA implementation. As this letter explains, it is necessary that EPA and CEQ step in to rectify FERC's clear violation of its obligations under NEPA and undermining of state-level climate laws.

EPA has already identified "environmental concerns and deficiencies in the NEPA analysis" of FERC's DEIS on August 18, 2022, and "identified remaining environmental concerns" in its review of the FEIS on December 15, 2022 which were not ultimately addressed, as EPA recommended they be, in the Record of Decision.<sup>7</sup> Consequently, we urge EPA to follow the steps outlined in its referral package procedures and prepare a letter and accompanying statement which describe why the project is unsatisfactory from the standpoint of public health or welfare or environmental quality, the steps that EPA recommended FERC take as cooperating agency which FERC refused to take, and EPA's remaining recommendations.<sup>8</sup>

We urge EPA to refer this decision to CEQ on several counts: the project's enormous social costs to society; its resultant emissions making existing state-level climate commitments impossible to meet; FERC's stark failure to meet its statutory obligations under NEPA, which includes its refusal to consider several of EPA's recommendations as a cooperating agency; and for its inconsistency with CEQ NEPA guidance.

## **The GTN Xpress Project Imposes Massive Costs on Society**

First, the approved increase in pipeline capacity is undeniably unsatisfactory from the standpoint of public health, welfare, and environmental quality.

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<sup>4</sup> U.S. Government Publishing Office, Clean Air Act § 309, <https://www.govinfo.gov/content/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapIII-sec7609.htm>

<sup>5</sup> EPA Policies And Procedures For The Review Of Major Federal Actions With Environmental Impacts, September 26, 2023, <https://www.epa.gov/system/files/documents/2023-09/309-nepa-policy-and-procedures-manual-9-26-23.pdf>; Interior Department's Bureau of Indian Affairs NEPA Guidebook, Section 11.4, August 2012, [https://www.bia.gov/sites/default/files/dup/assets/public/raca/handbook/pdf/59\\_IAM\\_3-H\\_v1.1\\_508\\_OIMT.pdf](https://www.bia.gov/sites/default/files/dup/assets/public/raca/handbook/pdf/59_IAM_3-H_v1.1_508_OIMT.pdf).

<sup>6</sup> Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations for Fiscal Year 1997: Hearings Before a Subcommittee of the Committee on Appropriations, United States Senate, One Hundred Fourth Congress, Second Session, on H.R. 3666 ... Corporation for National and Community Service ... Nondepartmental Witnesses. United States: U.S. Government Printing Office, 1997. [https://www.google.com/books/edition/Departments\\_of\\_Veterans\\_Affairs\\_and\\_Hous/FcL\\_nQwVSGwC?hl=en&gbpv=0](https://www.google.com/books/edition/Departments_of_Veterans_Affairs_and_Hous/FcL_nQwVSGwC?hl=en&gbpv=0)

<sup>7</sup> August 18, 2022 letter, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220818-5151&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220818-5151&optimized=false); December 15, 2022 letter, <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/details;jsessionid=FC126E3E508B63EE2B524A0BF1186A51?downloadAttachment=&attachmentId=387034>

<sup>8</sup> EPA Policies And Procedures For The Review Of Major Federal Actions With Environmental Impacts, <https://www.epa.gov/system/files/documents/2023-09/309-nepa-policy-and-procedures-manual-9-26-23.pdf>

As fossil fuel combustion is the primary contributor to the greenhouse gasses causing climate change, phasing out fossil fuel combustion as rapidly as possible is a policy imperative agreed upon by an overwhelming consensus of climate scientists.<sup>9</sup> We are in the midst of a crucial handful of years in which—by concerted action to reduce greenhouse gas emissions—we can still avoid locking in the worst impacts of climate change. The President himself has called climate change an “existential threat.”<sup>10</sup> It is at this juncture in history that the Federal Energy Regulatory Commission (FERC) is failing the public by refusing to deny the oil and gas industry its desired expansion, even as this expansion will cause irreversible harm to the American people.

FERC’s final environmental impact statement (EIS) for the GTN Xpress Project estimated that its downstream emissions would result in at least 1.9 million more metric tons of greenhouse gas pollution per year over the next 30 years.<sup>11</sup> This number is an undercount, as it arbitrarily failed to include estimated downstream emissions from the 51,000 dekatherms of gas per day that Canadian natural gas producer Tourmaline has contracted from GTN Xpress for the next 33 years.<sup>12</sup> FERC’s draft EIS previously included the downstream emissions from Tourmaline’s gas, and estimated that the GTN Xpress Project would result in 3.24 million more metric tons of downstream greenhouse gas emissions annually over the next 30 years; including operational emissions increases the estimate to 3.47 million metric tons annually, excluding upstream emissions.<sup>13</sup>

FERC’s estimate also failed to make use of established methodologies for estimating emissions from upstream natural gas production, as the Senators from Washington, Oregon, and California pointed out when urging FERC to reject the project.<sup>14</sup> EPA also raised this issue, informing FERC that “EPA continues to be concerned with the omission of upstream emissions as it may potentially be underestimating the SC-GHG impacts by the proposed project by several hundred million to over a billion dollars (depending on which discount rate for the SC-GHG is used),” but FERC failed to respond to this concern.<sup>15</sup>

FERC’s draft EIS estimated that this project’s operation and downstream emissions would increase Idaho’s emissions by 16 percent, Washington’s emissions by 3.8 percent, and Oregon’s emissions by 7.7

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<sup>9</sup> IPCC Sixth Assessment Report Working Group III: Mitigation of Climate Change, 2022. See Summary for Policymakers at C.4, “Reducing GHG emissions across the full energy sector requires major transitions, including a substantial reduction in overall fossil fuel use.” <https://www.ipcc.ch/report/ar6/wg3/>

<sup>10</sup> Fabian, Jordan, and Akayla Gardner. “Biden Says Climate Change Poses Greater Threat than Nuclear War.” *Bloomberg*, September 10, 2023. <https://www.bloomberg.com/news/articles/2023-09-10/biden-says-climate-change-poses-greater-threat-than-nuclear-war>

<sup>11</sup> Final Environmental Impact Statement for Gas Transmission Northwest LLC's GTN Xpress Project under CP22-2 at 4-50, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20221118-3019](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20221118-3019)

<sup>12</sup> Order Issuing Certificate on page 8, <https://www.ferc.gov/media/c-1-cp22-2-000>

<sup>13</sup> Draft Environmental Impact Statement for Gas Transmission Northwest LLC's GTN Xpress Project under CP22-2 at ES-3, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220630-3067](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220630-3067)

<sup>14</sup> Comments of US Senator Maria Cantwell et al. in opposition of the GTN Xpress Pipeline Expansion Project under CP22-2, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20230914-4005](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20230914-4005)

<sup>15</sup> December 15, 2022 letter, <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/details;jsessionid=FC126E3E508B63EE2B524A0BF1186A51?downloadAttachment=&attachmentId=387034>

percent based on state emissions in 2019.<sup>16</sup> After FERC’s final EIS arbitrarily excluded downstream emissions from Tourmaline’s commitment of gas from consideration, it brought down those estimates to an 8.4 percent emissions increase in Idaho, a 0.8 percent increase in Washington, and a 1.3 percent increase in Oregon based on 2020 levels.<sup>17</sup> Even this arbitrarily partial estimate indicates a significant increase in statewide emissions; and the fuller estimate from the draft EIS indicates even more extensive harm.

This project clearly undermines legally binding state-level decarbonization commitments. FERC superficially acknowledged these commitments, including Washington’s commitment to reduce greenhouse gasses by 95 percent by 2050, and Oregon’s commitment to reduce emissions by 75 percent of 1990 levels by 2050, but failed to respect them as law.<sup>18</sup> The attorneys general of Washington, Oregon, and California warned that “if GTN continues business as usual with its pipeline in 2050, that would represent 48 percent of the region’s target GHG emissions *from all sources*.”<sup>19</sup>

The Senators from Washington and Oregon unanimously urged FERC to reject this project on the grounds that it was inconsistent with their states’ laws. “Put simply, there is no way that our states can meet their emissions goals if this project moves forward,” the lawmakers wrote.<sup>20</sup> Washington Governor Jay Inslee also informed FERC that “expanding GTN’s pipeline is inconsistent with our state laws to address climate change.”<sup>21</sup> Inslee added: “These laws are not abstract visions. They establish concrete deadlines and enforceable obligations to reduce our emissions. GTN’s project ignores these laws and pushes in the wrong direction.”<sup>22</sup> Oregon Governor Tina Kotek likewise told the agency, “I do not believe it can comply with Oregon’s clean energy laws and regulations.”<sup>23</sup> But FERC is apparently willing to sacrifice the viability of existing, enforceable state-level climate policies for a Canadian natural gas company’s profits.

Not only is the project in direct conflict with states’ binding emissions reduction targets, but it also undermines tribal governments’ decarbonization commitments. The Columbia River Inter-Tribal Fish Commission wrote that “if FERC had properly consulted with the tribes of the region, it would be informed of these conflicts and may have provided a robust analysis of potential impacts.”<sup>24</sup> That criticism was made in August 2022 in relation to FERC’s draft EIS. Still, there is no evidence that FERC subsequently had government-to-government consultation with affected tribes before making its decision;

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<sup>16</sup> Draft Environmental Impact Statement at 4-45.

<sup>17</sup> Final Environmental Impact Statement at 4-48 to 4-49.

<sup>18</sup> Final Environmental Impact Statement at 4-49.

<sup>19</sup> Joint Motion to Intervene and Protest by the States of Washington, Oregon and California under CP22-2, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220822-5118](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220822-5118)

<sup>20</sup> Comments of US Senator Jeffrey Merkley et al. in opposition of the GTN Xpress Pipeline Project under CP22-2, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20231020-4001](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20231020-4001)

<sup>21</sup> Comments of Washington State Governor Jay Inslee re the GTN Xpress Project under CP22-2, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20230313-4005](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20230313-4005)

<sup>22</sup> *Id.*

<sup>23</sup> Comment of Oregon State Governor Tina Kotek opposing re GTN Xpress Project under CP22-2, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20230616-4002](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20230616-4002)

<sup>24</sup> Columbia River Inter-Tribal Fish Commission comment under CP22-2, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220822-5155](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220822-5155)

FERC did not mention government-to-government consultation in its discussion of tribal outreach in the final EIS.<sup>25</sup>

FERC's arbitrary exclusion of downstream emissions from Tourmaline's gas from its final EIS analysis also constrained its estimate of the social cost of greenhouse gas emissions from this project. While its draft EIS calculated the social cost to be approximately \$12.3 billion,<sup>26</sup> its final EIS estimated it to be \$8.8 billion.<sup>27</sup> Even after FERC deliberately weakened its own analysis, the estimated costs to society of this project remain astronomical.

As the Senators from Washington, Oregon, and California explained in a recent letter to FERC, the project would "likely saddle West Coast ratepayers with a substantial portion of project costs, even for customers that would not benefit from the project."<sup>28</sup> The lawmakers cautioned that "the total costs of expanding the pipeline appear to be obfuscated by the developer according to Motions to Intervene by two major utilities and other stakeholders, and may actually exceed the resulting revenues, which may benefit the pipeline owner but not the public."<sup>29</sup> Furthermore, they continued, "it appears GTN plans to recover project costs for several decades after our states have legally binding commitments to decarbonize, likely leaving a significantly diminished customer base to recover a concentrated level of outstanding project costs."<sup>30</sup>

Moreover, it is crucial to note that TC Energy and its subsidiaries, including GTN, have routinely failed to construct and maintain safe pipelines.<sup>31</sup> Since 2003, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) has initiated five Notice of Probable Violation cases, three Notice of Amendment cases, and nine Warning Letter cases against GTN.<sup>32</sup> Since 2011, PHMSA has initiated 23 cases against TC Energy and issued five Corrective Action Orders.<sup>33</sup> TC Energy's Keystone pipeline has spilled hundreds of thousands of gallons of oil in recent years, polluting waterways and other ecosystems across North America. A major failure of the sprawling system on December 7, 2022, released nearly 13,000 barrels of crude onto farmland and a creek in northeastern Kansas.<sup>34</sup> More recently, TC Energy's Columbia Gas Transmission pipeline in western Virginia (Line VB)

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<sup>25</sup> Final Environmental Impact Statement at 4-17.

<sup>26</sup> Draft Environmental Impact Statement at 4-47.

<sup>27</sup> Final Environmental Impact Statement at 4-51.

<sup>28</sup> Comments of US Senator Maria Cantwell et al. in opposition of the GTN Xpress Pipeline Expansion Project under CP22-2, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20230914-4005](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20230914-4005)

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Comments of Pipeline Safety Trust under CP22-2, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20230329-5179](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20230329-5179)

<sup>32</sup> PHMSA, Summary of Enforcement Actions: Gas Transmission Northwest LLC, [https://primis.phmsa.dot.gov/comm/reports/enforce/Actions\\_opid\\_15014.html](https://primis.phmsa.dot.gov/comm/reports/enforce/Actions_opid_15014.html)

<sup>33</sup> PHMSA, Federal Enforcement Data: TC Oil Pipeline Operations Inc., [https://primis.phmsa.dot.gov/comm/reports/operator/OperatorIE\\_opid\\_32334.html](https://primis.phmsa.dot.gov/comm/reports/operator/OperatorIE_opid_32334.html)

<sup>34</sup> PHMSA, Amended Corrective Action Order, In the Matter of TC Oil Pipeline Operations, Inc., CPF No. 3-2022-074-CAO (Mar. 7, 2022) [https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2023-03/TC%20Oil%20Pipeline%20-%202022074CAO\\_Amended%20Corrective%20Action%20Order\\_03072023\\_\(22-261792\).pdf](https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2023-03/TC%20Oil%20Pipeline%20-%202022074CAO_Amended%20Corrective%20Action%20Order_03072023_(22-261792).pdf)

exploded on July 25, 2023, ejecting 250 feet of pipe from the ground and causing a fire that burned for hours.<sup>35</sup>

In a letter calling on FERC to reject the GTN Xpress Project, the Pipeline Safety Trust called GTN's request to increase the amount of gas flowing through its pipelines "extremely concerning."<sup>36</sup> According to the Trust: "Higher pressure systems leak more gas, and incidents on higher pressure lines release more methane into the environment, given the greater amount of methane in a higher pressure pipeline, all else being equal, and have [a] larger 'blast zone' in the case of explosion. Further, compressor stations like those planned for use on this project increase the total emissions of the pipeline because compressors are prone to leaks and are gas-fired systems themselves."<sup>37</sup>

Notably, the GTN system contains decades-old pipes that are significantly larger in diameter than the decades-old, 26-inch pipe that ruptured in Virginia; thus, the consequences of a failure would be exacerbated.<sup>38</sup> Making matters worse, the GTN pipeline system traverses a region where existing wildfire risks are already high and only projected to grow as the fossil fuel-driven climate crisis intensifies, bringing hotter and drier conditions to the area.<sup>39</sup> Representative Earl Blumenauer of Oregon told FERC that a pipeline explosion "would be catastrophic in our region."<sup>40</sup> The States of Washington, Oregon, and California accused FERC of ignoring "the realities of the arid West, where wildland fire threatens the rangelands and sagebrush steppe ecosystem that surround the Starbuck and Kent Compressor Stations."<sup>41</sup> But this was to no avail, underscoring the need for EPA intervention.

## **FERC Willfully Undermined The Intent Of Environmental Review Under NEPA**

We further urge EPA to refer this decision to CEQ because FERC's environmental impact analysis under the National Environmental Policy Act (NEPA) is stunningly inadequate.

FERC did not even attempt to address the EPA's recommendations for preparing its environmental impact statement (EIS). As a cooperating agency in preparing the EIS for this project, EPA made several recommendations that FERC characterized as "including how the public's need for energy services (e.g., electricity generation and building heating) would be met with and without the Project; the extent to

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<sup>35</sup> PHMSA, Corrective Action Order, In the Matter of Columbia Gas Transmission, LLC, CPF No. 1-2023-051-CAO (Jul. 28, 2023) [https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2023-07/Columbia%20Gas%20Transmission\\_CAO\\_12023051\\_07282023.pdf](https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2023-07/Columbia%20Gas%20Transmission_CAO_12023051_07282023.pdf)

<sup>36</sup> Comments of Pipeline Safety Trust under CP22-2, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20230329-5179](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20230329-5179)

<sup>37</sup> *Id.*

<sup>38</sup> The GTN pipeline consists of two parallel pipes that are 36- and 42-inches in diameter. See NGI Staff Reports, "PG&E Gas Transmission Puts New Line in Service, Files 2003 Expansion." *Natural Gas Intelligence* (2001). <https://www.naturalgasintel.com/pge-gas-transmission-puts-new-line-in-service-files-2003-expansion-2/>

<sup>39</sup> USDA, "Climate Change and Wildfire in Idaho, Oregon, and Washington." <https://www.climatehubs.usda.gov/hubs/northwest/topic/climate-change-and-wildfire-idaho-oregon-and-washington>

<sup>40</sup> Comments of US Representative Earl Blumenauer requesting that FERC reject TC Energy's request for a Certificate of Public Convenience and Necessity for the Gas Transmission Northwest Express Pipeline Expansion Project under CP22-2, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20230918-4012](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20230918-4012)

<sup>41</sup> Joint Comments on Draft Environmental Impact Statement by the States of Washington, Oregon, and California under CP22-2, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220822-5123](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220822-5123)

which existing renewable and fossil fuel energy facilities at current production levels are able to supply regional users' current and future needs; the inclusion of contracts that demonstrate the need for the compressor stations' proposed modifications, and an explanation of how gathering system compressor stations are scaled up in response to more wells being drilled upstream, increasing demand for compression."<sup>42</sup> FERC rejected these recommendations wholesale, stating: "these issues are outside the scope of this EIS (see Purpose and Scope of this EIS above) and are not considered further in this analysis."<sup>43</sup> EPA made additional recommendations to these, including asking FERC to "Modify the No Action Alternative, or creating a new renewable alternative, to consider and evaluate non-gas energy alternatives that satisfy the ultimate need for the Project, specifically the energy services that would be provided by the Project," which FERC refused to address.<sup>44</sup>

FERC's conspicuous refusal to prioritize the public interest over the project applicant's wishes actively undermines the spirit and intent of NEPA. The stated goal of NEPA is to ensure that the federal government takes seriously its "continuing responsibility" to "use all practicable means" to "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations."<sup>45</sup> It requires the government to make choices that "prevent or eliminate damage to the environment and biosphere," recognizing "the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man."<sup>46</sup>

In stark contrast, FERC does not consider any purpose and need but that of the project developer in its environmental impact statement. "The purpose of this Project is to increase the capacity of GTN's existing natural gas transmission system," FERC stated. "An alternative that does not increase the capacity of GTN's natural gas transmission system is not a reasonable alternative because it does not meet the purpose of the Project; and is therefore, not considered in this EIS."<sup>47</sup> Though FERC acknowledged that "commentors request that alternative energy services that would be provided by the delivered fuel should be considered," FERC refused to consider the energy needs of the public, and whether they could be otherwise fulfilled by alternative sources of energy, because the only need that FERC will consider is the stated need of GTN to expand its pipeline's capacity.<sup>48</sup>

This is a clear circumvention of NEPA's requirements. NEPA does not ask federal agencies to be the stewards of corporate developers' wishes; it asks every federal agency to ensure that it is acting as a trustee of the environment for the American public, and preserving its integrity for future generations. **In admitting that it would only consider alternatives that meet the developer's goals, FERC has essentially confessed to intentionally violating NEPA. EPA must take action.** Under the Obama Administration, the U.S. Department of the Interior referred an Army Corps of Engineers ("Army Corps") action to CEQ in part because of the Army Corps' failure to consider less harmful alternatives

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<sup>42</sup> Final Environmental Impact Statement at 1-4 to 1-5.

<sup>43</sup> *Id.* at 1-5.

<sup>44</sup> Comments of Environmental Protection Agency Region 10 on the Draft Environmental Impact Statement for the GTN XPress Project under CP22-2, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220818-5151&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220818-5151&optimized=false)

<sup>45</sup> National Environmental Policy Act of 1969, Public Law 91-190, As Amended Through Public Law 118-5, Enacted June 3, 2023, <https://www.govinfo.gov/content/pkg/COMPS-10352/pdf/COMPS-10352.pdf>

<sup>46</sup> *Id.*

<sup>47</sup> Final Environmental Impact Statement at 3-1.

<sup>48</sup> *Id.*

recommended by its cooperating agencies, insisting that “only the preferred alternative provides the agricultural benefits that are driving the project and is acceptable to the project sponsor.”<sup>49</sup> There is precedent for referring agencies to raise their concerns with lead agencies’ problematic preferencing of developer interest over the public interest to the level of CEQ. The EPA should do so here.

FERC’s prioritization of developer interest over the public interest extends to its disregard of state laws as well. FERC argued that because GTN has “entered long-term precedent agreements with shippers for 100% of the project’s capacity,” such “precedent agreements for 100% of the project’s capacity are significant evidence of the need for the proposed project.”<sup>50</sup> Meanwhile, FERC refused to take Washington and Oregon’s existing, legally enforceable commitments to decarbonize their energy supply over the next thirty years—the same period as those long-term precedent agreements—as constituting significant evidence of a *lack* of need for the proposed project.

FERC’s myopic commitment to a Canadian energy company’s view of what is necessary for energy consumers in U.S. states whose laws directly contravene that company’s view is unjustifiable. Moreover, the fact that corporations are routinely securing investments in unnecessary fossil energy infrastructure is precisely why estimates of future stranded energy assets are so massive. One landmark study from 2022 estimated that “global stranded assets as present value of future lost profits in the upstream oil and gas sector exceed US \$1 trillion under plausible changes in expectations about the effects of climate policy.”<sup>51</sup> Projects like the GTN Xpress Project are likely to number among those future stranded assets, and the costs associated with them will be unfairly and disproportionately borne by the public. As Washington, Oregon, and California pointed out in their Joint Motion to Intervene and Protest, “[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 of methane.”<sup>52</sup>

### **FERC’s Actions Are Inconsistent With CEQ Guidance**

CEQ’s interim guidance for agencies on how to take greenhouse gas and climate change impacts into account when fulfilling their NEPA requirements came into immediate effect in January 2023.<sup>53</sup> FERC’s final environmental impact statement failed to properly implement several tenets of this guidance, and so its decision warrants referral to CEQ on these grounds as well.

As discussed above, FERC refused to calculate upstream emissions and only quantified some of the downstream emissions from this project. CEQ’s guidance told agencies to use appropriate data and methodology to calculate environmental impact, to compare emissions across alternate scenarios, and to

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<sup>49</sup> Referral Letter from Sally Jewell, Secretary of the Interior, to Christy Goldfuss, Managing Director of CEQ, December 6, 2016, <https://ceq.doe.gov/docs/nepa-practice/DOI-letter-to-ceq-12.6.16.pdf>

<sup>50</sup> Order Issuing Certificate.

<sup>51</sup> Semieniuk, G., Holden, P.B., Mercure, JF. et al. Stranded fossil-fuel assets translate to major losses for investors in advanced economies. *Nat. Clim. Chang.* 12, 532–538 (2022). <https://doi.org/10.1038/s41558-022-01356-y>

<sup>52</sup> Joint Motion to Intervene and Protest by the States of Washington, Oregon and California under CP22-2, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220822-5118](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220822-5118)

<sup>53</sup> Guidance: National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, presented by the Council on Environmental Quality on Jan. 9, 2023. <https://www.regulations.gov/document/CEQ-2022-0005-0001>

place emissions calculations in relevant context around climate goals.<sup>54</sup> FERC failed to fulfill the first step, which is to fully account for the cumulative emissions that may result from the project. Though FERC superficially included a no project alternative in its EIS, it did not actually consider that as a viable alternative, because it refused to consider any alternative that might hinder the developer's stated interests, even if those alternatives could better serve the public interest and reduce the project's harms. FERC also failed to meaningfully consider the emissions in the context of state and federal climate commitments,<sup>55</sup> flagrantly ignoring the arguments of elected officials from multiple states that FERC's approval of this project would undermine their states' climate commitments.

FERC also ignored CEQ's guidance on environmental justice impacts and communities. FERC's EIS recognized that potential impacts from air pollutants to environmental justice communities associated with the Athol and Starbuck Compressor Stations to be disproportionately high and adverse.<sup>56</sup> Though CEQ guidance "recommends that agencies regularly engage environmental justice experts and leverage the expertise of the White House Environmental Justice Interagency Council to identify approaches to avoid or minimize adverse effects on communities of color and low-income communities," FERC failed to act as though it were obliged to avoid or minimize adverse effects, holding itself more accountable to the energy company's concerns than impacted communities.<sup>57</sup>

For all these reasons, and for many more expressed by commenters in public filings to FERC's docket, this decision is an egregious affront to the public interest of communities in the Pacific Northwest, and undercuts the elected officials responsible for overseeing legally binding state-level climate commitments in Washington and Oregon, as well as the affected tribal governments who FERC failed to properly consult. It is imperative that the EPA recognize its authority and duty to refer FERC's decision to the Council on Environmental Quality. Especially as FERC admitted that it would only consider alternatives that fulfilled the developer's goals, expressly violating the spirit and requirements of NEPA, the public urgently needs the EPA and CEQ to step in.

Sincerely,

Revolving Door Project  
Center for Biological Diversity  
Columbia Riverkeeper  
Friends of the Earth  
1000 Grandmothers for Future Generations  
198 methods  
1st UU of Detroit  
350 Bay Area Action  
350 Colorado  
350 Deschutes  
350 Hawaii

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<sup>54</sup> NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, Section IV-A.

<sup>55</sup> NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, Section IV-B-2.

<sup>56</sup> Final Environmental Impact Statement at 4-33.

<sup>57</sup> NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, Section VI-E.

350 Mass  
350 PDX  
350.org  
Accelerate Neighborhood Climate Action  
AFGE Local 704  
Alliance of Nurses for Healthy Environments  
American Baptist Churches of the Rochester Genesee Region EcoJustice Collaborative  
Animals Are Sentient Beings, Inc.  
ARTivism Virginia  
Beyond Extreme Energy  
Beyond Toxics  
California Communities Against Toxics  
California Environmental Voters  
California Interfaith Power and Light  
Capitol Heights Presbyterian Church  
Center for Oil and Gas Organizing  
Chesapeake Climate Action Network  
Citizens Caring for the Future  
Citizens' Alliance for a Sustainable Englewood  
Clean Energy Action  
Climate Action Rhode Island-350  
Climate Action Team of the Unitarian Universalist Fellowship of Corvallis  
Climate Hawks Vote  
CO Democratic Party - Energy & Environmental Initiative  
CO Jewish Climate Action  
COCRN Colorado Community Rights Network  
Colorado Call to Action and CatholicNetwork  
Colorado Cross Disabilities Coalition  
ColorBrightonGreen  
Community for Sustainable Energy  
Concerned Health Professionals of Pennsylvania  
Corvallis Climate Action Alliance  
Corvallis Interfaith Climate Justice Committee  
Democratic Socialist of America - Knoxville, TN  
Don't Waste Arizona  
Earth Action, Inc.  
Earth Ethics, Inc.  
Earth Ministry/WA Interfaith Power and Light  
Earth Path Sanctuary  
Empower Our Future  
Endangered Species Coalition  
Environmental Protection Information Center - EPIC  
Extinction Rebellion Seattle  
Fenceline Watch

Food & Water Watch  
Fossil Free California  
Fox Valley Citizens for Peace & Justice  
FracTracker Alliance  
Fridays for Future Evansville  
Fridays for Future USA  
Fridays for Future Volusia  
Greater Park Hill Community  
Greece Baptist Church Sustainability Team  
Green House Connection Center  
Green New Deal Virginia  
GreenFaith  
Greenpeace USA  
I-70/Vasquez Blvd Citizens Advisory Committee  
Indian Point Safe Energy Coalition  
Indivisible Ambassadors  
Institute for Policy Studies Climate Policy Program  
Intheshadowofthewolf  
League of Conservation Voters  
Littleton Business Alliance  
Long Beach Alliance for Clean Energy  
Long Island Progressive Coalition  
Madhvi4EcoEthics  
Mayfair Park Neighborhood Association Board  
Media Alliance  
Mental Health & Inclusion Ministries  
Metro State Student and Our Children's Trust Juliana Plaintiff  
Micronesia Climate Change Alliance  
Montbello Neighborhood Improvement Association  
Mothers Out Front  
Neighbors Against the Gas Plants  
New Mexico Climate Justice  
North American Climate, Conservation and Environment (NACCE)  
North Country Earth Action  
North Range Concerned Citizens  
Occupy Bergen County  
Oil Change International  
Oregon League of Conservation Voters  
Pacific Green Party, Linn Benton Chapter (OR)  
Peace Action WI  
Peace and Freedom Party  
Peace, Justice, Sustainability NOW!  
Physicians for Social Responsibility Pennsylvania  
Portland Raging Grannies

Presente.org  
PrimaveraZur  
Progressives for Climate  
Protect All Children's Environment  
Public Citizen, Inc.  
Putnam Progressives  
Putting Down Roots  
Rachel Carson Council  
Resource Renewal Institute  
RESTORE: The North Woods  
Rise Up WV  
Rogue Climate  
Safe Energy Rights Group  
Santa Fe Forest Coalition  
Save EPA  
Scientist Rebellion, Turtle Island  
SEE (Social Eco Education)  
Sierra Club  
Small Business Alliance  
Snake River Alliance  
South Seattle Climate Action Network  
Southwest Organization for Sustainability  
Spirit of the Sun  
Spokane Riverkeeper  
Stand.earth  
Sunflower Alliance  
Sunnyside United Neighbors, Inc (SUNI)  
Sunrise Movement  
System Change Not Climate Change  
Terra Advocati  
The Climate Reality Project, Western New York Chapter  
The People's Justice Council  
The Phoenix Group  
Transit Riders Alliance  
Turtle Island Restoration Network  
Unitarian Universalist Congregation of Petoskey (MI)  
Unitarian Universalists for a Just Economic Community  
Unite North Metro Denver  
Vibrant Littleton  
Vote Climate  
W.B.R. We Black Radio LLC  
Wall of Women  
Waterkeeper Alliance  
Waterspirit

WESPAC Foundation, Inc.  
Wild Idaho Rising Tide  
Womxn from the Mountain  
Working for Racial Equity