

**STATE OF NEW YORK BEFORE THE
PUBLIC SERVICE COMMISSION**

PETITION FOR A DECLARATORY)	Case No. 17-G-0610
RULING THAT NATURAL GAS)	
PRECEDENT AGREEMENTS AND)	
TRANSPORTATION AGREEMENTS ARE)	
SUBJECT TO REVIEW UNDER PUBLIC)	
SERVICE LAW SECTION 110(4))	

**NATURAL RESOURCE DEFENSE COUNSEL’S COMMENTS IN SUPPORT OF
ENVIRONMENTAL DEFENSE FUND’S PETITION FOR DECLARATORY
RULING**

Pursuant to the New York State Public Service Commission’s (“Commission”) Rules of Procedure Section 8.2(c), the Natural Resources Defense Council (“NRDC”) respectfully submits these comments in support of the Environmental Defense Fund’s (“EDF”) “Petition for a Declaratory Ruling that Natural Gas Precedent Agreements and Transportation Agreements are Subject to Review Under Public Service Law Section 110(4)” (“Petition”). In support thereof, NRDC states as follows:

I. INTERESTS OF NRDC

Natural Resources Defense Council (NRDC) is a national non-profit membership organization committed to the preservation and protection of the environment, public health, and natural resources. To this end, NRDC is actively involved in advancing policies that reduce greenhouse gas emissions and other forms of air pollution and that accelerate the deployment of energy efficiency, renewable energy, and other clean energy resources. NRDC has a keen interest in ensuring that New York customers are not required to support over-investment in natural gas pipeline infrastructure that could jeopardize achievement of the state’s climate goals.

II. COMMENTS IN SUPPORT

A. EDF's Petition Will Help Protect Customers Against Unjust and Unreasonable Costs Associated with Pipeline Transportation Agreements

Granting EDF's Petition will ensure a future forum is available for customers to challenge the costs associated with natural gas transportation agreements. These costs can be significant, causing retail natural gas customers to shoulder millions or even billions over the course of the contract. As recently detailed in a report by the Applied Economics Clinic, Consolidated Edison's affiliate investment in the Mountain Valley Pipeline will cause customers to incur a total nominal cost of \$1.2 billion over twenty years.¹ These costs should not simply be passed through to customers without scrutiny. The Commission has an obligation to ensure that such costs are just and reasonable, and consistent with the purposes of the Public Service Law. For these reasons, the Commission should grant EDF's petition.

B. Pipeline Precedent and Transportation Agreements Supported by Affiliates Should be Viewed Critically by this Commission

As noted in the Petition, there has been an increased prevalence of affiliate-backed precedent and transportation agreements, highlighting the need for careful regulatory review. NRDC has previously raised concerns regarding these arrangements before the Federal Energy Regulatory Commission ("FERC"), particularly with regard to Consolidated Edison's affiliate investment in the Mountain Valley Pipeline, a proposed new pipeline in West Virginia and Virginia:

The entire capacity of the [Mountain Valley Pipeline] project is subscribed to by affiliated shippers, and notably, there has been no meaningful state

¹ See Ratepayer Impacts of ConEd's 20-Year Shipping Agreement on the Mountain Valley Pipeline, Case 93-G-0932 (October 2, 2017).

regulatory review of any of the affiliate precedent agreements. Moreover, one pipeline owner—Con Edison Gas Midstream LLC—was formed **three months** after the initial certificate application was submitted to the Commission. Con Edison Gas Midstream LLC’s investment in MVP will allow it to maximize shareholder return at the same time that the captive customers of Con Edison shoulder the majority of the risk by paying for the investment via firm transportation costs. This is the very definition of self-dealing that the Commission seeks to prevent.²

Given FERC’s reluctance to date to look beneath the precedent agreements in certificate proceedings, the obligation falls to this Commission to ensure that retail natural gas customers are protected against the risk-shifting inherent in these arrangements. Granting EDF’s Petition will ensure that a forum is available for the Commission and interested parties to scrutinize the costs associated with these types of agreements, particularly those involving affiliates.

C. Any Investment in New Pipeline Build Should Be Viewed in Light of New York’s Ambitious Climate Goals

Precedent agreements help a pipeline developer establish that there is a need for a new project. Where pipeline developers and the regulated utilities signing up for capacity are part of the same corporate group, this demonstration of need becomes circular: the pipeline is “needed” because the pipeline developer’s affiliate says it is needed. These arrangements are leading to more pipeline infrastructure than is necessary or efficient and should be viewed with a skeptical eye, particularly in those states such as New York which have adopted ambitious climate goals. New York has adopted policies aimed at reducing carbon pollution and moving to clean energy

² Motion for Leave to Answer and Answer of the Appalachian Mountain Advocates *et al.* to the Answer of Mountain Valley Pipeline, LLC, FERC Docket No. CP16-10 at 4 (March 31, 2017) (citations omitted) (emphasis in original).

sources, including the Clean Energy Standard that establishes a mechanism to achieve 50 percent renewable electricity supply by 2030, and the State Energy Plan’s goal to achieve 40 percent greenhouse gas emissions reductions as compared to 1990 levels by 2030. “Any energy-related action or decision” from the Public Service Commission must “be reasonably consistent with the forecasts and the policies and long-range energy planning objectives and strategies contained in the [State Energy Plan], including its most recent update.”³ Thus any new investment in natural gas infrastructure, particularly proposals supported by affiliates, should be analyzed to confirm that these decisions will not hinder the state from meeting these ambitious climate goals. Subjecting precedent and transportation agreements to Section 110(4) of the Public Service Law will help protect retail customers from unjust and unreasonable costs associated with unnecessary pipeline buildout.

The statute conferring jurisdiction on this Commission sets forth that the Commission will:

encourage all persons and corporations subject to its jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources.⁴

A careful balance of these efficiency and environmental considerations suggests increased scrutiny of precedent and transportation agreements, including those supported by affiliates. The absence of such review will lead to more pipeline buildout than is necessary and will likely have the effect of locking in natural gas use that would otherwise be uneconomic in the future, and conversely locking out renewable energy

³ New York Energy Law § 6-104(5)(b) (2017).

⁴ New York Public Service Law § 5 (2017).

investment. Further, it could discourage alternative approaches to satisfying customer needs, such as installing efficient heating and cooling technologies in buildings. Such consequences would run afoul of the commitments this State has made to address climate change and the statutory prescription for this Commission to consider environmental values in its decision-making.

III. CONCLUSION

The Natural Resources Defense Council respectfully requests that the Commission consider the foregoing comments in taking any action in this docket.

Dated: October 2, 2017

Respectfully submitted,

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