UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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Inquiry Regarding the Commission's	**)**	
Policy for Determining Return on Equity	**)**	**Docket No. PL19-4-000**

INITIAL COMMENTS OF TC ENERGY CORPORATION

TC Energy Corporation ("TC Energy") hereby submits its initial comments in response to the Federal Energy Regulatory Commission's (the "Commission") Notice of Inquiry Regarding the Commission's Policy for Determining Return on Equity ("NOI"), issued on March 21, 2019.[1] TC Energy, through its subsidiaries, owns and/or operates approximately 31,000 miles of FERC-regulated natural gas pipelines and 536 billion cubic feet of regulated storage capacity in the United States. The outcome of the NOI may affect the calculation of the rates for service on assets owned and/or operated by TC Energy, and as such, TC Energy will be directly affected by the outcome of the NOI.

The Commission should not apply its base return on equity ("ROE") policy across the interstate natural gas pipeline, oil pipeline, and public utility/electric industries, nor should it adopt a rigid, one-size-fits all formula for evaluating interstate natural gas pipeline ROEs. Neither such approach would be appropriate or advisable. Instead, the Commission must develop an ROE policy that accounts for both (i) the significant differences in risk faced by interstate natural gas pipelines when compared to public utilities/electric transmission owners (collectively referred to herein as "electric transmission owners");[2] and (ii) the ever-evolving risks and capital markets to which interstate natural gas pipelines are subject. Accordingly, the Commission should adopt an

[1] 166 FERC ¶ 61,207 (2019).

[2] In the NOI, the Commission recognized the potential that differences between such entities "would justify using different methodologies to determine their ROEs." *See* NOI at P 32 (B4) (citing *Trailblazer Pipeline Co. LLC,* 166 FERC ¶ 61,141, at P 48 (2019)).

approach that enables it to evaluate interstate natural gas pipelines' (each referred to herein as a "natural gas pipeline") ROEs (i) without regard to other industries not facing similar risks; and (ii) with the flexibility to weight the applicable models in a manner that accounts for the specific risk factors and capital markets facing a natural gas pipeline at the time that the ROE is set. This type of approach will be vital to determining just and reasonable ROEs for natural gas pipelines that "will accurately reflect how investors make their investment decisions", in accordance the intent of the NOI[3] and the standards set forth by the United States Supreme Court in *Federal Power Commission v. Hope Natural Gas Co.* ("*Hope*").[4]

As discussed in more detail within the comments filed by the Interstate Natural Gas Association of America ("INGAA"), natural gas pipelines face several circumstances that make them inherently riskier than electric transmission owners.[5] For example, electric transmission owners often obtain certainty regarding the recovery of the costs of transmission facilities through their participation in regional planning processes.[6] Regional planning also limits the competition that they face, and many electric transmission owners have franchised service territories with no competition.[7] Moreover, integrated electric transmission owners operating within franchised service territories are often protected from cost under-recovery through state regulation.[8]

However, natural gas pipelines do not receive such certainty in cost recovery. Notably, in many ways, Commission policies has placed natural gas pipelines at risk of cost-of-service recovery. For instance, through its certificate policies, the Commission has promoted pipe on pipe

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[3] NOI at P 24.
[4] 320 U.S. 591, 603 (1944) (holding that the ROE earned by the owner of a natural gas pipeline must "be commensurate with returns on investments in other enterprises having corresponding risks" and "be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.").
[5] Initial Comments of the Interstate Natural Gas Association of America, Docket No. PL19-4-000, at 5-6, 14-23 (filed June 26, 2019) ("INGAA Comments").
[6] *Id.* at 15.
[7] *Id.* at 15-16.
[8] *Id*.

competition within the natural gas pipeline industry.[9] In addition, natural gas pipelines face competition from their own customers through the Commission's capacity release program.[10] While such competition has given shippers additional economic alternatives, it has also made it harder for natural gas pipelines to recover their costs and provide a return on investment through the sales of their services. Moreover, natural gas pipelines must file comprehensive, complex rate cases in order to recover increased costs, which are time- and resource-intensive undertakings that do not guarantee complete cost recovery.[11]

Natural gas pipelines are also subject to shifts in market forces unique to the industry. For example, over the last decade, the natural gas market has evolved in large part due to the increased ability to economically extract gas from shale.[12] During this time, legacy supply sources have diminished, and liquified natural gas, once considered the supply of the future, is now viewed as the market of the future.[13]

Shifting market dynamics such as these often have large, previously unexpected impacts on natural gas pipelines.[14] For example, market shifts may cause an increase in de-contracting risk for natural gas pipelines that serve legacy markets.[15] Natural gas pipelines that were once thought to face relatively low contracting risk may then become subject to unexpected de-

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[9] *Id.* at 6, 19.
[10] *Id.* at 6, 19-20.
[11] *See generally* 15 U.S.C. §§ 717-717w; *see also* FERC, *Commission Explanation of Cost of Service Rate Filings*, Federal Energy Regulatory Commission, https://www.ferc.gov/industries/gas/gen-info/rate-filings.asp. (last visited Jun. 26,2019).
[12] INGAA Comments at 19.
[13] *Id.* at 18-19*; see also* ExxonMobil, *Fueling the Future*, (Sep. 12, 2018) https://corporate.exxonmobil.com/en/energy-and-environment/energy-resources/natural-gas/liquefied-natural-gas/fueling-the-future-cleaner-burning-natural-gas-demand-forecasted-to-triple-by-2040 (stating view that liquified natural gas demand is expected to rise sharply in the future).
[14] INGAA Comments at 18-19.
[15] *See generally id.* at 18-19.

contracting.[16] These types of unpredictable market evolutions continue to create unique challenges for the recovery of natural gas pipelines' costs.

Natural gas pipelines clearly face greater risks in recovering their costs and achieving a sufficient return than do electric transmission owners. The Commission must be able to address these unique risks when setting ROEs for natural gas pipelines. This is especially true given the impact such risks have on investment decisions. Investors seek to maximize positive returns and minimize losses on their investments and are willing to take greater risks only when incentivized to do so with higher potential returns.[17] Accordingly, when compared with electric transmission owners, the relatively higher risks faced by natural gas pipelines makes a relatively higher ROE necessary to spur investment.

An ROE methodology that accounts for this difference in risks and its impacts is therefore imperative. Such a methodology will ensure both that natural gas pipeline ROEs accurately reflect how investors make investment decisions and satisfy the standard set forth in *Hope* requiring that such ROEs "be commensurate with returns on investments . . . having corresponding risks." Under this framework, an ROE policy specific to the natural gas pipeline industry, rather than a uniform ROE policy across industries, is the only correct approach.

Additionally, the natural gas pipeline ROE policy must permit flexibility in weighting the applicable models to address capital market conditions and risk factors. In *Hope*, the Supreme Court explained that the ROE of a natural gas pipeline must "be sufficient to assure confidence in the financial integrity of the enterprise, *so as to maintain its credit and to attract capital*."[18] Accordingly, anomalous capital market conditions may impact whether a natural gas pipeline's

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[16] *See generally id.* at 18-19.
[17] *Id.* at 59.
[18] *Hope*, 320 U.S. at 603 (emphasis added).

ROE is risk-appropriate, as required by *Hope* and recognized by the Commission in the NOI and its Opinion Nos. 531 and 551.[19] Simply stated, investment decisions involving natural gas pipelines are constantly influenced by ever-evolving risk factors and capital markets.[20] For example, as noted by INGAA, regulatory uncertainty in the natural gas pipeline industry directly affects investors' decisions regarding both whether to allocate capital into the sector, and the return required to invest in a company in that sector.[21] The Commission must retain the ability to consider capital market circumstances such as these when evaluating natural gas pipelines' ROEs.

An ROE formulated through a rigid approach that does not adapt to changing circumstances cannot possibly reflect the dynamic nature by which investors make their investment decisions, nor can it result in returns commensurate with investments having corresponding risks. However, these market realities may be addressed with an ROE methodology that allows the applicable models to be weighted in a manner that accounts for specific circumstances as they exist at the time that the ROE is set.[22] INGAA's comments provide a detailed roadmap as to how such flexibility could be achieved, with support through well-reasoned analyses and expert testimony. TC Energy fully supports INGAA's comments in this proceeding.

WHEREFORE, PREMISES CONSIDERED, TC Energy respectfully requests that the Commission adopt its comments.

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[19] NOI at P 18 (explaining that, in the Commission's Opinion Nos. 531 and 551, it concluded that the capital market conditions prevailing after the financial crisis left the Commission "less confident that a mechanical application of the midpoint of the DCF-produced zone of reasonableness would provide a risk appropriate ROE, as required by *Hope* and [*Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 692-693 (1923)]," which led to the Commission setting the ROEs at issue "above the midpoint of the DCF zone of reasonableness" after considering alternative valuation methodologies) (internal citations omitted).

[20] INGAA Comments at 47-48, 59.

[21] *Id.* at 21-22.

[22] *See, e.g. Id.* at 40-41.

Respectfully submitted,

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