

IN THE MATTER OF	)	
	)	Docket No. CP23-29-000
Saguaro Connector Pipeline, LLC	)	

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC”), 18 C.F.R. § 385.212, Sierra Club hereby moves for leave to file and submits these supplemental comments on Saguario Connector Pipeline, L.L.C.’s (“Saguario”) Response to the FERC data Request. On October 17, 2023, FERC filed a data request in the above-captioned docket, instructing Saguario to respond to assist the agency’s review of the Saguario Connector Pipeline (“Saguario Pipeline”) application.<sup>1</sup> Saguario filed its response to the Data Request on October 27, 2023 (“Saguario Response”).<sup>2</sup>

Because the Data Request and the Saguaro Response directly relate to issues raised by Sierra Club in this docket (*e.g.*, whether the Saguaro Pipeline will transport interstate gas), and because the new information has been submitted to

<sup>2</sup> Saguaro Response to Data Request, Appendix A, Docket No. CP23-29-000 (October 27, 2023) (“Saguaro Response”).

the docket after the close of the comment period on the Draft Environmental Assessment (“Draft EA”), Sierra Club respectfully seeks leave to file these brief supplemental comments.

Furthermore, as set forth below, Sierra Club respectfully requests that FERC supplement the Draft EA pursuant to 40 C.F.R. § 1502.9(d)(1).

### **Supplemental Comments**

#### **A. The entire Saguaro Pipeline is an export project pursuant to section 3 of the Natural Gas Act**

As set forth in Sierra Club’s comments on the draft Environmental Assessment (“EA Comments”),<sup>3</sup> the entire Saguaro Pipeline is an export facility subject to FERC jurisdiction pursuant to section 3 of the Natural Gas Act, 15 U.S.C. § 717b(a). FERC must not accept the applicant’s arbitrary segmentation of the project into two parts—the border segment and the “intrastate” segment—so as to remove the vast majority of the project from FERC jurisdiction.

The Saguaro Response provides further confirmation that the entire 157-mile Saguaro Pipeline is one inseparable export project. FERC’s Request 2(c) asked Saguaro to “[i]dentify and locate all proposed receipt and delivery interconnects for the proposed intrastate pipeline...”<sup>4</sup> In response, Saguaro discusses eight potential sources of upstream gas that will supply the Saguaro Pipeline, but fails to

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<sup>3</sup> Comments of Sierra Club on the Saguaro Connector Pipeline Draft Environmental Assessment, Docket No. CP23-29-000 (Sept. 25, 2023) (“Sierra Club EA Comments”), at 2-9.

<sup>4</sup> Data Request, at 3.

indicate any delivery points along the pipeline route in Texas, other than the border crossing.<sup>5</sup> That means that each and every molecule of gas that enters the Saguaro Pipeline at or near the Waha Hub will be exported to Mexico and overseas markets, with no intent for any of the gas to be delivered to any points in Texas, and in fact no ability for the gas to be offloaded in Texas. Thus, the Saguaro Response casts further doubt on FERC's arbitrary position that the border crossing and "intrastate" segment are two separate projects delineated at a location 1,000 feet from the border. It is clear that the Saguaro Pipeline is a single, interconnected project with one purpose: to transport up to 2.8 billion cubic feet per day (Bcf/d) of gas from the Waha Hub to an LNG export facility on the west coast of Mexico.

Relatedly, the Saguaro Response claims, for the first time, that some portion of the gas to be transported on the Saguaro Pipeline would be used domestically in Mexico.<sup>6</sup> This marks a significant change to the project as described in the project application pursuant to 18 C.F.R. § 153.7. Neither Saguaro's application nor FERC's Draft EA mentioned the possibility of any transported gas being used for domestic consumption in Mexico. Instead, both have repeatedly described the purpose and need for this project solely in terms of providing access to overseas markets via the LNG export terminal under development in Puerto Libertad,

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<sup>5</sup> Saguaro Response, at 7.

<sup>6</sup> *Id.* at 5.

Mexico.<sup>7</sup> Saguaro now appears to be attempting to amend the project’s purpose and need to include meeting demand for gas *in Mexico*.

The original purpose and need of the project has been further undercut by Mexico Pacific Limited LLC (“MPL”), the entity developing the Saguaro Energia LNG export terminal in Puerto Libertad. MPL has repeatedly stated that the LNG export facility does not need the gas from the Saguaro Pipeline. For example, in arguing that the Saguaro Pipeline and LNG terminal are not dependent on each other, MPL stated that the “gas to be processed through the MPL Facility as it is now designed could come through several border crossings” other than Saguaro; that “MPL could make use of [its proposed DOE export authorization] to move gas from the U.S. into Mexico through any of several pipelines”; and that MPL is in no way *required* to use, nor is it dependent on, the Saguaro Connector project...”<sup>8</sup> In the Department of Energy (“DOE”) export docket, MPL has further emphasized that the Saguaro Pipeline is unnecessary in light of existing pipeline capacity: “There is, therefore, adequate *existing* cross-border capacity available to support delivery of the quantities of gas MPL is seeking authorization to export...” and

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<sup>7</sup> See, e.g., Application at 4, n.11 (Saguaro’s gas will be delivered “to a natural gas export facility under development on the West Coast of Mexico” that is designed to “meet the increasing global market demand” for LNG; Draft EA, at 2 (“The transportation of natural gas on Saguaro and the pipeline in Mexico is intended to supply a new natural gas export facility under development on the West Coast of Mexico.”))

<sup>8</sup> Motion of Mexico Pacific Limited LLC for Leave to Submit reply Comments and reply Comments on the Environmental Assessment Addressing the Saguaro Connector Border Crossing Project, Docket No. CP23-29-000 (October 17, 2023), at 7-8.

“the [existing cross-border] pipeline capacity available in the U.S.... is *more than adequate* to support exports to the MPL facility in the quantities MPL has proposed.”<sup>9</sup>

In light of MPL’s repeated statements that it does not need any gas from the Saguaro Pipeline, and Saguaro’s new claim that much of the gas will be used in Mexico, FERC should prepare a supplemental EA/EIS that evaluates the proposed project in light of this new purpose and need, including an evaluation of its foreseeable impacts and alternatives, as well as whether the project is in the public interest pursuant to 15 U.S.C. § 717b(a).

**B. The Saguaro Pipeline is an interstate pipeline pursuant to section 7 of the Natural Gas Act**

As set forth in Sierra Club’s EA Comments<sup>10</sup>, the Saguaro Pipeline is an interstate pipeline subject to FERC jurisdiction pursuant to section 7 of the NGA, 15 U.S.C. §§ 717(b), because it will transport gas sourced from outside Texas. *See Associated Gas Distributors v. FERC*, 899 F.2d 1250, 1255 (D.C. Cir. 1990) (“[I]f gas crosses a state line at any time from its production at the wellhead to its consumption at the burner tip, then that gas is deemed to be “in interstate commerce” throughout the entire journey.”) Despite Saguaro’s unsupported claims

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<sup>9</sup> Conditional Motion for leave to Submit an Answer One Day Out of Time and Answer of Mexico Pacific Limited LLC to Protests, DOE Docket No 22-167-LNG (April 19, 2023), at 16 (emphasis added) (Attached as Exhibit A).

<sup>10</sup> Sierra Club EA Comments, at 9-28.

to the contrary, the massive capacity of the Saguaro Pipeline and its connection to interstate sources of gas via the Waha Hub and the WesTex Pipeline system make it extremely likely that the project will transport interstate gas.

Several of FERC's questions in the Data Request relate to the question of whether the Saguaro Pipeline will, in fact, transport *only* Texas-sourced gas. Saguaro's responses are incomplete and elusive, and failed to demonstrate that this would truly be an intrastate pipeline.

For example, FERC asked the following of Saguaro:

**Request No. 2**

Identify/list and describe the gathering and intrastate pipeline systems that the Saguaro Connector Pipeline will or potentially will interconnect with via its tie-in to the existing WesTex intrastate natural gas pipeline and/or any other tie-ins at the Waha Hub.

**Request No. 2(a)**

Provide an estimate of these non-jurisdictional pipelines' delivery capacity into the Saguaro Connector Pipeline and ultimately to the Border Facilities.<sup>11</sup>

Saguaro's complete response to both requests is as follows:

Currently, there are approximately eight (8) potential intrastate sources of volume which are being contemplated as upstream interconnections to aggregate intrastate gas supply for ultimate delivery into Saguaro Connector Pipeline. At the time Saguaro Connector Pipeline goes into service, it is estimated that these potential sources could provide a volume totaling approximately 5 BCF/D.<sup>12</sup>

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<sup>11</sup> Data Request, at 3.

<sup>12</sup> Saguaro Response, at 4. *See also* Saguaro Response, at 7, Request No. 2(c) Response (restating its response to Request No. 2(a) but failing to include "intrastate" in noting the "eight

This response fails to meaningfully answer the Data Request; instead, it provides incomplete and qualified answers in several ways.

First, the response fails to “[i]dentify/list and describe” the eight potential upstream connections, as requested by FERC. FERC did not ask for the *total number* of potential upstream connections that were contemplated; but specifically asked Saguaro to identify/list and describe the upstream systems. Saguaro has failed to do so. FERC should require Saguaro to provide the requested information.

Second, the Saguaro Response is conspicuously limited to intrastate “sources of volume” as opposed to pipeline systems. The Data Request asks for a list of all upstream “gathering and intrastate pipeline *systems*” that the Saguaro Pipeline will have the ability to connect to “*via its tie-in to the existing WestTex intrastate natural gas pipeline and/or any other tie-ins at the Waha Hub.*”<sup>13</sup> As indicated in Sierra Club’s EA Comments,<sup>14</sup> both WestTex and the Waha Hub are connected to dozens of pipelines and pipeline systems, both intrastate and intrastate, that the Saguaro Pipeline could potentially receive gas from (either in the short-term or long-term). Presumably, FERC requested information on any and all upstream *systems* that Saguaro could potentially connect to, as FERC would be

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(8) potential sources ... being contemplated as upstream interconnections for ultimate delivery into the Saguaro Connector Pipeline.”).

<sup>13</sup> Data Request, at 3.

<sup>14</sup> Sierra Club EA Comments, at 10-13, 16-19.

in a position to verify whether those systems themselves transport interstate gas. But the Saguaro Response vaguely refers only to unnamed intrastate sources of volume.

Third, the Saguaro Response is qualified insofar as it states the total number of upstream sources Saguaro *contemplates* connecting to. Again, FERC appears to have been requesting information on all upstream pipeline systems that the Saguaro Pipeline *could potentially connect to* as a result of its interconnections with the Waha Hub and the WesTex system; *i.e.*, those that it would have the ability to connect to in the future if it chooses to do so. The Saguaro Response introduces a subjective qualifier, and limits its answer to those upstream sources the company currently contemplates connecting to.

Fourth, the Saguaro Response is limited to sources of gas Saguaro contemplates connecting to “at the time Saguaro enters into service.” The Data Request was not so limited. As Sierra Club has repeatedly argued, and has been the case with other pipelines in the recent past, the Saguaro Pipeline appears to be designed to transport both interstate and intrastate gas, but has been proposed as an intrastate pipeline *at the time it enters service* to avoid FERC’s NGA section 7 jurisdiction.<sup>15</sup> The Data Request appears to be asking whether the Saguaro Pipeline would have the potential to connect to any interstate sources of gas, should

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<sup>15</sup> See, *e.g.*, Sierra Club EA Comments, at 19-24.



Saguaro seek authority to transport interstate gas via section 311 of the Natural Gas Policy Act (“NGPA § 311”) in the weeks or months after the pipeline enters service (as Saguaro’s application acknowledges it might). The Saguaro Response fails to provide information that would shed light on its ultimate purpose. FERC should require Saguaro to answer the questions posed in the Data Request with specificity.

In addition, Saguaro’s other responses are elusive as to whether it has any firm plans to transport intrastate gas at all, and if so, for how long and in what amounts. In Request No. 2(b), FERC asks:

Given that the Border Facilities will have a design capacity of approximately 2.834 billion standard cubic feet per day (Bcf/d). Provide a capacity range that Saguaro plans to operate on the Saguaro Connector Pipeline and the Border Facilities. This can be provided as a percentage of the ultimate design capacity. Provide any supporting or planned precedent agreements confirming the operating capacity range.<sup>16</sup>

This inquiry is important. Given the Saguaro Pipeline’s massive capacity and connection to the Waha Hub, a major source of interstate gas, it strains credulity to believe the ultimate intent for Saguaro Pipeline is to export only Texas-sourced gas. However, Saguaro could bolster its claim that this is a purely intrastate pipeline by providing some evidence of long-term shipping contracts, or

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<sup>16</sup> Data Request, at 3.

even planned contracts, from intrastate gas sources in the amount that approximates the capacity of the pipeline.

Tellingly, Saguaro can provide no such evidence. Instead, Saguaro claims it “has not yet signed a precedent agreement with any shipper...”, and fails to even mention any *planned* precedent agreements, as FERC requested.<sup>17</sup> Saguaro cannot provide any supporting, or even planned, precedent agreements that would demonstrate it has committed to ship any significant amount of solely intrastate gas for any period of time. This lack of responsive information is conspicuous.

Saguaro goes on to state that it plans to sell at least 90% of its offered capacity, but is careful not to indicate whether that the 90% of capacity (*i.e.*, roughly 2.55 Bcf/d) will be solely intrastate gas; or, for example, if Saguaro plans to ship a relatively small amount of interstate gas when it enters service, and subsequently sell at least 90% capacity after it receives authorization to ship interstate gas via NGPA § 311. Given the lack of information to support the former scenario, the latter scenario is more likely, and is evidence of intent to use NGPA § 311 to circumvent FERC’s jurisdiction under section 7 of the NGA.

Saguaro devotes several more paragraphs to explaining that it intends to provide customers with access to a variety of intrastate gas supplies, and to meet international demand for gas. Of course, there is no indication that international

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<sup>17</sup> Saguaro Response, at 5.

demand is limited to Texas-sourced gas. Saguaro even suggests it has limited control over what the sources of gas are, and appears to leave the door open to shipping gas from a variety of upstream sources in the future, potentially including interstate gas:

Given that Saguaro does not intend to own any gas or transport any gas to which it has title, the actual utilization of the system will be dependent wholly on its shippers.... As this project comes into service, it is reasonable to anticipate more interconnects and more supply will continue to be added.<sup>18</sup>

In light of these non-answers, it remains unclear how Saguaro intends to ensure that no interstate gas is transported on the Saguaro Pipeline, given its connections to the Waha Hub and WesTex systems, both of which are connected to interstate sources of gas, and given the way interstate and intrastate gas is intermixed in upstream systems. Saguaro appears to have provided one map/diagram to FERC that may help indicate how and whether intrastate gas is segregated from interstate sources.<sup>19</sup> However, that map/diagram has not been made available to the public. FERC should require that this information be submitted as a public filing, as it is crucial for the public to be able to verify Saguaro's claims as to its plans for this project.

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<sup>18</sup> Saguaro Response, at 5-6.

<sup>19</sup> *Id.* at 7 (“The attached map/diagram demonstrates how all future sources of volume will merge and terminate at the Saguaro Custody Transfer Hub (“CT HUB”) where the Saguaro assets will commence with a feed line (“CS1 FEED LINE”) to the suction side of the Saguaro Connector Pipeline’s first compressor station (“CS1”).”).

In failing to provide any evidence that Saguaro's 2.8 Bcf/d of capacity will be sourced from within Texas, Saguaro asks FERC to simply take its word for it. FERC's Request No. 2(d) and Saguaro's response are perhaps the best example of this:

**Request No. 2(d)**

Confirm that Saguaro will only transport Texas-sourced gas when it initiates service on its proposed pipeline. If known, describe the origin of the natural gas that will be transported.

**Response No. 2(d)**

Confirmed. All gas transported on Saguaro at the initiation of service will be sourced from the State of Texas.<sup>20</sup>

Saguaro fails to "describe the origin of the natural gas" *within Texas*, as FERC clearly requested. Indeed, the second sentence of FERC's request would be entirely superfluous if it was simply asking to confirm that the gas would come from Texas. Saguaro's response that the purportedly Texas-sourced gas will be sourced from within the State of Texas is incomplete and evasive.

As set forth in Sierra Club's EA Comments,<sup>21</sup> FERC has an obligation to independently verify information supplied by the applicant and to seek the data that would support its ultimate decision. *See, e.g., Am. Rivers v. FERC*, 895 F.3d

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<sup>20</sup> *Id.* at 8.

<sup>21</sup> Sierra Club EA Comments, at 24-26.

32, 50 (D.C. Cir. 2018) (FERC erred by blindly accepting the applicant's statements).<sup>22</sup> Asking the applicant to "please confirm," and accepting the applicant's unsupported response of "confirmed," would be the epitome of neglecting its legal obligations.

**C. FERC must evaluate the upstream and downstream environmental impacts of the Saguaro Pipeline**

Sierra Club has repeatedly urged FERC to evaluate the upstream impacts of increased amounts of gas development that will occur as a result of the Saguaro Pipeline, including in the specific areas that the gas will originate from.<sup>23</sup> In *Sierra Club v. United States Dep't of Energy*, the D.C. circuit held that the Department of Energy's NEPA analysis for the Freeport LNG terminal was not required to evaluate the impacts of upstream gas development because the agency did not know where, at the local or regional level, the production might occur. 867 F.3d 189, 198–200 (D.C. Cir. 2017) ("*Freeport*") (noting that gas development is spread throughout the lower 48 states such that "every natural-gas-producing region in the

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<sup>22</sup> See also 40 C.F.R. §1506.5 (agencies must independently evaluate information submitted in NEPA analyses, and are responsible for the accuracy of such information).

<sup>23</sup> See, e.g., Sierra Club EA Comments at 38; Protest of Sierra Club, Docket No. CP23-29-000 (Jan 26, 2023), at 13-15; Comments of Sierra Club in Response to Notice of Scoping Comments on Environmental Issues, Docket No. CP23-29-000 (March 6, 2023), at 16.

country is a potential source for new gas wells in order to meet export-induced natural gas demand.”)<sup>24</sup>

In contrast here, the Saguaro Response makes clear that FERC *does know* with some specificity where the gas would be coming from, or should be able to find out. First, according to Saguaro, the gas would come entirely from within Texas. Second, Saguaro claims that there are “approximately eight (8) potential intrastate sources of volume which are being contemplated as upstream interconnections...” with a combined capacity of 5 Bcf/d.<sup>25</sup> As set forth above, that response is overly broad/insufficient, as it appears to include *all potential* sources that have a combined capacity of nearly double Saguaro’s capacity without identifying any that are reasonably certain or likely, as FERC requested. Nonetheless, Saguaro’s representation that all gas transported on the Saguaro Pipeline would (a) be produced in Texas, and (b) come from eight potential sources in Texas, means that FERC can determine, unlike in *Freeport*, where the

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<sup>24</sup> FERC is not relieved of its NEPA obligation to evaluate the indirect upstream and downstream effects of gas exports, as the court held it was *Sierra Club v. FERC*, 827 F.3d 36, 4 (D.C. Cir. 2016). That case was wrongly decided and should be limited to the facts of the case. There, the court found that was the Department of Energy’s (“DOE”) responsibility to evaluate those impacts rather than FERCs. *Id.* But that holding was limited to the situation where DOE was participating as a cooperating agency in the FERC NEPA process. *Id.* at 42- 46. However, in this case, there is no corresponding DOE export docket to evaluate the exports.

<sup>25</sup> Saguaro Response, at 4.

upstream gas development is most likely to occur, at what levels, and evaluate the associated environmental impacts of that development.<sup>26</sup>

FERC should instruct Saguaro to provide more detailed information, including which of the eight upstream sources are most likely or reasonably certain to supply gas to the Saguaro Pipeline. FERC cannot fulfill its obligation under NEPA to take a hard look at the impacts of the Saguaro Pipeline if it simply allows Saguaro to provide vague and evasive answers to basic questions about where Saguaro's gas will be sourced.

Finally, Sierra Club has repeatedly urged FERC to evaluate the lifecycle greenhouse gas emissions associated with the Saguaro Pipeline.<sup>27</sup> The U.S. Department of State ("State Department") recently urged FERC to do the same, pointing out that such an analysis is required under the Biden-Harris Administration's directives for agencies to evaluate climate change impacts under NEPA.<sup>28</sup> It is imperative that FERC not only complete the lifecycle greenhouse gas analysis requested by the State Department, but include that analysis in a supplemental EA or EIS and provide an opportunity for public comment.

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<sup>26</sup> FERC must also evaluate how much of Saguaro's capacity will be met by additional / induced upstream gas production as opposed to existing gas production.

<sup>27</sup> *See, e.g.*, Comments of Sierra Club in Response to Notice of Scoping Comments on Environmental Issues, Docket No. CP23-29-000 (March 6, 2023), at 12-13; Sierra Club EA Comments at 56-66.

<sup>28</sup> U.S. Department of State correspondence, Docket No. CP-29-000 (November 9, 2023).

**D. No federal or state agency has evaluated the environmental impacts of the 157-mile Saguaro Pipeline in Texas.**

The Saguaro Response answers FERC’s Request No. 1 by describing the status of authorizations by state agencies in Texas, including the Texas Railroad Commission (“RRC”).<sup>29</sup> However, it is important to point out that the extent of the RRC’s jurisdiction over the Saguaro Pipeline is unclear, even to the RRC itself, and in any case extremely limited. For example, when citizens recently raised concerns over the Saguaro Pipeline at the RRC’s open meeting, the commissioners emphasized that they had no authority to consider pipeline siting, routing, environmental impacts, or even provide notice to landowners directly on the pipeline route.<sup>30</sup> It is thus abundantly clear that whatever authority the RRC has over the pipeline, it does not conduct any environmental, safety, or public interest review before the pipeline is built. That means that the one-page description of the “intrastate” portion of the Saguaro Pipeline, found at Appendix A of the FERC EA, constitutes the only public environmental “analysis” conducted by any federal or

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<sup>29</sup> Saguaro Response, at 2. Texas law requires *all* pipeline operators in Texas, irrespective of their self-identification as interstate or intrastate, to obtain the P-5 Form operator and T-4 pipeline authorizations Saguaro identifies. Tex. Nat. Res. Code Ann. § 81.051; 16 Tex. Admin. Code §§ 3.1, 3.70. The regulations do not suggest that the RRC conducts a searching review of the applicant’s self-identification and/or classification of the pipeline. Rather, authorization appears to follow perfunctory review to ensure the basic administrative forms are complete and required fees paid.

<sup>30</sup> See, e.g., video recording of Open Meeting of Texas Railroad Commission, (October 24, 2023), *available at* [https://www.adminmonitor.com/tx/rrc/open\\_meeting/20231024/](https://www.adminmonitor.com/tx/rrc/open_meeting/20231024/), at time stamp 58:27 to 1:01:20, and 1:08:22 to 1:11:00. The Commission not only stated that it does not regulate pipeline siting or routing but admitted that “we don’t have pipeline routing regulations in this state.” *Id.* at time stamp 59:30.



state regulatory agency of a 157-mile, 48-inch gas pipeline that will transport up to 2.8 Bcf/d through dozens of communities. FERC must exercise its jurisdiction over this pipeline pursuant to sections 3 and/or 7 of the NGA, and conduct a thorough and transparent environmental review.

### **Conclusion**

If the intent of the Data Request was to give Saguaro the opportunity to provide evidence that the proposed Saguaro Pipeline is truly intrastate pipeline, Saguaro has failed to do so. Instead, it provided only vague, evasive and unsupported statements. These non-answers, combined with Saguaro's inability to provide any concrete evidence of purely intrastate service, further clarifies that the ultimate intent of the Saguaro Pipeline is to export interstate gas.

As such, we urge FERC to: (a) request further information from Saguaro, including but not limited to the issues discussed herein as well as the questions set forth in Sierra Club's EA Comments, at pages 26-27; (b) exercise jurisdiction over the entire Saguaro Pipeline pursuant to sections 3 and/or 7 of the NGA; (c) supplement the draft environmental assessment pursuant to 40 C.F.R. § 1502.9(d)(1) to evaluate the new information, changed circumstances, and changes to the project discussed herein, as well as the lifecycle GHG analysis requested by the State Department; and (d) and prepare a full environmental impact statement for the project.

Respectfully Submitted,

/s/ **Doug Hayes**

Doug Hayes

Sierra Club

1650 38th St., Suite 102W

Boulder, CO 80301

(303) 449-5595

[doug.hayes@sierraclub.org](mailto:doug.hayes@sierraclub.org)

*Attorney for Sierra Club*

**Dated:** November 10, 2023

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each party designated on the official service list in this proceeding, by email.

/s/ Doug Hayes

Doug Hayes

Sierra Club

1650 38th St., Suite 102W

Boulder, CO 80301

(303) 449-5595

[doug.hayes@sierraclub.org](mailto:doug.hayes@sierraclub.org)

*Attorney for Sierra Club*

Dated in Boulder, CO this November 10, 2023.