



FERC Reverses Course on Greenhouse Gas Analysis

By: [Nicole Blevins](#)

On March 22, 2021, the Federal Energy Regulatory Commission (FERC) issued an [order](#) reversing its previous position against analyzing the significance of greenhouse gas emissions and their contribution to climate change in National Environmental Policy Act (NEPA) analyses for interstate gas transportation projects. The Commission stated that, in future proceedings, it will continue to consider all reasonably foreseeable greenhouse gas emissions and those emissions' contribution to climate change. This is significant because it opens the door for potential greenhouse gas mitigation requirements and the potential rejection of interstate gas transportation projects based on climate impacts.

FERC cited *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019) in support of its new position. There, the Court of Appeals stated that because greenhouse gas emissions are reasonably foreseeable, FERC should include a discussion of their significances as an indirect effect as well as the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Ultimately, the Commission determined that the pipeline replacement project's contribution to climate change would not be significant and the Commission approved the project.

On February 18, 2021, FERC issued a [Notice of Inquiry](#) (NOI) seeking new information and insights gained since its previous April 19, 2018 Notice of Inquiry, on whether the Commission should revise its policy and approach to certification of new interstate natural gas transportation facilities. The NOI specifically seeks input on the Commission's evaluation of alternatives and environmental effects under NEPA and the Natural Gas Act and the use of the social cost of carbon, among other things. The NOI comments are due by April 26, 2021.

The March 22 order elicited a strong dissent by Commissioner Danly. Commissioner Danly criticized the Commission's greenhouse gas analysis because it does not provide an analytical framework or a threshold for when emissions will be deemed significant, and because the Commission did not explain its departure from precedent. He warned that the decision is likely to have "profound consequences" in light of the Commission's "seeming willingness to reopen closed certificate proceedings to evaluate whether there are 'mitigation measures the Commission should impose in response to air emissions' for projects currently in operation."

Please contact [Nicole Blevins](#) or [Bret Sumner](#) for additional information about how this decision may impact your operations.