

Shifts in energy infrastructure permitting and climate change impact assessments

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Recent actions by the Trump administration and by the Federal Energy Regulatory Commission (FERC) signal that the industry may see more streamlined reviews of proposed natural gas infrastructure projects that will focus less on the impacts of greenhouse gas (GHG) emissions and climate change.

Unleashing American Energy executive order

The Trump administration seeks to expedite and simplify the federal permitting process to facilitate the permitting and construction of interstate energy transportation and other critical energy infrastructure. In the Unleashing American Energy Executive Order, which was signed on Jan. 20, President Trump directed the Council on Environmental Quality (CEQ) to provide guidance on implementing the National Environmental Policy Act (NEPA) and to propose rescinding the rules on how agencies conduct their NEPA reviews.

In response, on Feb. 16, the Chairman of the CEQ sent an interim final rule titled "Removal of National Environmental Policy Act Implementing Regulations" to the White House Office of Information and Regulatory Affairs for review.

The Unleashing American Energy Executive Order also directed the Secretaries of Defense, Interior, Agriculture, Commerce, Housing, Urban Development, Transportation, Energy, Homeland Security, the Administrator of the Environmental Protection Agency, the Chairman of CEQ and the heads of other relevant agencies to "undertake all available efforts to eliminate all delays within their respective permitting processes, including through, but not limited to, the use of general permitting and permit by rule."

This is significant because it directs a government-wide review of rules and policies that could change how the effects of GHG emissions and climate change are assessed in federal reviews of proposed projects.

FERC termination of GHG policy statement proceeding

Four days after the Unleashing American Energy Executive Order was signed, FERC terminated its years-long proceeding to develop a policy statement that explains how FERC would assess the impacts of natural gas infrastructure projects on climate change in its reviews under NEPA and the Natural Gas Act (NGA).

FERC withdrew its draft Greenhouse Gas (GHG) Policy Statement, closed the proceedings, and will instead consider climate impacts of permitting actions on a case-by-case basis when raised by parties to a proceeding, as FERC has done for the last few years.

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As the agency that reviews and approves the construction and operation of interstate natural gas pipelines and storage facilities, natural gas import or export facilities, and liquefied natural gas terminals, FERC assesses the environmental consequences of a decision to approve such facilities. In April 2018, FERC initiated an inquiry asking for information to help it explore whether, and if so, how, it should revise its approach on determining whether a proposed project is consistent with the public convenience and necessity and evaluating the environmental impacts of the proposed project.

After receiving numerous comments, FERC issued a new notice of inquiry in February 2021 to solicit additional comments on how it should consider GHG emissions in its review. FERC received thousands of comments in response to that inquiry and subsequently held a technical conference in November 2021 to discuss methods that natural gas companies may use to mitigate the effects of direct and indirect GHG emissions resulting from their projects.

A divided Commission issued the Interim GHG Policy Statement in February 2022 that set forth FERC's procedures for evaluating climate impacts under NEPA and integrating climate considerations into public interest determinations under the Natural Gas Act.

Under this Interim Policy Statement, FERC would (a) quantify a project's GHG emissions that are reasonably foreseeable and have

a reasonably close causal relationship to the proposed actions, including construction activities and downstream emissions from combustion of transported gas, (b) apply a 100% utilization rate to estimate a project's emissions, (c) prepare the more detailed environmental impact statement (EIS) if the project would result in 100,000 or more metric tons per year of GHG emission, considering any mitigation measures proposed by the applicant, and (d) consider whether to require additional GHG emission mitigation when authorizing a project.

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FERC reasoned that considering GHG emissions and climate change were encompassed by its public interest review standard. Commissioner Mark Christie (now FERC's Chairman) filed a strong dissent, in part arguing that FERC, as an economic regulator, lacked jurisdiction to act as an environmental regulator and that this policy statement intended to stifle natural gas use.

The Interim Policy Statement was short-lived. In the face of strong opposition, FERC pulled it the following month, designating it as a draft policy statement, and invited further comments. FERC stated that, upon further consideration, it would not apply the draft policy statement to any pending or future applications until FERC issued final guidance.

As noted above, in January 2025, more than two and a half years after issuing the draft GHG Policy Statement, FERC issued an order terminating the draft GHG Policy Statement proceeding, stating that based on the record, GHG emissions are "better considered on a case-by-case basis, when raised by parties to those proceedings," as FERC has been doing. FERC did not otherwise explain its decision.

Commissioners Willie Phillips, David Rosner, and Judy Chang issued a joint concurrence characterizing the draft GHG policy statement as a key part of FERC's NEPA review that provided useful

information to develop the "current bipartisan, court-affirmed approach to considering GHG issues on a case-by-case basis."

The concurrence described this approach as estimating reasonably foreseeable GHG emissions, providing a qualitative discussion of potential adverse effects of such emissions, contextualizing the emission levels by comparing to applicable national and statewide emission levels, and calculating monetized values. It also expressed an expectation that projects evaluate means to mitigate or avoid GHG emissions during construction and operations, and opined that an evaluation of public convenience and necessity would consider potential adverse consequences, to include environmental impacts.

Finally, the same day that FERC terminated the draft GHG Policy Statement proceeding, FERC reinstated the authorization it granted to Transcontinental Gas Pipe Line Company, LLC (Transco) to construct and operate the Regional Energy Access Expansion Project (REA), an incremental expansion of Transco's existing system designed to increase natural gas transportation capacity by up to 829,000 dekatherms per day from northeastern Pennsylvania to multiple delivery points in New Jersey, Pennsylvania, and Maryland.

FERC approved REA despite concluding that GHG emissions would not be mitigated. However, the District of Columbia U.S. Circuit Court of Appeals vacated and remanded FERC's approval in part, finding that FERC did not explain its decision to not make a GHG significant determination or discuss GHG emission mitigation.

On remand from the D.C. Circuit, FERC held that it fulfilled its NEPA responsibility because it is "not obligated to make a binary determination of the significance of the climate impacts based on those emissions, particularly for impacts for which the significance is unknown." FERC held in its order on remand that NEPA only requires it to discuss environmental impacts, which it did, and that where the significance of impacts are unknown, FERC would not summarize those impacts in its approval.

Although FERC's termination of the draft GHG Policy Statement proceeding maintains the status quo of a case-by-case analysis, practically, it signals a likely return of restraint in using expected GHG emissions to impose conditions on permitting actions or otherwise hinder infrastructure development.

FERC, however, may still continue to expect that projects will propose GHG emission mitigation measures. And, while a more limited form of NEPA review will remain part of FERC's permitting process, it is expected that CEQ's interim final rule will expedite FERC's permitting process for natural gas infrastructure.

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