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Rethinking greenhouse gas emissions: D.C. Circuit orders further environmental review of natural gas pipeline certificate

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Energy Alert

On August 22, 2017, the United States Court of Appeals for the District of Columbia Circuit issued a ruling that may change the way that the Federal Energy Regulatory Commission (FERC) examines the impacts of greenhouse gas emissions when permitting natural gas pipelines. In *Sierra Club v. FERC*, a split panel of the D.C. Circuit vacated and remanded FERC's orders certificating the Southeast Market Pipelines Project, which is comprised of three natural gas pipeline projects in Alabama, Florida and Georgia—including the Sabal Trail pipeline—because it found that FERC's environmental impact statement for the project failed to adequately consider the greenhouse gas emissions from power plants that will be served by the project.

The court rejected a number of other challenges to FERC's orders certificating the project, but it held that FERC should either have given a "quantitative estimate of the downstream greenhouse gas emissions that will result from burning the natural gas that the pipelines will transport or explained more specifically why it could not have done so." The court found that greenhouse gas emissions from the power plants supplied by the pipeline were a foreseeable indirect effect of authorizing the pipeline and therefore required more discussion and consideration than FERC provided. The court distinguished prior D.C. Circuit decisions in which the court had held that FERC need not consider "downstream" greenhouse gas emissions resulting from LNG exports in approving LNG export terminals. It concluded that those decisions rested upon FERC's lack of legal authority to prevent the adverse environmental effects of natural gas exports.

The dissenting judge argued that FERC should not be held responsible for studying the effects of emissions from power plants whose construction or expansion is subject to the exclusive jurisdiction of the state siting authority.

The impacts of this decision are potentially numerous: portions of the pipeline project are already in service, but this order vacates the approval necessary for the pipelines to continue operation. There are also many more pipeline projects currently pending FERC review, and while it is unclear whether this decision will prompt FERC to require those pending projects that have completed environmental review to amend or augment their environmental showing, this decision will likely impact the scope of the environmental reviews that will be conducted, adding time and additional potential hurdles to the permitting process. However, while the decision requires FERC to estimate and assess the impacts of downstream greenhouse gas emissions, it does not dictate that FERC take any specific action with respect to these impacts.

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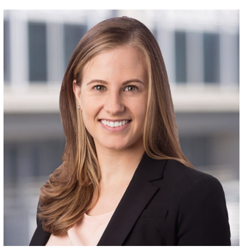

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