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REACHING NET ZERO TOGETHER

Energy Transition Challenges and Opportunities

Natural Gas Infrastructure

Presenters



Kirstin E. Gibbs



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David Mendelsohn

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Agenda

- Precedent on FERC Analysis of Climate Change
- FERC Review of 1999 Pipeline Certification Process and Considerations
- Recent FERC Policy Statements
 - Updated Policy Statement on Certification of New Interstate Natural Gas Facilities
 - Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Reviews Interim Policy Statement
- A View from Capitol Hill
- Discussion



Evolution of FERC Environmental Reviews

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Precedent on FERC Analysis of Climate Change

- *Sierra Club v. FERC* (2017)
 - DC Circuit panel vacated and remanded certificate order because EIS failed to adequately consider GHG emissions from power plants that will be served by project.
 - FERC should have either:
 - (1) given a quantitative estimate of downstream greenhouse gas emissions that will result from burning the natural gas that the pipeline transported OR
 - (2) explained why it could not provide such a quantitative estimate.
- *Birckhead v. FERC* (2019)
 - D.C. Circuit held that FERC should at least attempt to obtain information on downstream uses to determine if downstream GHG emissions are a reasonably foreseeable effect.
- *Food & Water Watch and Berkshire Environmental Action Team v. FERC* (2022)



FERC Review of 1999 Certificate Policy Statement

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FERC Review of 1999 Certificate Policy Statement

- Analytical Framework under 1999 Certificate Policy Statement:
 - 1. Can the project proceed without financial subsidies from existing customers?
 - 2. Has the applicant made efforts to eliminate/minimize adverse effects the project might have on existing customers, existing pipelines, landowners, and communities?
 - 3. Do the benefits of the project outweigh the adverse effects on economic interests? If so, complete environmental analysis.

FERC Review of 1999 Certificate Policy Statement

- FERC's 2018 Notice of Inquiry
 - Four general areas of examination:
 - (1) The reliance on precedent agreements to demonstrate need for a proposed project;
 - (2) the potential exercise of eminent domain and landowner interests;
 - (3) the Commission's evaluation of alternatives and environmental effects under NEPA and the NGA; and
 - (4) the efficiency and effectiveness of the Commission's certificate processes.

FERC Review of 1999 Certificate Policy Statement

- FERC's 2021 Notice of Inquiry

- Sought updated information and additional viewpoints gained since 2018 NOI
- Added a fifth area of examination:

The Commission's identification and addressing of any disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on environmental justice communities and the mitigation of those adverse impacts and burdens.



FERC's 2022 Policy Statements

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Updated Certificate Policy Statement

- Updated Policy Statement on the Certification of New Interstate Natural Gas Facilities
 - Precedent agreements alone may not be sufficient to establish project need
 - Certificate application must include showing of how gas will be used and expected utilization rate of new facilities
 - Continued consideration of four major interests that may be adversely affected by the construction and operation of the project –
 - (1) applicant's existing customers,
 - (2) existing pipelines and their captive customers;
 - (3) environmental interests; and
 - (4) landowners and surrounding communities, including environmental justice communities

Interim Greenhouse Gas Policy Statement

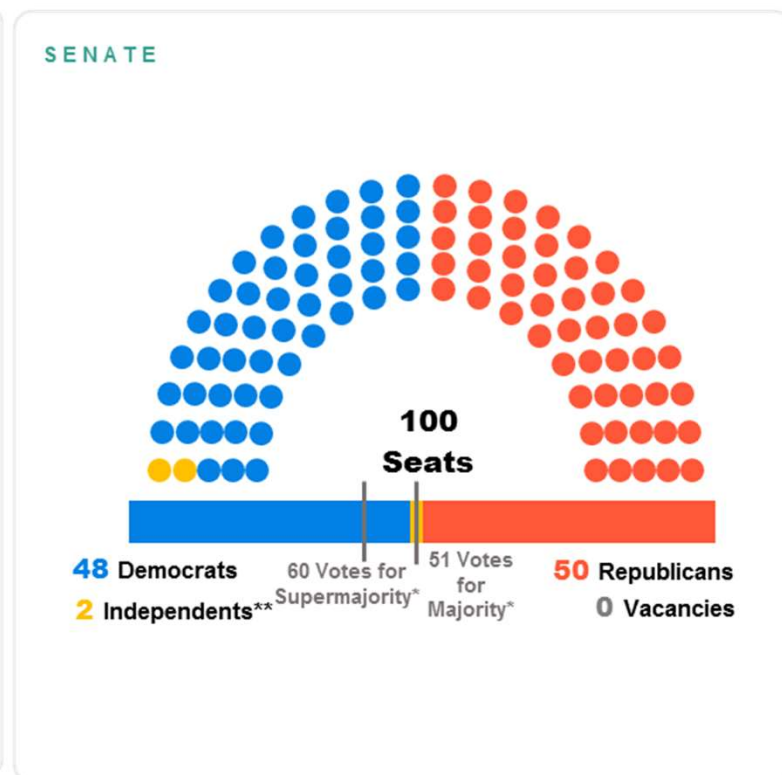
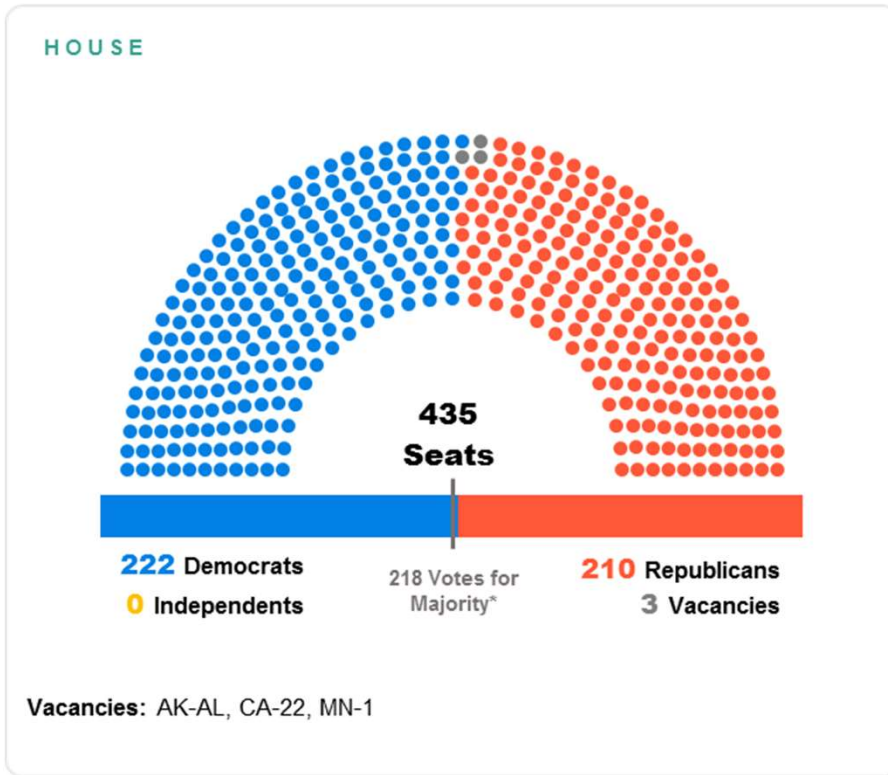
- Interim Policy Statement on the Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews
 - Explains how FERC will assess the impacts of natural gas infrastructure projects on climate change in reviews conducted under NEPA and NGA
 - Establishes a rebuttable presumption that proposed projects with 100,000 metric tons per year of carbon dioxide equivalents (CO₂e) emissions will be deemed to have a significant impact on climate change
 - FERC will analyze a project's emissions that are "reasonably foreseeable and have a reasonably close causal relationship" to the project
 - FERC will consider mitigation proposals developed by project sponsors
- Applies to currently pending and new NGA Section 3 and 7 applications
- Comments due April 4, 2022



A View from Capitol Hill

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Congress - an Overview



House Energy and Commerce Committee

Frank Pallone, Chair

- *"I applaud FERC for taking these necessary and long-overdue actions to ensure that climate change and environmental justice are core considerations of its natural gas infrastructure certification process. The courts have repeatedly instructed FERC to take greenhouse gas pollution into account when deciding whether new gas infrastructure is in the public interest."*

Cathy McMorris-Rodgers, Ranking

- *"...This reckless partisan action is also FERC stepping away from its core mission to ensure Americans have reliable and affordable energy, especially at a time when energy costs are at record highs. Energy and Commerce Committee Republicans will continue to fulfill our oversight role of FERC to ensure it is not abandoning its primary responsibilities or exceeding its statutory authority."*

Senate Energy and Natural Resources Committee

"Today's reckless decision by FERC's Democratic Commissioners puts the security of our nation at risk. The Commission went too far by prioritizing a political agenda over their main mission - ensuring our nation's energy reliability and security. The only thing they accomplished today was constructing additional road blocks that further delay building out the energy infrastructure our country desperately needs."

Joe Manchin, Chairman

Senate Energy and Natural Resources Committee

Democrats (10)

- **Joe Manchin III, W.Va. - Chairman**
- Ron Wyden, Ore.
- Maria Cantwell, Wash.
- Bernie Sanders, Vt. (I)
- Martin Heinrich, N.M.
- Mazie Hirono, Hawaii
- Angus King, Maine (I)
- Catherine Cortez Masto, Nev.
- Mark Kelly, Ariz.
- John Hickenlooper, Colo.

Republicans (10)

- **John Barrasso, Wyo. - Ranking Member**
- Jim Risch, Idaho
- Mike Lee, Utah
- Steve Daines, Mont.
- Lisa Murkowski, Alaska
- John Hoeven, N.D.
- James Lankford, Okla.
- Bill Cassidy, La.
- Cindy Hyde-Smith, Miss.
- Roger Marshall, Kan.

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Senate Energy and Natural Resources Hearing

A Review of Recent Actions of the Federal Energy Regulatory Commission Relating To Permitting, Construction and Operation of Interstate Natural Gas Pipelines and Other Natural Gas Infrastructure Projects

March 3, 2022

Witnesses:

Richard Glick, Chairman

James Danly, Commissioner

Allison Clements, Commissioner

Mark C. Christie, Commissioner

Willie L. Phillips, Commissioner

Notable Moments

- *"In a way, this is similar to the issues we're facing around transmission, which I think we've heard senators of both sides. I know I've heard Senator Lankford, Senator Manchin, Senator Heinrich talk about these issues. Maybe it's time that we get around the table and just discuss the legislative solution to gas and transmission at the same time because we really are running out of time."*
 - Sen. John Hickenlooper (D-CO)
- *"If this is just an issue of us passing a law that you were to consider only those emissions associated with fugitive leaks and/or a criteria that would otherwise be similar to that required to build roads, that could be common ground between these two sides."*
 - Sen. Bill Cassidy (R-LA)

Notable Moments

- *"I do think it sounds like there is the potential to narrow it, clarify it a little bit more in this conversation."*
 - Sen. Catherine Cortez Masto (D-NV)

Congressional Considerations

- The Calendar
- Midterm Elections

FERC March 2022 Open Meeting

- Order on Draft Policy Statements (March 24, 2022)
 - Updated Certificate Policy Statement and Interim GHG Policy Statement are now draft policy statements
 - Comments due April 25, 2022
 - Reply comments due May 25, 2022
 - Draft policy statements will not be applicable to pending applications or applications filed before FERC issues any final guidance



Discussion

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Upcoming Webinars of Interest

- **Reaching Net Zero Together: Innovation and IP | April 21**
 - Efforts to reduce the environmental impact of exploration and development activities, and the impact of the IP landscape
 - Innovations spurring the energy transition including carbon capture, battery storage, offshore wind, and other technologies
 - Opportunities for accelerated examination
- **Earth Day Celebration, A Four-Part Series**
 - Alternative Energy Development | April 18
 - Emerging Contaminants | April 19
 - Major Federal Environmental Cases | April 20
 - Climate Change/Clean Air Act | April 21

Biography



Kirstin Gibbs

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Kirstin Gibbs, co-leader of the firm’s energy industry team, as well as a leader of the climate change and sustainability working group, represents pipelines, producers, traders, marketers, utilities, and end users, on a host of issues. She handles transactional matters related to the development of new oil and gas infrastructure and regularly provides assistance with negotiation of midstream transportation and storage agreements, complex asset management agreements, and commodity transactions. Kirstin also counsels global clients interested in addressing climate change and sustainability initiatives by investing in clean energy technologies, including renewable natural gas and hydrogen, and decarbonizing their operations.

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Biography



Pamela T. Wu

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Pamela T. Wu advises clients in the natural gas, oil, and electric power industries before the Federal Energy Regulatory Commission (FERC), the Commodity Futures Trading Commission (CFTC), the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the US Department of Transportation, and the Texas Railroad Commission on rate, regulatory, and transactional matters. Pam represents clients in administrative litigation before FERC in rate and tariff proceedings and advises clients on compliance with the Natural Gas Act, the Interstate Commerce Act, and FERC-regulated tariffs.

Biography



David B. Mendelsohn

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David B. Mendelsohn is a government relations professional in Morgan Lewis's Washington Strategic Government Relations and Counseling Practice. He advises Morgan Lewis attorneys and clients on legislative developments and public policy issues and assists with lobbying registration and reporting.

David monitors a wide range of legislative and public policy issues, including: energy, tax, healthcare, infrastructure, digital assets, trade, and national security. He is currently serving as the government relations lead on the firm's Ukraine Conflict task force.

Prior to joining Morgan Lewis in 2011, he worked for the American Trucking Associations and previously interned in the Capitol Hill office of Congresswoman Gabrielle Giffords (D-AZ).

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