The Missing Metric: Greenhouse Gas Emissions in FERC's Pipeline Decisions

INTRODUCTION

The Intergovernmental Panel on Climate Change predicts that global warming of greater than 1.5 degrees Celsius above pre-industrial levels will result in greater food insecurity, loss of forests and coral reefs, and greater competition for land and water resources.[1] Keeping global warming below that target requires significant efforts to limit greenhouse gas (GHG) emissions.[2] Natural gas systems account for 31 percent of methane emissions, a potent GHG, demanding careful consideration of a new natural gas project's contribution to climate change compared to its benefits. [3]

In *New Jersey Conservation Foundation v. FERC*, the D.C. Circuit found that the Federal Energy Regulatory Commission's (FERC) approval of a natural gas pipeline project did not appropriately weigh GHG emissions as required by the National Environmental Protection Act (NEPA) and the Natural Gas Act (NGA).[4] The court found that in its cost-benefit analysis of the project, FERC did not apply a consistent or meaningful metric that appropriately weighed the harms of climate change coming from increased GHG emissions, as required by the NGA.[5] Consideration of the harms of increased GHG emissions before a pipeline project is approved could provide a useful tool in slowing global warming.

I. LEGAL BACKGROUND

In 2021, Transcontinental Gas Pipeline Company (Transco) initiated an application for a certificate of public necessity and convenience from FERC, a

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1. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2023: SYNTHESIS REPORT, SUMMARY FOR POLICY MAKERS 12-18 (2023), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf.

2. *See id.* at 9-10 (showing different greenhouse gas emission scenarios determining different levels of warming, and thus different levels of impact on human systems and ecosystems).

3. *See* International Energy Agency, *Understanding Methane Emissions*, INT'L ENERGY AGENCY, https://www.iea.org/reports/global-methane-tracker-2025/understanding-methane-emissions (last visited Nov. 23, 2025).

4. 111 F.4th 42, 54-63 (D.C. Cir. 2024).

5. *See id.*; Envt'l Def. Fund v. Fed. Energy Regul. Comm'n, 2 F.4th 953, 961-62 (D.C. Cir. 2021).

required part of pipeline approval under the NGA.[6] FERC's approval raised the question of how the agency should consider the GHG emissions of natural gas pipeline projects within its approval process. The New Jersey Conservation Foundation, among other groups, petitioned for review of the certificate, arguing that FERC overlooked important environmental impacts of the pipeline in issuing the certificate.[7]

Two federal statutes determine the evaluation of environmental impacts in FERC's certification process: NEPA and the NGA. Courts review FERC's NGA and NEPA decisions under the "arbitrary and capricious" standard of the Administrative Procedure Act (APA).[8] FERC's explanation for an action made in accordance with its NGA and NEPA obligations can fail to meet this standard if the agency offers an explanation that runs counter to the evidence before the Commission or fails to base its decision making off the record.[9] That will lead courts to determine that the agency's decision was "arbitrary and capricious," resulting in the remand of the decision to FERC for reconsideration.[10]

A. National Environmental Protection Act

Under NEPA, a court must make sure the agency has "adequately considered and disclosed the environmental impact" of an action, and that the determination made by the agency is not "arbitrary or capricious."[11] NEPA does not require an agency to use particular labels indicating the significance of a project's environmental impacts; however, where an environmental impact statement (EIS) "does not contain[] sufficient discussion of the relevant issues and opposing viewpoints," the court can set aside an agency action for not being "fully informed and well considered."[12]

The incorporation of GHGs into a NEPA analysis is a politicized issue and has fluctuated over the last decade. Until recently, the Council on Environmental Quality (CEQ) was responsible for establishing regulations for implementing NEPA.[13] In August 2016, the Obama administration's CEQ laid out methods for evaluating GHG emissions in NEPA compliance involving review of existing scientific literature and consideration of severe weather changes due to climate change.[14] Under the first Trump administration, the Obama administration CEQ

6. *N.J. Conservation Found.*,, 111 F.4th at 52.
7. *Id.* at 50.
8. 5 U.S.C. § 706(a)
9. Envt'l Def. Fund v. Fed. Energy Regul. Comm'n, 2 F.4th 953, 967-68 (D.C. Cir. 2021).
10. *Id.*
11. *N.J. Conservation Found.*, 111 F.4th at 54 (quoting *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97-98 (1983)).
12. *Id.* at 51 (internal quotation marks omitted) (quoting *Gulf Restoration Network v. Haaland*, 47 F.4th 795, 799-800 (D.C. Cir. 2022)).
13. *Welcome*, NEPA.GOV, https://ceq.doe.gov/ (last visited Nov. 24, 2025).
14. Memorandum from Christina Goldfuss, Council on Envt'l Quality to Heads of Federal Departments and Agencies, on Final Guidance for Federal Departments and Agencies on Consideration

guidance was rescinded. The Biden administration then built upon the Obama-era guidelines, which FERC relied on to consider GHG emissions as part of the approval process in a 2021 pipeline approval for Northern Natural Gas Company.[15] In 2023, Biden instituted new CEQ guidelines that instructed federal agencies to disclose and consider GHG emissions that contribute to climate change by quantifying them.[16] However, the guidance explicitly did not establish a level of GHG emissions at which the environment is considered to be "significantly" impacted.[17] It instead stated that placing those emissions in context fit for the proposed project was important to analyzing its effects.[18] This quantification and consideration was conducted at relevant times by monetizing the impact of a project's GHG emissions via the Social Cost of Greenhouse Gases metric.[19] The Social Cost of GHGs is a metric used to account for the net social costs of increasing GHG emissions and the net social benefits of reducing GHG emissions.[20]

Under the current Trump administration, these CEQ guidelines for incorporating GHGs into NEPA have been entirely revoked.[21] Further, the D.C. Circuit has recently held in *Marin Audubon Society v. FAA* that the CEQ does not have the authority to issue binding regulations for interpreting NEPA, leaving it up to individual agencies to decide how to conduct its own NEPA analysis.[22] The changing guidance on whether and how to include GHGs demonstrates that administrative guidelines for implementing NEPA are not a strong legal mechanism for ensuring consideration of GHG impacts in pipeline development.

B. Natural Gas Act

The purpose of the NGA is to "encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices" subject to "subsidiary" considerations, such as "conservation, environmental, and antitrust questions."[23] To that end, the NGA requires a project to receive a certificate of public

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of Greenhouse Gas Emissions and Effects of Climate Change in National Environmental Policy Act Reviews 24, 30 (Aug. 1, 2016) [hereinafter 2016 CEQ Memorandum].

15. National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196, 1198 (Jan. 9, 2023). *See* N. Nat. Gas Co., 174 F.E.R.C. ¶ 61,189 at P 36 (2021).

16. National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196, 1200 (Jan. 9, 2023).

17. *Id.*

18. *Id.*

19. *Id*. at 1201.

20. *Id.* at 1203.

21. *See generally* Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610 (Feb. 25, 2025).

22. Marin Audubon Soc'y v. Fed. Aviation Admin., 121 F.4th 902, 908-914 (D.C. Cir. 2024).

23. Nat'l Ass'n for the Advancement of Colored People v. Fed. Power Comm'n, 425 U.S. 662, 669-70, 670 n.6 (1976).

necessity and convenience before it can commence.[24] As part of this approval process, FERC must first determine that there is a market need for a project.[25] If an adequate market need is found, it then determines whether there are likely to be adverse impacts on the economic interests of energy consumers, other energy companies, and landowners, and, if so, whether those outweigh a project's public benefits.[26] Adverse impacts outweighing a project's benefits triggers FERC's obligations under NEPA.[27] The goal of the applicant in this interest-balancing process is to show that public benefits outweigh the adverse impacts.[28] The NGA balancing considers how the adverse effects of a pipeline impact only specific interests. These are "the interests of the [pipeline's] existing customers, the interests of competing existing pipelines and their captive customers, and the interests of landowners and surrounding communities."[29]

In 2022, the D.C. Circuit described in *Center for Biological Diversity v. FERC* that NGA balancing includes finding that public benefits of a project are "not outweighed by the projected environmental impacts."[30] Currently, FERC's evaluation of public convenience and necessity under the NGA requires balancing the need for and benefits of a project against adverse consequences on "landowners as well as environmental impacts identified in the NEPA document developed for that project."[31] This means FERC takes a case-by-case approach to considering environmental impacts based on the project's EIS.[32]

Accounting for the impact of GHG emissions became part of NGA balancing based on a FERC decision on a pipeline approval for Northern Natural Gas Company.[33] There, the Commission stated, "we note that should we determine that a project's reasonable foreseeable GHG emissions are significant, those GHG related impacts would be considered along with many other factors when determining whether a project is required by public convenience and necessity."[34] Here, FERC's reference to "public convenience and necessity" refers to the NGA balancing test.[35] Determining that GHG emissions are "significant" as part of the NEPA review process means that the impacts of GHG emissions from a project must be considered as one of the factors in the NGA

24. 15 U.S.C. § 717f(c)(1)(A); Certificate of New Interstate Nat. Gas Pipeline Facilities, 88 F.E.R.C. ¶ 61,227, 61,743 (1999).

25. Envt'l Def. Fund v. Fed. Energy Regul. Comm'n, 2 F.4th 953, 961 (D.C. Cir. 2021).

26. *Id.*

27. *See id.*

28. *Id.* at 961-62.

29. 88 F.E.R.C. ¶ 61,227, 61,747.

30. 67 F.4th at 1188.

31. Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs., 190 F.E.R.C. ¶ 61,049 at P 4 (2025) (Phillips, Rosner, & Chang, Comm'rs, concurring).

32. *See id.*

33. N. Nat. Gas Co., 174 F.E.R.C. ¶ 61,189 at P 36 (2021).

34. *Id.*

35. *See id.*

balancing test, which ultimately determines whether or not FERC will grant a certificate of public convenience and necessity.[36]

II. CASE BACKGROUND

In January 2023, FERC issued a certificate allowing Transco to construct a new pipeline project through New Jersey, New York, Delaware, Maryland, and Pennsylvania.[37] In this decision, FERC found the public benefits outweighed the harm, incorporating the findings of its EIS into the Certificate Order approving the project.[38] The New Jersey Conservation Foundation sued FERC following its certification of the project, arguing it failed to weigh GHG emissions as part of the environmental consequences of its decision to approve the pipeline, thus violating the APA due to the inconsistency with an earlier pipeline approval.[39] Alongside several other organizations, the New Jersey Conservation Foundation filed petition for review, which, under the NGA, can be heard by the D.C. Circuit.[40]

The Petitioners argued that FERC failed to adequately weigh the environmental impact of GHG emissions resulting from the pipeline project as required under NEPA and the NGA for two reasons.[41] First, under NEPA, the petitioners claimed that FERC failed to make, or explain why it could not make, a significance determination regarding GHG emissions after having done so in a previous agency decision for Northern Natural Gas Co.[42] In a 2021 certificate issuance, FERC found, "there is nothing about GHG emissions or their resulting contribution to climate change that prevents us from making [a] significance determination."[43] Here, FERC decided to issue the certification for Transco without making any significance determination regarding GHG emissions or explaining why it could not make such a determination just a few years later.[44] The court determined that even if FERC is not required to make a significance determination, its choice not to do so in this case without explanation was "arbitrary and capricious" under the APA. [45]

Second, the Petitioners argued that the balancing of public benefits and adverse impacts required for issuance of the public necessity and convenience certificate under the NGA was "arbitrary and capricious" because it overlooked important harms from GHG emissions.[46] FERC merely mentioning the

36. *See id*.
37. N.J. Conservation Found. v. Fed. Energy Regul. Comm'n, 111 F.4th 42, 49-50, 52 (D.C. Cir. 2024).
38. *Id.* at 52-53.
39. *Id.* at 49-50, 54.
40. *Id.* at 53.
41. *Id.* at 53-54, 62-63.
42. *Id.* at 54.
43. N. Nat. Gas Co., 174 F.E.R.C. ¶ 61,189 at P 32 (2021).
44. *N.J. Conservation Found.*, 111 F.4th at 54.
45. *Id.* at 56.
46. *Id.* at 62.

anticipated GHG emissions without sufficiently weighing them amongst the criteria made its interest balancing conclusory.[47] The court found that FERC's choice not to make a significance determination led to a failure to meaningfully weigh climate harms as part of the adverse impacts in its interest balancing test under the NGA because it merely referred back to the "equivocal" EIS when determining the public benefits outweigh the harms.[48]

III. ANALYSIS

FERC does not yet have a meaningful methodology for considering GHGs within its certification process for new pipelines under the NGA and NEPA. CEQ's attempts to provide a guiding standard left FERC confused, providing little and often significantly differing levels of guidance depending on the administration in power.[49] In *New Jersey Conservation Foundation*, the D.C. Circuit attempted to hold FERC to some standard for evaluation but without specifying how this process might occur.[50] Furthermore, the court held in *Food & Water Watch v. FERC* that merely stating the lack of a method for quantifying climate harm is an acceptable claim that there is a lack of adequate consideration of GHGs.[51] In light of the D.C. Circuit ruling that CEQ's NEPA guidance documents exceed their authority, FERC determines its own methods for the consideration of GHG emissions.[52] FERC leaves the public with only a statement of its current policies.[53] However, these contain precisely the issues that FERC previously stated prevent it from making significance determinations. Specifically, the methodologies do not allow for a useful balancing of GHG emissions and their impacts. A meaningful standard would be one where the NGA balancing test incorporates an interest that can be tangibly affected by GHG emissions.

A. GHG emissions cannot be meaningfully considered within the NGA balancing test.

It is important to understand the point of the NGA balancing test. The Commission must consider adverse impacts on stakeholders, such as the existing customers of the pipeline proposing a project, the existing pipelines in the

47. *Id.* at 63.

48. *Id.*

49. *See* 2016 CEQ Memorandum, *supra* note 15at 24, 30 (original CEQ guidelines regarding the consideration of GHG emissions in the NPA process); National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196, 1200-01 (Jan. 9, 2023) (codifying the Biden era re-implementation of similar guidelines after the first Trump Administration); *see* Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610 (Feb. 25, 2025) (removing CEQ guidelines for the enforcement of NEPA).

50. *See N.J. Conservation Found.*, 111 F.4th at 56, 63.

51. Food & Water Watch v. Fed. Energy Regul. Comm'n, 28 F.4th 277, 290 (D.C. Cir. 2022).

52. *See* Marin Audubon Soc'y v. Fed. Aviation Admin., 121 F.4th 902, 908 (D.C. Cir. 2024).

53. *See, e.g.*, Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs., 190 F.E.R.C. ¶ 61,049 (2025).

market, or landowners and communities affected by the "route of the new pipeline."[54] If adverse effects seem likely to result, FERC must balance them against the public benefits of the project, as measured by an "economic test."[55] The adverse effects considered by the Commission are increased rates for preexisting customers, degradation in service, unfair competition, and negative impact on the environment or landowner's property.[56]

Furthermore, FERC's NGA balancing test originally disregarded the consideration of environmental issues and thus creates the problem with meaningfully evaluating GHG emissions. Initially, FERC did not include broader environmental concerns in its discussions of impacts to landowner property because, "landowner property rights issues are different in character from other environmental issues considered under NEPA."[57] As described above, recent precedent changed how FERC's considered environmental factors as adverse effects, leading to the court in *New Jersey Conservation* to find balancing GHGs among the adverse effects as "needed analysis" in order for FERC's balancing to be complete.[58] If the NEPA environmental assessment or EIS find significant environmental factors, they must be considered in the NGA balancing.[59] Public benefits include meeting new demand, providing new competitive alternatives, and advancing clean air objectives.[60] These factors being the main consideration in the "economic test" utilized for NGA balancing makes it fundamentally incompatible with consideration of environmental issues under the NGA, because environmental issues are often not quantifiable within a purely economic context.[61] Currently, however, the Commission establishes that there are certain cases where NGA balancing may consider GHG emissions.[62] Nonetheless, the methods available to FERC for doing so currently fall short.

B. FERC's stated methods to evaluate GHG emissions remain unworkable.

The D.C. Circuit's attempt to require at least some analysis of the impact of GHG emissions stemming from the pipeline project in *New Jersey Conservation* still did not result in a meaningful standard.[63] The court felt that

54. Envt'l Def. Fund v. Fed. Energy Regul. Comm'n, 2 F.4th 953, 961 (D.C. Cir. 2021).

55. *Id.* (quoting Certification of New Interstate Nat. Gas Pipeline Facilities, 88 F.E.R.C. ¶ 61,227, 61,745 (1999)).

56. *Id.*

57. 88 F.E.R.C. ¶ 61,227, 61,747 (1999).

58. *See* N.J. Conservation Found. v. Fed. Energy Regul. Comm'n, 111 F.4th 42, 63 (D.C. Cir. 2024).

59. *See* Ctr. for Biological Diversity v. Fed. Energy Regul. Comm'n, 67 F.4th 1176, 1188 (D.C. Cir. 2023); Food & Water Watch v. Fed. Energy Regul Comm'n, 28 F.4th 277, 282 (D.C. Cir. 2022).

60. *Envt'l Def. Fund*, 2 F.4th at 961.

61. *See id.*

62. Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs., 190 F.E.R.C. ¶ 61,049 at 6 (2025); N. Nat. Gas Co., 174 F.E.R.C. ¶ 61,189 at P 36 (2021).

63. *See N.J. Conservation Found.*,111 F.4th at 63.

FERC needed to show its reasoning such that they have sufficiently "evaluated the record evidence" of GHGs as part of its significance determination under NEPA and the interest-balancing under the NGA.[64] The court focused its analysis on the fact that FERC calculated the emissions and discussed climate harm generally in its interest balancing but stopped short of considering them among the adverse effects.[65] However, at this stage the court did not elaborate on what meaningfully considering GHG emissions among adverse impacts in balancing should look like and merely critiqued the EIS for being "equivocal."[66] The court refers to the emissions from the project as "enormous" and takes issue with FERC's refusal to make a NEPA significance determination based on GHG emissions because it was able to make one in its prior certification of Northern Natural Gas Co.'s pipeline and did not explain the discrepancy in its decision making.[67] In a decision to certify a project for Northern Natural Gas Co., FERC quantified GHG emissions in the NEPA document and calculated the project's contribution to national and statewide emissions.[68] Finding it to be a very small percentage of both national and statewide emissions, FERC determined the harms for additional GHG emission were not significant.[69] Because FERC employed this methodology, the D.C. Circuit held in *New Jersey Conservation* that FERC must adequately weigh GHG emissions in its interest balancing and significance determination, or at least explain why it cannot do so in its decisions.[70] However, this holding provides little clarity for FERC about how it should be weighing GHG emissions.

Both before and after *New Jersey Conservation*, FERC considered developing an established process for handling GHG emissions in its NEPA and NGA approval requirements.[71] However, in early 2025, FERC cancelled this order, noting this process is better handled on a case-by-case basis.[72] In a concurrence to this order, three of the Commissioners note that there remain factors FERC utilizes in determining the impact of GHG emissions as part of its approval process.[73] FERC's democratically-appointed commissioners wrote that the Commission utilizes five considerations for evaluating GHGs in order to comply with NEPA: estimating reasonably foreseeable GHG emissions attributable to a proposed project; providing a qualitative discussion of potential adverse effects from such emissions; contextualizing emissions levels by comparing them to any applicable national and statewide emissions levels and

64. *Id.*
65. *Id.*
66. *See id.*
67. *Id.* at 54.
68. N. Nat. Gas Co., 174 F.E.R.C. ¶ 61,189 at PP 34-36 (2021).
69. *Id.*
70. *See N.J. Conservation Found.*, 111 F. 4th at 54, 63.
71. Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs., 190 F.E.R.C. ¶ 61,049 at PP 2-3 (2025).
72. *Id.* at P 3.
73. *Id.* at P 3 (Phillips, Rosner, & Chang, Comm'rs, concurring).

calculating monetized values; evaluating technically and economically feasible strategies for avoiding GHG emissions during construction and operations; and balancing the need for benefits derived from the project against the potential adverse consequences.[74]

However, these considerations fall short of a practicable standard for FERC. The consideration most relied on by FERC in its Northern Natural Gas Co. project certification was estimating reasonably foreseeable GHG emissions attributable to a proposed project and contextualizing them by comparing them to any applicable national and statewide emissions levels. While this method was previously found acceptable by the D.C. Circuit,[75] the EPA rejected this method as "inappropriately diminish[ing] the significance of project-level greenhouse gas (GHG) emissions."[76] FERC also determined calculating monetized values unworkable because it is "currently unable to identify any criteria to determine what monetized values are significant for NEPA purposes."[77] Finally, in considering mitigation measures, "NEPA does not specify any form of mitigation for that statute's required discussion."[78] Each of the stated factors FERC considers are not practicable based on FERC and other regulatory agency's concerns with their accuracy.

A likely reason these factors do not intelligibly enable the Commission to evaluate GHG emissions is because FERC's stated policy toward GHG emissions does not fit within the current framework for the NGA balancing test. The NGA balancing test's consideration of how the adverse effects of a pipeline impact particular interests include the "interests of competing existing pipelines and their captive customers. . . ."[79] For the interests of existing pipelines already serving the market and their customers, it is unclear how GHG emissions would impact that market directly. It is possible to consider how the GHG emissions might impact the economic interests of existing customers, but it is incredibly challenging to identify the how the interests of people are impacted by climate change.[80] Finally, FERC situated the "interests of landowners and surrounding communities," as explicitly separate from other environmental concerns, stating, "those issues are characteristically different from other environmental issues."[81] Without an NGA balancing test interest within which FERC can consider GHG emissions to have an intelligible impact, there is no meaningful way to apply the impact of the emissions from a particular project within the NGA balancing test.

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74. *Id.*

75. *See generally* Birckhead v. Fed. Energy Regul. Comm'n, 925 F.3d 510 (D.C. Cir. 2019).

76. Final Opening Brief of Petitioner at 65, Citizens Action Coal. of Ind., Inc. v. Fed. Energy Regul. Comm'n, 125 F. 4th. 229 (D.C. Cir. 2024) (No. 23-1046).

77. Transcon. Gas Pipe Line Co., 190 F.E.R.C. ¶ 61,048 at P 85 (2025).

78. *Id.* at P 86.

79. Certification of New Interstate Nat. Gas Pipeline Facilities, 88 F.E.R.C. ¶ 61,227, 61,747 (1999).

80. *Id.*; *see, e.g.*, Am. Elec. Power Co. v. Connecticut, 564 U.S. 410, 422 (2011) ("[E]missions in New Jersey may contribute no more to flooding in New York than emissions in China.").

81. 88 F.E.R.C. ¶ 61,227, 61,747.

C. Future challenges FERC will face in addressing greenhouse gas emissions

Currently, adverse effects analyzed as part of the NGA balancing test do not intelligibly account for climate harms. Providing a meaningful standard would require FERC to identify an interest of persons or the environment to which it can tie the harm of specific amount of GHG emissions. As discussed above, under the Biden Administration, FERC included the Social Cost of GHGs in its NEPA reports. However, it provided no way of using this monetized value because it cannot specify what amount reaches the level of significance under NEPA review that triggers the consideration of GHGs in the NGA balancing test.[82] If FERC established a state-level interest in climate mitigation, it could provide a way for the monetized value of GHG emissions to directly address an interest that FERC must consider. The Social Cost of Carbon could be used in comparison to a state's GDP, allowing FERC to consider what monetized value of GHG emissions would be significant based on a relative comparison to a state's GDP.[83] However Biden administration policies that are responsible for the historical of use of the Social Cost of Carbon by FERC, including an Executive Order and CEQ Guidelines, are no longer controlling authorities. Furthermore, critics argue that the Social Cost of GHGs fails to adequately consider equity and intergenerational impacts of climate change.[84] However, the establishment of some interest through amendment of the stated interests in the NGA that would account for climate harms could provide the opportunity for a meaningful standard to weigh GHG emissions under the NGA balancing test required for certification of a natural gas pipeline project. [85]

In a future FERC administration, it is possible the makeup of the Commission may change, resulting in increased interest in a more thorough consideration of GHG emissions, as with its decision for the Northern Natural Gas Co. pipeline.[86] However, without support from the underlying law behind changes in policy direction, any effort FERC makes to change its treatment of GHG emissions may face a similar challenge for violation of the APA as it did in *New Jersey Conservation*.[87] In that instance, the APA challenge involved the move away from considering GHG emissions when the previous record in its Northern Natural Gas Co. approval indicated that FERC would continue considering them.[88] Now FERC's record, as discussed above, details a shift away

82. National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196, 1201 (Jan. 9, 2023).

83. For an analysis of GDP by state, see *GDP by State*, BUREAU OF ECON. ANALYSIS, https://www.bea.gov/data/gdp/gdp-state (last updated Sept. 26, 2025).

84. Laurie T. Johnson & Chris Hope, *The Social Cost of Carbon in U.S. Regulatory Impact Analyses: An Introduction and Critique*, 2 J. ENVT'L STUD. & SCIS. 205, 206, 211-13 (2012).

85. *Id.*

86. *See* N. Nat. Gas Co., 174 F.E.R.C. ¶ 61,189 at PP 29-36 (2021).

87. *See* N.J. Conservation Found. v. Fed. Energy Regul. Comm'n, 111 F.4th 42, 53-54 (D.C. Cir. 2024).

88. *See id.* at 54-56.

from considering GHGs, leaving them largely unweighted in the balancing test due to the lack of a cognizable standard.[89] Thus, engaging more with the consideration of GHG emissions may lead to further legal challenges brought under the APA for its "arbitrary and capricious" decision making.

CONCLUSION

The D.C. Circuit ruling in *New Jersey Conservation Foundation* exposes the overall ineffectiveness of FERC's past attempts to consider GHG emissions within its pipeline approval process. The ineffectiveness of these attempts stems from the lack of an interest considered in the NGA balancing test which the adverse effects of climate change can intelligibly impact. The challenges, both practical and legal, to FERC's ability to regulate GHG emissions will continue, so long as it does not consider an interest that actually accounts for adverse effects of climate change.

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89. *See, e.g.*, Food & Water Watch v. Fed. Energy Regul. Comm'n, 28 F.4th 277, 290 (D.C. Cir. 2022) (accepting FERC's reasoning to make no significance determination based on its GHG emissions in its NEPA review because there were no methods available to attribute environmental impacts to GHG emissions).