FERC Overrules *Northern Natural* and Finds It Does Not Need to Identify Whether a Natural Gas Project's Greenhouse Gas Emissions are 'Significant'

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On November 27, 2024, in *Venture Global, CP2 LNG, LLC*,[1] the Federal Energy Regulatory Commission's (FERC or Commission) explicitly overruled precedent set in *Northern Natural Gas Co.*,[2] a 2021 decision in which FERC made an affirmative finding that an interstate natural gas pipeline project it was certificating under section 7 of the Natural Gas Act (NGA) would not make a "significant" contribution to global climate change. *Northern Natural* is the only FERC decision in which a so-called significance determination was made with respect to greenhouse gas emissions (GHG) arising from a FERC-regulated natural gas infrastructure project. In *Venture Global*, FERC rejected arguments that it needed to follow *Northern Natural* and assess the significance of GHG emissions in all NGA certificate proceedings to comply with the National Environmental Policy Act (NEPA). NEPA requires federal agencies, including FERC, that perform "major federal actions," which include issuing NGA section 7 certificates, to prepare an environmental impact statement (EIS) if the action will "significantly affect[] the quality of the human environment."[3] FERC has been under pressure to fully explain why it has chosen not to apply *Northern Natural*'s significance analysis in subsequent cases, and that issue is currently before FERC on remand from the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) in *Healthy Gulf et al. v. FERC*, which reviewed FERC's approval of a liquefied natural gas (LNG) terminal under NGA section 3.

In *Venture Global*, FERC rejected arguments that it needed to make a binary significance or insignificance determination to comply with NEPA or regulations implementing NEPA, particularly if the agency prepares an EIS that discusses the significance of emissions. FERC also explains that *Northern Natural* does not represent an agency policy or practice necessitating a binary result. FERC held that *Northern Natural*'s determination was "sui generis" as it merely compared the project's reasonably foreseeable GHG emissions to the total of GHG emissions in the United States as well as to state inventories, but did not explain the basis upon which it determined significance, nor identified any tool or method for making a significance determination. FERC also explained that it could not:

> characterize any project's GHG emissions as significant or insignificant because we are unable to identify any accepted tool or method, including use of the social cost of GHGs, that would allow us to determine what level of GHG emissions' contribution to adverse climate change impacts is significant under NEPA. We note that to date, no other Federal agency, including the U.S. Environmental Protection Agency (EPA) and [Council on Environmental Quality], has established either an accepted tool or method or a threshold for determining significance that the Commission could adopt.

FERC also rejected arguments that that it needed to use the "social cost of GHGs," a tool that allows policy-makers to estimate the dollar value associated with emitted a metric ton of GHGs, to make a significance determination. FERC, however, committed to continue to calculate and publish the social cost of GHGs for a project's reasonably foreseeable GHG emissions to fulfill its obligations under NEPA of public disclosure.

Venture Global represents the clearest explanation to date regarding FERC's position on its role to evaluate reasonably foreseeable GHG emissions arising from projects it regulates. The clarity likely may be a biproduct of the new Commissioners. While Commissioner Chang did not participate in the decision, *Venture Global* is a bipartisan decision with no dissents. It leaves some things unknown, however. FERC states that it will continue to consider GHG impacts on a case-by-case basis. It also leaves open the possibility that natural gas infrastructure projects will always require an EIS to address GHGs when an explicit significance determination cannot be made. And, while the natural gas industry will appreciate *Venture Global*'s holdings on significance for GHGs, other aspects of the decision are unfavorable, including FERC's decision to pause construction of an LNG terminal and related pipeline project while it completes a supplemental EIS process. This is the topic of a different Akin Speaking Energy post, which can be found here.

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1 189 FERC ¶ 61,148 (2024).

2 174 FERC ¶ 61,189 (2021).

3 42 U.S.C. 4332(2)(C).

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