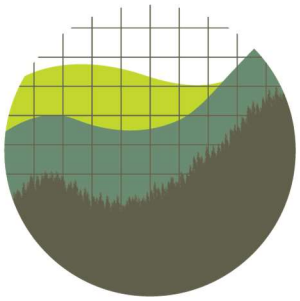

Institute *for*
Policy Integrity
NEW YORK UNIVERSITY SCHOOL OF LAW

September 2, 2020

To: Office of Energy Projects, Federal Energy Regulatory Commission, Department of Energy

Subject: Failure to Monetize Greenhouse Gas Emissions in Draft Environmental Assessment for the PennEast 2020 Amendment Project (Docket No. CP20-47-000)

The Institute for Policy Integrity at New York University School of Law ("Policy Integrity")[1] respectfully submits comments on the Federal Energy Regulatory Commission's ("FERC" or "the Commission") Draft Environmental Assessment for the PennEast 2020 Amendment Project ("Environmental Assessment").[2] Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity regularly submits comments to federal agencies on the social cost of greenhouse gases and assessments under the National Environmental Policy Act ("NEPA") and the Natural Gas Act ("NGA").

In the Environmental Assessment, FERC projects that the PennEast 2020 Amendment Project (the "Project")—which provides for various additions to the proposed PennEast Pipeline, including three compressor units—will result in an additional 262,559 metric tons of carbon-dioxide equivalent in annual operational emissions[3] along with 86,691 metric tons of carbon-dioxide equivalent in total construction emissions.[4] Yet without assessing the impact of these emissions on climate changes and resulting health and welfare harms such as mortality or property damages, the Commission nonetheless concludes that such emissions "would not have a significant impact."[5] This cursory and conclusory assessment does not satisfy the Commission's obligations under the NGA and NEPA to meaningfully assess the significance of environmental harms including effects on climate change. And it disregards an available tool—the social cost of greenhouse gases—that allows for such an assessment.

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[1] This document does not purport to represent the views, if any, of New York University School of Law.

[2] FED. ENERGY REG. COMM'N, PENNEAST 2020 AMENDMENT PROJECT DRAFT ENVTL. ASSESSMENT (Docket No. CP20-47-000) (Aug. 2020) [hereinafter "EA].

[3] *Id.* at 43 tbl. B.7.3-7. While the EA appears to indicate that this is an annualized rather than a cumulative figure, the Commission should clarify this point in any finalized environmental assessment for the Project.

[4] *Id.* at 41 tbl. B.7.3-5.

[5] *Id.* at 44.

Beginning with NEPA, mere quantification of greenhouse gas emissions is insufficient without an assessment of the harm that those emissions will cause. NEPA requires "hard look" consideration of beneficial and adverse effects of each alternative option for major federal government actions. The U.S. Supreme Court has called the disclosure of impacts the "key requirement of NEPA," and held that agencies must "consider and disclose the *actual environmental effects*" of a proposed project in a way that "brings those effects to bear on [the agency's] decisions."[6] The "impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires," and it is arbitrary and capricious not to "provide the necessary contextual information about the[se] cumulative and incremental environmental impacts."[7]

The tons of greenhouse gases emitted by a project are not the "actual environmental effects" that must be assessed under NEPA. Rather, the actual effects are the incremental climate impacts caused by those emissions, including property lost or damaged by sea-level rise, coastal storms, flooding, and other extreme weather events, and human health impacts including mortality from heat-related illnesses and changing disease vectors like malaria and dengue fever.[8] Simply quantifying emissions is not enough: By calculating only the tons of greenhouse gases emitted, an agency fails to meaningfully assess the actual incremental impacts to property, human health, productivity, and so forth.[9] To provide an analogous example, just quantifying the acres of timber to be harvested or the miles of road to be constructed does not constitute a "description of *actual* environmental effects," even when paired with a qualitative "list of

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[6] *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 96 (1983) (emphasis added); *see also* 40 C.F.R. § 1508.8(b) (requiring assessment of the "ecological," "economic," "social," and "health" "*effects*") (emphasis added).

[7] *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008); *see also id*. ("[T]he fact that climate change is largely a global phenomenon that includes actions that are outside of [the agency's] control . . . does not release the agency from the duty of assessing the effects of *its* actions on global warming within the context of other actions that also affect global warming."); *Border Power Plant Working Grp. v. U.S. Dep't of Energy*, 260 F. Supp. 2d 997, 1028–29 (S.D. Cal. 2003) (failure to disclose project's indirect carbon dioxide emissions violates NEPA).

[8] For a more complete discussion of actual climate effects, including air quality mortality, extreme temperature mortality, lost labor productivity, harmful algal blooms, spread of West Nile virus, damage to roads and other infrastructure, effects on urban drainage, damage to coastal property, electricity demand and supply effects, water supply and quality effects, inland flooding, lost winter recreation, effects on agriculture and fish, lost ecosystem services from coral reefs, and wildfires, *see* EPA, *Multi-Model Framework for Quantitative Sectoral Impacts Analysis: A Technical Report for the Fourth National Climate Assessment* (2017); U.S. Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment* (2017); EPA, *Climate Change in the United States: Benefits of Global Action* (2015); Union of Concerned Scientists, *Underwater: Rising Seas, Chronic Floods, and the Implications for U.S. Coastal Real Estate* (2018).

[9] *See, e.g.*, *Ctr. for Biological Diversity*, 538 F.3d at 1216–17 (rejecting analysis under NEPA when agency "quantifie[d] the expected amount of [carbon dioxide] emitted" but failed to "evaluate the incremental impact that these emissions will have on climate change or on the environment more generally," noting that this approach impermissibly failed to "discuss the *actual* environmental effects resulting from those emissions" or "provide the necessary contextual information about the cumulative and incremental environmental impacts" that NEPA requires); *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1190 (D. Colo. 2014) ("Beyond quantifying the amount of emissions relative to state and national emissions and giving general discussion to the impacts of global climate change, [the agencies] did not discuss the impacts caused by these emissions."); *Mont. Envtl. Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1096–99 (D. Mont. 2017) (rejecting the argument that the agency "reasonably considered the impact of greenhouse gas emissions by quantifying the emissions which would be released if the [coal] mine expansion is approved, and comparing that amount to the net emissions of the United States").

environmental concerns such as air quality, water quality, and endangered species," when the agency fails to assess "the degree that each factor will be impacted."[10]

Turning to the NGA, likewise, Section 7 of that Act permits FERC to approve the construction of natural gas facilities only if the project is "required by the present or future public convenience and necessity." 15 U.S.C. § 717f(e). Such a determination requires FERC to adequately consider a project's environmental impacts, including climate consequences.[11] And such an assessment requires more than a "passing reference to relevant factors,"[12] but rather requires FERC to meaningfully and rationally consider all "relevant factors … within the scope of the authority delegated to the agency by the statute."[13] FERC cannot reasonably make this determination if it simply lists the volume of emissions without any meaningful consideration of the impacts that those emissions will have on the climate. Indeed, it would be the hallmark of arbitrary-and-capricious decision-making for FERC to declare the Project to be in the public interest without carefully assessing its impacts on human health, extreme weather events, property damage, and other devastating impacts posed by climate change.[14]

The Commission's failure to meaningfully consider the impact of the Project's greenhouse gas emissions on climate damages is particularly arbitrary and irrational because an available and widely-used tool—the social cost of greenhouse gases—allows for precisely such an assessment. The social cost of greenhouse gases methodology calculates how the emission of an additional unit of greenhouse gases affects atmospheric greenhouse concentrations, how that change in atmospheric concentrations changes temperature, and how that change in temperature incrementally contributes to the above list of economic damages.[15] The social cost of greenhouse gases tool therefore captures the factors that actually affect public welfare and assesses the degree of impact to each factor, in ways that just estimating the volume of emissions cannot. In fact, various agencies have used the social cost of greenhouse gases to assess a project's climate impacts under NEPA.[16]

Indeed, applying the social cost of greenhouse gases is straightforward and provides information that would be very useful to the Commission's assessment here. Specifically, using

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[10] *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 995 (9th Cir. 2004) ("A calculation of the total number of acres to be harvested in the watershed is . . . not a sufficient description of the actual environmental effects that can be expected from logging those acres.").

[11] *See, e.g.*, *Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (explaining that "FERC could deny a pipeline certificate [under Section 7 if] the pipeline would be too harmful to the environment," and proceeding to assess the adequacy of the Commission's analysis of greenhouse gas emissions).

[12] *Mo. PSC v. FERC*, 234 F.3d 36, 41 (D.C. Cir. 2000).

[13] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[14] *Rio Grande LNG, LLC*, 169 FERC ¶ 61,131 (Nov. 22, 2019) (*Glick, Comm'r, dissenting)*, at P 2 ("Claiming that a project generally has no significant environmental impacts while at the same time refusing to assess the significance of the project's impact on the most important environmental issue of our time is not reasoned decisionmaking.").

[15] Interagency Working Group on the Social Cost of Carbon, *Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis* 5 (2010).

[16] *See e.g.*, BUREAU OF OCEAN ENERGY MGMT., FINAL ENVIRONMENTAL IMPACT STATEMENT OF COOK INLET PLANNING AREA OIL AND GAS LEASE SALE 244 (BOEM 2016-069) (Dec. 23, 2016); The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, 85 Fed. Reg. 24,174 (Apr. 30, 2020); *see also* Peter Howard & Jason Schwartz, *Think Global: International Reciprocity as Justification for a Global Social Cost of Carbon*, 42 COLUM. J. ENVTL. L. 203, 270–84 (2017) (listing all uses by federal agencies through mid-2016, including numerous NEPA assessments).

the central value identified by the federal Interagency Working Group on the Social Cost of Carbon, the methodology reveals that the Project's operational emissions alone would cause nearly $15 million in annual climate harms.[17] This substantial cost helps disclose the intensity and significance of the Project's climate harms pursuant to NEPA and would bear heavily on assessing whether the Project is in fact in the public interest under the NGA. Should this Commission approve the Project without using the methodology or any rational assessment of the severity of resulting climate harms, its determination would be arbitrary and capricious.

Policy Integrity hereby attaches its October 2019 comments on FERC's Draft Environmental Impact Statement for the Alaska LNG Project, submitted jointly with six other groups, which provides further detail on the social cost of greenhouse gases and rebuts specific arguments that the Commission has offered against the methodology in prior determinations. Policy Integrity also attaches its 2019 report titled "Pipeline Approvals and Greenhouse Gas Emissions," which further explains FERC's legal obligations to assess climate-related impacts in pipeline approvals. FERC should consider all relevant arguments expressed in the attached documents to be comments made on the Environmental Assessment as well. As these documents further explain, and as detailed above, it would be arbitrary and capricious for FERC to approve the Project without further analysis of its climate impacts, which the social cost of greenhouse gases would facilitate.

Sincerely,

Iliana Paul, Policy Analyst
Max Sarinsky, Attorney
Jason A. Schwartz, Legal Director

Attached:

Joint Comments on the Failure to Use the Social Cost of Greenhouse Gases in the Alaska LNG Project Draft Environmental Impact Statement (Docket No. CP17-178-000)

Jayni Hein et al., Pipeline Approvals and Greenhouse Gas Emissions, Institute for Policy Integrity Report (2019)

[17] The 2016 Interagency Working Group's central estimate of the social cost of carbon for year 2025 emissions is $46 in 2007$. Interagency Working Group on the Social Cost of Carbon, *Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis* 4 (2016). Adjusted for inflation, that equals approximately $57 in 2019$. 262,559 tons of CO2e* $57 = $14.97 million. In a proper cost-benefit analysis, that calculation of costs from year 2025 emissions would be discounted back to present value.

This estimate includes only operational emissions. This same formula finds that the Project's 86,691 metric tons of carbon-dioxide equivalent in total construction emissions, EA at 41 tbl. B.7.3-5, would result in over $4.9 million in climate damages.