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

November 20, 2017

To: Federal Energy Regulatory Commission
Dockets: CP14-554-002, CP15-16-003, CP15-17-002
Subject: Need to Analyze Supply-Price-Demand Effects on Downstream Emissions of the Southeast Market Pipelines Project

In addition to our separate comments submitted jointly with other organizations on the failure to use the social cost of greenhouse gases, the Institute for Policy Integrity at New York University School of Law[1] submits these comments on the need for FERC to analyze the effects of approving the Southeast Market Pipelines project on natural gas supply and prices, the consequential effect on demand for natural gas, and the ultimate effect on downstream emissions.

While FERC does briefly assess the potential for this project to contribute to the displacement of coal- and oil-fired energy, FERC fails to conduct a full assessment of substitute energy sources, or to explain either why such an assessment is infeasible or why the results of such assessment would be insignificant.

Basic principles of supply and demand predict that increasing the supply of a commodity like natural gas will lower prices, and that lower prices will lead to increased demand for and consumption of that commodity.[2] If the increased consumption of natural gas due to the increased supply from the Southeast Market Pipelines project comes at the expense of energy conservation or of cleaner energy sources like nuclear and renewables, the end result would be an increase in greenhouse gas emissions.

Multiple courts have recognized the need for agencies to assess such demand effects and energy substitution patterns in their environmental impact statements. Most recently, the U.S. Court of Appeals for the Tenth Circuit explained that it is irrational for an agency to fail to consider how, if its action will help increase the supply of fossil fuels, then the price for that commodity will also drop, demand will rise, and greenhouse gas emissions will increase.[3]

Other agencies' environmental impact statements routinely assess the effects of their approvals on fossil fuel supply, price, demand, energy substitutes, and consequential greenhouse gas emissions. For example, the Bureau of Ocean Energy Management uses sophisticated modeling to calculate the change

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[1] No part of these comments purports to present the views, if any, of New York University.
[2] *See* N. Gregory Mankiw, *Principles of Economics* 74–78, 80–81 (5th ed. 2008).
[3] *WildEarth Guardians v. Bureau of Land Management*, No. 15-8109 at 24 (10th Cir., Sept. 15, 2017) ("this perfect substitution assumption [is] arbitrary and capricious because the assumption itself is irrational (i.e., contrary to basic supply and demand principles).").
Other courts have also addressed this issue. *See Ctr. for Sustainable Economy v. Jewell*, 779 F.3d 588, 609 (D.C. Cir. 2015) ("forgoing additional leasing on the [outer continental shelf] would cause an increase in the use of substitute fuels such as renewables, coal, imported oil and natural gas, and a reduction in overall domestic energy consumption from greater efforts to conserve in the face of higher prices"); *see also Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549–550 (8th Cir. 2003) ("the increased availability of inexpensive coal will at the very least make coal a more attractive option to future entrants into the utilities market"); *Montana Envtl. Info. Ctr.*, 2017 WL 3480262, at *15 (holding that it was "illogical" for the agency to assume that choosing not to approve federal coal leases would have no effect on coal supply, demand, or consumption, because "other coal would be burned in its stead"); *High Country Conservation Advocates*, 52 F. Supp. 3d at 1197 (recognizing that increased production of coal could affect "the demand for coal relative to other fuel sources, and coal that otherwise would have been left in the ground will be burned" (quotation marks omitted)).

in greenhouse gas emissions resulting from the effects on demand of either approving or not approving individual oil and gas leases.[4]

Under the requirement of NEPA, FERC may not ignore the impact that increased production could have on the availability of gas, the price of gas relative to other energy resources, and the downstream emissions that could result from those changes. FERC must analyze whether the Southeast Market Pipelines project will change demand for natural gas in ways that will further increase downstream greenhouse gas emissions.

Sincerely,

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[4] Bureau of Ocean Energy Mgmt., Dep't of Interior, *Draft Environmental Impact Statement: Liberty Development Project* at 4-50 (Aug. 2017); *see also* BOEM, *Proposed Final Outer Continental Shelf Oil & Gas Leasing Program 2012-2017*, 110 (2012) (calculating that if the offshore acreage were not leased, 6% of the forgone oil and gas would be replaced by energy conservation).