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

April 17, 2020

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

Subject: Failure to Monetize Greenhouse Gas Emissions in Environmental Assessment for the Lamar County Expansion Project (Docket No. CP19-517-000)

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") Environmental Assessment for the Lamar County Expansion 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 Lamar County Expansion Project—which calls for the construction and operation of a pipeline, compressor station, and meter station in Forrest and Lamar Counties, Mississippi, to allow for the transportation of natural gas to the proposed Morrow Repower Project[3]—will result in 3.87 million metric tons of downstream emissions in carbon-dioxide equivalence per year.[4] This is a large amount of emissions that will produce substantial climate-related damages such as sea-level rise, greater incidence of coastal storms and extreme weather events, and human health impacts and mortality from heat-related illnesses. While both NEPA and the NGA require FERC to disclose and assess the significance of the contributions of its actions to such environmental impacts—and an available metric, the social cost of greenhouse gases, allows the agency to do just that—FERC fails to estimate such actual, real-world climate impacts. Yet, as the social cost metrics reveal, approval of the proposed action would result in over $200 million in annual climate costs.[5]

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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, LAMAR COUNTY EXPANSION PROJECT ENVTL. ASSESSMENT (Docket No. CP19-517-000) (Feb. 2020) [hereinafter "EA"].

[3] *Id.* at 1–2.

[4] *Id.* at 76.

[5] The 2016 Interagency Working Group's central estimate of the social cost of carbon for year 2025 emissions is $46 in 2007$; adjusted for inflation, that equals approximately $57 in 2019$. 3.87 million tons of CO2e* $57 = $220.6 million. In a proper cost-benefit analysis, that calculation of costs from year 2025 emissions would be discounted back to present value.

When a project has climate consequences that must be assessed under NEPA, monetizing the climate damages—which FERC fails to do here—fulfills an agency's legal obligations in ways that simple quantification of greenhouse gas emissions cannot. 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 to fail 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] Even in combination with a general, qualitative discussion of climate change, 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 environmental concerns such as air quality, water quality, and

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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 id.*; *High Country Conservation Advocates v. United States 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").

endangered species," when the agency fails to assess "the degree that each factor will be impacted."[10]

By monetizing climate damages using the social cost of greenhouse gas metrics, FERC can satisfy the legal obligations and statutory goals of NEPA to assess the incremental and actual effects bearing on the public interest. 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.[11] 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, a number of agencies have used the social cost of greenhouse gases to assess a project's climate impacts under NEPA.[12] By focusing only on volume estimates in this instance, FERC falls short of its legal obligations.

FERC's failure to monetize the social cost of the proposed project's greenhouse gas emissions also violates the NGA. The NGA authorizes FERC to approve a natural-gas pipeline only that it finds to be in the "public convenience and necessity."[13] Such an assessment requires more than a "passing reference to relevant factors."[14] Yet FERC violates this requirement by simply quantifying the emissions resulting from the proposed pipeline expansion without assessing the significance of those emissions on the "public convenience," as the NGA requires. Given FERC's broad mandate to assess whether the proposed action is in the public interest, the agency's failure to meaningfully "consider whether the costs of its decision outweighed the benefits," by using a readily-available tool to actually assess the project's substantial climate costs, violates the NGA.[15]

FERC's failure to monetize the social cost of the project's emissions is particularly troubling because the agency's attempts to contextualize these emissions provide a confusing and inadequate picture that minimize their impacts. Specifically, FERC compares the increase in downstream emissions to total national emissions, finding that the project would increase national emission by 0.06 percent.[16] But this figure is deeply misleading. Indeed, in a country of over 300 million people and over 6.5 billion tons of annual greenhouse gas emissions, it is far too easy to make highly significant effects appear relatively trivial. As the U.S. Court of Appeals for the Fifth Circuit recently observed, even a seemingly "very small portion" of a "gargantuan source of [harmful] pollution" may nevertheless "constitute[] a gargantuan source of [harmful]

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

[12] *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).

[13] 15 U.S.C. § 717(f)(c). FERC recognizes that it is evaluating the proposed project under this statutory provision. *See* EA at 1.

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

[15] *See Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) (finding that agency acted arbitrarily and capriciously by failing to consider costs under a statute with a similarly broad mandate requiring agency to assess whether the contemplated action was "appropriate and necessary").

[16] EA at 77.

pollution on its own terms."[17] In other words, percentages can be misleading and manipulated by the choice of the denominator. What matters, therefore, is the proposal's actual contribution to total harm, and the damage estimates here—over $200 million annually—are quite substantial.

FERC also fails to contextualize the proposed project's emissions when it argues in conclusory fashion that the project would have "no significant cumulative impacts" on emission of greenhouse gases and other air pollutants because it would "reduce emissions currently being generated at [a nearby] coal facility by replacing the capacity with natural gas fired units resulting in lower air impacts to the surrounding area."[18] FERC should not assume, without analysis, that new transmission of fossil fuels will perfectly substitute for other supply with no effects on total demand or resulting emissions. As the Tenth Circuit explained, the assumption of perfect substitution is "contrary to basic supply and demand principles" because it assumes that the price of the target resource will remain constant as supply expands.[19]

Accordingly, FERC should use substitution analysis to determine what effects a project would have on supply and demand, and therefore on cumulative greenhouse gas emissions. Such a substitution analysis should then be applied equally to FERC's consideration of any economic benefits, analyzing how factors such as "property tax revenue" and "job opportunities"—which the agency states will likely increase due to the proposed project[20]—would be impacted in net terms, considering the energy transmission that this project would replace. Agencies cannot "put a thumb on the scale" by discounting only a project's environmental harms while touting its full economic benefits,[21] and FERC's attempts to do so—without even performing any substitution analysis—violates NEPA.

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. 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, FERC will continue to violate NEPA and the NGA unless it uses the social cost of greenhouse gases to assess the climate-related impacts of the proposed action.

Sincerely,

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[17] *Sw. Elec. Power Co. v. EPA*, 920 F.3d 999, 1032 (5th Cir. 2019).
[18] EA at 77.
[19] *WildEarth Guardians v. BLM*, 870 F.3d 1222, 1236 (10th Cir. 2017).
[20] EA at 46.
[21] *Ctr. for Biological Diversity*, 538 F.3d at 1198.

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) (Oct. 3, 2019)

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