

Riverkeeper and Flint Riverkeeper⁸ “requiring the Commission to consider the reasonably foreseeable GHG emissions resulting from natural gas projects,” as FERC noted in its recent Interim GHG Policy Statement (see below). This Sierra Club precedent has been cited by the State of New York in denying a permit⁹ for the Constitution Pipeline that resulted in that pipeline’s demise when FERC declined to overrule.¹⁰ More recently, that Sierra Club case was cited by the D.C. Circuit Court¹¹ in revoking oil and gas leases in the Gulf of Mexico.¹²

The Commission itself in 2022 overhauled its pipeline approval process to emphasize greenhouse gases.¹³ In FERC’s own statement¹⁴ about this ruling:¹⁵

“The updates to the certificate policy statement include the first revision in more than 20 years to the Commission’s policy for the certification of new interstate natural gas projects under section 7 of the Natural Gas Act (NGA). With the interim GHG Policy statement, the Commission is taking a critical step in clarifying how it will address GHG emissions under the NGA and National Environmental Policy Act (NEPA) for proposed pipeline and LNG projects. The Commission is seeking comment on the Interim GHG Policy Statement.”

The Interim GHG Policy Statement implicitly raises the basic LNG issue that needs Rulemaking:¹⁶

22. *Section 3(a) of the NGA provides for federal jurisdiction over the siting, construction, and operation of facilities used to import or export gas.¹ To date, the Commission has exercised section 3 authority to authorize: (1) LNG terminals located at the site of import or export and (2) the site and facilities at the place of import/export where a pipeline crosses an international border.² Additionally, NGA section 3(e) states that “[t]he Commission shall have the exclusive authority to approve or deny an application for the siting, construction,*

⁸ *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*).

⁹ *Constitution Pipeline Company, LLC, v. N.Y. State Dep’t of Envtl. Conservation*, 868 F.3d 87, 91-98 (2d Cir. 2017). *Id.* at 17; *id.* app. at 003181-94 (reproducing New York DEC’s Notice of Denial).

¹⁰ 162 FERC ¶ 61,014, January 11, 2018, ORDER ON PETITION FOR DECLARATORY ORDER, Constitution Pipeline Company, LLC, Docket No. CP18-5-000, Accession Number 20180111-3063, https://elibrary.ferc.gov/eLibrary/idmws/file_list.asp?accession_num=20180111-3063

¹¹ D.C. Circuit Court, Document 78, January 27, 2022, Memorandum Opinion, in *Friends of the Earth, et al. v. Debra A. Haaland, et al.*, Case 1:21-cv-02317-RC, <https://int.nyt.com/data/documenttools/78-memorandum-opinion-1-27/b0903c94e57b0cb5/full.pdf>

¹² Lisa Friedman, *New York Times*, January 27, 2022, Court Revokes Oil and Gas Leases, Citing Climate Change: A judge ruled that the Interior Department must consider the climate effects of oil drilling in the Gulf of Mexico before awarding leases.

<https://www.nytimes.com/2022/01/27/climate/federal-court-drilling-gulf.html?referringSource=articleShare>

¹³ Miranda Willson, *E&E News*, February 18, 2022, FERC issues ‘historic’ overhaul of pipeline approvals

<https://www.eenews.net/articles/ferc-issues-historic-overhaul-of-pipeline-approvals/>

¹⁴ News Release, FERC, February 17, 2022, FERC Updates Policies to Guide Natural Gas Project Certifications,

<https://www.ferc.gov/news-events/news/ferc-updates-policies-guide-natural-gas-project-certifications>

¹⁵ 178 FERC ¶ 61,107, February 18, 2022, Certification of New Interstate Natural Gas Facilities, Docket No. PL18-1-000,

<https://elibrary.ferc.gov/eLibrary/filedownload?fileid=A7118D43-C33A-CB2A-8702-7F0EA7C00000>

¹⁶ FERC Accession number 2022-02-18-3033, Interim Policy Statement re Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews under PL21-3,

<https://elibrary.ferc.gov/eLibrary/filedownload?fileid=AF794977-2465-C460-96FF-7F0E36C00000>