RECENT CASES

ADMINISTRATIVE LAW — APPELLATE REVIEW OF AGENCY ACTION — D.C. CIRCUIT HOLDS FERC MUST EXPLAIN REFUSAL TO ASSESS CLIMATE IMPACTS. — *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321 (D.C. Cir. 2021).

The climate crisis has reached a point of "code red for humanity."[1] Within the United States, disasters like heatwaves,[2] wildfires,[3] and hurricanes[4] have worsened as greenhouse gas levels in the atmosphere have risen, and scientists expect this trend to continue.[5] Despite the existential threat that the climate crisis poses, the Federal Energy Regulatory Commission (FERC), which has the authority to authorize natural gas facilities, has resisted taking a fulsome accounting of the implications that its authorization decisions have for the climate crisis.[6] Recently, in *Vecinos para el Bienestar de la Comunidad Costera v. FERC*,[7] the D.C. Circuit remanded authorization of two natural gas facilities to the Commission, ruling that it had insufficiently contextualized the impacts that the projects would have on the climate as part of its environmental impact statements (EISs).[8] The decision signaled that FERC's authorization procedures will continue to face judicial scrutiny as long as the Commission neglects to fully examine the climate impacts of its decisions.

In November 2019, FERC authorized the construction and operation of three liquefied natural gas (LNG) facilities in Cameron County, Texas:

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[1] Brady Dennis & Sarah Kaplan, *Humans Have Pushed the Climate into "Unprecedented" Territory, Landmark U.N. Report Finds*, WASH. POST (Aug. 10, 2021, 7:49 AM), https://www.washingtonpost.com/climate-environment/2021/08/09/ipcc-climate-report-global-warming-greenhouse-gas-effect [https://perma.cc/BRR8-9FD9] (quoting the U.N. Secretary General); *see* INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *Summary for Policymakers*, *in* CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS 4 (Valérie Masson-Delmotte et al. eds., 2021), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM_final.pdf [https://perma.cc/6575-77NG].

[2] *See, e.g.*, Nadja Popovich & Winston Choi-Schagrin, *Hidden Toll of the Northwest Heat Wave: Hundreds of Extra Deaths*, N.Y. TIMES (Aug. 11, 2021), https://www.nytimes.com/interactive/2021/08/11/climate/deaths-pacific-northwest-heat-wave.html [https://perma.cc/N4HT-T673].

[3] *See, e.g.*, *California Firefighters Battle a Dozen Large Wildfires*, ASSOCIATED PRESS (Aug. 23, 2021), https://apnews.com/article/fires-california-wildfires-be432313e3cfb4cdfb4cff6c9b7e6ea7 [https://perma.cc/M6CM-9JD3].

[4] *See, e.g.*, Henry Fountain, *Ida Strengthened Quickly into a Monster. Here's How.*, N.Y. TIMES (Sept. 10, 2021), https://www.nytimes.com/2021/08/29/climate/hurricane-ida-category.html [https://perma.cc/A7VK-LY8Y].

[5] *See* Dennis & Kaplan, *supra* note 1.

[6] *See* Romany M. Webb, *Climate Change, FERC, and Natural Gas Pipelines: The Legal Basis for Considering Greenhouse Gas Emissions Under Section 7 of the Natural Gas Act*, 28 N.Y.U. ENV'T L.J. 179, 183–85 (2020).

[7] 6 F.4th 1321 (D.C. Cir. 2021).

[8] *Id.* at 1329; *see* 40 C.F.R. § 1502.21(c) (2021).

the Rio Grande terminal,[9] the Annova terminal,[10] and the Texas terminal.[11] In the administrative proceedings to evaluate the applications, FERC found that approval of each of the three facilities was consistent with the Natural Gas Act,[12] which requires that applications for the exportation of natural gas are not "inconsistent with the public interest"[13] and that interstate natural gas pipelines satisfy the "public convenience and necessity."[14] Because approval of each facility constituted a "major Federal action," the National Environmental Policy Act of 1969[15] (NEPA) required FERC to conduct EISs, which are comprehensive reports of the potential environmental implications of a project.[16] With respect to the climate impact of the facilities, FERC, per Commission practice, quantified the greenhouse gas emissions that would result from the construction and operation of each facility but did not assess the impacts those emissions would have on climate change.[17] Environmental organizations and community groups argued against the facilities in proceedings before the Commission, claiming that they would negatively impact local communities, raise natural gas prices, and exacerbate the climate crisis.[18] Nevertheless, a majority of FERC Commissioners authorized each facility.[19] Commissioner Glick vigorously dissented from all three orders.[20]

The environmental organizations and community groups filed requests for rehearing and stays of the proceedings, all of which FERC

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[9] *See* Rio Grande LNG, LLC, 169 FERC ¶ 61,131 (Nov. 22, 2019).

[10] *See* Annova LNG Common Infrastructure, LLC, 169 FERC ¶ 61,132 (Nov. 22, 2019).

[11] *See* Tex. LNG Brownsville LLC, 169 FERC ¶ 61,130 (Nov. 22, 2019); *see also Vecinos*, 6 F.4th at 1325. For all three orders, Commissioner Chatterjee and Commissioner McNamee were in the majority, with Commissioner Glick dissenting.

[12] 15 U.S.C. §§ 717–717z.

[13] *Rio Grande*, 169 FERC para. 18; *see* 15 U.S.C. § 717b. Although the Department of Energy retains ultimate jurisdiction over the export of LNG, it has delegated to FERC the ability to authorize "the siting, construction, expansion, or operation of" facilities required for export. *Vecinos*, 6 F.4th at 1325.

[14] 15 U.S.C. § 717f(c). The Rio Grande facility included an export terminal and an interstate pipeline system. *Rio Grande*, 169 FERC paras. 1–2. The Annova facility was an export terminal for LNG, *Annova*, 169 FERC para. 1, as was the Brownsville facility, *Brownsville*, 169 FERC para. 1.

[15] 42 U.S.C. §§ 4321–4347.

[16] *Vecinos*, 6 F.4th at 1325 (alteration omitted) (quoting 42 U.S.C. § 4332(2)(C)). NEPA requires that agencies prepare EISs addressing, inter alia, the environmental impact of the actions, available alternatives, and the long-term impacts of any "major Federal action" that has significant environmental effects. *Id.* (alteration omitted) (quoting 42 U.S.C. § 4332(2)(C)); *see id.* at 1325–26.

[17] *See, e.g.*, *Rio Grande*, 169 FERC para. 108.

[18] *See id.* at para. 15; *Annova*, 169 FERC para. 19; *Brownsville*, 169 FERC para. 10.

[19] *See Rio Grande*, 169 FERC para. 25; *Annova*, 169 FERC para. 25; *Brownsville*, 169 FERC para. 21.

[20] Commissioner Glick described one approval as "ludicrous, unreasoned, and an abdication of our responsibility to give climate change the 'hard look' that the law demands." *Rio Grande*, 169 FERC para. 5 (Glick, Comm'r, dissenting).

denied.[21] The denials were similar to the initial orders, with the same two commissioners in the majority and Commissioner Glick again dissenting.[22] Opponents of the facilities sought review of the Commission's orders by the D.C. Circuit, and the projects' proponents intervened as respondents.[23]

The D.C. Circuit remanded without vacatur.[24] Writing for a unanimous panel, Judge Wilkins[25] found the Commission's analyses of the projects' impacts on climate change and environmental justice communities[26] to be arbitrary and capricious under NEPA and the Administrative Procedure Act[27] (APA), and accordingly held that the Commission's determinations of public interest under the Natural Gas Act were deficient.[28]

First discussing the Commission's analysis of the projects' greenhouse gas emissions, the panel found FERC's determination that it was "unable to determine the significance of [each] Project's contribution to climate change" to be arbitrary and capricious.[29] NEPA requires agencies to take a "hard look"[30] at the environmental consequences of "major Federal action[s]" through an EIS.[31] The law does not require substantive outcomes, but procedurally deficient NEPA analyses are subject to the arbitrary and capricious standard of the APA.[32] Here, the Commission had not given climate change the "hard look" NEPA demands. In particular, the panel found that FERC did not address whether 40 C.F.R. § 1502.21(c) compels the Commission to assess

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[21] *See* Rio Grande LNG, LLC, 170 FERC ¶ 61,046 (Jan. 23, 2020); Annova LNG Common Infrastructure, LLC, 170 FERC ¶ 61,140 (Feb. 21, 2020); Tex. LNG Brownsville LLC, 170 FERC ¶ 61,139 (Feb. 21, 2020).

[22] *See, e.g.*, *Brownsville*, 170 FERC para. 1 (Glick, Comm'r, dissenting) ("Rather than wrestling with the Project's adverse impacts to the environment and the surrounding community, today's order makes clear that the Commission will not allow these impacts to get in the way of its outcome-oriented desire to approve the Project.").

[23] *See Vecinos*, 6 F.4th at 1327. Annova abandoned its project prior to oral argument, and the panel accordingly dismissed the petition for review of that authorization as moot. *Id.*

[24] *Id.* at 1332.

[25] Judge Wilkins was joined by Chief Judge Srinivasan and Judge Ginsburg.

[26] Under current Environmental Protection Agency (EPA) guidance, environmental justice communities are communities that "frequently bear a disproportionate burden of environmental harms and risks," including "minority populations, low-income populations and indigenous peoples." ENV'T PROT. AGENCY, GUIDANCE ON CONSIDERING ENVIRONMENTAL JUSTICE DURING THE DEVELOPMENT OF REGULATORY ACTIONS 5 (2015), https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf [https://perma.cc/4VQU-H9RT].

[27] 5 U.S.C. §§ 551, 553–559, 701–706.

[28] *Vecinos*, 6 F.4th at 1325.

[29] *Id.* at 1328 (quoting FERC's EISs).

[30] *Id.* at 1326 (quoting Sierra Club v. FERC, 867 F.3d 1357, 1367 (D.C. Cir. 2017)).

[31] *Id.* at 1325 (quoting 42 U.S.C. § 4332(2)(C)).

[32] *See id.* at 1327.

climate impacts in its EIS.[33] The regulation requires agencies to use "theoretical approaches or research methods generally accepted in the scientific community" to evaluate impacts that cannot be measured directly.[34] The panel found the regulation to be "applicable on its face," and FERC therefore needed either to use a methodology to estimate those impacts or to explain why the regulation did not compel it to do so.[35] Without that kind of explanation, its decision was arbitrary and capricious under the APA because it had not responded to "significant opposing viewpoints concerning" its NEPA analysis.[36] The panel rejected FERC's position that the Commission could not determine the climate impacts of individual projects' greenhouse gas emissions.[37] The D.C. Circuit had previously accepted this position in *EarthReports, Inc. v. FERC*,[38] but distinguished *EarthReports* because the litigants in that case had not brought up § 1502.21(c).[39] The panel accordingly remanded to the Commission with instructions to respond to the question of whether the regulation compels an assessment of the projects' impacts on climate change.[40]

The panel also found that FERC's environmental justice analyses as required by Executive Order 12,898 were not rationally connected to the Commission's findings and therefore were arbitrary and capricious under NEPA and the APA.[41] The Commission analyzed the projects' impacts on only environmental justice communities within two miles of

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[33] *Id.* at 1328.

[34] 40 C.F.R. § 1502.21(c) (2021). The petitioners argued that § 1502.21(c) required FERC to use the "social cost of carbon" protocol or another widely accepted methodology in its EISs. *Vecinos*, 6 F.4th at 1328. The social cost of carbon protocol is a framework that monetizes the impacts that incremental increases in carbon emissions will have on climate change. *See* Jody Freeman & Jim Rossi, *Agency Coordination in Shared Regulatory Space*, 125 HARV. L. REV. 1131, 1199 & n.302 (2012). An interagency working group developed the social cost of carbon protocol in 2010 for use in agency cost-benefit analyses, *see id.* at 1198–99, although the Trump Administration retracted it as official government policy in 2017, *see Vecinos*, 6 F.4th at 1328.

[35] *Vecinos*, 6 F.4th at 1329.

[36] *Id.*

[37] *See id.*

[38] 828 F.3d 949 (D.C. Cir. 2016). In *Vecinos* and *EarthReports*, FERC raised three arguments against the social cost of carbon protocol in particular: there is no consensus as to an appropriate discount rate (that is, the cost of future harms as compared to present harms), the protocol measures "cost" but not actual impacts resulting from a project's greenhouse gas emissions, and there are no criteria for assessing whether a cost found using the protocol is "significant." *Vecinos*, 6 F.4th at 1328; *see EarthReports*, 828 F.3d at 956.

[39] *See Vecinos*, 6 F.4th at 1329.

[40] *Id.* at 1329–30.

[41] *See id.* at 1330; Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994). Although this executive order does not create a private right of action, litigants may challenge analyses conducted pursuant to it under NEPA and the APA. *Vecinos*, 6 F.4th at 1330. Per EPA and Council on Environmental Quality guidance, FERC's environmental justice analyses took into account the racial and economic composition of communities that would be affected by the facilities, as well as the impacts that the facilities would have on those communities. *See* 1 FED. ENERGY REGUL.

the project sites, but had determined that the environmental effects from the projects would extend much farther.[42] The panel agreed with the petitioners that the Commission had offered no "rational connection between the facts found and the decision made" to limit the environmental justice analysis to a two-mile radius of the facilities and that the decision was therefore arbitrary.[43]

Because the Commission had relied on its deficient climate impacts and environmental justice analyses to support its finding that the facilities satisfied the "public interest" and "public convenience and necessity" requirements of the Natural Gas Act, the panel also instructed FERC to revisit its determination on those requirements.[44] But importantly, because the panel found it likely both that FERC could "remedy any deficiencies in its orders on remand" and that "vacating the orders would needlessly disrupt completion of the projects," the panel remanded without vacatur.[45]

In the past, FERC has limited the extent to which it considers the effects of its authorizations on the climate crisis, both in how it quantifies a project's greenhouse gas emissions and in how it contextualizes the impacts of those emissions.[46] *Vecinos* continues the D.C. Circuit's trend of pushing back on the Commission's reluctance to take a "hard look" at climate change,[47] with the court pressing FERC to assess the impacts of the emissions resulting from the projects that it approves. Given recent political change at FERC, decisions like *Vecinos* can provide legal fodder for a motivated Democratic majority to update FERC's policies to take a "harder look" at climate impacts. And even without political tailwinds, the decision could be strong enough on its own terms to compel FERC to use a framework like the social cost of carbon protocol to assess climate impacts.

FERC historically has not given serious consideration to the climate impacts of the natural gas infrastructure it approves.[48] It is unequivocal that the combustion of natural gas emits greenhouse gases that drive the climate crisis.[49] But FERC has limited the scope of the emissions

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COMM'N, FERC/EIS-0287F, RIO GRANDE LNG PROJECT FINAL ENVIRONMENTAL IMPACT STATEMENT 4-234 (2019).

[42] *Vecinos*, 6 F.4th at 1330.

[43] *Id.* (quoting Cmtys. Against Runway Expansion, Inc. v. Fed. Aviation Admin., 355 F.3d 678, 685 (D.C. Cir. 2004)); *see id.* at 1331.

[44] *Id.* at 1331; *see* 15 U.S.C. §§ 717b(a), 717f(e).

[45] *Vecinos*, 6 F.4th at 1332.

[46] *See* Webb, *supra* note 6, at 208–10.

[47] *See, e.g.*, Sierra Club v. FERC, 867 F.3d 1357, 1371 (D.C. Cir. 2017).

[48] *See* Webb, *supra* note 6, at 208.

[49] *See Global Greenhouse Gas Emissions Data*, ENV'T PROT. AGENCY (Oct. 26, 2021), https://www.epa.gov/ghgemissions/global-greenhouse-gas-emissions-data [https://perma.cc/82HF-GFQX]; *see also* INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 1, at 4.

impacts it considers, resisting examining projects' "upstream and downstream emissions" in favor of examining only projects' direct emissions.[50] Additionally, FERC has refused, as it did in *Vecinos*, to contextualize those emissions' impacts with a tool like the social cost of carbon.[51] FERC's limited consideration of emissions impacts has caused consternation among environmental groups[52] and individual FERC commissioners alike.[53]

Litigants have challenged FERC's approach to greenhouse gases in the D.C. Circuit with some success. First, litigants have challenged FERC's policy of examining only direct emissions. For example, in *Sierra Club v. FERC*,[54] the D.C. Circuit held that FERC must consider downstream emissions from natural gas pipelines or "explain in more detail why it cannot do so," remanding (with vacatur) a pipeline authorization to the agency.[55] Second, litigants have argued, as in *Vecinos*, that FERC's policy of not contextualizing emissions impacts is unlawful.[56] This approach has found success in other contexts, with one circuit noting that the costs of climate change are difficult to quantify but are "certainly not zero."[57] The D.C. Circuit, however, has generally been more solicitous of FERC's arguments against contextualization of climate impacts.[58] But even before *Vecinos*, the D.C. Circuit had signaled that its solicitude of FERC's position was running thin; in *Sierra Club*, the court requested on remand that the Commission explain whether it still held

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[50] Webb, *supra* note 6, at 184–85; *see id.* at 211. Upstream emissions are emissions from natural gas production (before it reaches the relevant facility), while downstream emissions are emissions from end use of natural gas (after it leaves the relevant facility). *See id.* at 204.

[51] *See Vecinos*, 6 F.4th at 1328; Webb, *supra* note 6, at 214.

[52] *See, e.g.*, Hannah Northey, *FERC, Greens Spar over "Cursory" Reviews of Gas Projects*, E&E NEWS (Oct. 20, 2014, 1:00 PM), subscriber.politicopro.com/article/eenews/2014/10/20/ferc-greens-spar-over-cursory-reviews-of-gas-projects-104897 [https://perma.cc/8Y5G-RQZ3].

[53] *See, e.g.*, Rich Glick (@RichGlickFERC), TWITTER (Oct. 15, 2020, 10:34 AM), https://twitter.com/richglickferc/status/1316749268498214912 [https://perma.cc/P3GW-ENUH] ("@FERC is not an environmental regulator. At the same time, the orders @FERC issue have a very real impacts [sic] on #GHG emissions & we cannot act as if #ClimateChange does not exist."). Scholars have also argued that NEPA and the Natural Gas Act require FERC to consider upstream and downstream emissions. *See, e.g.*, Michael Burger & Jessica Wentz, *Downstream and Upstream Greenhouse Gas Emissions: The Proper Scope of NEPA Review*, 41 HARV. ENV'T L. REV. 109, 166 (2017) (NEPA); Webb, *supra* note 6, at 186 (Natural Gas Act).

[54] 867 F.3d 1357 (D.C. Cir. 2017).

[55] *Id.* at 1375; *see id.* at 1379. In *Birckhead v. FERC*, 925 F.3d 510 (D.C. Cir. 2019), the court stated that it was "troubled" by FERC's refusal to consider both upstream and downstream emissions in the context of a natural gas compression facility, signaling that the holding in *Sierra Club* extended beyond pipeline authorizations and that it also applied to upstream emissions. *Id.* at 519.

[56] *See* EarthReports, Inc. v. FERC, 828 F.3d 949, 956 (D.C. Cir. 2016).

[57] Ctr. for Biological Diversity v. NHTSA, 538 F.3d 1172, 1200 (9th Cir. 2008). *See generally* Zoe Palenik, Note, *The Social Cost of Carbon in the Courts: 2013–2019*, 28 N.Y.U. ENV'T L.J. 393, 404–14 (2020) (compiling cases involving the social cost of carbon).

[58] *See EarthReports*, 828 F.3d at 956.

the same position on the social cost of carbon protocol as it had in *EarthReports* (decided the year before).[59]

Vecinos fits the trend set by *Sierra Club* by continuing to push FERC to live up to its statutory mandates, and that trend may provide sympathetic FERC commissioners with legal fodder to change the Commission's greenhouse gas procedures. To be sure, "the role of a court in reviewing" NEPA analyses "is a limited one," and courts rarely mandate that an agency take a given course of action.[60] Even still, judicial review of NEPA analyses can effectively shape agency behavior. In the past, getting "whacked in the head" with court losses has played a role in pushing FERC to consider more seriously the environmental implications of its decisions,[61] and FERC has once again taken note of these judicial "whacks." Now-Chairman Glick has argued that court decisions like *Vecinos* may legally mandate that FERC reconsider its treatment of climate impacts in its authorization decisions.[62] FERC has an ongoing notice of inquiry into its process for approving natural gas pipelines, including "how the Commission addresses climate change."[63] Following *Sierra Club* and *Vecinos*, it seems like FERC will at least consider requiring itself to evaluate upstream and downstream emissions, as well as climate impacts. And political change at FERC might make it more likely that the Commission will use these decisions as a legal justification to update its greenhouse gas procedures: Democrats recently took control of FERC after President Biden appointed Democrat Commissioner Phillips to replace Republican Commissioner Chatterjee.[64]

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[59] *See Sierra Club*, 867 F.3d at 1375.

[60] Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc., 435 U.S. 519, 555 (1978); *see also Vecinos*, 6 F.4th at 1329 ("Of course, we do not hold that the Commission was indeed required to do any of that."). This limited role highlights that courts may be less well positioned than other institutional actors to make meaningful change against the pressing existential threat of the climate crisis. *Cf.* RICHARD J. LAZARUS, THE RULE OF FIVE: MAKING CLIMATE HISTORY AT THE SUPREME COURT 292 (2020) ("[T]he kind of transformative change that *Massachusetts* [*v. EPA*, 549 U.S. 497 (2007)] sought to trigger can begin in a courthouse, but it never ends there.").

[61] J.R. DeShazo & Jody Freeman, *Public Agencies as Lobbyists*, 105 COLUM. L. REV. 2217, 2229 (2005) (quoting Telephone Interview with J. Mark Robinson, Dir., Off. of Energy Projects, FERC (Mar. 11, 2005)).

[62] *See A Review of the Administration of Laws Under the Jurisdiction of the Federal Energy Regulatory Commission: Hearing Before the S. Comm. on Energy & Nat. Res.*, 117th Cong. 5 (2021) (written testimony of Richard Glick, Chairman, FERC), https://www.energy.senate.gov/services/files/4408CCE0-8366-40AF-9E7F-5B75BC6D6A0A [https://perma.cc/SER8-DE44].

[63] Certification of New Interstate Natural Gas Facilities, 86 Fed. Reg. 11,268, 11,271 (Feb. 18, 2021).

[64] *See* Ethan Howland, *Democrats Gain FERC Majority with Phillips Senate Confirmation*, UTIL. DIVE (Nov. 17, 2021), https://www.utilitydive.com/news/democrats-gain-ferc-majority-with-phillips-senate-confirmation/608534 [https://perma.cc/5E6V-WXFF]. Commissioner Chatterjee was in the original majorities for the authorizations at issue in *Vecinos*.

But even if a new FERC majority is not politically predisposed to adopting a method to contextualize climate impacts, *Vecinos* could be strong enough on its own terms to force a change in FERC's policies regardless. As the panel noted, the arguments FERC has made in the past to avoid using the social cost of carbon protocol did not speak to whether 40 C.F.R. § 1502.21(c) required its use.[65] The regulation reasonably could compel FERC to contextualize the projects' effects on climate change using a "generally accepted" approach like the protocol.[66] The social cost of carbon protocol is not without its critics,[67] but it has been generally accepted by scientific authorities and government agencies alike.[68] Therefore, even absent political motivations, *Vecinos* could compel FERC to adopt a framework to contextualize climate impacts and take a harder look at the climate implications of the projects it approves.

The holding in *Vecinos* was limited on its face: the panel merely remanded the case with directions for FERC to consider on review.[69] By remanding without vacatur, the panel found it "reasonably likely" that these facilities would again pass legal muster.[70] But such a result is not inevitable, especially in light of a string of recent D.C. Circuit decisions challenging FERC's treatment of greenhouse gases.[71] And even if FERC does again authorize these specific facilities, *Vecinos* signals that the Commission's greenhouse gas analyses will continue to face judicial scrutiny until its policies are in line with its statutory mandates.

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[65] *See Vecinos*, 6 F.4th at 1329.

[66] *Id.* (quoting 40 C.F.R. § 1502.21(c)(4) (2021)). The social cost of carbon protocol contextualizes climate impacts through monetization, although the Commission could opt to use another method that would assess those impacts. *Id.* at 1329–30.

[67] *See, e.g.*, Jonathan S. Masur & Eric A. Posner, *Climate Regulation and the Limits of Cost-Benefit Analysis*, 99 CALIF. L. REV. 1557, 1597 (2011) (arguing that monetization of climate impacts is not useful because it implicates moral and political, not solely economic, judgments); Katherine A. Trisolini, *Efficiency Gatekeepers, the Social Cost of Carbon, and Post-Trump Climate Change Regulation*, 91 TEMP. L. REV. 261, 269 (2019) (arguing that monetization of climate impacts trivializes the potentially catastrophic effects of climate change); Nicholas Stern & Joseph E. Stiglitz, *The Social Cost of Carbon, Risk, Distribution, Market Failures: An Alternative Approach* 7 (Nat'l Bureau of Econ. Rsch., Working Paper No. 28472, 2021) (taking issue with the standard economic modeling of the social cost of carbon).

[68] *See* Brief of the Institute for Policy Integrity at New York University School of Law as Amicus Curiae in Support of Petitioners at 6–11, *Vecinos*, 6 F.4th 1321 (No. 20-1045).

[69] *See Vecinos*, 6 F.4th at 1329–32.

[70] *Id.* at 1332.

[71] *See, e.g.*, Sierra Club v. FERC, 867 F.3d 1357, 1371 (D.C. Cir. 2017).