



FERC Dems Make Climate Change Case In House Hearing

By Keith Goldberg

Law360 (June 12, 2019, 7:31 PM EDT) -- A U.S. House panel on Wednesday gave the Federal Energy Regulatory Commission's two Democrats a Capitol Hill platform to assert that the commission needs to beef up its climate change reviews of gas infrastructure projects, an issue over which they and their Republican counterparts are stubbornly split.

Repeating arguments they've raised in FERC project approval orders, monthly open meetings and public statements, Commissioners Richard Glick and Cheryl LaFleur told Democrats on the House Committee on Energy and Commerce's energy subcommittee that FERC is not fulfilling its legal obligations to evaluate the greenhouse gas emissions impacts of pipelines and other gas projects. That places them at odds with Chairman Neil Chatterjee and Commissioner Bernard McNamee.

Glick and LaFleur said their concerns have been validated by the D.C. Circuit's recently criticizing FERC's decision to limit its consideration of projects' GHG impacts. The appeals court said in a June 4 ruling that FERC's approach is based on an improper reading of the D.C. Circuit's decision in 2017's *Sierra Club v. FERC*, which said that the National Environmental Policy Act requires the commission to review indirect environmental impacts that are "reasonably foreseeable" and ordered FERC to review the downstream GHG impacts of the Sabal Trail pipeline.

"There's been some question recently as to whether the commission has the authority to look at reasonably foreseeable greenhouse gas emissions, and I think the two court cases, including the one last week, have I think, put that question to bed," Glick told committee chairman Frank Pallone, D-N.J. "I think we clearly have that authority."

LaFleur, who has been recently performing her own GHG reviews in order to approve several gas projects, noted that the D.C. Circuit said last week in *Birckhead et al. v. FERC* that "because the Commission may therefore deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment," it is a "legally relevant cause" of downstream emissions of pipelines and should therefore take those emissions into account.

"I think the commission has been too stinting in its interpretation of [*Sierra Club v. FERC*]," LaFleur told Pallone. "I think the implications of the decision go much broader."

Lawmakers had no questions on the issue for FERC Chairman Neil Chatterjee, who has said he believes FERC's legal authority to review GHG impacts is limited. Chatterjee's fellow Republican, recently minted Commissioner Bernard McNamee, got a single query as to what FERC's GHG obligations are.

McNamee told Rep. Annie Kuster, D-N.H., that he examines a project's environmental impacts, including climate change, as part of his NEPA review. He said FERC has to look at the Natural Gas Act to determine how extensive their GHG reviews should be, but didn't say how.

"I don't think it'd be appropriate, because it's a legal issue that comes before us about what does the statute specifically mean ... but I personally take a serious look at the issues of greenhouse gas emissions, particularly pursuant to our NEPA responsibilities," McNamee said.

Both Glick and LaFleur have said that FERC isn't treating climate change impacts like other environmental impacts, including conditioning project approvals on mitigating their impacts. Rep. Bill Flores, R-Texas, asked Glick what would be acceptable GHG mitigation options for a liquefied natural gas export project. Glick suggested examples that included the project developer buying renewable energy credits or powering their operations with renewables or zero-carbon power.

FERC's pipeline review policy wasn't the only climate-related issue on lawmakers' minds Wednesday. Committee members also pressed FERC commissioners on how they plan to ensure that wholesale power markets can co-exist with increasingly aggressive state clean energy policies and when they will finalize a rule that makes a place for aggregated distributed energy resources such as rooftop solar in wholesale markets.

FERC recently finalized its rule giving energy storage a seat at the wholesale market table. Chatterjee said the commission has all the information it needs to push out a final rule on aggregated DERs, but still needs to ensure the rule is legally sound.

"We have some complex legal questions that we are currently wrestling with," Chatterjee told Rep. Paul Tonko, D-N.Y.

Committee members also pressed the commissioners about scrutinizing the governance of the regional grid operators that oversee the electric grid and run the wholesale markets subject to FERC jurisdiction. Several lawmakers expressed concern that consumer concerns are being ignored and regional grid operators aren't transparent enough about decisions that could ultimately impose millions, if not billions, of dollars in ratepayer costs.

LaFleur said it's "probably a good time for a re-look" at FERC Order No. 719, which revised regulations for organized wholesale markets to improve competition. But while Chatterjee agreed that more transparency and consumer protection is needed, he cautioned against "a one-size-fits-all approach," noting that no two regional grid operators are alike.

--Editing by Peter Rozovsky.