

E&E News

FERC

McNamee, Glick clash over climate

Rod Kuckro, E&E News reporter

Published: Friday, July 19, 2019

Federal Energy Regulatory Commission member Bernard McNamee took a not-so-subtle swipe at fellow Commissioner Richard Glick yesterday, pushing back at Glick's complaint that the agency has abdicated its responsibility to weigh the effects of greenhouse gas emissions from gas projects it approves.



Bernard McNamee, Federal Energy Regulatory Commission

Congress, McNamee said, has not given FERC explicit authority to mitigate greenhouse gas impacts from liquefied natural gas projects and gas pipelines.

"They have not given that direction," FERC's newest member said at the commission's monthly meeting.

"We must look at the powers that we have and not try to aggrandize ourselves, not try and take what we think is a problem and use our statutes to achieve the ends that we would like," McNamee said. "We can only achieve the ends that Congress provides us to do."

McNamee is a Republican; Glick is a Democrat.

McNamee's sentiments align with the conservative legal philosophy of the Federalist Society and FERC general counsel James Danly, who espouses the theory of the "humble regulator," wherein interpreting the law to make policy is to be avoided ([*Energywire*](#), June 10).

That narrow reading of the Federal Power Act and the Natural Gas Act (NGA) and a reluctance to use the agency's discretion to interpret those and the other statutes in

formulating policy are a departure from the legal thinking and practice that has long governed FERC under chairs of both political parties.

For months, Glick has issued extensive dissents explaining his refusal to vote for numerous LNG projects and pipelines chiefly for one reason: FERC's reversal in May 2017 of a practice where the commission accounted for greenhouse gas impacts.

In a dissent Tuesday evening on FERC's approval of the Gulf LNG Liquefaction project, Glick said the order violates both the NGA and the National Environmental Policy Act (NEPA). The commission, he wrote, "is again refusing to consider the consequences its actions have for climate change. Neither the NGA nor NEPA permit the Commission to assume away the climate change implications" of an LNG facility.

McNamee's extended remarks came at Commissioner Cheryl LaFleur's last meeting, which otherwise was punctuated with sometimes tearful tributes and much levity.

The normally taciturn McNamee spoke of the deliberate process FERC follows when considering natural gas projects.

"We look at each case individually. We make the decisions based on the fact and the record. I know I look at the issues of the environment, all issues, including climate change," he said.

"We only have the powers we are authorized to exercise under the Natural Gas Act and the Federal Power Act and the hard look we have to take under NEPA."

The environmental impact statements that FERC produces on natural gas projects "talk about how greenhouse gases have an incremental impact on climate change," McNamee said.

"The thing is recognizing that understanding what the actual impacts of these projects are [is] elusive in a certain sense," he said. "So we make reasoned judgments about what the impacts are, and we take it very seriously."

McNamee noted that Glick has pointed out that FERC routinely acts to order mitigation of gas projects' damage to wetlands.

"But that is not a good analogy," McNamee said, because Congress authorized wetlands protection directly in the Clean Water Act and gave the responsibility to the Army Corps of Engineers and EPA.



Richard Glick. Federal Energy Regulatory Commission

"They have not done so for greenhouse gases," he said.

Earlier at the meeting, Glick had outlined again his reason for dissenting on two gas project orders approved yesterday — "Pretty much for the same reason I've given in the past: the commission's continued refusal to consider" the impact of the emissions associated with the projects on climate change.

"The majority continues to treat climate change differently than all other environmental impacts associated with these pipelines — both under NEPA and the Natural Gas Act," he said.

"We do that with a lot of other environmental impacts, whether it be wetlands or species or a whole bunch of other things, but we don't do it for climate change. We could easily do that, and I don't think it's very costly. I don't think it's very time-consuming," he said.

"I think that this is going to cost them the potential for the courts to overturn these orders."

In a phone interview later, Glick said he "didn't really understand" McNamee's argument.

"I was a little bit surprised it didn't make a lot of sense," he said.

Chairman backs McNamee

After the meeting, FERC Chairman Neil Chatterjee, a Republican, backed up McNamee.

"I just disagree with [Glick's] interpretation of the law in this area," he said. "Congress has not acted to give us this authority when it comes to greenhouse gases."

On climate change, Chatterjee reiterated, "I firmly believe in it" and that there's a "need to mitigate emissions."

He pointed to FERC Order Nos. 841 and 845, which he described as "really significant market-based steps to enable innovative clean energy technologies to compete on a level playing field."

"I for one believe that may have a dramatic impact on global emissions," he said.

Chatterjee said he is "proud of the work we've done the last two years to address carbon mitigation."

But he added, "There's been so much focus on our evaluation of gas projects under the Natural Gas Act that it's missing the fact that there are numerous other actions this commission is looking at."