



August 26, 2019

Via e-filing on www.regulations.gov

Council on Environmental Quality
Attention: Docket ID No. CEQ-2019-0002
730 Jackson Place, NW
Washington, DC 20503

Re: Comments on Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions

Dear Sir or Madam:

GPA Midstream Association ("GPA Midstream") appreciates this opportunity to submit comments to the Council on Environmental Quality ("CEQ") in response to its notice and request for comments regarding its Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions, 84 Fed. Reg. 30,097 (June 26, 2019).

GPA Midstream has served the U.S. energy industry since 1921. GPA Midstream is composed of nearly 100 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." Such processing includes the removal of impurities from the raw gas stream produced at the wellhead as well as the extraction for sale of natural gas liquid products ("NGLs") such as ethane, propane, butane, and natural gasoline or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA Midstream membership accounts for more than 90% of the NGLs produced in the United States from natural gas processing.

GPA Midstream believes that guidance on how federal agencies treat greenhouse gas ("GHG") emissions under the National Environmental Policy Act ("NEPA") is essential to establishing certainty and consistency in project permitting and any subsequent legal challenges to major federal agency actions. Without such guidance, federal agencies and courts have been inconsistent in how they treat NEPA analyses of GHG emissions. CEQ's April 5, 2017 withdrawal of its August 1, 2016 Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews was a significant first step towards this goal. GPA Midstream believes that the proposed Draft Guidance provides significant clarity and consistency that will aid project

GPA Midstream Association
Sixty Sixty American Plaza, Suite 700
Tulsa, Oklahoma 74135

(918) 493-3872

applicants, federal agencies, and courts. In furtherance of these goals, GPA Midstream wishes to emphasize the following key comments:

- Lead agencies should only be required to consider a proposed project's indirect GHG emissions where they are reasonably foreseeable based on reasonably available information while avoiding theoretical discussions based on speculative assumptions.
- Lead agencies should consider a proposed project's GHG emissions without attempting to speculate about any potential localized or regional climate effects.
- The finalized guidance should clarify that NEPA does not require lead agencies to attempt to monetize the potential costs of GHG emissions even where there is readily available information on the economic benefits of a proposed project.

I. Lead agencies should limit reviews to reasonably foreseeable direct and indirect GHG emissions

GPA Midstream agrees that NEPA requires the lead agency to consider direct GHG emissions from the construction and operation of the proposed project. We also agree that, where the proposed project will lead to indirect GHG emissions, and those emissions can be calculated based on reasonably available information, they must also be considered by the lead agency. This consideration of indirect GHG emissions will frequently arise with fossil fuel production or transportation projects. One example was discussed in Sierra Club v. FERC, 867 F.3d 1357 (D.C. Cir. 2017) where a proposed pipeline would deliver natural gas to an established set of planned and existing gas-fired power plants. There, the destination and usage of the gas was known and information existed to allow FERC to calculate the power plants' carbon dioxide emissions.

Although the Draft Guidance properly cautions that assessments of indirect effects should not be speculative and must be based on reasonably available information, GPA Midstream believes that some additional guidance is required where indirect effects are not as reasonably foreseeable as in Sierra Club v. FERC. With respect to oil, gas, or NGL pipeline systems, the ultimate destination of fuels may not be discernible by either the project applicant or the lead agency due to the complexity of the systems. Further, downstream GHG emissions from combustion of these fuels may vary based on combustion efficiency. Thus, where the ultimate destination and usage are not known, presuming that all oil, gas, or NGLs transported will result in a certain quantity of GHG emissions is unduly speculative. Further, a new project to produce or transport oil, gas, or NGLs adds these products into a dynamic system where supplies rapidly decline and new supplies are necessary simply to replace the output of declining assets. This precludes simplistic assumptions about whether any particular proposed project is adding new GHG emissions from downstream fuel combustion or simply replacing existing emissions.

The U.S. Court of Appeals recently grappled with this issue in Birkhead v. FERC, 925 F.3d 510, 516-521 (D.C. Cir. 2019). There, the court was skeptical of FERC's position that adding

natural gas into a complex transmission and distribution system precluded it from making reasonable estimates of downstream GHG emissions but declined to rule on procedural grounds. In voicing its skepticism, the court presumed, without explaining its basis, that FERC could have obtained information detailing the ultimate destination and use of transported natural gas. GPA Midstream believes that courts, lead agencies, and project applicants could benefit from some explanation in the Final Guidance regarding the complexity of indirect, downstream GHG emissions from any particular proposed project and that, under the “rule of reason,” lead agencies should rely on their expertise in determining whether such information is obtainable, reliable, and would be of any value in the decisionmaking process. Indulging in theoretical discussions on the downstream destination and use of oil, gas, and NGLs, and ultimately a quantification of presumed indirect GHG emissions, is overly speculative and could be inaccurate or misleading.

II. Federal agencies should not attempt to predict direct and indirect climate effects attributable to a proposed project.

GPA Midstream has significant concerns with the Draft Guidance’s claim that “[a] projection of a proposed action’s direct and reasonably foreseeable indirect GHG emissions may be used as a proxy for assessing potential climate effects.” 84 Fed. Reg. at 30,098 (emphasis added). Specifically, we believe that this claim may be misinterpreted as requiring lead agencies to attempt to correlate the GHG emissions from a proposed project with future localized climate effects, such as flooding, temperature increases, or hurricane impacts. The Final Guidance should clarify that no tools exist to link the GHG emissions of any particular project with any particular localized climate effect. Even where a project’s direct and indirect GHG emissions can be quantified, any future climate effects will result from global GHG atmospheric concentrations. These atmospheric concentrations are in constant flux and are influenced by worldwide industrial, agricultural, and silvicultural activities. Any single project’s contribution would constitute a tiny percentage of GHG atmospheric concentration and cannot be correlated with localized, or even regional, climate effects. Any attempt to do so would be overly speculative and misleading.

GPA Midstream agrees that, where reliable information is reasonably available, lead agencies may quantify a proposed project’s direct and indirect GHG emissions and compare them to local, regional, national, or sector-wide emissions estimates. 84 Fed. Reg. at 30,098. This will provide context for the public and provide the lead agency “with sufficient information to make a reasoned choice among alternatives.” *Id.* The Final Guidance should make clear that NEPA does not require lead agencies to speculate about any particular climate effects.

III. Lead agencies lack a reliable methodology to quantify future GHG emission costs and need not do so under NEPA

GPA Midstream agrees that lead agencies should not be required to monetize the potential cost of a proposed project’s GHG emissions even where an Environmental Assessment or Environmental Impact Statement discusses monetary benefits. This is a significant issue as some courts have reached the opposite conclusion. One court held that the Social Cost of Carbon

(“SCC”) must be used to quantify the potential future costs of GHG emissions unless agencies “have justifiable reasons for not using (or assigning minimal weight to)” the SCC. High Country Conservation Advocates v. U.S. Forest Service, 52 F. Supp. 3d 1174, 1193 (D. Colo. 2014). Another court declared that the future cost of GHG emissions must be quantified whenever the lead agency quantifies any benefit from a proposed project. Montana Environmental Information Center v. U.S. Office of Surface Mining, 274 F. Supp. 3d 1074, (D. Mont. 2017).

Neither holding was required by NEPA or its implementing regulations and the approaches of these decisions are not helpful to either lead agencies or the public. With respect to the SCC, it is no longer an available tool for quantifying GHG emission costs, as the High Country court claimed. 52 F. Supp. 3d at 1190. The President ordered the SCC’s withdrawal in favor of more generally accepted accounting methodologies. Executive Order 13783, Promoting Energy Independence and Economic Growth, 82 Fed. Reg. 16,093, 16,095-96 (March 31, 2017). Several courts have rejected the High Country mandate for agencies to use the SCC, including another district court judge in the U.S. District Court for the District of Colorado. Citizens for a Healthy Community v. U.S. Bureau of Land Management, 377 F. Supp. 3d 1223 (D. Colo. 2019); see also EarthReports, Inc. v. FERC, 828 F.3d 949, (D.C. Cir. 2016) (accepting FERC’s rationale as to why the SCC “would not be appropriate or informative to use” for project-specific NEPA reviews) (internal quotations omitted); WildEarth Guardians v. Zinke, 368 F. Supp. 3d 41 (D.D.C. 2019).

With respect to the Montana Environmental Information Center decision, other courts rejected its view that NEPA requires the quantification of costs whenever a lead agency recognizes a proposed project’s monetary benefits, including another district court judge in the U.S. District Court for the District of Montana. See W. Org. of Res. Councils v. BLM, 2018 WL 1475470 (D. Mont. Mar. 26, 2018) (NEPA does not require agencies to use the SCC for cost-benefit analyses); see also Wilderness Workshop v. U.S. Bureau of Land Mgmt., 342 F. Supp. 3d 1145 (D. Colo. 2018) (considering benefits in a NEPA economic impact analysis “was not necessarily the ‘benefit’ side of a cost-benefit analysis”).

NEPA regulations do not require lead agencies to perform cost-benefit analyses as if they were significant agency rulemakings. See 40 C.F.R. § 1502.23 (“the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations.”). However, lead agencies may be required to discuss economic or social benefits from a proposed project. Id. § 1508.14. Requiring lead agencies to unreliably quantify future GHG emission costs (using the SCC or any other tool) whenever they estimate economic benefits, or forego benefit quantification because GHG emission cost estimates are too uncertain to quantify, would be inappropriately misleading. The former situation would imply a certainty to future GHG emission costs that is unsupportable and the latter situation would require the lead agency to ignore the reasonably quantifiable benefits of a proposed agency action, such as oil and gas leasing revenues.

Declining to monetize carbon emissions for lack of a reliable methodology is different than the scenario in Center for Biological Diversity v. NHTSA, 538 F.3d 1172, (9th Cir. 2008). There, the Ninth Circuit vacated National Highway Traffic Safety Administration fuel economy standards because the agency assigned a value of zero dollars to the benefits of GHG emission reductions when the record recognized some range of non-zero costs. Under NEPA, lead agencies may provide some qualitative description of the potential effects of GHG emissions without performing a cost-benefit analysis and without asserting that carbon emissions have zero potential future costs. This is perfectly consistent with 40 C.F.R. § 1502.23, which cautions agencies against assigning costs and benefits “when there are important qualitative considerations.”

GPA Midstream appreciates the opportunity to submit these comments in response to CEQ’s request and is standing by to answer any questions that it may have.

Respectfully submitted,

A handwritten signature in black ink that reads "Matt Hite". The signature is written in a cursive, flowing style.

Matt Hite
Vice President of Government Affairs
GPA Midstream Association