

Sierra Club v. Federal Energy Regulatory Commission: The D.C. Circuit Upholds FERC’s Regional NEPA Analysis for Freeport Projects; Punts on Issue of LNG Export Environmental Impacts

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I. OVERVIEW OF THE CASE

In 2011 and 2012, Freeport LNG Development, L.P. requested authorization from the Federal Energy Regulatory Commission (FERC) to modify its existing facilities in Freeport, Texas, and to construct additional gas liquefaction facilities to support natural gas export operations.¹ The projects (Freeport Projects) caught the attention of two environmentalist organizations—the Sierra Club and Galveston Baykeeper (Associations)—which were concerned with the environmental consequences stemming from the Freeport Projects.²

The Freeport Projects, due to their relation to the natural gas exports, implicate a complicated web of regulation.³ In this case, the Freeport Projects required approval from the Department of Energy

1. *Sierra Club v. Fed. Energy Regulatory Comm’n (Freeport)*, 827 F.3d 36, 42 (D.C. Cir. 2016).

2. *See id.* at 40.

3. *Id.*

(DOE) and FERC, and fell under the purview of the Natural Gas Act.⁴ In addition, because the Freeport Projects qualify as a “major federal action,” they implicated the National Environmental Policy Act (NEPA).⁵ The noted case deals primarily with FERC’s NEPA obligations regarding the construction and operation of the Freeport Projects. Accordingly, the Associations first raised their concerns by intervening in FERC’s NEPA administrative proceedings.⁶

In the FERC proceedings, the Associations argued that FERC failed to consider the indirect environmental effects of a possible increase in domestic natural gas production which would be induced by the Freeport Projects.⁷ In addition, the Associations argued that FERC failed to analyze the cumulative environmental impacts of the Freeport Projects in light of other proposed or authorized natural gas export projects across the country.⁸ FERC denied the Associations’ petition for rehearing on their NEPA concerns.⁹ In doing so, FERC rejected the assertion that increased domestic natural gas production was a causally related or reasonably foreseeable indirect effect of the Freeport Projects, and FERC found that the cumulative impact of nationwide proposed or authorized export projects fell outside the regulatory definition of “cumulative impact.”¹⁰ Following FERC’s lead, the DOE quickly authorized Freeport to export natural gas from the FERC-approved facilities.¹¹ After the Associations failed to block the Freeport Projects’ FERC administrative proceedings, the Associations sought judicial review of FERC’s NEPA analysis and ultimate decision to approve the Freeport Projects.¹² The United States Court of Appeals for the D.C. Circuit, while reserving decision on the Associations’ complaints related to natural gas exports, *held* that FERC’s NEPA analysis of the non-export related environmental consequences of the Freeport Projects was not arbitrary or capricious, and thus complied with NEPA. *Sierra Club v. Fed. Energy Regulatory Comm’n*, 827 F.3d 36, 47-51 (D.C. Cir. 2016).

4. *Id.* at 40-41.

5. *See id.* at 41; *see generally* Nat’l Env’tl. Policy Act, 42 U.S.C. §§ 4321-4370 (2012); *see also* 40 C.F.R. § 1508.18 (2016).

6. *Sierra Club (Freeport)*, 827 F.3d at 42.

7. *Id.*

8. *Id.*

9. *Id.* at 43.

10. *Id.*

11. *Id.*

12. *Id.* at 40.

II. BACKGROUND

A. *The Natural Gas Act and Divisions of Agency Authority*

The Natural Gas Act gives the DOE exclusive authority over the commodity export of natural gas.¹³ The DOE, in turn, has delegated to FERC the authority to “[a]pprove or disapprove the construction and operation of particular [export] facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of . . . exit for [natural gas] exports.”¹⁴ Thus, while DOE has ultimate authority over the authorization of natural gas exports, FERC retains the authority over the facilities used for such exports. Further, the decisions of each agency with regard to their respective natural gas-related functions must comply with NEPA.¹⁵ The Natural Gas Act also informs how FERC and the DOE must fulfill their NEPA obligations. For NEPA purposes, the Natural Gas Act designates FERC to be “the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act.”¹⁶ The DOE participates in FERC’s NEPA process only as a “cooperating agency,”¹⁷ although it is ultimately responsible for “supervis[ing] the preparation” of FERC’s NEPA analyses.¹⁸ Therefore, as long as the DOE independently reviews FERC’s NEPA analysis, it may adopt FERC’s analysis as its own.¹⁹

B. *National Environmental Policy Act*

The National Environmental Policy Act requires that federal agencies, upon a finding that an action constitutes a “major Federal action[] significantly affecting the quality of the human environment,” must prepare a detailed environmental impact statement that addresses the environmental impact of the action.²⁰ Among other requirements, NEPA requires agencies to consider the action’s “cumulative impact[s]”²¹

13. *Id.* (citing Natural Gas Act of 1938, 42 U.S.C. § 7151(b) (2012)).

14. U.S. Dep’t of Energy, Delegation Order No. 00-004.00A, § 1.21A (May 16, 2006); *cf.* 15 U.S.C. § 717b(e)(1) (2012).

15. *Sierra Club (Freeport)*, 827 F.3d at 41.

16. *Id.* (citing 15 U.S.C. § 717n(b)(1) (2012); *see also* 42 U.S.C. § 7172(a)(2)(B) (2012)).

17. *Id.* (citing 40 C.F.R. § 1501.6(b) (2016)).

18. *Id.* (citing 40 C.F.R. § 1501.5(a)(1)(2)).

19. *Id.* at 41-42 (citing 40 C.F.R. § 1506.3(c)).

20. 42 U.S.C. § 4332 (2012).

21. 40 C.F.R. § 1508.7 (2016).

and “indirect” environmental effects.²² The Council on Environmental Quality (CEQ) issues guidance to federal agencies on how to administer their NEPA analyses.²³

1. Indirect Effects

NEPA requires agencies to consider the indirect environmental effects of their actions.²⁴ Indirect environmental effects are those that are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”²⁵ In *Department of Transportation v. Public Citizen*, the United States Supreme Court compared the necessary causal relationship required for an indirect effect to the “familiar doctrine of proximate cause from tort law,”²⁶ and explained that underlying policies or legislative intent should be examined in order to “draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not.”²⁷ The Court’s decision in *Public Citizen* indicates that indirect effect determinations should revolve around causation.²⁸ In contrast, the United States Court of Appeals for the Eighth Circuit’s more recent decision in *Mid States Coalition for Progress v. Surface Transportation Board* implies that indirect effects determinations should be much broader.²⁹ In *Mid States*, the court explained that any identified environmental effects, even those for which the extent of the effect had not been determined, must be considered in NEPA reviews.³⁰ Thus, courts have offered differing opinions on exactly how agencies should conduct indirect effect NEPA analyses.

CEQ is tasked with issuing agency guidance on NEPA matters.³¹ In 2014, the CEQ issued draft guidance to provide federal agencies direction on when and how to consider the effects of greenhouse gas emissions and climate change in their evaluation of all proposed federal

22. *Id.* at § 1508.8(b).

23. *See* 42 U.S.C. § 4344 (2012); *see also* 40 C.F.R. §§ 1500-1508 (2016).

24. 40 C.F.R. § 1508.8(b) (2016).

25. *Id.*

26. *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

27. *Metro. Edison Co.*, 460 U.S. at 775 n.7.

28. *See Pub. Citizen*, 541 U.S. at 767.

29. *See Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520 (8th Cir. 2003).

30. *Id.* at 549.

31. *See* 42 U.S.C. § 4344 (2012); *see also* 40 C.F.R. §§ 1500-1508 (2016).

actions.³² These regulations directed agencies to consider emissions from “activities that have a reasonably close causal relationship to the Federal action, such as those that may occur as a predicate for the agency action (often referred to as upstream emissions) and as a consequence of the agency action (often referred to as downstream emissions).”³³ The CEQ regulations thus direct agencies to consider causally-connected activities that will occur both before and after an agency action in conducting indirect effects analyses. How agencies interpret CEQ’s 2014 definition of causally-related activities, however, will determine what upstream or downstream activities they will incorporate in their indirect effects analyses.

2. Cumulative Impacts

NEPA also dictates that an agency must examine the action’s “cumulative impact,” which is the environmental impact resulting from “the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”³⁴ The statutory definition of cumulative impact notably fails to draw a specific geographic range within which past, present, or reasonably foreseeable future actions must be considered in a cumulative impacts analysis. The D.C. Circuit helped clarify this ambiguity in *TOMAC, Taxpayers of Michigan Against Casinos v. Norton* by explaining that a cumulative impacts analysis must include agency actions which are “in the same geographic area.”³⁵ The Supreme Court has also offered guidance on this issue in the context of concurrent agency proposals.³⁶ In *Kleppe v. Sierra Club*, the Court explained the required scope of regional analyses for concurrent proposals by stating that “when several proposals for . . . [related] actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together.”³⁷ Accordingly, the *Kleppe* decision mandates that concurrent proposals for agency action which together have an impact “upon a region” must be considered together.³⁸

32. Council on Env'tl. Quality, *DRAFT published for public review and comment* (Dec. 2014), http://www.whitehouse.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance_searchable.pdf.

33. *Id.* at 11.

34. 40 C.F.R. § 1508.7 (2016).

35. *TOMAC, Taxpayers of Mich. Against Casinos v. Norton*, 433 F.3d 852, 864 (D.C. Cir. 2006).

36. *See Kleppe v. Sierra Club*, 427 U.S. 390 (1976).

37. *Id.* at 410.

38. *See id.*

Thus, while *TOMAC* and *Kleppe* indicate that cumulative impacts should be considered within a “region” or “same geographic area,” they nonetheless fail to identify specific boundaries for that region.³⁹

C. NEPA Standard of Review

The federal judiciary is charged with review of agencies’ NEPA analyses.⁴⁰ A court reviewing an agency’s NEPA analysis must “simply [] ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary or capricious.”⁴¹ If an agency’s NEPA analysis is “fully informed and well considered,” it is entitled to judicial deference.⁴² If the agency can meet this standard, a reviewing court should not substitute its own policy judgement for that of the agency.⁴³

III. THE COURT’S DECISION

A. Scope of the Opinion

In the noted case, while ultimately finding that FERC’s NEPA analysis was neither arbitrary nor capricious, the D.C. Circuit carefully drew a line between the issues it was deciding and the issues it was not deciding. After brushing aside FERC’s initial jurisdictional challenges, the court stated that the propriety or scope of FERC’s delegated authority under the Natural Gas Act, along with the administrative hierarchy between the DOE and FERC for NEPA analyses, was not at issue in the case.⁴⁴ Additionally, the court found that because no “segmentation” challenges had been lodged by the Associations against FERC for reviewing the Freeport Projects separately from the larger inter-agency export authorization process, it was not deciding any segmentation issues.⁴⁵ The court further declined to determine whether FERC’s NEPA analysis relating to the export terminals would satisfy the DOE’s own obligatory NEPA analysis concerning the actual export of natural gas or whether the DOE and FERC’s authorizations of the respective construction and export activities qualified as “connected actions” for

39. See *TOMAC*, 433 F.3d at 864; see *Kleppe*, 427 U.S. at 410.

40. See 5 U.S.C. §§ 701-706 (2012).

41. *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97-98 (1983).

42. *Nat. Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 294 (D.C. Cir. 1988).

43. *Id.*

44. *Sierra Club v. Fed. Energy Regulatory Comm’n (Freeport)*, 827 F.3d 36, 45 (D.C. Cir. 2016).

45. See *id.*

NEPA purposes.⁴⁶ Instead, the court emphasized that its decision would pertain only to FERC's NEPA duties to adequately consider the indirect and cumulative environmental impacts of the "siting, construction, expansion, [and] operation" of the Freeport Projects.⁴⁷ The court based its denial to discuss these issues on the division of authority between the two agencies with respect to construction of natural gas export facilities and natural gas exports in general.⁴⁸ The court reasoned that the Natural Gas Act placed export decisions "squarely and exclusively within the [DOE's] wheelhouse," while decisions relating to the construction and modifications of the physical export facilities fell under FERC's authority.⁴⁹ The court maintained that the Associations' objections related to the DOE's NEPA obligations ought to be raised in a pending challenge of the DOE's decision to authorize natural gas exports.⁵⁰

B. FERC's NEPA Analyses

After delineating the scope of its decision, the court proceeded to discuss the merits of the Associations' claims regarding FERC's NEPA analyses.⁵¹ The Associations argued that FERC failed to adequately consider the indirect effects and cumulative impacts of approving the Freeport Projects in its NEPA analyses.⁵² The court explained its standard of review by stating that it was not the court's job to "flyspeck" FERC's NEPA analysis for minor deficiencies.⁵³ Instead, the court maintained its job was "simply to ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary or capricious."⁵⁴ Under this standard of review, the court, while consistently emphasizing the limited scope of its decision, ultimately determined that none of the Associations' arguments prevailed.⁵⁵

46. *Id.* at 45-46.

47. *Id.* at 46 (citing 15 U.S.C. § 717b(e)(1) (2012)).

48. *See id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* at 46 (quoting *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97-98 (1983)) (internal quotation marks omitted).

55. *Id.*

1. Indirect Effects

Before addressing the Associations' claims relating to the indirect environmental effects of FERC's NEPA analysis, the court explained the rules governing how agencies are required to conduct such indirect effect determinations. The proper test for indirect effects, the court maintained, was not every effect of the Freeport Projects, which might be considered a but-for cause of the Projects, but was instead any effect "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision."⁵⁶ The court concluded that the indirect effects test under NEPA "requires a reasonably close causal relationship' [sic] between the environmental effect and the alleged cause."⁵⁷

The Associations' first indirect effects argument contended that "basic economic principles" supported the proposition that FERC's authorization of the Freeport Projects would lead to DOE's grant of an export license, which would increase domestic natural gas production.⁵⁸ This increase, the Association argued, would in turn increase natural gas prices and cause consumers to turn to more environmentally harmful energy sources like coal.⁵⁹ The court declined to take a stance on the merits of this argument. Instead, the court determined that the Associations' proposed chain of events did not merit consideration in FERC's NEPA analysis.⁶⁰ DOE's grant of a natural gas export license, the court reasoned, was an intervening action which broke the NEPA causal chain because FERC had no authority over that DOE decision.⁶¹ Accordingly, FERC had no responsibility to include the consideration of DOE's export grant in its NEPA analysis because it was a consideration it "could not act on" and for which it could not be "the legally relevant cause."⁶² By this reasoning, the court distinguished *Mid States*, which the Associations relied upon for their argument that FERC had to consider environmental effects for which the nature of the effects, but not the extent of the effects, had been identified.⁶³ Noting that the Eighth Circuit's decision in *Mid States* held no binding precedent on the D.C.

56. *Id.* at 47 (quoting *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005) (quoting *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992))) (internal quotation marks omitted).

57. *Id.* (quoting *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004)) (internal quotation marks omitted).

58. *Id.*

59. *Id.*

60. *Id.* at 47-48.

61. *Id.* at 48.

62. *Id.* (quoting *Pub. Citizen*, 541 U.S. at 769).

63. *Id.*

Circuit, the court again pointed out that the Associations had not identified “any specific and causally linear indirect consequences” apart from the intervening action of DOE’s export grant.⁶⁴

The Associations’ second indirect effects argument was that FERC acted arbitrarily and capriciously by not considering a report by the Energy Information Administration which it contended “specifically predicted the extent to which LNG exports from the Gulf Coast would increase gas production and coal use.”⁶⁵ Again, the court concluded that because the report dealt with consequences relating to DOE’s export grant it was not relevant for FERC’s NEPA analysis of the environmental effects of the construction and modification of the Freeport Projects.⁶⁶ In coming to this conclusion, the court acknowledged seemingly contrary Supreme Court precedent in *SEC v. Chenery Corp.*⁶⁷ In *Chenery*, the Supreme Court stated that “[t]he grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based.”⁶⁸ The court noted, however, that D.C. Circuit precedent in *Shea v. Director, Office of Worker’s Compensation Programs, U.S. Department of Labor* provided a caveat to the *Chenery* principle: while an appellate court must judge the agency’s findings upon the grounds upon which the action was made, it can instead base the agency’s findings on a separate ground found by the court.⁶⁹ Thus, the court concluded that although FERC had not considered the Energy Information Administration’s report in its ultimate decision, the court could instead base its approval of FERC’s analysis by resort to its own intervening cause rationale.⁷⁰

2. Cumulative Impacts

After rejecting the Associations’ indirect effects challenges, the court moved next to the Associations’ argument that FERC should have undertaken a cumulative impacts analysis which included proposed or approved natural gas export terminals nationwide.⁷¹ The court relied on *TOMAC* to explain that cumulative impacts analyses only need to

64. *Id.*

65. *Id.*; see U.S. Energy Info. Admin., Effect of Increased Natural Gas Exports on Domestic Energy 1, 3 (Jan. 2012), http://energy.gov/sites/prod/files/2013/04/f0/fe_cia_lng.pdf.

66. *Sierra Club (Freeport)*, 827 F.3d at 48.

67. See *id.* (citing *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943)).

68. *Chenery*, 318 U.S. at 87.

69. *Shea v. Dir., Office of Workers’ Comp. Programs, U.S. Dep’t of Labor*, 929 F.2d 736, 739 n.4 (D.C. Cir. 1991).

70. See *Sierra Club (Freeport)*, 827 F.3d at 48-49.

71. *Id.* at 50.

include actions which are “in the same geographic area.”⁷² Noting that the determination of the relevant geographic area “requires a high level of technical expertise” and “is a task assigned to the special competency of” the Commission,” the Court held that FERC’s selection of a countywide area was appropriate.⁷³ The court found that the Associations’ calls for a nationwide geographic area “draws the NEPA circle too wide for the Commission.”⁷⁴

The Associations urged that *Kleppe* compels a different conclusion on the issue.⁷⁵ In *Kleppe* the Supreme Court stated that concurrent agency proposals that will have a cumulative impact “upon a region” must be considered together.⁷⁶ The court, however, keyed in on the words “upon a region” and noted FERC had indeed complied with the requirement by evaluating the cumulative impacts within the countywide region.⁷⁷ While acknowledging that a nationwide cumulative impacts analysis might be warranted in some situations, the court found that the lack of evidence that the Freeport Projects would have any impact on energy markets or emission levels on a national scale meant FERC’s cumulative impacts analysis was neither arbitrary nor capricious.⁷⁸

IV. ANALYSIS

The D.C. Circuit’s decision in the noted case provides important insight into the extent to which agencies must consider effects they cannot directly control in analyzing indirect effects and cumulative impacts in a NEPA analysis. In particular, the decision confers a limitation on the extent to which agencies must consider the effects of intervening causes in their NEPA analyses. While the case resolves these issues in the context of FERC’s authority over natural gas terminal construction and modification, it marks a minor skirmish in the environmental battle over natural gas exports with the decisive outcome still to be decided in pending DOE litigation.

The court’s decision is in line with prior jurisprudence. Because the court declined to widen FERC’s “NEPA circle,” this decision is consistent with precedent in *Public Citizen* and *Kleppe*.⁷⁹ Like in *Public*

72. *Id.* (quoting TOMAC, Taxpayers of Mich. Against Casinos v. Norton, 433 F.3d 852, 864 (D.C. Cir. 2006)).

73. *Id.* at 49 (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 412-14 (1976)).

74. *Id.* at 50.

75. *See id.*

76. *Kleppe*, 427 U.S. at 410.

77. *Sierra Club (Freeport)*, 827 F.3d at 50.

78. *Id.*

79. *Id.*

Citizen, in which the Supreme Court declined to require the Federal Motor Carrier Safety Administration to consider environmental effects for which it was not the legally relevant cause, the D.C. Circuit did not require FERC to consider environmental impacts which would ultimately be caused by DOE's approval of natural gas exports—an operation over which FERC lacked direct control.⁸⁰ Similarly the court's decision reflects *Kleppe*'s earlier insistence on regional rather than nationwide cumulative impacts analyses and emphasizes an agency's practical considerations in conducting NEPA analyses.⁸¹

The decision is also important because it sheds light on how courts and agencies are likely to interpret CEQ guidance on assessing effects on climate change in NEPA analyses. Although the 2014 CEQ guidance directed agencies to consider “upstream” and “downstream” actions predicated on or following from the agency's decision,⁸² the actual effect of the CEQ guidance will depend on agency and judicial interpretation. FERC's finding, along with the court's subsequent ruling, points to a narrower interpretation of CEQ guidance regarding “upstream” and “downstream” impacts than that proposed by CEQ itself. In the future, agencies may tend to adopt this narrower interpretation and decline to consider more attenuated indirect effects in their NEPA analyses. Ultimately, however, this issue will likely be resolved by the courts.

The court's decision is largely consistent with the purposes of NEPA. While the court's decision may be seen as a setback for environmentalists opposing natural gas exports, it marks a balance between the administrability of NEPA by agencies and NEPA's aim of protecting the environment.⁸³ By marking the DOE's approval of natural gas exports an intervening cause,⁸⁴ the decision generally lessens the extent of FERC's NEPA analyses for approval of natural gas export terminals by providing clarification of its required NEPA boundaries. In turn, this clarification will likely increase the ease and likelihood of authorizing such export terminals in the future. On the other hand, the D.C. Circuit, by determining DOE's export authorization was an intervening cause and reserving the export-related indirect effects and cumulative impacts for decision in the DOE litigation,⁸⁵ has not

80. Dep't of Transp. v. Pub. Citizen, 541 U.S. 752, 769 (2004); *Sierra Club (Freeport)*, 827 F.3d at 49.

81. *Sierra Club (Freeport)*, 827 F.3d at 50; see *Kleppe*, 427 U.S. at 410.

82. Council on Env'tl. Quality, *supra* note 32.

83. See generally COUNCIL ON ENVTL. QUALITY, EXEC. OFFICE OF THE PRESIDENT, A CITIZEN'S GUIDE TO THE NEPA: HAVING YOUR VOICE HEARD (2007).

84. *Sierra Club (Freeport)*, 827 F.3d at 47-48.

85. See *id.* at 46-48.

entirely eliminated environmentalist arguments regarding the export authorization's effects on climate change. For example, the court declined to adopt a concrete stance on the merits of the Associations' argument that the Freeport Projects would, by a chain of dependent actions, ultimately lead to greater use of environmentally harmful products like coal.⁸⁶ Instead, it relied on its intervening action rationale to find in favor of FERC.⁸⁷ The decision clarifies FERC's NEPA obligations in relation to the physical export terminals while allowing environmentalists to fight another day.

By applying the Supreme Court's rationale from *Public Citizen* in an energy project context, the court eliminated an important argument for environmentalists seeking to challenge energy infrastructure projects. Under the D.C. Circuit's holding, environmentalists may no longer argue that agencies tasked with approving energy infrastructure must consider the indirect and cumulative effects of induced energy production in their environmental analyses. To the contrary, agencies charged with NEPA analyses for energy infrastructure projects will not have to consider the indirect or cumulative environmental effects of actions outside of their direct authority. Thus, the holding may be especially relevant for agencies responsible for approving expansions to other energy infrastructure, such as interstate natural gas pipelines, but who do not hold direct authority over where and how such energy is ultimately consumed or used. This decision will certainly have direct relevance, for example, on the many proposed, pending, or approved natural gas terminals in the United States.⁸⁸

The court's limited holding sets the stage for a showdown in the DOE litigation, which will have important implications for stakeholders on both sides of the case. While the decision clarifies the NEPA process for agencies in charge of energy infrastructure approvals, it leaves unresolved the issue of whether or not agencies charged with approval of broader actions, for example DOE's authority over natural gas exports in general, will have to consider the indirect and cumulative environmental impacts of their decisions from an induced production or climate change context. The court's agreement with FERC's stance that DOE's export authorization was too attenuated of an effect to include in its NEPA analysis might suggest that the court would entertain similar arguments

86. *Id.* at 47-48.

87. *Id.* at 49.

88. See FED. ENERGY REGULATORY COMM'N, LNG (last updated Oct. 13, 2016), <http://www.ferc.gov/industries/gas/indus-act/lng.asp>.

made by the DOE in its own litigation.⁸⁹ On the other hand, by reserving key issues for the DOE litigation, it suggests the court may give more consideration to the merits of arguments regarding the environmental impacts of induced production from natural gas exports when reviewing the DOE's actions.⁹⁰

V. CONCLUSION

The holding in the noted case helps refine the intricacies of NEPA indirect effects and cumulative impacts analyses. Because federal agencies may exclude intervening causes from their indirect effects analyses and may limit their cumulative impacts analyses to a particular geographic region, FERC can now proceed more expeditiously with approvals of natural gas export terminals.⁹¹ However, the court's holding, while precluding environmentalists' induced-production and climate change arguments in the FERC litigation, preserves these arguments for decision in the upcoming battle over the DOE's approval of natural gas exports. The outcome of that decision will be key to understanding the viability of induced production and climate change arguments against agencies tasked with conducting NEPA analyses for broader environmental actions.

D. Ryan Cordell, Jr.*

89. See *Sierra Club (Freeport)*, 827 F.3d at 46-49.

90. *Id.* at 46.

91. *Id.* at 47-48, 50.

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