



2019
MID-YEAR
ENERGY FORUM

Tuesday, October 15, 2019 – Wednesday, October 16, 2019
Renaissance Downtown Hotel • Washington DC

General Session: The Role of Carbon in FERC Regulation

Historically, FERC has not figured prominently in the debates over how to address climate change. But that has changed in recent years. As governments, industries, and non-governmental organizations look for sustainable ways to address climate change, FERC's role is often included in these debates. This panel will explore the role that FERC can and should play under NEPA, the NGA, and the FPA when it comes to greenhouse gas emissions. The discussion will consider how FERC regulates the bulk power system under the "just and reasonable" standard and its certificate process under the "public convenience and necessity" standard. The panel will explore what should FERC be doing, if anything, to comply with its Congressional mandates and central role over the nation's energy markets and infrastructure.

Moderator: Ari Peskoe, *Director*, Electricity Law Initiative, Harvard Law School
Environmental and Energy Law Program

Speakers:

Matthew Christiansen, *Legal Advisor to Commissioner Richard Glick*, Federal Energy
Regulatory Commission

Jay Costan, *Partner*, Dentons

EBA 2019 Mid-Year Meeting

The Role of Carbon in FERC Regulation

James Costan

October 15, 2019

FERC's Role as authorizer of new gas pipeline infrastructure

Limiting principle on statutory authority from *DOT v. Public Citizen*:

- “An agency has no obligation to gather or consider environmental information if it has no statutory authority to act on that information.” *Sierra Club v. FERC*, 867 F.3d 1357, 1372 (2017).

Formulation of question presented as borrowed from *NAACP v. FPC*, 425 U.S. 662 (1976):

- The question in pipeline certificate cases is not whether the reduction of GHG emissions is an important national goal. It clearly is.
- Nor is the question whether Congress could authorize FERC to combat GHG emissions. It clearly could.
- The question is simply whether or to what extent Congress has authorized FERC under NGA section 7(e) to deny a certificate to a new gas pipeline because of concerns about the effects on climate change of GHG emissions from the downstream use of the gas transported by the pipeline.

***NAACP v. FPC* on ascribing meaning to “public interest” in NGA and FPA:**

- “This Court’s cases have consistently held that the use of the words ‘public interest’ in a regulatory statute is not a broad license to promote the general welfare. Rather the words take meaning from the purposes of the regulatory legislation.” 425 U.S. at 669.
- “In the case of the Power and Gas Acts, it is clear that the principal purpose of those Acts was to encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.” *Id.* at 669-70.

Thank you

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