# Sierra Club v. Federal Energy Regulatory Commission, 867 F.3d 1357 (2017)

Environmental groups and landowners have challenged the decision of the Federal Energy Regulatory Commission to approve the construction and operation of three new interstate natural-gas pipelines in the southeastern United States. Their primary argument is that the agency's assessment of the environmental impact of the pipelines was inadequate. We agree that FERC's environmental impact statement did not contain enough information on the greenhouse-gas emissions that will result from burning the gas that the pipelines will carry. In all other respects, we conclude that FERC acted properly. We thus grant Sierra Club's petition for review and remand for preparation of a conforming environmental impact statement.

[standing discussion deleted]

**III**

Both sets of petitioners rely heavily on the National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970). NEPA "declares a broad national commitment to protecting and promoting environmental quality," and brings that commitment to bear on the operations of the federal government. *Robertson v. Methow Valley Citizens Council,* 490 U.S. 332, 348, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989). The statute "commands agencies to imbue their decisionmaking, through the use of certain procedures, with our country's commitment to environmental salubrity." *Citizens Against Burlington, Inc. v. Busey,* 938 F.2d 190, 193-94 (D.C. Cir. 1991). One of the most important procedures NEPA mandates is the preparation, as part of every "major Federal action[ ] significantly affecting the quality of the human environment," of a "detailed statement" discussing and disclosing the environmental impact of the action. 42 U.S.C. § 4332(2)(C).

This environmental impact statement, as it has come to be called, has two purposes. It forces the agency to take a "hard look" at the environmental consequences of its actions, including alternatives to its proposed course. *See id.* § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.,* 462 U.S. 87, 97, 103 S.Ct. 2246, 76 L.Ed.2d 437 (1983). It also ensures that these environmental consequences, and the agency's consideration of them, are disclosed to the public. *See WildEarth Guardians,* 738 F.3d at 302. Importantly, though, NEPA "directs agencies only to look hard at the environmental effects of their decisions, and not to take one type of action or another." *Citizens Against Burlington,* 938 F.2d at 194. That is, the statute is primarily information-forcing.

The role of the courts in reviewing agency compliance with NEPA is accordingly limited. Furthermore, because NEPA does not create a private right of action, we can entertain NEPA-based challenges only under the Administrative Procedure Act and its deferential standard of review. *See Theodore Roosevelt Conservation P'ship v. Salazar,* 616 F.3d 497, 507 (D.C. Cir. 2010). That is, our mandate "is `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.'" *WildEarth Guardians,* 738 F.3d at 308 (quoting *City of Olmsted Falls v. FAA,* 292 1368\*1368 F.3d 261, 269 (D.C. Cir. 2002)). We should not "`flyspeck' an agency's environmental analysis, looking for any deficiency no matter how minor." *Nevada v. Dep't of Energy,* 457 F.3d 78, 93 (D.C. Cir. 2006) (citation omitted).

But at the same time, we are responsible for holding agencies to the standard the statute establishes. An EIS is deficient, and the agency action it undergirds is arbitrary and capricious, if the EIS does not contain "sufficient discussion of the relevant issues and opposing viewpoints," *Nevada,* 457 F.3d at 93 (quoting *Nat. Res. Def. Council v. Hodel,* 865 F.2d 288, 294 (D.C. Cir. 1988)), or if it does not demonstrate "reasoned decisionmaking," *Del. Riverkeeper Network v. FERC,* 753 F.3d 1304, 1313 (D.C. Cir. 2014) (quoting *Found. on Econ. Trends v. Heckler,* 756 F.2d 143, 154 (D.C. Cir. 1985)). The overarching question is whether an EIS's deficiencies are significant enough to undermine informed public comment and informed decisionmaking. *See Nevada,* 457 F.3d at 93. This is NEPA's "rule of reason." *See Dep't of Transp. v. Pub. Citizen,* 541 U.S. 752, 767, 124 S.Ct. 2204, 159 L.Ed.2d 60 (2004).

With those principles in mind, we direct our attention to the specific deficiencies the petitioners have alleged in the EIS for the Southeast Market Pipelines Project. As noted above, FERC prepared a single unified EIS for the project's three pipelines, and no party has challenged that approach. Thus, for purposes of our NEPA analysis, we will consider the project as a whole.

**A**

The principle of environmental justice encourages agencies to consider whether the projects they sanction will have a "disproportionately high and adverse" impact on low-income and predominantly minority communities.[4] *See* J.A. 1353-54. Executive Order 12,898 required federal agencies to include environmental-justice analysis in their NEPA reviews, and the Council on Environmental Quality, the independent agency that implements NEPA, *see* 42 U.S.C. § 4344, has promulgated environmental-justice guidance for agencies, *see* J.A. 1369-78.

Sierra Club argues that the EIS failed to adequately take this principle into account. Like the other components of an EIS, an environmental justice analysis is measured against the arbitrary-and-capricious standard. *See Cmtys. Against Runway Expansion, Inc. v. FAA,* 355 F.3d 678, 689 (D.C. Cir. 2004).[5] The analysis must be "reasonable and adequately explained," but the agency's "choice among reasonable analytical methodologies is entitled to deference." *Id.* As always with NEPA, an agency is not required to select the course of action that best serves environmental justice, only to take a "hard look" at environmental justice issues. *See Latin Ams. for Social & Econ. Dev. v. Fed. Highway Admin.,* 756 F.3d 447, 475-77 (6th Cir. 2014). We conclude that FERC's discussion of environmental justice in the EIS satisfies this standard.

The EIS explained that 83.7% of the pipelines' proposed route would cross 1369\*1369 through, or within one mile of, environmental-justice communities (defined as census tracts where the population is disproportionately below the poverty line and/or disproportionately belongs to racial or ethnic minority groups). That percentage varied from 54 to 80 percent for the alternative routes proposed by stakeholders and commenters, albeit with only one option below 70 percent. This type of data appeared not only in the section of the EIS specifically dedicated to environmental justice, but also in the chapter that compared the various alternative routes. That later chapter weighed environmental-justice statistics alongside factors like total route length, wetlands impact, and the number of homes near the route. It also discussed one additional proposed route, which would cross the Gulf of Mexico and avoid Georgia completely. This option would affect far fewer environmental-justice communities, but in FERC's assessment would be infeasible because it would cost an additional two billion dollars.

FERC concluded that the various feasible alternatives "would affect a relatively similar percentage of environmental justice populations," and that the preferred route thus would not have a disproportionate impact on those populations. *See* J.A. 836. The agency also independently concluded that the project would not have a "high and adverse" impact on *any* population, meaning, in the agency's view, that it could not have a "*disproportionately* high and adverse" impact on any population, marginalized or otherwise.[6]

Sierra Club contends that FERC misread "disproportionately high and adverse," the standard for when a particular environmental effect raises an environmental-justice concern. By Sierra Club's lights, any effect can fulfill the test, regardless of its intensity, extent, or duration, if it is not beneficial and falls disproportionately on environmental-justice communities. But even if we assume that understanding to be correct, we cannot see how this EIS was deficient. It discussed the intensity, extent, and duration of the pipelines' environmental effects, and also separately discussed the fact that those effects will disproportionately fall on environmental-justice communities. Recall that the EIS informed readers and the agency's ultimate decisionmakers that 83.7% of the pipelines' length would be in or near environmental-justice communities. The EIS also evaluated route alternatives in part by looking at the number of environmental-justice communities each would cross, and the mileage of pipeline each would place in low-income and minority areas. FERC thus grappled with the disparate impacts of the various possible pipeline routes. Perhaps Sierra Club would have a stronger claim if the agency had refused entirely to discuss the demographics of the populations that will feel the pipelines' effects, and had justified this refusal by pointing to the limited intensity, extent, and duration of those effects. However, as the EIS stands, we see no deficiencies serious enough to defeat the statute's goals of fostering well-informed decisionmaking and public comment. *See Nevada,* 457 F.3d at 93.

The same goes for Sierra Club's other arguments. The agency's methodology was reasonable, even where it deviated from what Sierra Club would have preferred. *See Runway Expansion,* 355 F.3d at 689. Take the agency's decision to compare the demographics along the various proposed routes to each other instead of "the general 1370\*1370 population." Sierra Club Opening Br. 18. An EIS is meant to help agency heads choose among the relevant alternatives, including the alternative of taking no action, and to help the public weigh in. Thus, FERC's decision to directly compare the proposed alternatives to one another, rather than to some broader population, was reasonable under the circumstances. *See id.* (approving an environmental-justice review that compared "the population predicted to be affected by ... [a] project to the demographics of the population that otherwise might conceivably be affected" by the project). Another methodology might be more appropriate in a case where some feasible alternative, with a lower environmental-justice impact, has been left out of the analysis. However, no party has offered any such alternative here.

Sierra Club is particularly concerned about Sabal Trail's plan to build a compressor station (a facility that helps "pump" gas along the pipeline, and gives off air and noise pollution while doing so) in an African American neighborhood of Albany, Dougherty County, Georgia. The agency identified environmental-justice communities by looking at the demographics of census *tracts,* which are county subdivisions created to organize census data. The neighborhood in question is a 100% African American census *block,* an even smaller census subdivision, but because it sits in the midst of a majority-white census tract, FERC did not designate it an environmental-justice community. Sierra Club's objection to this omission elevates form over substance. The goal of an environmental-justice analysis is satisfied if an agency recognizes and discusses a project's impacts on predominantly-minority communities, even if it does not formally label each such community an "environmental justice community." FERC *did* recognize the existence and demographics of the neighborhood in question, and discussed the neighborhood extensively. The EIS listed community features, including subdivisions, schools, and churches, along with their distances from the proposed compressor station, and explained that the station's noise and air-quality effects on these locations were expected to remain within acceptable limits.

More persuasive is Sierra Club's argument that FERC disregarded the extent to which Dougherty County is already overburdened with pollution sources. A letter to FERC from four members of Georgia's congressional delegation cites the grim statistics: southern Dougherty County has 259 hazardous-waste facilities, 78 air-polluting facilities, 20 toxic-polluting facilities, and 16 water-polluting facilities. The EIS did not mention these existing polluters in its discussion of Dougherty County. Sierra Club thus argues that FERC inadequately considered the project's "cumulative impacts," that is, its effects taken in combination with existing environmental hazards in the same area. *See* 40 C.F.R. § 1508.7; *Del. Riverkeeper,* 753 F.3d at 1319-20.

Perhaps FERC could have said more, but the discussion it undertook of the cumulative impacts of the proposed route fulfilled NEPA's goal of guiding informed decisionmaking. The EIS acknowledged that the Sabal Trail project will generate air pollution and noise pollution in Albany, and it projected cumulative levels of both of these types of pollution from all sources in the vicinity of the compressor station, finding that both would remain below harmful thresholds.[7] We are sensitive to 1371\*1371 Sierra Club's broader contention that it is unjust to locate a polluting facility in a community that already has a high concentration of polluting facilities, even if those older facilities produce pollution of a different type or in different locations. We note, however, that FERC took seriously commenters' concerns about locating Sabal Trail facilities in Dougherty County. The agency reopened the comment period on the EIS to seek input on relocating the compressor station, and then actually secured Sabal Trail's agreement to relocate the station, moving it in part to mitigate effects on environmental-justice communities. The EIS also considered four route alternatives proposed by Sierra Club and its fellow environmental petitioners that would have partially or completely avoided Albany, but rejected them all, mainly on the ground that they would have had a greater overall impact on residences and populated areas.

To sum up, the EIS acknowledged and considered the *substance* of all the concerns Sierra Club now raises: the fact that the Southeast Market Pipelines Project will travel primarily through low-income and minority communities, and the impact of the pipeline on the city of Albany and Dougherty County in particular. The EIS also laid out a variety of alternative approaches with potential to address those concerns, including those proposed by petitioners, and explained why, in FERC's view, they would do more harm than good. The EIS also gave the public and agency decisionmakers the qualitative and quantitative tools they needed to make an informed choice for themselves. NEPA requires nothing more.

**B**

It's not just the journey, though, it's also the destination. All the natural gas that will travel through these pipelines will be going somewhere: specifically, to power plants in Florida, some of which already exist, others of which are in the planning stages. Those power plants will burn the gas, generating both electricity and carbon dioxide. And once in the atmosphere, that carbon dioxide will add to the greenhouse effect, which the EIS describes as "the primary contributing factor" in global climate change. J.A. 915. The next question before us is whether, and to what extent, the EIS for this pipeline project needed to discuss these "downstream" effects of the pipelines and their cargo. We conclude that at a minimum, FERC should have estimated the amount of power-plant carbon emissions that the pipelines will make possible.

An agency conducting a NEPA review must consider not only the direct effects, but also the *indirect* environmental effects, of the project under consideration. *See* 40 C.F.R. § 1502.16(b). "Indirect effects" are those that "are caused by the [project] and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* § 1508.8(b). The phrase "reasonably foreseeable" is the key here. Effects are reasonably foreseeable if they are "sufficiently likely to occur that a person of ordinary prudence would take [them] into account in reaching a decision." *EarthReports, Inc. v. FERC,* 828 F.3d 949, 955 (D.C. Cir. 2016) (citation omitted).

What are the "reasonably foreseeable" effects of authorizing a pipeline that will 1372\*1372 transport natural gas to Florida power plants? First, that gas will be burned in those power plants. This is not just "reasonably foreseeable," it is the project's entire purpose, as the pipeline developers themselves explain. *See* Intervenor Br. 4-5 (explaining that the project "will provide capacity to transport natural gas to the electric generating plants of two Florida utilities"). It is just as foreseeable, and FERC does not dispute, that burning natural gas will release into the atmosphere the sorts of carbon compounds that contribute to climate change.

The pipeline developers deny that FERC would be the legally relevant cause of any power plant carbon emissions, and thus contend that FERC had no obligation to consider those emissions in its NEPA analysis. They rely on *Department of Transportation v. Public Citizen,* 541 U.S. 752, 124 S.Ct. 2204, 159 L.Ed.2d 60 (2004), a case involving the Federal Motor Carrier Safety Administration's development of safety standards for Mexican trucks operating in the United States. The agency had proposed those standards because the President planned to lift a moratorium on Mexican motor carriers operating in this country. These standards would require roadside inspections, which had the potential to create adverse environmental effects. The agency's EIS discussed the effects of these roadside inspections, but Public Citizen contended that the EIS was also required to address the environmental effects of increased truck traffic between the two countries. *See id.* at 765, 124 S.Ct. 2204.

The Supreme Court sided with the agency. The Court noted that the agency would have no statutory authority to exclude Mexican trucks from the United States once the President lifted the moratorium; it would only have power to set safety rules for those trucks. *See id.* at 766-67, 124 S.Ct. 2204. And because the agency could not exclude Mexican trucks from the United States, it would have no reason to gather data about the environmental harms of admitting them. The purpose of NEPA is to help agencies and the public make informed decisions. But when the agency has no *legal* power to prevent a certain environmental effect, there is no decision to inform, and the agency need not analyze the effect in its NEPA review. *See id.* at 770, 124 S.Ct. 2204.

We recently applied the *Public Citizen* rule in three challenges to FERC decisions licensing liquefied natural gas (LNG) terminals. *See Sierra Club v. FERC* (*Freeport*), 827 F.3d 36 (D.C. Cir. 2016); *Sierra Club v. FERC* (*Sabine Pass*), 827 F.3d 59 (D.C. Cir. 2016); *EarthReports, Inc. v. FERC,* 828 F.3d 949 (D.C. Cir. 2016). Companies can export natural gas from the United States through an LNG terminal, but such natural gas exports require a license from the Department of Energy. *See Freeport,* 827 F.3d at 40. They also require physical upgrades to a terminal's facilities. The Department of Energy has delegated to FERC the authority to license those upgrades. *See id.* A question presented to us in all of these cases was whether FERC, in licensing physical upgrades for an LNG terminal, needed to evaluate the climate-change effects of exporting natural gas. Relying on *Public Citizen,* we answered no in each case. FERC had no legal authority to consider the environmental effects of those exports, and thus no NEPA obligation stemming from those effects. *See Freeport,* 827 F.3d at 47; *accord Sabine Pass,* 827 F.3d at 68-69; *EarthReports,* 828 F.3d at 956.

An agency has no obligation to gather or consider environmental information if it has no statutory authority *to act on that information.* That rule was the touchstone of *Public Citizen, see* 541 U.S. at 767-68, 124 S.Ct. 2204, and it distinguishes this 1373\*1373 case from the LNG-terminal trilogy. Contrary to our dissenting colleague's view, our holding in the LNG cases was not based solely on the fact that a second agency's approval was necessary before the environmental effect at issue could occur.[8] Rather, *Freeport* and its companion cases rested on the premise that FERC had *no legal authority to prevent* the adverse environmental effects of natural gas exports. *See Freeport,* 827 F.3d at 47.

This raises the question: what did the *Freeport* court mean by its statement that FERC could not prevent the effects of exports? After all, FERC *did* have legal authority to deny an upgrade license for a natural gas export terminal. *See Freeport,* 827 F.3d at 40-41. And without such an upgrade license, neither gas exports nor their environmental effects could have occurred.

The answer must be that FERC was forbidden to rely on the effects of gas exports *as a justification for* denying an upgrade license. *Cf. Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983) (explaining that an agency acts arbitrarily and capriciously if it makes a decision based on "factors which Congress had not intended it to consider"). The holding in *Freeport,* then, turned not on the question "What activities does FERC regulate?" but instead on the question "What factors can FERC consider when regulating in its proper sphere?" In the LNG cases, FERC was acting not on its own statutory authority but under a narrow delegation from the Department of Energy. *See Freeport,* 827 F.3d at 40-41. Thus, the agency would have acted unlawfully had it refused an upgrade license on grounds that it did not have delegated authority to consider. *See State Farm,* 463 U.S. at 43, 103 S.Ct. 2856.

Here, FERC is not so limited. Congress broadly instructed the agency to consider "the public convenience and necessity" when evaluating applications to construct and operate interstate pipelines. *See* 15 U.S.C. § 717f(e). FERC will balance "the public benefits against the adverse effects of the project," *see Minisink Residents for Envtl. Pres. & Safety v. FERC,* 762 F.3d 97, 101-02 (D.C. Cir. 2014) (internal quotation marks omitted), including adverse environmental effects, *see Myersville Citizens for a Rural Cmty. v. FERC,* 783 F.3d 1301, 1309 (D.C. Cir. 2015). Because FERC could deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment, the agency is a "legally relevant cause" of the direct and indirect environmental effects of pipelines it approves. *See Freeport,* 827 F.3d at 47. *Public Citizen* thus did not excuse FERC from considering these indirect effects.[9]

FERC next raises a practical objection, arguing that it is impossible to 1374\*1374 know exactly what quantity of greenhouse gases will be emitted as a result of this project being approved. True, that number depends on several uncertain variables, including the operating decisions of individual plants and the demand for electricity in the region. But we have previously held that NEPA analysis necessarily involves some "reasonable forecasting," and that agencies may sometimes need to make educated assumptions about an uncertain future. *See Del. Riverkeeper,* 753 F.3d at 1310. Indeed, FERC has already estimated how much gas the pipelines will transport: about one million dekatherms (roughly 1.1 billion cubic feet) per day. The EIS gave no reason why this number could not be used to estimate greenhouse-gas emissions from the power plants, and even cited a Department of Energy report that gives emissions estimates per unit of energy generated for various types of plant.

We conclude that the EIS for the Southeast Market Pipelines Project should have either given a quantitative estimate of the downstream greenhouse emissions that will result from burning the natural gas that the pipelines will transport or explained more specifically why it could not have done so. As we have noted, greenhouse-gas emissions are an indirect effect of authorizing this project, which FERC could reasonably foresee, and which the agency has legal authority to mitigate. *See* 15 U.S.C. § 717f(e). The EIS accordingly needed to include a discussion of the "significance" of this indirect effect, *see* 40 C.F.R. § 1502.16(b), as well as "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions," *see WildEarth Guardians,* 738 F.3d at 309 (quoting 40 C.F.R. § 1508.7).

Quantification would permit the agency to compare the emissions from this project to emissions from other projects, to total emissions from the state or the region, or to regional or national emissions-control goals. Without such comparisons, it is difficult to see how FERC could engage in "informed decision making" with respect to the greenhouse-gas effects of this project, or how "informed public comment" could be possible. *See Nevada,* 457 F.3d at 93; *see also WildEarth Guardians,* 738 F.3d at 309 (accepting an agency's contention that the "estimated level of [greenhouse-gas] emissions can serve as a reasonable proxy for assessing potential climate change impacts, and provide decision makers and the public with useful information for a reasoned choice among alternatives").

We do not hold that quantification of greenhouse-gas emissions is required *every* time those emissions are an indirect effect of an agency action. We understand that in some cases quantification may not be feasible. *See, e.g., Sierra Club v. U.S. Dep't of Energy,* 867 F.3d 189, 202, No. 15-1489, 2017 WL 3480702 (D.C. Cir. Aug. 15, 2017). But FERC has not provided a satisfactory explanation for why this is such a case. We understand that "emission estimates would be largely influenced by assumptions rather than direct parameters about the project," *see* J.A. 916, but some educated assumptions are inevitable in the NEPA process, *see Scientists' Inst. for Pub. Info. v. Atomic Energy Comm'n,* 481 F.2d 1079, 1092 (D.C. Cir. 1973). And the effects of assumptions on estimates can be checked by disclosing those assumptions so that readers can take the resulting estimates with the appropriate amount of salt. *See WildEarth Guardians,* 738 F.3d at 309 (approving an EIS that took this approach).

Nor is FERC excused from making emissions estimates just because the 1375\*1375 emissions in question might be partially offset by reductions elsewhere. We thus do not agree that the EIS was absolved from estimating carbon emissions by the fact that some of the new pipelines' transport capacity will make it possible for utilities to retire dirtier, coal-fired plants. The effects an EIS is required to cover "include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial." 40 C.F.R. § 1508.8. In other words, when an agency thinks the good consequences of a project will outweigh the bad, the agency still needs to discuss both the good and the bad. In any case, the EIS itself acknowledges that only "portions" of the pipelines' capacity will be employed to reduce coal consumption. *See* J.A. 916. An agency decisionmaker reviewing this EIS would thus have no way of knowing whether total emissions, on net, will be reduced or increased by this project, or what the degree of reduction or increase will be. In this respect, then, the EIS fails to fulfill its primary purpose.

We also recognize that the power plants in question will be subject to "state and federal air permitting processes." J.A. 917. But even if we assume that power plants' greenhouse-gas emissions will be subject to regulation in the future, *see* Exec. Order No. 13,783, § 4(a), 82 Fed. Reg. 16,093, 16,095 (Mar. 28, 2017) (instructing the EPA administrator to consider "whether to revise or withdraw" federal regulation of these emissions), the existence of permit requirements overseen by another federal agency or state permitting authority cannot substitute for a proper NEPA analysis. *See Calvert Cliffs' Coordinating Comm. v. Atomic Energy Comm'n,* 449 F.2d 1109, 1122-23 (D.C. Cir. 1971). In any event, FERC quantified the project's expected emissions of other air pollutants, despite the fact that the project will presumably comply with the requirements of the Clean Air Act and state air-pollution laws.

Our discussion so far has explained that FERC must either quantify and consider the project's downstream carbon emissions or explain in more detail why it cannot do so. Sierra Club proposes a further analytical step. The EIS might have tried to link those downstream carbon emissions to particular climate impacts, like a rise in the sea level or an increased risk of severe storms. The EIS explained that there is no standard methodology for making this sort of prediction. *Cf. WildEarth Guardians,* 738 F.3d at 309 ("[C]urrent science does not allow for the specificity demanded" by environmental challengers.). In its rehearing request, Sierra Club asked FERC to convert emissions estimates to concrete harms by way of the Social Cost of Carbon. This tool, developed by an interagency working group, attempts to value in dollars the long-term harm done by each ton of carbon emitted. But FERC has argued in a previous EIS that the Social Cost of Carbon is not useful for NEPA purposes, because several of its components are contested and because not every harm it accounts for is necessarily "significant" within the meaning of NEPA. *See EarthReports,* 828 F.3d at 956. We do not decide whether those arguments are applicable in this case as well, because FERC did not include them in the EIS that is now before us. On remand, FERC should explain in the EIS, as an aid to the relevant decisionmakers, whether the position on the Social Cost of Carbon that the agency took in *EarthReports* still holds, and why.

[alterative claims deleted]

VI

The petition for review in No. 16-1329 is granted. The orders under review are vacated and remanded to FERC for the preparation of an environmental impact statement that is consistent with this opinion. The petition for review in No. 16-1387 is denied.

*So ordered.*

BROWN, Circuit Judge, concurring in part and dissenting in part:

I join today's opinion on all issues save the Court's decision to vacate and remand the pipeline certificates on the issue of downstream greenhouse emissions. Case law is clear: When an agency "`has no 1380\*1380 ability to prevent a certain effect due to' [its] `limited statutory authority over the relevant action[ ],' then that action `cannot be considered a legally relevant cause'" of an indirect environmental effect under the National Environmental Policy Act ("NEPA"). *Sierra Club (Freeport) v. FERC,* 827 F.3d 36, 47 (D.C. Cir. 2016) (quoting *Dep't of Transp. v. Pub. Citizen,* 541 U.S. 752, 770, 124 S.Ct. 2204, 159 L.Ed.2d 60 (2004)). Thus, when the occurrence of an indirect environmental effect is contingent upon the issuance of a license from a separate agency, the agency under review is not required to address those indirect effects in its NEPA analysis. Although this case seems indistinguishable from earlier precedent, the Court now insists the action taken by the Federal Energy Regulatory Commission ("FERC" or "the Commission") is the cause of an environmental effect, even though the agency has no authority to prevent the effect. *But see Pub. Citizen,* 541 U.S. at 767, 124 S.Ct. 2204 (holding "but for" causation is insufficient to make an agency responsible for a particular effect under NEPA). More significantly, today's opinion completely omits any discussion of the role Florida's state agencies play in the construction and expansion of power plants within the state— a question that should be dispositive. Because the Court's holding is legally incorrect and contravenes our duty to examine all arguments presented, I respectfully dissent.

When examining a NEPA claim, our role is limited to ensuring the relevant agency took a "hard look at the environmental consequences" of its decisions and "adequately considered and disclosed the environmental impact of its actions." *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council,* 462 U.S. 87, 97-98, 103 S.Ct. 2246, 76 L.Ed.2d 437 (1983). We examine the agency's determinations under the "deferential rule of reason," which governs which environmental impacts the agency must discuss and the "extent to which it must discuss them." *WildEarth Guardians v. Jewell,* 738 F.3d 298, 310 (D.C. Cir. 2013). FERC thus has broad discretion to determine "whether and to what extent to [discuss environmental impacts] based on the usefulness of any new potential information to [its] decisionmaking process." *Pub. Citizen,* 541 U.S. at 767, 124 S.Ct. 2204. Here, FERC declined to engage in an in-depth examination of downstream greenhouse gas emissions because there is no causal relationship between approval of the proposed pipelines and the downstream greenhouse emissions; and, even if a causal relationship exists, any additional analysis would not meaningfully contribute to its decisionmaking. Both determinations were reasonable and entitled to deference.

Regarding causation, the Court is correct that NEPA requires an environmental analysis to include indirect effects that are "reasonably foreseeable," *Freeport,* 827 F.3d at 46, but it misunderstands what qualifies as reasonably foreseeable. The Court blithely asserts it is "not just the journey," it is "also the destination." Maj. Op. at 1371. In fact, NEPA is a procedural statute that *is all about* the journey. It compels agencies to consider all environmental effects likely to result from the project under review, but it "does *not* dictate particular decisional outcomes." *Sierra Club v. U.S. Army Corps of Engineers,* 803 F.3d 31, 37 (D.C. Cir. 2015) (emphasis added). The statute therefore "requires a reasonably close causal relationship between the environmental effect and the alleged cause" that is "akin to proximate cause in tort law." *Pub. Citizen,* 541 U.S. at 754, 767, 124 S.Ct. 2204. Thus, the fact that the Commission's action is a "but for" cause of an environmental effect is insufficient to make it responsible for a particular environmental effect. *Id.* Instead, the 1381\*1381 effect must be "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision." *Freeport,* 827 F.3d at 47. There is a further caveat: An effect the agency is powerless to prevent does not fall within NEPA's ambit. Here, the Commission explained in its denial of rehearing that any "environmental effects resulting from end use emissions from natural gas consumption are generally neither caused by a proposed pipeline (or other natural gas infrastructure) project nor are they reasonably foreseeable consequences of our approval of an infrastructure project." JA 1330. FERC's conclusion is both logical and consistent with this Court's precedent. While the Court concludes FERC's approval of the proposed pipelines will be the cause of greenhouse gas emissions because a significant portion of the natural gas transported through the pipeline will be burned at power plants, *see* Maj. Op. at 1371, the truth is that FERC has no control over whether the power plants that will emit these greenhouse gases will come into existence or remain in operation.

…

## Footnotes

[4] Like petitioners, we refer to these two types of community collectively as "environmental-justice communities."

[5] Because FERC voluntarily performed an environmental-justice review, we need not decide whether Executive Order 12,898 is binding on FERC. *See Runway Expansion,* 355 F.3d at 689 (explaining that arbitrary-and-capricious analysis applies to every section of an EIS, even sections included solely at the agency's discretion).

[6] Sierra Club argues that the project will in fact have "high and adverse" impacts, but does so only in a brief and cursory fashion. *See CTS Corp. v. EPA,* 759 F.3d 52, 64 (D.C. Cir. 2014) (explaining that we need not address cursory arguments).

[7] FERC appropriately relied on EPA's national ambient air quality standards (NAAQS) as a standard of comparison for air-quality impacts. By presenting the project's expected emissions levels and the NAAQS standards side-by-side, the EIS enabled decisionmakers and the public to meaningfully evaluate the project's air-pollution effects by reference to a generally accepted standard. *See Runway Expansion,* 355 F.3d at 689 (explaining that in an environmental-justice analysis, the agency's "choice among reasonable analytical methodologies is entitled to deference").

[8] We also note that Florida Power & Light, which expects to be one of the pipelines' two primary customers, represented to FERC that "its commitments on Sabal Trail's and Florida Southeast's systems are to provide gas to existing natural gas-fired plants." Certificate Order ¶ 85, J.A. 1100. So even if the dissent were correct that Florida regulators' authority over power-plant construction excuses FERC from considering emissions from new or expanded power plants, that argument would not apply to the significant portion of these pipelines' capacity that is earmarked for *existing* plants.

[9] The dissent contends that if FERC refused to approve these pipelines, Florida utilities would find a way to deliver an equivalent amount of natural gas to the state regardless. *See* Dissenting Op. 1383. This argument, however, does not bear on the question whether FERC is legally authorized to consider downstream environmental effects when evaluating a Section 7 certificate application. In any case, the record suggests that there is no other viable means of delivering the amount of gas these pipelines propose to deliver. *See* J.A. 920-25.