United States Senate
WASHINGTON, DC 20510

November 8, 2017

Mr. Neil Chatterjee
Chairman
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Chairman Chatterjee:

We write concerning FERC's recent decision not to use the social cost of carbon (SCC) in its environmental analysis for the Southeast Market Pipelines (SMP) project. This decision is inconsistent with a series of court rulings on this issue and with the science and economics that underpins the SCC developed by the federal Interagency Working Group (IWG)[1] on the SCC. As you are aware, the SCC values and recommendations of the IWG were peer-reviewed, subject to public comment, and have been used in more than 75 rulemakings since 2010.

The courts have made several clear rulings upholding the use of the SCC in agency practices. In 2006, the National Highway Transportation Safety Administration (NHTSA) promulgated a rule for vehicle fuel economy standards that failed to monetize the benefits of reducing carbon emissions from vehicles, arguing that the values were too uncertain. In 2008, the U.S. Court of Appeals for the Ninth Circuit rejected NHTSA's uncertainty argument, finding that costs of carbon pollution are "certainly not zero."[2] Since this decision, U.S. District Courts in Colorado[3] and Montana[4] and the Tenth Circuit[5] have faulted federal parties for ignoring the carbon costs of their projects.

Beyond specific projects, the New York Public Service Commission and Illinois state legislature worked to incorporate a SCC into their zero-emission credit (ZEC) programs. In July, the U.S. District Court for the Northern District of Illinois dismissed challenges to the state of Illinois' ZEC program.[6] The U.S. District Court for the Southern District of New York has also dismissed a challenge to the ZEC program.[7] Also at the state level, there have been decisions by Minnesota and Colorado public utility commissions that supported the use of SCC estimates in evaluating potential infrastructure projects.[8]

With respect to FERC, a three-judge panel from the U.S. Court of Appeals for the D.C. Circuit ruled that the agency must consider the effects of carbon emissions that would result from the

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[1] Interagency Working Group on Social Cost of Carbon, Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866, Office of Management and Budget, May 2013, revision of July 2015, https://www.epa.gov/sites/production/files/2016-12/documents/sc_co2_tsd_august_2016.pdf
[2] *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 508 F.3d 508 (9th Cir. 2007).
[3] *High Country Conservation Advocates v. United States Forest Serv.*, 52 F. Supp. 3d 1174 (D. Colo. 2014).
[4] *Montana Envtl. Info. Ctr. v. U.S. Office of Surface Mining*, No. CV 15-106-M-DWM, 2017 WL 3480262 (D. Mont. Aug. 14, 2017).
[5] *WildEarth Guardians v. United States Bureau of Land Mgmt.*, 870 F.3d 1222 (10th Cir. 2017).
[6] *Vill. of Old Mill Creek v. Star*, No. 17 CV 1163, 2017 WL 3008289 (N.D. Ill. July 14, 2017).
[7] *Coal. for Competitive Elec., Dynegy Inc. v. Zibelman*, No. 16-CV-8164 (VEC), 2017 WL 3172866 (S.D.N.Y. July 25, 2017).
[8] Peter Fairley, *States are Using the Social Cost of Carbon in Energy Decisions, Despite Trump's Views*, INSIDE CLIMATE NEWS (Aug. 14, 2017), https://insideclimatenews.org/news/11082017/states-climate-change-policy-calculate-social-cost-carbon.

SMP Project.[9] The court ruling directed FERC to either better monetize the project's carbon emissions or to explain whether FERC maintains that the SCC is not useful under NEPA purposes. FERC responded to the court order with a supplemental environmental impact statement (SEIS) that calculated the downstream emissions of the project, but the agency failed to value the costs by using the SCC. FERC provided three justifications for why it did not use the SCC. Below we explain why we disagree with each of these.

1. FERC: The tool does not measure the actual incremental impacts of a project on the environment.

The SCC does indeed represent the value of an incremental ton of carbon emissions on the costs of climate change. Specifically, it is a value, in dollars, of the long-term damage done by one metric ton of carbon dioxide emissions. Whether these emissions come from a project, vehicle, facility, or some other source is irrelevant as carbon dioxide is a long-lived and well-mixed atmospheric gas. Each ton of carbon emissions released by a powerplant or pipeline will have an incremental effect of increasing global atmospheric carbon dioxide levels and enhancing the greenhouse effect. Enhancing the greenhouse effect worsens the damages we incur from climate change. Recent scientific literature concludes that for every 1-degree Fahrenheit increase in global temperatures, the U.S. economy will lose roughly 0.7% of its Gross Domestic Product, with each degree of warming costing more than the last.[10] Thus, one additional ton of carbon dioxide leads to higher global temperatures and will have real economic costs to homeowners, business owners, communities, states, and taxpayers.

Because FERC calculated the emissions of this project in its updated SEIS, it could calculate the climate externalities of this project. FERC could take the SCC, as calculated by the IWG, and multiply this by the projected tons of emissions coming from the project in every year over the lifetime of the project.

2. FERC: The U.S. Environmental Protection Agency (EPA) states that "no consensus exists on the appropriate [discount] rate to use for analyses spanning multiple generations" and consequently, significant variation in output can result.

In determining which discount rates to use for the SCC, both the IWG and the 2003 Office of Management and Budget (OMB) Circular A-4 guidance presented a range of discount rates to use in regulatory analysis of projects. OMB recommended in a 2003 guidance that agencies use a range of discount values from 3% to 7%. A 7% discount rate was chosen because it is the best estimate of the average "before-tax" rate of return on private capital. A 3% discount rate is recommended when a regulatory action does not primarily affect capital, but rather private consumption. Leading economists have argued that climate change effects will largely affect consumption.[11] OMB also recommended that if the regulatory action will have important intergenerational benefits or costs that the agency might consider a further sensitivity analysis

[9] *Sierra Club v. Fed. Energy Regulatory Comm'n*, 867 F.3d 1357 (D.C. Cir. 2017).
[10] Kopp et. al., Estimating economic damage from climate change in the United States, *Science* 30 Jun 2017: Vol. 356, Issue 6345, pp. 1362-1369.
[11] Arrow, K. J. J., M. Cropper, C. Gollier, B. Groom, G. Heal, R. Newell, W. Nordhaus, R. Pindyck, W. Pizer, P. Portney, T. Sterner, R. S. J. Tol, and M. Weitzman. 2013. Determining benefits and costs for future generations. *Science* 341, no. 6144:349–50.

using a lower discount rate than 3%. This recommendation is relevant for climate change because many of the benefits of GHG mitigation would occur generations after the year of emission control or emission reduction. FERC's reasoning to not calculate the SCC with a range of discount rates ignores a wide range of scientific literature[12] and governmental guidance. It is also inconsistent with the court decision that whatever the right number is, it's not zero. We recommend that FERC consider the range provided by either the IWG, OMB, or a recent National Academy of Sciences report.[13]

3. FERC: There are no established criteria identifying the monetized values that are to be considered significant for NEPA reviews.

Although the NEPA statute and implementing guidance do not prescribe exact methods or values for agencies to quantify carbon emissions and their damages to health and the environment, the statute directs that agencies shall "identify and develop methods and procedures…..which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations."[14] This direction means that an agency should seek out or, if not available, develop proper methods to conduct a complete analysis, in compliance with the statutory purpose, related to evaluating carbon emissions and consequent future damages from each project. An agency is not directed to wait for specific guidance on methods under NEPA.

Further, FERC has determined that the greenhouse gas emissions from this individual project will not result in "significant effects," but it offers no guidance on how it defines the term. We suggest in FERC's response to comments that it clearly explain what a significant project is and how the agency plans to enforce this standard. If no project is big enough to create "significant effects", but collectively they do, this argument is a fallacy.

We respectively urge that FERC consider these comments and additional background references as it continues to refine its analysis of infrastructure projects as it relates to their environmental effects.

Sincerely,

Sheldon Whitehouse
United States Senator

Michael F. Bennet
United States Senator

[12] Arrow, Kenneth J., Maureen L. Cropper, Christian Gollier, Ben Groom, Geoffrey M. Heal, Richard G. Newell, William D. Nordhaus, et al. "Should Governments Use a Declining Discount Rate in Project Analysis?" *Review of Environmental Economics and Policy* 8, no. 2 (July 1, 2014): 145–63.
[13] National Academies of Sciences, Engineering, and Medicine. *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide*. Washington, DC: The National Academies Press, 2017. doi:10.17226/24651.
[14] The National Environmental Policy Act of 1969, as amended, *available at* https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/Req-NEPA.pdf.