



Insights: Alerts

***Chevron* Overturned by the Supreme Court: The Impact on Energy**

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A landmark case in United States administrative law has been overturned by the United States Supreme Court and it could have cascading, long term effects on energy regulation.

Background:

On June 28, 2024, the Supreme Court issued an opinion in *Loper Bright Enterprises, et al v. Gina Raimondo, Secretary of Commerce and Relentless, Inc., et al v. Department of Commerce, et al.* (“*Loper*”) overturning the 1984 *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.* Supreme Court Decision and the so-called “*Chevron* Doctrine” or sometimes called the “*Chevron* Deference”. This decision will materially affect how administrative agencies, such as the Federal Energy Regulatory Commission (“FERC”) regulate and administer statutes.

Under the *Chevron* Doctrine, courts had sometimes been required to defer to “permissible” agency interpretations of statutes those agencies administer, even when the reviewing court reads the statute differently, per the Chief Justice Roberts 6-3 majority opinion. Specifically, the 1984 *Chevron* decision had been used as a tool for courts to allow deference to administrative agencies when interpreting ambiguous statutory authority that fell within the subject matter expertise of that administrative agency.

The *Chevron* Doctrine required one of two approaches used by courts to review agency action: (1) the reviewing court must first discern whether Congress had directly spoken to the precise question at issue via clear intent apparent in the applicable statute and, if intent is clear, the reviewing court must reject administrative decisions that run afoul of that clear intent of Congress; or (2) if the reviewing court deems the underlying statute as ambiguous as to congressional intent, then the reviewing court deferred to a permissible administrative interpretation. As noted in the Opinion in *Loper* (quoting *Smiley v. Citibank (South Dakota)*), *Chevron* provided a “presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows.”

The Court's Analysis:

The Opinion released today referenced another landmark Supreme Court Case – *Marbury v. Madison* – in buttressing an opinion that the judicial branch, and not an executive agency, is best-equipped to interpret statutory ambiguities. Moreover, specific to administrative law, the Administrative Procedure Act (“APA”) requires

courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority and that the *Chevron* doctrine defied the APA.

Chief Justice Roberts was unequivocal in stating that courts are the preferred vehicle in interpreting statutory issues and that an agency's subject matter expertise on a technical matter – whether it be energy or any other specialized, regulated matter – does not offer them similar unique subject matter expertise on the interpretation of congressional intent and statutory ambiguity. Furthermore, the Supreme Court pushed back on the concept that policymaking shall be conducted by “political actors rather than courts is especially mistaken because it rests on a profound misconception of the judicial role.” There can be no mistake – *Loper* wrestles away the policymaking statutory implementation authority that the agencies have long held and implements a larger role for the judicial branch when congressional intent is at issue.

What Does it Mean for Energy Regulation:

The *Loper* decision does not retroactively overturn all the cases where Courts have relied on *Chevron* in making determinations aligned with the underlying agency determination, but it does endanger them. Chief Justice Roberts specifically mentions that any such cases are still subject to statutory *stare decisis*, but there is nothing further in the opinion to protect prior court precedent affirming agency positions based on *Chevron*.

This all means, in the case of energy regulation, that past Court precedent affirming agency decisions based on the *Chevron* Doctrine, such as in *SEIA v. FERC, et al.* (commonly referred to as the “*Broadview*” case) are at risk of being overturned on these same bases. The death of *Chevron* and subsequent regulatory changes will greatly affect regulation of all industries in the U.S., with energy being no exception.

Footnotes

¹ Available here:

[https://www.cadc.uscourts.gov/internet/opinions.nsf/8B5F05D6EC9CBEF38525895600546F39/\\$file/21-1126-1985837.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/8B5F05D6EC9CBEF38525895600546F39/$file/21-1126-1985837.pdf)

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