UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of:	)	
Venture Global CP2 LNG, LLC	)	Docket Nos. CP22-21
Venture Global CP Express, LLC	)	CP22-22

REQUEST FOR REHEARING AND MOTION FOR STAY OF FOR A BETTER BAYOU, FISHERMEN INVOLVED IN SUSTAINING OUR HERITAGE, NICOLE DARDAR, TRAVIS DARDAR, KENT DUHON, MARY ALICE NASH, JERRYD TASSIN, ANTHONY THERIOT, HEALTHY GULF, LOUISIANA BUCKET BRIGADE, NATURAL RESOURCES DEFENSE COUNCIL, PORT ARTHUR COMMUNITY ACTION NETWORK, PUBLIC CITIZEN, SIERRA CLUB, TEXAS CAMPAIGN FOR THE ENVIRONMENT, AND TURTLE ISLAND RESTORATION NETWORK

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REQUEST FOR REHEARING AND MOTION FOR STAY OF INTERVENORS

Pursuant to section 19(a) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717r(a), and rule 713 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.713, intervenors For A Better Bayou, Fishermen Involved In Sustaining Our Heritage, Nicole Dardar, Travis Dardar, Kent Duhon, Mary Alice Nash, Jerryd Tassin, Anthony Theriot, Healthy Gulf, Louisiana Bucket Brigade, Natural Resources Defense Council, Port Arthur Community Action Network, Public Citizen, Sierra Club, Texas Campaign For The Environment, and Turtle Island Restoration Network (collectively, "Intervenors"), hereby request rehearing of FERC's authorization[1] ("Authorization Order" or "Order") of Venture Global, LLC's ("Venture Global") proposed CP2 LNG Facility (the "Facility" or "CP2") and CP Express Pipeline (the "Pipeline") (together, the "Project") in the above-captioned matters. Additionally, Intervenors request a stay of this Order pursuant to 5 U.S.C. § 705. This Request is timely, having been filed within 30 days of the Commission's Authorization Order.[2]

FERC granted all but one of Intervenors' respective motions to intervene in this proceeding–FISH was the unfortunate exception.[3] Thus, all Intervenors except FISH are a "party" to these proceedings with standing to file this request for rehearing and motion for a stay.[4]

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[1] *Venture Global CP2 LNG, LLC*, 187 FERC ¶ 61,199 (June 27, 2024) (the "Authorization Order" or "Order").

[2] 15 U.S.C. § 717r(a). The Commission issued the Authorization Order on Thursday, June 27, 2024. Under the Commission's regulations, a request for rehearing is due 30 days after the issuance of the Authorization Order. 18 C.F.R. § 385.713(b). Thirty days from June 27, 2024, is Saturday, July 27, 2024. Under the Commission's rules, when a deadline falls on a Saturday, the deadline is extended to the following business day. In this case, the deadline is Monday, July 29, 2024. 18 CFR § 385.2007(a)(2).

[3] Authorization Order PP 15-17. FISH is a broad and diverse coalition representative of commercial fishermen who would be directly impacted by this Project. *Id.*, P 17. As discussed in detail below, FERC's denial of FISH's motion was unlawful, unjust, and in error. *Infra*, at Part III.E. Intervenors request that the Commission reconsider this portion of the Order. *Id*.

[4] 18 C.F.R. § 385.214(c).

FERC's proffered justifications for authorizing this Project blatantly contravene its obligations under the NGA, 15 U.S.C. § 717b ("Section 3") and 15 U.S.C. § 717f ("Section 7"). The Authorization Order is not only legally indefensible but also shocks the conscience. This Project entails constructing: (1) a new liquefied natural gas ("LNG") export terminal with a nameplate capacity of 20 million metric tons per annum ("MTPA") of liquefaction capacity on the east side of the Calcasieu Ship Channel in Cameron Parish, Louisiana; and (2) an 85.4 mile-long pipeline to connect the Facility to gas in eastern Texas for export.[5] The Pipeline would feed up to 4,400,000 dekatherms of gas per day (Dth/d) from east Texas to the Facility for the sole purpose of exporting LNG overseas.[6] Venture Global plans to build the Project on top of already overburdened multi-generational fishing and environmental justice communities. The Project is estimated to "emit approximately 8,510,099 metric tons per year of CO_2e," which is "equivalent to putting more than 1,850,000 additional gas-fueled automobiles on the road."[7]

Intervenors seek rehearing and vacatur of the Order for the following reasons: (1) FERC unlawfully approved an export project to transport gas in foreign commerce under Section 7 of the NGA;[8] (2) FERC's Authorization Orderis arbitrary, capricious, and otherwise contrary to law and violates both Section 7 of the NGA and the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, because the Project is not required by the present or future public convenience and necessity;[9] (3) FERC's Authorization Order is arbitrary, capricious, and otherwise contrary to law and violates both Section 3 of the NGA and the APA, because the Project is inconsistent

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[5] Authorization Order, PP 1-2.
[6] Authorization Order, P 2.
[7] Authorization Order, Clements Dissent, P 10, n.30 (citing EPA, *Greenhouse Gas Emissions from a Typical Passenger Vehicle* (Aug. 28, 2023)), https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle ("A typical passenger vehicle emits about 4.6 metric tons of CO_2 per year."), attached as Exhibit 1.
[8] *See infra*, Part III.A.
[9] 15 U.S.C. §§ 717 *et seq*.; *see infra*, Part III.B.

with the public interest,[10] and (4) FERC's Authorization Order is arbitrary, capricious, contrary to law, and legally infirm under both the APA and the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, because it rests on a Final Environmental Impact Statement ("FEIS")[11] that is wholly deficient and, among other things, FERC once again stuck its head in the sand and refused to evaluate or determine the significance of the Project's greenhouse gas emissions (GHGs).[12]

Should FERC deny Intervenors' request for rehearing, Intervenors also hereby move for a stay of the Authorization Order, pursuant to 5 U.S.C. § 705, pending the outcome of judicial review. The stay is necessary to prevent irreparable harm to local industry and an already severely overburdened community.

I. STATEMENT OF ISSUES[13]

A. CP Express, an export-only pipeline, cannot be authorized under Section 7 of the NGA.[14] Section III.A.

   1. FERC erred in authorizing CP Express under Section 7, as it is a project exclusively supplying exports, is not engaged in interstate commerce, the 'utltimate consumer' of the gas is in foreign economies, and therefore CP Express cannot be approved under Section 7.[15] Section III.A.1.

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[10] *See infra*, Part III.D.
[11] Final Environmental Impact Statement for the CP2 LNG and CP Express Project, Docket Nos. CP22-21-000, CP22-22-000 (July 28, 2023), Accession No. 20230728-3008 ("FEIS").
[12] 5 U.S.C. § 706; 42 U.S.C. §§ 4321 *et seq.*; 40 C.F.R. §§1500–08; *Healthy Gulf v. FERC*, No. 23-1069, 2024 WL 3418863 (D.C. Cir. July 16, 2024) ("Healthy Gulf").
[13] As per 18 C.F.R. § 713(c)(2), each issue on rehearing is concisely listed herein, with further explication in Part III, *infra*.
[14] 15 U.S.C. § 717a(6); 15 U.S.C. § 717a(7); 15 U.S.C. § 717b; 15 U.S.C. § 717f(c)(2); 5 U.S.C. § 706; *Ala. Mun. Distributors Grp. v. FERC*, 100 F.4th 207 (D.C. Cir. 2024); *City of Oberlin, Ohio v. FERC*, 937 F.3d 599 (D.C. Cir. 2019) ("*Oberlin I*"); *Motor Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29 (1983).
[15] 15 U.S.C. § 717(c); 15 U.S.C. § 717a(6); 15 U.S.C. § 717a(7); 15 U.S.C. § 717a(11); 15 U.S.C. § 717b; 15 U.S.C. § 717b(e)(1); 15 U.S.C. § 717f; 15 U.S.C. § 717f(c)(2); 15 U.S.C. § 3202(2); 15 U.S. Code § 3301; *Maryland v. Louisiana*, 451 U.S. 725, 725, 755 (1981); *City of Oberlin, Ohio v. FERC*, 39 F.4th 719, 726, fn. 3 (D.C. Cir. 2022) ("*Oberlin II*"); *Oberlin I*, 937 F.3d 599, 606-608 (D.C. Cir. 2019) ("*Oberlin I*"); *Alliance for Property Rights and Fiscal Responsibility v. City of Idaho Falls*, 742 F.3d 1100, 1104 (9th Cir. 2013); *Transwestern Pipeline*

2. FERC erred in authorizing the export pipeline CP Express as neither export of gas nor any alleged purely economic benefits constitute a public use under the Fifth Amendment of the U.S. Constitution[16] or Section 7 of the NGA.[17] Section III.A.2.

B. FERC's Authorization Order is arbitrary, capricious, otherwise contrary to law, and a violation of the APA and Section 7 and Section 3 of the NGA. Section III.B.[18] Section III.B.

1. FERC erroneously determined market need for the CP Express pipeline.[19] Section III.B.1.

a) FERC's seemingly exclusive reliance on a single affiliate precedent agreement to approve an alleged NGA Section 7 pipeline is a violation of the NGA, APA, arbitrary, capricious, and otherwise contrary to law.[20] Section III.B.1.a.

Co. v. 17.19 Acres of Prop., 550 F.3d 770, 774 (9th Cir. 2008); *E. Tenn. Nat. Gas Co. v. Sage*, 361 F.3d 808, 826 (4th Cir. 2004); *Intermountain Mun. Gas Agency v. FERC*, 326 F.3d 1281, 1282 (D.C. Cir. 2003); *Consumers Energy Co. v. FERC*, 226 F.3d 777, 779 (6th Cir. 2000); *Altamont Gas Transmission Co. v. FERC*, 92 F.3d 1239, 1246 (D.C. Cir. 1996); *Okla. Nat. Gas Co. v. FERC*, 28 F.3d 1281, 1285 (D.C. Cir. 1994); *Distrigas Corp. v. Fed. Power Comm'n.*, 495 F.2d 1057, 1063 (D.C. Cir. 1974); *Border Pipeline Line Co. v. Fed. Power Comm'n.*, 171 F.2d 149, 150, 152 (D.C. Cir. 1948); *Nexus Gas Transmission, Order on Remand*, 172 FERC ¶ 61,199 (Sept. 3, 2020); *Nexus Gas Pipeline, Notice of Denial of Rehearing By Operation of Law and Providing For Further Consideration*, 173 FERC ¶ 62,065 (Nov. 5, 2020); *Alaska Gasline Dev. Corp.*, 171 FERC ¶ 61,134, PP 9-10 (May 21, 2020); S. Rep. 429 (July 3, 1947); U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration Request for Interpretation of 49 CFR 193.2001.

[16] U.S. Const. Amend. V; 15 U.S.C. § 717(a); *Kelo v. City of New London*, *Conn*, 545 U.S. 469, 477, 483-484 (2005); *Oberlin II*, 39 F.4th 719, 727-729 (D.C. Cir. 2022); *Oberlin I*, 937 F.3d 599, 606 (D.C. Cir. 2019); *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 973 (D.C. Cir. 2000); *Puntenney v. Iowa Utils. Bd.*, 928 N.W.2d 829, 848, n.4 (Iowa 2019).

[17] 15 U.S.C. § 717a.

[18] 15 U.S.C. 717f(e); *Fed. Power Comm'n. v. Transcon. Gas Pipeline Corp.,* 365 U.S. 1, 7 (1961); *Envtl. Def. Fund v. FERC*, 2 F.4th 953, 959 (D.C. Cir. 2021) ("*Spire*").

[19] 15 U.S.C. § 717f(e); *Certificate Policy* at ¶ 61,227, 61,746-48 (Sept. 15, 1999), *clarified*, 90 FERC ¶ 61,128, 61, 744, 61,748 (Feb. 9, 2000), *further clarified*, 92 FERC ¶ 61,094, 61,373 (July 28, 2000) ("Certificate Policy"); *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,107, P 54 (2022), *converted to draft policy by* Order on Draft Policy Statements, 178 FERC ¶ 61,197 (Mar. 24, 2022) ("2022 Draft Policy Statement"); *Spire*, 2 F.4th 953, 973 (D.C. Cir. 2021).

[20] 15 U.S.C. § 717f(e); Certificate Policy, 88 FERC ¶ 61,227, 61,746-48 (Sept. 15, 1999), *clarified*, 90 FERC ¶ 61,128, 61,748 (Feb. 9, 2000), *further clarified*, 92 FERC ¶ 61,094, 61,373 (July 28, 2000); *Food & Water Watch v. FERC*, 104 F.4th 336, 347 (D.C. Cir. 2024); *Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 114 (D.C. Cir. 2022); *Spire*, 2 F.4th 953, 973 (D.C. Cir. 2021); *Spire STL Pipeline, LLC*, 181 FERC ¶ 61,232 (Comm'r Clements, concurring at P 4) (Dec. 15, 2022); *Tenn. Gas Pipeline Co., L.L.C.*, 179 FERC ¶ 61,041, P 15 (2022).

b) FERC failed to meet its obligations under Section 7 to consider market need, which exist independent of the U.S. Department of Energy's NGA Section 3 authority over exports.[21] Section III.B.1.b.

c) FERC failed to examine record evidence demonstrating that there is no market support for the CP Express pipeline violating its mandate under Section 7.[22] Section III.B.1.c.

2. FERC failed to articulate any pertinent public benefits to warrant authorization of the CP Express pipeline under Section 7 of the NGA or address the evidence on the record cutting against any such alleged benefits.[23] Section III.B.2.

C. FERC failed to weigh the alleged benefits and adverse impacts of the Project in violation of the NGA and APA, including its failure to take into account significant adverse impacts on the commercial fishermen and local community, and complete and utter failure to weigh the range of severe adverse impacts on Environmental Justice communities.[24] Section III.C.

D. The CP2 LNG Project is affirmatively inconsistent with the public interest, and FERC's undefined legal standard under Section 3 lacks any clarity, leading to arbitrary and unlawful decisionmaking like the Authorization Order, which fails to account for or align with the public interest in violation of the NGA and the APA.[25] Section III.D.

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[21] 15 U.S.C. § 717b(a); 15 U.S.C. § 717f; 15 U.S.C. § 717f;(e); *Certificate Policy*, 88 FERC ¶ 61,227, 61,746-47); *Ala. Mun. Distributors Grp. v. FERC*, 100 F.4th 207, 210-11, 213-14 (D.C. Cir. 2024); *Earthreports, Inc. v. FERC*, 828 F.3d 949, 952-53 (D.C. Cir. 2016); *Sierra Club v. FERC*, 827 F.3d 36, 45, 47-49 (D.C. Cir. 2016) ("*Freeport*"); *Sierra Club v. FERC*, 827 F.3d 59, 68 (D.C. Cir. 2016) (*"Sabine Pass"*); *Alaska Gasline Dev. Corp*., 171 FERC ¶ 61,134, at P 15 (May 21, 2020); *Tennessee Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199, 62,368 (2022) (Comm'r Glick, concurring); *Spire STL Pipeline, LLC, 181 FERC* ¶ 61,232, P 4 (Dec. 15, 2022) (Comm'r Clements, concurring).

[22] 15 U.S.C. § 717f(e); *Spire*, 2 F.4th at 959 (D.C. Cir. 2021); Certificate Policy at ¶ 61,747-48; *Spire STL Pipeline, LLC, 181 FERC* ¶61,232, P 4 (Dec. 15, 2022) (Comm'r Clements, concurring).

[23] *NAACP v. Fed. Power Comm'n,* 425 U.S. 662, 669-670 (1976); *Federal Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 610 (1944); *Atlantic Ref. Co. v. PSC of New York*, 360 U.S. 378, 388 (1959); *City of Clarksville, Tenn. v. FERC,* 888 F.3d 477, 479 (D.C. Cir. 2018); *Freeport*, 827 F.3d at 47 (D.C. Cir. 2016); *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1307 (D.C. Cir. 2015); Certificate Policy at 16, 25; *NEXUS Gas Transmission*, 160 FERC ¶ 61,022, P170 (Aug. 25, 2017).

[24] Certificate Policy at 61,743; *NAACP v. Fed. Power Comm'n,* 425 U.S. 662, 669-70 (1976); *Atl. Refining Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959); *Office of Consumers' Council v. FERC*, 655 F.2d 1132, 1147 (D.C. Cir. 1980); *Motor Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29 (1983); Authorization Order, Clements Dissent, PP 19-25, 68.

[25] 15 U.S.C. 717b(a); 15 U.S.C. § 717b(e); *Distrigas Corp. v. FPC*, 495 F.2d 1057, 1064 (D.C. Cir. 1974); Authorization Order, Clements Dissent, P 1, n.5); *Commonwealth LNG, LLC*, 181 FERC ¶ 61,143 (Glick, Chair, concurring at PP 2, 7) (2022) ("Commonwealth Order"); *KeySpan LNG, L.P.*, 112 FERC ¶ 61,028, PP 5-6, 58 (July 5, 2005); *KeySpan LNG, L. P.,* 114 FERC ¶

E. FERC's denial of FISH's motion to intervene was arbitrary, capricious, contrary to law, and a dramatic departure from FERC's long standing practice and policy to grant unopposed motions to intervene filed prior to the Commission's issuance of an order.[26] Our review of 22 recent FERC gas decisional orders decided after *Tennessee Gas Pipeline* indicates that FERC approved nearly every motion for intervention that was filed after the formal deadline but before the granting of the orders.[27] FISH's motion to intervene had good cause for being out-of-time, and it contained none of the infirmities that led FERC to deny out-of-time motions in other recent cases.[28] Section III.E.

F. FERC Violated NEPA and the APA. Section III.F.

G. FERC adopted an unlawfully narrow statement of purpose and need, by defining the project need as to provide the exact capacity and design CP2 and CP Express preferred, precluding analysis of reasonable alternatives, including the no-action alternative.[29] Section III.G.

H. FERC failed to take a hard look at the project's greenhouse gas emissions. Section III.H.

61,054, P 19 (Jan. 20, 2006).; *Motor Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29 (1983).

[26] *Mountain Valley Pipeline, LLC & Equitrans, L.P.*, 161 FERC ¶ 61,043, at P 22 (Oct. 13, 2017); *Northern Natural Gas Co.*, 175 FERC ¶ 61,052 (April 15, 2021); *id*., Chairman Glick *Concurring*, P 3; *California Trout v. FERC*, 572 F.3d 1003, 1007, 1023 (9th Cir. 2009); *United Mun. Distrib. Group v. FERC*, 732 F.2d 202, 210 (D.C. Cir. 1984); *Greater Boston Int'l Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970); *E. Ky. Power Co-Op v. FERC*, 489 F.3d 1299, 1306 (D.C. Cir. 2007); *Tennessee Gas Pipeline Co., LLC*, Order Denying and Dismissing Rehearing, 162 FERC ¶ 61,167, P 46-47, 50 (Feb. 27, 2018).

[27] *Spire STL Pipeline LLC,* 164 FERC ¶ 61,085 at P 16 (August 3, 2018); *Venture Global Calcasieu Pass, LLC,* 166 FERC ¶ 61,144 at P 13 (February 21, 2019); *Driftwood LNG LLC and Driftwood Pipeline,* 167 FERC ¶ 61,054 at P 22 (April 18, 2019); *Rio Grande LNG, LLC et al.*, 169 FERC ¶ 61,131 at P 14 (November 22, 2019); *Texas Brownsville LLC*, 169 FERC ¶ 61,130 at PP 8-9 (November 22, 2019); *Pacific Connector Pipeline*, 170 FERC ¶ 61,202 at P 21 (Mar. 19, 2020); *Alaska Gasline Development Corporation*, 171 FERC ¶ 61,134 at P 6 (May 21, 2020); *Evangeline Pass*, 178 FERC ¶ 61,199 at P 17 (March 25, 2022); *East 300 Upgrade Project*, 179 FERC ¶ 61,041 at P 9 (Apr. 21, 2022); *Commonwealth LNG*, 181 FERC ¶ 61,143 at P 7 (November 17, 2022); *Gas Transmission Northwest, LLC*, 185 FERC ¶ 61,035 at P 7 (October 23, 2023); *Columbia Gas Transmission, LLC*, 182 FERC ¶ 61,171, at P 7; *Saguaro Connector Pipeline, LLC*, 186 FERC ¶ 61,114 at P 5 (February 15, 2024).

[28] *Northern Natural*, Notice Denying Late Intervention, Docket No. CP20-487 (Accession No. 20200831-3038, Aug. 31, 2020); *Transcontinental Pipeline Co.*, Notice Denying Late Intervention, Docket No. CP21-94 (Accession No. 20220922-3082, September 22, 2022); *California Department of Water Resources,* 120 FERC ¶ 61057, PP 3-5, 10-11; *reh'g denied*, 120 FERC ¶ 61,248, *aff'd sub nom. Cal. Trout and Friends of the River v. FERC*, 572 F.3d 1003 (9th Cir. 2009).

[29] 40 C.F.R. §§ 1502.13, 1502.14; *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

1. FERC violated its own regulation that required FERC to determine whether these emissions were significant or insignificant.[30] For this project, where emissions greatly exceed any significance threshold FERC could plausibly adopt, FERC could determine that emissions were significant despite the absence of an established threshold.[31] Section III.H.1.

2. FERC separately and additionally failed to take a hard look at the "effects" and "significance" of greenhouse gas emissions.[32] FERC's claim that it lacked tools to assess significance obliged FERC to evaluate these emissions using methods generally accepted in the scientific community.[33] FERC's claim that the social cost of greenhouse gases was not such a method, because it is not generally accepted for project-level review, is unsupported and contrary to the facts before FERC.[34] Comparing project emission with state and national totals fails to actually illustrate the effects of significance of those emissions.[35]Section III.H.2.

I. FERC failed to take a hard look at impacts on commercial fishing. FERC's conclusion that impacts to *fish* would be temporary ignores the fact that the *fishing industry* is precarious and may be unable to survive one or more years of reduced catch. FERC's conclusion that the impact of LNG tankers on fishing boats' use of the channel is contradictory in its treatment of day and night transits, and ignores the cumulative impact of delays on fishing vessels.[36] Section III.I.

J. FERC failed to take a hard look at the impact of extreme weather. The FEIS's conclusion that the storm wall will protect against flooding ignored project facilities outside the stormwall, and ignored the fact that storm surge from a category 4 storm, coupled with sea level rise expected to occur during the life of the project, will foreseeably overtop the storm wall. FERC's contention that a category 5 storm is unforeseeable and need not be considered because one has not previously hit this specific stretch of coastline misunderstands FERC's obligation to engage in reasonable forecasting and ignores the possibility of climate change making such storms more likely. And FERC failed to take a hard look at extreme weather impacts beyond flooding. Section III.J.

K. FERC failed to take a hard look at individual and cumulative impacts of air pollution. Section III.K.

1. FERC failed to take a hard look at cumulative air pollution impacts. FERC concluded that because the project's individual impact would be insignificant, there was no need to

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[30] 18 C.F.R. § 380.7.
[31] *Healthy Gulf*, 2024 WL 3418863; *Northern Natural Gas Co.*, 174 FERC ¶ 61,189 (2021).
[32] 40 C.F.R. § 1508.1(i)(4) (2024); 40 C.F.R. § 1502.16(a)(1) (2024).
[33] 40 C.F.R. § 1502.21(c); *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321 (D.C. Cir. 2021).
[34] *E.g.*, CEQ, Interim NEPA Guidance on Consideration of Greenhouse Gases, 88 Fed. Reg. 1196, 1202 (Jan. 9, 2023).
[35] *Bd. of Cnty. Commissioners of Weld Cnty., Colorado v. EPA*, 72 F.4th 284, 291 (D.C. Cir. 2023).
[36] 40 C.F.R. § 1502.16(a)(1); Authorization Order, Clements Dissent, P 18.

further discuss cumulative impacts. The D.C. Circuit has squarely rejected this logic.[37] Section III.K.1.

2. FERC's conclusion that all modeled NAAQS exceedances would have occurred even without the project is contradicted by the model results presented in the EIS.[38]Section III.K.2.

3. FERC modeling of air impacts unlawfully excluded foreseeable emissions from nearby LNG terminals' future shipping traffic.[39] NEPA requires FERC to consider foreseeable cumulative emissions regardless of whether the Clean Air Act requires these emissions to be included in modeling conducted pursuant to that statute.[40] This omission undermined FERC's cumulative effects analysis. It also undermined FERC's analysis of individual effects, specifically: FERC's conclusion that when Project emissions would increase ambient air pollution beyond the significant impact levels, the NAAQS would not be exceeded. Section III.K.3.

4. FERC failed to explain inconsistencies between its analysis of the CP2 project and FERC's analysis of the neighboring, but smaller, Commonwealth LNG terminal, including FERC's inclusion of numerous additional projects in its cumulative effects analysis for Commonwealth, and the Commonwealth EIS's prediction of much higher total air pollution levels. Section III.K.4.

5. FERC understated foreseeable project emissions by ignoring the emission from additional ship traffic that would be required if this project seeks authorization to utilize its anticipated peak capacity, beyond the currently-requested authority to use only nameplate capacity (an increase other LNG terminals routinely request), and by ignoring evidence that the CP1 project has exceeded predictions of that project's emissions.[41]Section III.K.5.

6. FERC's conclusion that EPA's concerns about NAAQS violations during project construction would be addressed by voluntary mitigation measures was arbitrary. These measures and mitigation plans were not defined and so their potential efficacy could not be assumed. FERC could not reasonably rely on these measures without actually requiring them to be implemented.[42] Section III.K.6.

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[37] *Healthy Gulf*, 2024 WL 3418863; 40 C.F.R. § 1508.1(i)(3).
[38] EIS Appendix K at 1.
[39] 40 C.F.R. § 1508.1(i)(3).
[40] *Healthy Gulf*, 2024 WL 3418863; *Sierra Club v. FERC ("Sabal Trail")*, 867 F.3d 1357, 1367 (D.C. Cir. 2017).
[41] *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014) (quoting *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C. Cir. 1973)).
[42] *O'Reilly v. U.S. Army Corps of Engineers*, 477 F.3d 225, 231, 234 (5th Cir. 2007); *Nat'l Audubon Soc. v. Hoffman*, 132 F.3d 7, 16-17 (2d Cir. 1997).

7. FERC's refusal to publish a supplemental EIS to address EPA's lowered 24-hour PM2.5 NAAQS and the CP1 project's increased air pollution was arbitrary.[43] These facts, individually and together, paint a "seriously different picture" of the environmental landscape.[44] This case differs from cases that have upheld agency refusals to publish a supplemental NEPA analysis, because here, FERC is no longer relying on the EIS; instead, FERC has prepared new air modeling, and switched to using a different air monitor, without providing the public with a NEPA opportunity to weigh in on these changes. Section III.K.7.

8. FERC failed to take a hard look at the impacts of air pollution on environmental justice communities. FERC's conclusion that air pollution would be insignificant in general does not itself demonstrate that air pollution would not have a disproportionate and adverse impact on environmental justice communities.[45] Nor does a general conclusion that environmental justice communities would suffer *some* disproportionate and adverse impacts relieve FERC of the obligation to take a hard look at whether air pollution is such an impact; *inter alia*, FERC needs to identify which impacts are in this category to inform discussion of potential mitigation. Section III.K.8.

L. FERC failed to take a hard look at carbon capture and sequestration (CCS). Although FERC purported to address the effects of CP2's proposed beyond-the-fenceline CCS infrastructure, the EIS failed to actually do so. These aspects of CP2's proposal need to be considered as connected actions, rather than merely through the lens of cumulative effects.[46] Separately, FERC arbitrarily concluded that alternatives that would employ additional CCS to further reduce greenhouse gas emission were "outside the scope" of the EIS, without providing any justification for this exclusion, without demonstrating that such alternatives were infeasible, and without any discussion of such alternatives' environmental impacts. Section III.L.

M. The FEIS fails to take the requisite hard look at the project's effects on the critically endangered Rice's whale in violation of NEPA.[47] Section III.M.

1. FERC failed to disclose and evaluate the direct and indirect effects of CP2 on the critically endangered Rice's whale. FERC's conclusion that effects on whales, generally, would be less than significant fails to consider the most up-to-date, peer-reviewed scientific evidence and data on the species' imperiled status, its persistent occurrence in the central and western Gulf of Mexico, and direct threats to the species' survival posed by underwater noise, and the risk of vessel strike and spills generated by CP2.[48] Section III.M.1.

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[43] 40 C.F.R. § 1502.9(d).
[44] *Stand Up for Cal.! v. Dep't of the Interior*, 994 F.3d 616, 629 (D.C. Cir. 2021).
[45] Federal Interagency Working Group on Environmental Justice & NEPA Committee, *Promising Practices for EJ Methodologies in NEPA Reviews* (Feb. 2016).
[46] 40 C.F.R. § 1501.3(b) (2024); *accord* 40 C.F.R. § 1501.9(e) (2020).
[47] *Sierra Club v. FERC ("Sabal Trail")*, 867 F.3d 1357, 1367 (D.C. Cir. 2017); 40 CFR §§ 1502.16, 1508.1(i) (2024).
[48] 40 CFR §§ 1502.16, 1502.21, 1508.1(i).

2. FERC's cumulative impact analysis for the Rice's whale is flawed and ignores the nature of the cumulative effects problem.[49] FERC never discloses or evaluates CP2's cumulative effects on the endangered Rice's whale specifically, and unlawfully reaches the conclusion that cumulative effects on whales would be less than significant because the project's own incremental effects, such as contributions to ship traffic, would be minor.[50] Moreover, FERC's consideration of cumulative effects unlawfully limits its consideration to a small subset of FERC-approved LNG facilities within the HUC-12 subwatershed, omitting numerous other proposed and federally licensed oil, gas, and LNG production and export facilities posing similar threats from underwater noise, vessel strike and oil, gas and chemical spills to the Rice's whale in its central and western Gulf of Mexico habitat.[51] Section III.M.2.

3. FERC violated NEPA by failing to conduct supplemental environmental review to consider updated science on the critically endangered Rice's whale and the implementation of protective measures by other federal agencies, and to correct its flawed cumulative effects analysis that omits numerous other proposed and permitted oil, gas and LNG projects that pose similar threats to the species and its habitat in the same region, that could result in significant adverse effects that remain unevaluated.[52] Section III.M.3.

N. FERC violated the Endangered Species Act ("ESA") in reaching the unsubstantiated conclusion that CP2 is "not likely to adversely affect" the critically endangered Rice's whale, and by failing to conduct formal Section 7 consultation and make a determination on whether the project would jeopardize the continued existence of the species.[53] Section III.N.

O. FERC's conclusion that impacts on wetlands would be insignificant because the Corps of Engineers will ultimately require mitigation of those impacts was arbitrary. FERC failed to support its conclusion that wetland impacts would be temporary, or that temporary impacts could not have a significant impact. Section III.O.[54]

II. BACKGROUND

A. Foreshadowing What's to Come—Venture Global's Disastrous Calcasieu Pass LNG Facility.

The residents of Cameron Parish and its surrounding communities have been here before. On February 21, 2019, the Commission issued an order ("CP1 Authorization") approving Venture Global's application under Section 3 and Section 7 of the NGA to site, construct, and

[49] 40 CFR § 1508.1(i)(3).
[50] *Healthy Gulf*, 2024 WL 3418863, at *5-*7.
[51] 40 CFR § 1508.1(i)(3).
[52] 40 C.F.R. § 1502.9(d)(1).
[53] 16 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.14, 402.16.
[54] 40 C.F.R. §§ 1508.1(i)(1)–(3) (2024).

operate a separate LNG export terminal along the Calcasieu Ship Channel ("CP1 LNG Facility"), as well as a separate, new 23.4-mile gas pipeline (together "CP1").[55] Through the CP1 Authorization, FERC mandated that Venture Global make CP1 available for service within five years, or by February 20, 2024.[56] CP1 is located immediately adjacent to the proposed site of the CP2 Facility.[57]

Venture Global began site mobilization and site preparation for CP1 in March 2019[58] and rushed to complete construction, beginning LNG production in January 2022.[59] The CP1 LNG Facility exported its first tanker of LNG in March 2022.[60] On October 26, 2023, FERC authorized Venture Global to place liquefaction blocks 7-9 in service.[61] The October 26 authorization provided that CP1 "can operate above the authorized nameplate capacity and near the authorized maximum capacity," and that the CP1 LNG Facility "can be operated safely and reliably."[62] Thus, as of October 26, 2023, all of CP1 LNG's liquefaction blocks were in service

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[55] Exhibit 2, *Venture Global Calcasieu Pass, LLC,* 166 FERC ¶ 61,144, at P 3 (Feb. 21, 2019) ("CP1 Authorization").
[56] *Id*. at P 120 (ordering subsection B).
[57] *Venture Global CP2 LNG, LLC*, Application For Authorizations Under Section 3 and Section 7 of the Natural Gas Act, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20211202-5104 (Dec. 2, 2021) ("Application"), at 6 ("The Project [CP2] is located immediately adjacent to the Calcasieu Pass terminal, on the east side of the Calcasieu Ship Channel, as well as on nearby Monkey Island which separates the Calcasieu Ship Channel and Calcasieu Pass, in Cameron Parish, Louisiana").
[58] Exhibit 3, Limited Notice to Proceed, Docket Nos. CP15-550-000, CP15-551-000, CP15-551-001 (Mar. 6, 2019), Accession No. 2019-0306-3044.
[59] Exhibit 4, Approval to Introduce Hazardous Fluids: Feed Gas, Mixed Refrigerant, and LNG to Liquefaction Block 1A and South LNG Storage Tank, Docket No. CP15-550-000 (Jan. 12, 2022), Accession No. 20220112-3006.
[60] Exhibit 5, *Venture Global Calcasieu Pass, LLC,* Notification of First Export Cargo, Item #38, DOE Docket Nos. 13-69-LNG, et al., (Mar. 22, 2022).
[61] Exhibit 6, Authorization to Commence Service of Liquefaction Blocks 7-9 and Modified Commissioning and In-Service Schedule, Docket No. CP15-550-000 (Oct. 26, 2023), Accession No. 20231026-3024.
[62] Exhibit 6, Authorization to Commence Service of Liquefaction Blocks 7-9 and Modified Commissioning and In-Service Schedule, Docket No. CP15-550-000 (Oct. 26, 2023), Accession No. 20231026-3024.

and operating at or above its nameplate capacity. But, contrary to FERC's claims, operation of CP1 is anything but "safe" for surrounding communities.

1. Venture Global's Harmful Environmental and Economic Practices that Result in Significant Harms.

In the years since it shipped its first cargo, the CP1 LNG Facility has exceeded pollution limits in its air permits hundreds of times, as documented by Venture Global's own filings and by the Louisiana Department of Environmental Quality ("LDEQ"). Despite these permit violations, Venture Global has chosen to operate the CP1 LNG Facility at full capacity, in what it calls a prolonged "commissioning phase."[63] Venture Global has done so all while exposing nearby residents and communities to harmful levels of toxic and carcinogenic air emissions.[64] It is difficult to overstate the gravity of the air emissions problem at the CP1 LNG Facility:

- In 2022, the CP1 LNG Facility emitted continuously for over two months up to *eight times more sulfur dioxide per hour* than was permitted. According to LDEQ, Venture Global failed to report the unauthorized release for 56 days after it learned of the problem, in violation of Louisiana law.[65]
- Days before the CP1 LNG Facility began LNG operations in January 2022, it released 180,000 pounds of gas into the environment without a permit.[66]
- According to a report by John Allaire, a Cameron Parish resident and a former oil and gas industry environmental engineer, the CP1 LNG Facility operated in violation of pollution limits in its air emissions permit for *286 out of its first 343 days of operation, or 87% of*

[63] Exhibit 7 *Venture Global Calcasieu Pass, LLC* Commissioning Update, Docket No. CP15-550-000 (Mar. 28, 2023), Accession No. 20230328-5239 ("While Calcasieu Pass is indeed able to produce LNG, it remains in the commissioning phase because it continues to face periodic reliability challenges.")

[64] Local Fishermen, Landowners, and Organizations' Response to CP2 LNG and CP Express Form Letter Campaign ("Response to Form Letters"), Docket Nos. CP22-21-000, CP22-22-000 (June 14, 2024), Accession No. 20240614-5192, at Ex. 10 (T. Cowen, Institute for Energy Economics and Financial Analysis, *Calcasieu Pass LNG: Unreliable Operations Result in Excessive Pollution and Profits*, October 2023).

[65] Response to Form Letters, Ex. 3 (LDEQ, Consolidated Compliance Order & Notice of Potential Penalty, June 29, 2023); *see also*, *id*., Ex. 8 (H. Parker, New Orleans Public Radio, *Amid Expansion Plans, Venture Global LNG Plant Faces Compliance Order After 100+ Violations*, July 25, 2023).

[66] *Id*., Ex. 6 (A. Vaughn, Venture Global, Unauthorized Discharge Written Notification Report - OS1481, Jan. 24, 2022); *see also id*., Ex. 3 (LDEQ, Consolidated Compliance Order & Notice of Potential Penalty, June 29, 2023).

> *the time.* This includes over 2,000 exceedances of air pollution limits for hazardous air pollutants, toxic air pollutants, volatile organic compounds, carbon monoxide, NOx, sulfur dioxide, and particulate matter.[67]

Venture Global does not plan to reduce this pollution. Confronted with the conflict between the permitted levels of air emissions and the CP1 Facility's performance, Venture Global proposes that the permitted limits should give way.[68] Specifically, Venture Global attributes these exceedances to design flaws, but rather than correcting the facility design, it has sought variances to allow the increased emissions to continue indefinitely.[69]

Air emission exceedances continued through 2023 and appear to have been continuously underreported by Venture Global. For example, Cameron residents documented numerous unreported instances of gas flaring incidents at the facility.[70] Gas flaring is not supposed to be a consistent occurrence at the CP1 Facility; indeed, according to the CP1 FEIS, flaring is supposed to only occur during startup and "occasionally" thereafter.[71]

Given these dramatic and frequent exceedances of permitted air emission limits, it is no surprise that Cameron residents are reporting respiratory health problems and chronic difficulty

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[67] *Id*., Ex. 7 (Louisiana Bucket Brigade, *Analysis of Emissions Monitoring Reports*, undated); *see also*, *infra*, Part III.C.1, (discussing FERC ignoring the disturbing and documented frequency of flaring).

[68] Sierra Club's Comments on CP2 LNG, *et al*.'s Response to FERC's March 26, 2024 Envt'l Info. Request, Docket Nos. CP22-21 and CP22-22 (April 22, 2024), Accession No. 20240422-5288 (attaching Venture Global CP1 LNG Facility Title V Renewal and Significant Modification and PSD Major Modification Application dated March 17, 2023).

[69] Response to Form Letters, Ex. 3 (LDEQ, Consolidated Compliance Order & Notice of Potential Penalty, June 29, 2023); *see also*, *id*., Ex. 8 (H. Parker, New Orleans Public Radio, *Amid Expansion Plans, Venture Global LNG Plant Faces Compliance Order After 100+ Violations*, July 25, 2023).

[70] *Id*., Ex. 9 (S. Vasudevan, *et al*., Louisiana Bucket Brigade, *Gas Export Spotlight: Venture Globals Operational Failures & the Impacts on Fishermen*, December 2023).

[71] Exhibit 8 CP1 Final Environmental Impact Statement (excerpt), at 4-58, Docket Nos. CP15-550-000, CP15-551-000, CP15-551-001 (Oct. 22, 2018), Accession No. 20181022-3001.

breathing.[72] Organizations representing frontline community members, who are desperate for help, have petitioned the U.S. Environmental Protection Agency ("EPA") to investigate the CP1 Facility's blatant disregard for the health and safety of residents.[73]

2. Venture Global's highly questionable industry practices.

Despite CP1's failure to meet its air permitting requirements, CP1 has been in production for over two years;[74] and as of this writing, it had exported around over 300 tankers of LNG.[75] Nonetheless, Venture Global still claims that it has not yet started its commercial operations at the CP1 Facility.[76] Evidently, consistent production over two years and more than 300 tankers of LNG does not meet Venture Global's definition of "commercial operations." Consequently, Venture Global is not currently honoring any of its long-term contracts with LNG shippers; all of the over 300 exported cargoes to date have been for Venture Global Calcasieu Pass, LLC.[77] One need only review the gross disparity in the prices obtained by Venture Global for LNG exports as

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[72] *See*, *e.g.*, Response to Form Letters, Ex. 5 (N. Cunningham, Gas Outlook, *Louisiana LNG Could Be "Nail in the Coffin" for Local Fishermen*, Feb. 23, 2024); *see also* Exhibit 9, Casey, J. *et al*., *Climate Justice and California's Methane Superemitters: Environmental Equity Assessment of Community Proximity and Exposure Intensity*, Environ. Sci. Technol. (Oct. 20, 2021) (concluding that proximity to methane emitting facilities such as the CP1 LNG Facility is associated with adverse health outcomes, and in particular respiratory and cardiovascular diseases); Exhibit 10, Buonocore, J. *et al*., 2023 Environ. Res.: Health 1, 021006, *Air pollution and health impacts of oil & gas production in the United States*, May 8, 2023 ("Observational studies indicate that populations living in proximity to or downwind of oil and gas activity have higher rates of poor birth outcomes, asthma exacerbations, emergency room visits, hospitalizations, cardiovascular disease and other adverse health outcomes") (citations omitted).
[73] Exhibit 11, Louisiana Bucket Brigade, *et al.*, Joint Letter to EPA Region 6 Administrator E. Nance (May 22, 2023).
[74] Exhibit 5, *Venture Global Calcasieu Pass, LLC,* Notification of First Export Cargo, Item #38, DOE Docket Nos. 13-69-LNG, et al. (Mar. 22, 2022).
[75] Exhibit 12, U.S. Department of Energy Office of Fossil Energy and Carbon Management's Natural Gas Imports and Exports Monthly 2024 (Mar. 2024) (The FECM data shows all of the reported LNG cargoes that have departed from the CP1 LNG Facility since March 2022); *see also* Exhibit 7, *Venture Global Calcasieu Pass, LLC* Commissioning Update, Docket No. CP15-550-000 (Mar. 28, 2023), Accession No. 20230328-5239 (as of Mar. 28, 2023, CP1 LNG has "exported 128 cargos" and continues to export approximately 11 cargos per month).
[76] Exhibit 13, *Venture Global Calcasieu Pass, LLC,* Request for Extension of Time, If Deemed Necessary, Docket No. CP15-550-002 (Feb. 15, 2024), Accession No. 20240215-5263.
[77] Exhibit 12, DOE FECM Natural Gas Imports and Exports Monthly 2024 (Mar. 2024).

compared to its competitors (who are honoring their long-term contracts) to conclude that Venture Global is reaping a handsome windfall from its prolonged commissioning period—with data showing shipments from CP1 being priced as high as four times the average of competitors.[78]

Speaking at the Gastech conference in Singapore last year, Shell's Executive Vice President Steve Hill accused Venture Global of "deceitful actions" and said the company's failure to honor long term contracts was "damaging and dangerous to the industry."[79] He continued: "The long-term commitment that foundation buyers make enable the regulatory certainty, the financing, and the development of your LNG projects. If contracts are seen as options for suppliers, then buyers simply won't sign them."[80]

It is unclear whether Venture Global ever intends to honor its long-term LNG export contracts for CP1. Only a few days before the February 20, 2024–the deadline by which CP1 was to be "made available for service" – Venture Global filed a letter with the Commission seeking "a request for extension of time, if deemed necessary," to show that the CP1 Facility could safely and reliably produce LNG.[81] Venture Global's request primarily takes the position that no

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[78] Exhibit 14, DOE FECM Natural Gas Imports and Exports Monthly 2024, at 33, Table 16b (U.S.-Produced LNG Export Prices and Point of Exit) (Apr. 2024) (showing exports from the CP1 facility priced as high as 4 times the average of competitors performing under long-term contracts).

[79] Exhibit 15, Jeslyn Lerh and Sudarshan Varadhan, "Shell executive accuses Venture Global of "deceitful actions" over contracts," Reuters (Sept. 5, 2023), available at https://www.reuters.com/business/energy/gastech-shell-exec-accuses-venture-global-deceitful-actions-over-contracts-2023-09-05/. As of March 2018, Shell had agreed to purchase 2 mtpa from Venture Global Calcasieu Pass, LLC. *See also* Exhibit 16, *Venture Global Calcasieu Pass, LLC,* Submission of Contract Amendment and Summary of Major Provisions of Contract for Public Posting, FE Docket Nos. 13-69-LNG, 14-88-LNG, 15-25-LNG (Agreement dates Jan. 19, 2016, as amended Mar. 30, 2018), available at https://www.energy.gov/fecm/articles/calcasieu-pass-terminal.

[80] Exhibit 15, Jeslyn Lerh and Sudarshan Varadhan, "Shell executive accuses Venture Global of "deceitful actions" over contracts," Reuters (Sept. 5, 2023).

[81] Exhibit 13, *Venture Global Calcasieu Pass, LLC,* Request for Extension of Time, If Deemed Necessary, at 1-2, Docket No. CP15-550-002 (Feb. 15, 2024), Accession No. 20240215-5263.

extension of the "in-service" deadline is necessary because Ordering subsection (B) of the CP1 Authorization applies only to the liquefaction blocks, which are fully operational, and not to other facilities (including the heat recovery steam generators, which allegedly have not passed commissioning tests).[82] In the alternative, Venture Global requests that FERC grant it a one-year extension of the in-service deadline should FERC determine that the Facility is not yet in service.

It is unclear how Venture Global can on the one hand advocate to FERC that CP1 is in service, delivering hundreds of LNG cargoes to its customers, while on the other hand refuse to declare CP1 to be commercially operational under its contracts with long-term customers.[83] Venture Global may have adopted these seemingly contradictory positions in an effort to eschew its long-term contracts, perhaps motivated by the hyper inflated prices that its purported "commissioning" cargoes are fetching in the market.[84]

Over a year ago, one of CP1's long-term customers filed a motion to intervene and protest related to CP1's failure to declare commercial operation.[85] Later, after Venture Global filed its extension request, several of CP1's long-term customers filed motions to intervene seeking disclosure of purportedly confidential information concerning the plant's failure to declare itself operational. That investigation unearthed that for over eight years, CP1 has failed to comply with FERC regulations that required Venture Global to provide a form protective order that qualifying parties could sign to have access to documents claimed to be privileged or

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[82] *Id*.
[83] *Id*.
[84] Exhibit 14, DOE FECM Natural Gas Imports and Exports Monthly, at 33, Table 16b (U.S.-Produced LNG Export Prices and Point of Exit) (Apr. 2024) (showing exports from the CP1 facility priced as high as four times the average of competitors performing under long-term contracts).
[85] *See* Exhibit 17, *Venture Global Calcasieu Pass, LLC*, Request for Rehearing of Repsol LNG Holding, S.A., Docket No. CP15-550-002 (June 2, 2023), Accession No. 20230602-5247 (Repsol LNG Holding, S.A.'s request for rehearing of FERC's denial of its motion to intervene. That rehearing request was deemed denied by operation of law. *See reh'g denied Venture Global Calcasieu Pass, LLC,* Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, 184 FERC ¶ 62,003 (July 3, 2023)).

confidential.[86] This led FERC to issue a Deficiency Letter to Venture Global,[87] to appoint an Administrative Law Judge, and to open a separate subdocket to resolve disputes over confidential and privileged information.[88] Venture Global has apparently simply ignored certain customers' requests that it produce privileged documents related to its failure to declare the plant commercially operational.[89] These actions (which constitute clear violations of FERC regulations) have enabled Venture Global to withhold documents from its customers and to delay the proceedings, all while CP1 continues to ship "commissioning" cargoes at inflated prices and reap the windfall.[90]

FERC has been fully aware of these questionable business practices for some time; yet, quite extraordinarily, the Commission continues to treat Venture Global as a rational, honest industry actor that it can rely on for determinations such as market need, environmental mitigation measures and impacts, and alleged community communications and input. With the facts and knowledge before it, this, in itself, is a dereliction of FERC's duties to both the public and the industry it is charged with regulating. The Commission's role in regulating and ensuring compliance with NGA standards is crucial. By allowing the continuation of such practices without any consequence, and by continuing to rubber-stamp Venture Global's proposed infrastructure projects despite its egregious conduct,[91] FERC risks undermining the integrity of the regulatory framework and the trust of market participants.

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[86] *See* Exhibit 18, *Venture Global Calcasieu Pass, LLC*, Order Establishing Procedures Before an Administrative Law Judge and Directing Release of Information Under a Protective Agreement, 187 FERC ¶ 61,150, P 1 (June 10, 2024) (describing background of motions to intervene).
[87] Exhibit 19, *Venture Global Calcasieu Pass, LLC*, Deficiency Letter, Docket No. CP15-550 *et al*., Accession No. 20240313-3015 (Mar. 13, 2024).
[88] *See Venture Global Calcasieu Pass, LLC,* Docket No. CP15-550-002.
[89] Exhibit 20, *Venture Global Calcasieu Pass, LLC*, Request for Clarification or, In the Alternative, Rehearing of Shell NA LNG LLC, Docket No. CP15-550-003, Accession No. 20240710-5186, at 3 (July 10, 2024).
[90] *See generally*, *Venture Global Calcasieu Pass, LLC*, Docket No. CP15-550-002.
[91] *See* Authorization Order.

3. Venture Global's ongoing harm to Cameron and its people.

The CP1 Facility has also caused significant harm to the long-standing commercial fishing and shrimping industries of Cameron Parish. These industries have historically been the bedrock of Southwest Louisiana's culture, are the lifeblood of the local economy in Cameron Parish, and a way of life for area families. Indeed, Cameron was once the top fishery in the United States.[92] However, since the CP1 Facility began operations, local commercial fishermen have experienced dramatic reductions in fish catch.

As just one example, fisherman and Intervenor Anthony Theriot obtained trip tickets that show the total volumes of his shrimp catch reported to the Louisiana Department of Fisheries and Wildlife ("LDFW") over the past decade.[93] Those trip tickets show that:

- From 2014 through 2021, the volume of shrimp that Mr. Theriot caught remained relatively stable, with any reductions in a given year's catch being offset by an increase in catch the following year.[94]
- The greatest single-year reduction in shrimp catch occurred in 2015, after Sempra Energy began dredging for its Cameron LNG facility in Hackberry, Louisiana. That year, Mr. Theriot's catch decreased by 38%. That was followed, however, by a 31% increase in shrimp catch in 2016.[95]
- When the CP1 Facility began production and shipping operations in early 2022, Mr. Theriot experienced an immediate and dramatic decrease in shrimp catch. As compared to 2021, Mr. Theriot's shrimp catch decreased by 47% (69,374 pounds) in 2022.[96] This represents the greatest single-year decrease in shrimp catch that Mr. Theriot has experienced.
- Mr. Theriot's shrimp catch decreased by an additional 40% (31,225 pounds) in 2023.[97] This represents the greatest single year reduction in shrimp catch other than 2022.

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[92] Exhibit 21, UPI Archives, *Louisiana Nation's Top Fish Producer* (July 29, 1985), available at https://www.upi.com/Archives/1985/07/29/Louisiana-nations-top-fish-producer/8550491457600.
[93] Response to Form Letters, Ex. 4 (Declaration of Anthony Theriot), at ¶¶ 7-9, Exs. 4C & 4D.
[94] *Id*., Ex. 4, at ¶ 10.
[95] *Id*., Ex. 4, at ¶ 11.
[96] *Id*., Ex. 4, at ¶¶ 15-16.
[97] *Id*., Ex. 4, at ¶¶ 17.

- All told, Mr. Theriot's shrimp catch in 2023 was 68% lower than 2021, the year before the CP1 Facility began LNG operations. His 2023 catch was 44% lower than the average year between 2014 and 2021.

- Mr. Theriot reports that his shrimp catch thus far in 2024 is even lower than at this time in 2023.[98]

Since the CP1 Facility began LNG production and shipping operations in early 2022, Mr. Theriot has experienced two consecutive years of the greatest year-over-year decreases in shrimp catch volume in his almost 30 years of fishing in Cameron Parish. The total decrease in his shrimp catch from 2021 to 2023 is 68%. As a consequence, Mr. Theriot is unsure whether his commercial fishing business will survive through 2024 and whether he will be able to continue to make payments on his home.[99]

Mr. Theriot is not the only fisherman to experience dramatic decreases in fish and shrimp catch since the CP1 Facility began operation. In fact, inland commercial fishermen in Cameron Parish are overwhelmingly experiencing the same thing—they have seen dramatic annual catch reductions, some as high as 50%, since early 2022.[100] As a consequence – and as previously noted to FERC several times[101] – many commercial fishermen have already been forced to relocate and others, like Mr. Theriot, are facing the prospect of being forced out of their homes and jobs.[102]

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[98] Response to Form Letters, Ex. 4, at ¶ 19.
[99] *Id*., Ex. 4, at ¶ 19.
[100] *See*, *e.g.*, *id*., Ex. 5 (N. Cunningham, *Louisiana LNG Could Be "Nail in the Coffin" for Local Fishermen*, Gas Outlook, Feb. 23, 2024); *see also*, *id*., Ex. 4 (Declaration of Anthony Theriot) at ¶¶ 22-23 (June 14, 2024).
[101] *Id*., Ex. 4, at ¶ 19 (decreased shrimp catch threatens Mr. Theriot's livelihood); Comments of Niskanen Center, *et al*., on the DEIS for the CP2 and CP Express Projects, Docket Nos. CP22-21 and CP22-22, Accession No. 20230313-5225 (March 13, 2023) ("Niskanen DEIS Comments") at 28 ("For shrimpers and fishers in the Calcasieu Ship Channel, it may cost them their businesses, and thus their very livelihood."); Response to Form Letters at 3 ("the Project poses an existential threat to [the fishermen's] livelihood").
[102] Response to Form Letters, Ex. 4, (Declaration of Anthony Theriot) at ¶ 19.

B. FERC's Sanctioning of the Rapid Proliferation of LNG Export Facilities: A Crisis for Cameron Parish.

The rapid expansion of LNG export facilities in and around Cameron Parish has transformed this once-idyllic coastal community to an industrial hub, imposing severe economic and environmental harms on local residents and fishermen.

The CP1 Facility is only one of several LNG facilities contributing to this dramatic transformation. A mere 18 miles from Cameron, in Hackberry, Louisiana, Sempra Energy's Cameron LNG facility spans 500-acres and has been operating since 2019 with a nameplate capacity of 15 MTPA.[103] Dozens of tankers pass through Cameron every month as they traverse the Calcasieu Ship Channel from Cameron LNG to the Gulf of Mexico, their massive drafts disturbing sediments that serve as critical shrimp and oyster breeding grounds as they create enormous wakes that endanger shrimp boats and the safety of their operators.[104] The Cameron LNG facility is currently undergoing construction on a significant expansion that will add an additional 6.75 MTPA of export capacity (resulting in a significant increase in tanker traffic in the Calcasieu Ship Channel and related air emissions impacting local residents).[105] And eastern Cameron Parish is also the home of Sabine Pass LNG, the largest operational LNG facility in the world with a nameplate capacity of 30 MTPA.[106]

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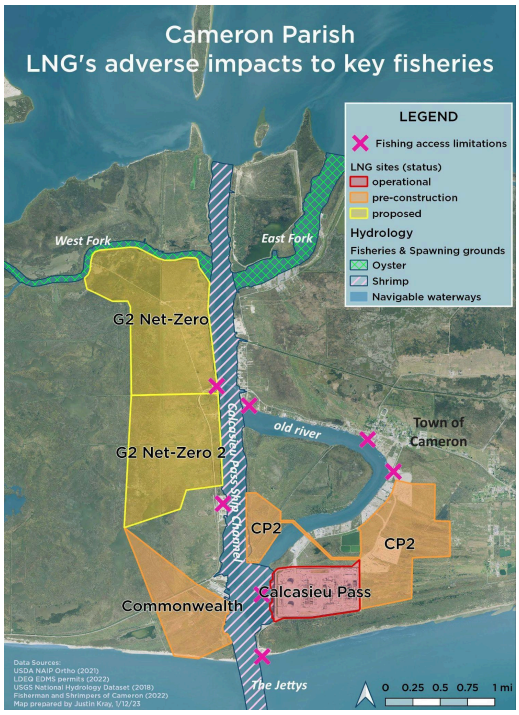
[103] Exhibit 22, Sempra Cameron LNG webpage, available at https://semprainfrastructure.com/what-we-do/lng-net-zero-solutions/cameron-lng (Last accessed July 19, 2024).

[104] Louisiana Bucket Brigade, *et al.*, Comments on Final Environmental Impact Statement, FERC Docket Nos. CP22-21-000, CP22-22-000, at 6 (Jan. 17, 2024) ("Cameron Fishing Community Concerns") Accession No. 20240117-5083 ("channel dredging and wake from passing tankers traveling at unsafe speeds present serious threats to the fishermen's property (including vessels and traps) as well as their personal safety").

[105] Exhibit 23, Cameron LNG Amended Expansion Project Fact Sheet (2022), available at https://cameronlng.com/expansion/ (Last accessed July 19, 2024). *See also* FEIS at 4-519 (The Expansion Project would be located 16 miles north of CP2 and affect 141 acres).

[106] Exhibit 24, Cheniere Sabine Pass Liquefaction webpage, available at https://www.cheniere.com/where-we-work/sabine-pass (Last accessed July 19, 2024).

Figure 1. Map of LNG's adverse impacts to key fisheries in Cameron Parish



As if these facilities were not enough for the residents of Southwest Louisiana to bear, FERC has approved several other LNG export facilities and expansion projects in the immediate vicinity that are either under construction or awaiting final investment decisions. These fully-approved facilities include:

- Commonwealth LNG facility: with a permitted liquefaction and export capacity of 8.5 MTPA, which was approved by FERC on November 17, 2022.[107] The Commonwealth facility would occupy 166 acres of land directly across the Calcasieu Ship Channel, .5 miles southwest of the CP2 Facility site and 1.75 miles west of the CP Express Pipeline. It would accommodate an average of 156 vessel calls per year. Like CP1 and the CP2 Facility, the Commonwealth LNG facility would be located very near the population center of Cameron and immediately adjacent to the traditional shrimping and oyster beds of the area's commercial fishermen.[108]

[107] Commonwealth Order, 181 FERC ¶ 61,143 (Nov. 17, 2022); *Commonwealth LNG, LLC,* 182 FERC ¶ 62,033 (Jan. 19, 2023). The D.C. Circuit recently granted, in part, petitions for review of FERC authorization of the Commonwealth LNG facility because FERC inadequately explained its failure to determine the significance of that project's greenhouse gas emissions and remanded the matter to FERC. *Healthy Gulf*, 2024 WL 3418863.
[108] FEIS at 4-159.

- Lake Charles LNG facility: with a permitted liquefaction and export capacity of 16.45 MTPA, which was approved by FERC on December 17, 2015.[109] The Lake Charles facility is located 22 miles north of the CP2 Facility site and three miles north of the CP Express Pipeline. Construction of the project would affect 1,516 acres. The project includes modification and expansion of an existing terminal, which accommodates 225 vessel calls annually.[110]

- Driftwood LNG facility: with a permitted liquefaction and export capacity of 27.6 MTPA, which was approved by FERC on April 18, 2019.[111] The Driftwood facility is located 22 miles north of the CP2 Facility and 1.5 miles north of the CP Express Pipeline, on the west side of the Calcasieu River. Construction of the project would affect 2,775 acres, and accommodate an average of 365 vessel calls annually.[112]

- Magnolia LNG facility: with a permitted liquefaction and export capacity of 8 MTPA, which was approved by FERC on April 15, 2016.[113] Sited on an industrial canal on the east side of the Calcasieu Ship Channel, the facility would be located 23 miles north of CP2. Construction of the project would affect 129 acres within the Calcasieu River-Prien Lake watershed, and accommodate an average of 208 vessel calls annually.[114]

- Delfin LNG facility: On October 4, 2023, FERC granted Delfin LNG a four-year extension of time to construct onshore facilities associated with its deepwater LNG export facility 45 miles off the coast of Cameron, which was approved by the U.S. Department of Transportation Maritime Administration with a permitted liquefaction and export capacity of 12 MTPA.[115]

Given the sheer number of LNG export projects approved by FERC, as well as the well-known environmental and human health impacts associated with these facilities, the impact of FERC's decision making over the past decade is to transform Southwest Louisiana from a sportsman's paradise into a sacrifice zone. FERC's own visual of what's been approved, but not yet built, in Southwest Louisiana, is striking:

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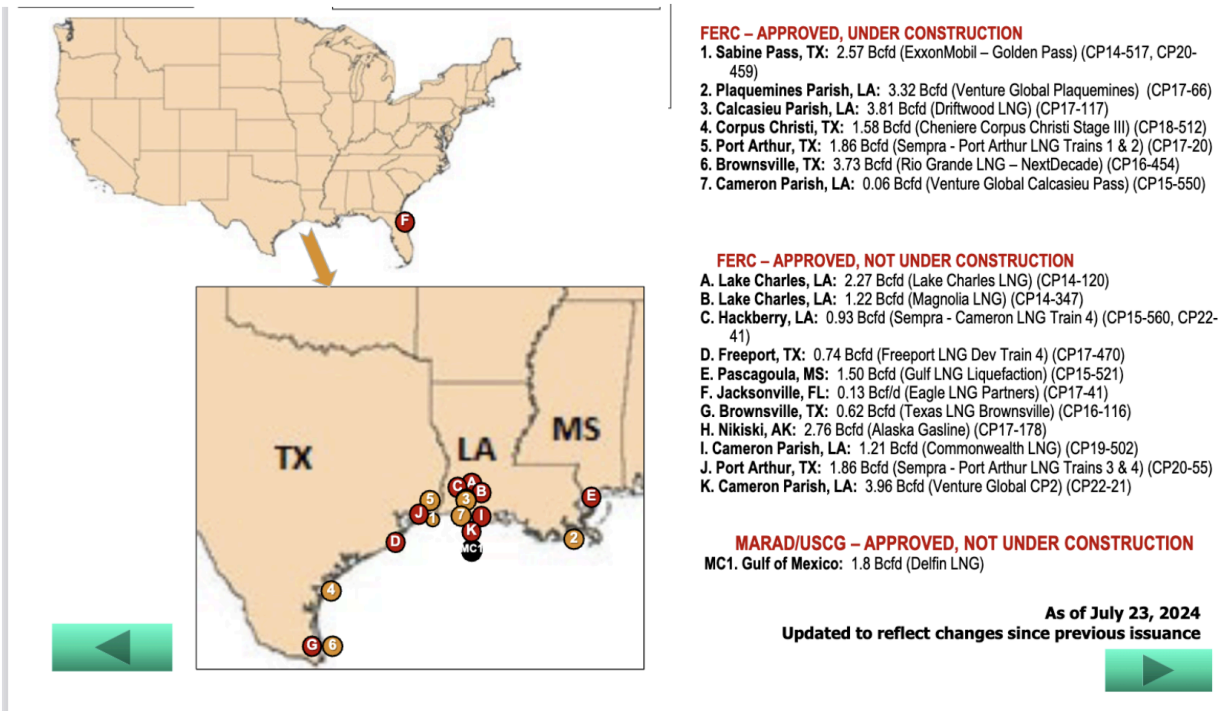
[109] *Lake Charles LNG Export Company, LLC,* 153 FERC ¶ 61,300 (Dec. 17, 2015).
[110] FEIS at 4-518.
[111] *Driftwood LNG LLC,* 167 FERC ¶ 61,054 (Apr. 18, 2019).
[112] FEIS at 4-518.
[113] *Magnolia LNG,* Order Granting Authorization Under Section 3 of the Natural Gas Act and Issuing Certificates, 155 FERC ¶ 61,033 (Apr. 15, 2016).
[114] FEIS at 4-519, 4-520.
[115] *Delfin LNG,* Order Granting Extension of Time, 185 FERC ¶ 61,009 (Oct. 4, 2023); FEIS at 4-519.

Figure 2. FERC-approved, but not yet built LNG projects on the Gulf Coast[116]



The many FERC-approved LNG export facilities in Southwest Louisiana are part of a much broader and problematic national trend. DOE characterizes this expansion as "exponential" and "unprecedented."[117] In just over a decade, the United States has gone from a nominal LNG exporter to the single largest exporter of LNG in the world, with a current operating export capacity of over 14 billion cubic feet per day ("Bcf/d").[118] The numbers are staggering:

- DOE issued its first final non-Free Trade Agreement ("FTA") export order in August 2012, authorizing Sabine Pass Liquefaction, LLC to export a volume of 2.2 Bcf/d of gas.[119]

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[116] Exhibit 25, FERC, "U.S. LNG Export Terminals – Existing, Approved not Yet Built, and Proposed," (July 16, 2024) ("FERC Approved Terminals"), available at: https://www.ferc.gov/media/us-lng-export-terminals-existing-approved-not-yet-built-and-proposed (last Accessed July 16, 2024) (Image reformatted).

[117] Exhibit 26**,** *State of Louisiana v. Biden,* Case No. 2:24-cv-00406, Defendants' Motion to Dismiss and Opposition to Plaintiffs' Motion for Stay or Injunction, at 1-2 (W.D. LA, May 6, 2024) ("DOE Motion To Dismiss").

[118] *Id*. at 7-8 (citing DOE Fact Sheet at 1).

[119] Exhibit 27, DOE Office of Fossil Energy and Carbon Mgmt., Notice Dismissing Request for Rehearing, Commonwealth LNG, LLC, Docket No. 19-134-LNG at 3 (Mar. 27, 2024) ("DOE Commonwealth Notice").

- Since that authorization, DOE has issued 40 final, long-term non-FTA export authorizations totalling over 48 Bcf/d.[120]

- These orders authorize private companies to export approximately 46% of all domestic gas production.[121]

- With over 14 Bcf/d of currently operating export capacity, the United States is the single largest exporter of LNG on the planet.[122] This is more than three times greater than U.S. export capacity was just six years ago in 2018.[123]

- More than 12 Bcf/d of export capacity is under construction in the United States, meaning that the U.S. is set to nearly double its export capacity in the next decade.[124]

- An additional 22 Bcf/d of export capacity has already been authorized by DOE but is not yet operating or under construction.[125]

According to its own data, FERC has authorized the siting, construction, and operation of LNG facilities capable of exporting a total of a whopping 50.36 Bcf/day.[126] The chart below summarizes the most recent FERC data of LNG projects that, despite FERC approval years ago, are not yet built and operational, totaling approximately 36 BCf/d:[127]

[120] Exhibit 27, DOE Commonwealth Notice at 3.
[121] *Id*.
[122] *Id*.
[123] Exhibit 28, U.S. Dep't of Energy, The Temporary Pause on Review of Pending Applications to Export Liquefied Natural Gas DOE Fact Sheet, at 1 (Feb. 2024) ("DOE Fact Sheet") (citing February 2024 Short-Term Energy Outlook from the U.S. Energy Information Administration) (emphasis added), available at https://www.energy.gov/sites/default/files/2024-02/The%20Temporary%20Pause%20on%20Review%20of%20Pending%20Applications%20to%20Export%20Liquefied%20Natural%20Gas_0.pdf (Last accessed July 21, 2024); Exhibit 26, DOE Motion to Dismiss at 7-8.
[124] Exhibit 27, DOE Commonwealth Notice at 3-4.
[125] Exhibit 28, DOE Fact Sheet.
[126] Exhibit 25, FERC Approved Terminals.
[127] Some of this data was previously submitted to FERC in January of 2023, and ignored by FERC. *See* Niskanen Center, et al., Scoping Comments for DEIS, FERC Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20230113-5277 at 6-7 (Jan. 13, 2023).

Table 1. FERC-Approved U.S. LNG Export Projects

Project Name	Operator	Capacity (Bcf/d)	Status	Year Approved	Years Pending
Lake Charles LNG	Energy Transfer, LP	2.27	Not Under Construction	2015	9
Golden Pass	ExxonMobil	2.57	Under Construction	2016	8
Magnolia LNG	Glenfarne Group	1.22	Not Under Construction	2016	8
Cameron LNG Train 4	Cameron LNG, LLC	0.93	Not Under Construction	2016	8
Delfin LNG	Fairwood Group	1.80	Under Construction	2017	7
Plaquemines	Venture Global LNG	3.32	Under Construction	2019	5
Driftwood LNG	Driftwood LNG LLC (subsidiary of Tellurian, Inc.)	3.81	Under Construction	2019	5
Corpus Christi Stage III	Cheniere	1.58	Under Construction	2019	5
Port Arthur LNG Phase I	Sempra Energy	1.86	Under Construction	2019	5
Rio Grande LNG	NextDecade Corporation	3.73	Under Construction	2019	5
Calcasieu Pass	Venture Global LNG, Inc.	0.06	Under Construction	2019	5
Freeport LNG Train 4	Freeport LNG	0.74	Not Under Construction	2019	5
Gulf LNG	Kinder Morgan et al.	1.50	Not Under Construction	2019	5
Eagle LNG	Eagle LNG Partners	0.13	Not Under Construction	2019	5

	Jacksonville LLC				
Texas LNG Brownsville	Glenfarne Group	0.62	Not Under Construction	2019	5
Alaska LNG	Alaska Gasline Development Corporation	2.76	Not Under Construction	2020	4
Commonwealth LNG	Commonwealth Projects, LLC	1.21	Not Under Construction	2022	2
Port Arthur LNG Phase II	Sempra Energy	1.86	Not Under Construction	2023	1
CP2 LNG	Venture Global LNG, Inc.	3.96	Not Under Construction	2024	<1
	Total Approved Capacity	**35.93**			

Source: FERC U.S. LNG Export Terminals – Existing, Approved Not Yet Built, and Proposed (July 16, 2024).[128]

This chart, of course, excludes the six proposed or pending LNG export terminals, *three of which are also in Louisiana*.[129] As discussed further below, this speaks to FERC's failure to examine market misconceptions and misleading assertions in its ongoing rubber-stamping of LNG export facilities such as CP2, as well as its failure to fully evaluate cumulative environmental effects under NEPA.[130]

This rapid expansion of U.S. LNG export capacity, and the potential impact on domestic energy prices as well as the environment, led DOE in January 2024 to temporarily pause its review and approval of new applications to export LNG to non-FTA countries.[131] DOE is

[128] Exhibit 25 FERC Approved Terminals. Currently, there are 26 LNG export projects authorized by FERC. Calcasieu Pass is listed twice in FERC's public summary of authorized projects, but is only counted once toward this total.
[129] *Id*.
[130] *See infra*, Part III.B.1.c.
[131] Exhibit 28, DOE Fact Sheet ("The Biden-Harris Administration believes this update, and corresponding temporary pause, is a practical action that will ensure the most up-to-date

working to update the economic and environmental analyses that inform its determination of whether such applications are in the public interest.[132]

Meanwhile, global demand for gas is in decline. Due to diminishing demand and a massive new wave of global export capacity, gas markets are predicted to enter into a state of oversupply within two years.[133] Global LNG liquefaction capacity from projects that are already under construction would add a whopping 193 MTPA of new supply capacity worldwide between now and 2028, meaning that, by 2028, global liquefaction capacity wouldreach 666.5 MTPA.[134] That is significantly higher than the International Energy Association's ("IEA") estimate of peak global demand under the "stated policies scenario," which is estimated to reach 482 MTPA in 2050.[135] As a result, the IEA warns that the "strong rise in [LNG] capacity … risks creating a supply glut, given that global gas demand growth has slowed considerably."[136] Critically, these projections include only LNG export projects currently under construction; they do not include the nameplate capacity of the CP2 Project or many other FERC-approved export projects, rendering the CP2 Project's export capacity superfluous in an oversaturated global market.

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economic and environmental analyses are being utilized to protect against unintended or unnecessary energy cost increases on everyday American consumers and businesses, particularly in light of the large proportion of U.S. natural gas supplies already approved for export"); A judge in the U.S. District Court for the Western District of Louisiana issued a temporary injunction purports to stay the DOE LNG Pause. *See Louisiana v. Biden,* W. D. La., Case 2:24-cv-00406, Memorandum Ruling, (Doc. 72, July 1, 2024). That ruling, however, has no practical effect because the court has not ordered DOE to rule on any given LNG export application at any specific time. As a consequence, DOE can continue preparing the various reports necessary to determine whether granting additional export applications, including that for the CP2 project, are in the public interest.

[132] *Id*.

[133] Response to Form Letters, Ex. 27 (IEEFA, *Global LNG Outlook 2024-2028*, Apr. 25, 2024).

[134] *Id*.

[135] Exhibit 29, IEA, *World Energy Outlook 2023* (Oct. 2023), available at https://www.iea.org/reports/world-energy-outlook-2023 (Last accessed June 7, 2024).

[136] Response to Form Letters, Ex. 29 (IEA, *The Energy World Is Set to Change Significantly by 2030, Based on Today's Policy Settings Alone*, Oct. 24, 2023).

The unchecked proliferation of LNG export facilities in Southwest Louisiana, sanctioned by FERC, has turned the region into a sacrifice zone, jeopardizing local communities, economies, and ecosystems. It has transformed Southwest Louisiana from an affordable, rural, close-knit community, to one taken hostage by the LNG industry. The national and global oversupply of LNG further underscores the need for a comprehensive reassessment of these projects, balancing economic benefits against significant economic, environmental, and public health costs.

C. Venture Global's Proposed CP2 LNG Project and CP Express Pipeline.

Against this backdrop of our nation, and Southwest Louisiana, in particular, is drowning in LNG export approvals, on December 2, 2021, Venture Global's wholly-owned subsidiaries Venture Global CP2 LNG, LLC ("CP2 LNG") and Venture Global CP Express, LLC ("CP Express"), together filed a single application (the "Application") under Sections 3 and 7(c) of the NGA, seeking approval to build the Project.[137]

The Facility would be built on a massive 737.3-acre site on the east side of the Calcasieu Ship Channel, almost immediately adjacent to CP1, and directly across the Ship Channel from the FERC-approved Commonwealth LNG facility.[138] The Facility would be built in two phases. Phase I consists of facilities sufficient to support a liquefaction and export capacity of 10 MTPA, and is estimated to take approximately 36 months to complete.[139] Phase II may never come to fruition, as its construction and operation, including half of the project's proposed transport and export capacity, is conditionally based on vague assertions and assumptions of market support.[140]

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[137] *See supra*, Request for Rehearing and Motion to Stay of Intervenors, prefatory statement describing scope of Project.
[138] Authorization Order, P 5.
[139] Authorization Order, P 6.
[140] CP2 Application at 2 ("construction of Phase 2 will depend upon market demand and the contracting by CP2 LNG for LNG off-take agreements; but, assuming timely market support, construction of Phase 2 would begin approximately twelve months after the start of Phase 1 construction and also will take approximately three years").

Phase II—*if it is ever constructed and becomes operational*—would involve facilities sufficient to support additional liquefaction and export an additional capacity of 10 MTPA.[141] CP2 LNG claims that each phase of construction will take around 36 months to complete, with initial operations beginning around 24 months after the start of construction on Phase I.[142] CP2 LNG "anticipates" that Phase II construction will begin 12 months after the start of Phase I construction,[143] but again, Phase II will never be constructed unless "timely and sufficient market support" manifests itself for that portion of the Project.[144] A similar two-phase construction approach is proposed for the CP Express Pipeline.[145]

Notice of the Application was issued on December 16, 2021, and published in the *Federal Register* on December 23, 2021.[146] The notice provided interested parties a meager eight business days to file interventions, comments, and protests, including over the Christmas holiday season, or by January 6, 2022.[147] Timely, unopposed motions to intervene were filed by: Public Citizen (December 3, 2021);[148] NRDC (December 16, 2021);[149] Healthy Gulf (January 5,

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[141] Authorization Order, P 6.
[142] *Id*. at P 6.
[143] *Id*. at P 6.
[144] CP2 Application at 7 ("The timing for construction of Phase 2 will depend upon market demand and the contracting by CP2 LNG for LNG off-take agreements; but, *assuming timely market support,* construction of Phase 2 would begin approximately twelve months after the start of Phase 1 construction.") (emphasis added); *see also* Exhibit 30, *Venture Global CP2 LNG, LLC*, DOE Order No. 4812, DOE Docket No. 21-131-LNG at 7 (Apr. 22, 2022) ("DOE FTA Order") ("CP2 LNG states that it expects to have the Phase 1 facilities in-service by mid-2026, with the Phase 2 facilities to follow by '12 or fewer months after the first phase,' *assuming timely and sufficient market support."*) (emphasis added).
[145] Authorization Order at PP 11-12.
[146] *Id*. at P 15 (citing 86 Fed. Reg. 72,939 (Dec. 23, 2021)).
[147] 86 Fed. Reg. 72,939 (Dec. 23, 2021) (establishing January 6, 2022 as the deadline).
[148] Motion to Intervene of Public Citizen, Inc., Docket Nos. CP22-21 and CP22-22 (Dec. 3, 2021), Accession No. 20231203-5080.
[149] Motion to Intervene of NRDC, Docket Nos. CP22-21 and CP22-22 (Dec. 16, 2021), Accession No. 20211216-5124.

2021);[150] Cheniere Creole Trail Pipeline (January 6, 2022);[151] Sierra Club, Louisiana Environmental Action Network, Texas Campaign for the Environment, Port Arthur Community Action Network, Turtle Island Restoration Network, and Louisiana Bucket Brigade (January 6, 2022);[152] Driftwood LNG and Driftwood Pipeline (January 6, 2022);[153] Southeast Laborers' District Council (January 6, 2022);[154] the State of Louisiana (January 6, 2022);[155] and Restore Explicit Symmetry to Our Ravaged Earth ("RESTORE") (January 6, 2022).[156] Those timely, unopposed motions to intervene were automatically granted by operations of 18 C.F.R. § 385.214.[157]

As a major federal action significantly affecting the environment, FERC's consideration of the Application triggered the requirement that FERC prepare an environmental impact statement ("EIS") under NEPA in order to evaluate the Project's environmental impacts as part of its decision making process.[158] On August 23, 2022, FERC provided notice of its planned environmental review schedule, signaling that its Draft Environmental Impact Statement

[150] Motion to Intervene of Healthy Gulf, Docket Nos. CP22-21 and CP22-22 (Jan. 5, 2021), Accession No. 20220105-5151.
[151] Motion to Intervene of Cheniere Creole Trail Pipeline, Docket Nos. CP22-21 and CP22-22 (Jan. 6, 2022), Accession No. 20220106-5164.
[152] Motion to Intervene of Sierra Club, et al., Docket Nos. CP22-21 and CP22-22 (Jan. 6, 2022), Accession No. 20220106-5162.
[153] Motion to Intervene of Driftwood LNG, LLC and Driftwood Pipeline LLC, Docket Nos. CP22-21 and CP22-22 (Jan. 6, 2022), Accession No. 20220106-5134.
[154] Motion to Intervene of Southeast Laborers' District Council, Docket Nos. CP22-21 and CP22-22 (Jan. 6, 2022), Accession No. 20220106-5072.
[155] Notice of Intervention or, Alternatively, Motion to Intervene of State of Louisiana, Docket Nos. CP22-21 and CP22-22 (Jan. 6, 2022), Accession No. 20220106-5160.
[156] Motion to Intervene of RESTORE, Docket Nos. CP22-21 and CP22-22 (Jan. 6, 2022), Accession No. 20220106-5079.
[157] The Authorization Order's description of interventions at PP 15-16 is incorrect.
[158] *See* 42 U.S.C. § 4332(C); 18 C.F.R. § 380.6(a).

("DEIS") would be issued in January 2023.[159] The DEIS was issued on January 19, 2023, and it was published in the *Federal Register* on January 26, 2023.[160]

Between January 7 and FERC's issuance of the Draft Environmental Impact Statement ("DEIS") on January 19, 2023, eight different parties filed out of time motions to intervene: Golden Pass LNG Terminal (January 7, 2022);[161] Golden Pass Pipeline, LLC (January 7, 2022);[162] Commonwealth LNG (January 10, 2022);[163] Niskanen Center (March 1, 2022);[164] Bernard Webb, Georgia Webb, and Jerryd Tassin (June 10, 2022);[165] and Mary Alice Nash (September 13, 2022).[166] These motions were granted by Secretary's Notice on November 13, 2023.[167]

During the DEIS open comment period, which lasted from January 19 through March 13, 2023, six parties filed motions to intervene: American Gas Association (January 23, 2023);[168] the Niskanen Center (February 16, 2023);[169] Travis Dardar and Nicole Dardar (March 3, 2023);[170]

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[159] Notice of Revised Schedule for Envt'l Review of the CP2 LNG and CP Express Projects, FERC Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20220823-3030 at 1 (Aug. 23, 2022).
[160] 88 Fed. Reg. 4995 (Jan. 26, 2023).
[161] Motion to Intervene Out-of-Time of Golden Pass LNG Terminal LLC, Docket Nos. CP22-21 and CP22-22 (Jan. 7, 2022).
[162] Motion to Intervene Out-of-Time of Golden Pass Pipeline LLC, Docket Nos. CP22-21 and CP22-22 (January 7, 2022), Accession No. 20220107-5033.
[163] Out-of-Time Motion to Intervene of Commonwealth LNG, LLC, Docket Nos. CP22-21 and CP22-22 (January 10, 2022), Accession No. 20220110-5178.
[164] Motion to Intervene of the Niskanen Center, Docket Nos. CP22-21 and CP22-22 (March 1, 2022), Accession No. 20220301-5105.
[165] Motion to Intervene of Bernard Webb, *et al*., Docket Nos. CP22-21 and CP22-22 (June 10, 2022), Accession No. 20220610-5071.
[166] Motion to Intervene Out-of-Time of Mary Alice Nash, Docket Nos. CP22-21 and CP22-22 (September 13, 2022), Accession No. 20220913-5085.
[167] Notice Granting Late Interventions, Docket Nos. CP22-21 and CP22-22 (Nov. 13, 2023), Accession No. 20231113-3046.
[168] Motion to Intervene of American Gas Association, Docket Nos. CP22-21 and CP22-22 (Jan. 23, 2023), Accession No. 20230123-5103.
[169] Motion to Intervene of Niskanen Center, Docket Nos. CP22-21 and CP22-22 (Feb. 16, 2023), Accession No. 20230216-5187.
[170] Motion to Intervene of Travis Dardar, *et al*., Docket Nos. CP22-21 and CP22-22 (March 3, 2023), Accession No. 20230303-5103.

and Anthony Theriot and Kent Duhon.[171] Those motions were deemed timely by operation of 18 C.F.R. § 380.10(a)(1)(i).

Numerous comments challenging FERC's DEIS were filed, including by Intervenors.[172] FERC finalized the Final Environmental Impact Statement ("FEIS") on July 28, 2023.[173]

Three parties filed untimely motions in October 2023, over 21 months after the initial deadline for timely motions set by the Notice of Application and seven months after the deadline for comments on the DEIS: For a Better Bayou (October 16, 2023);[174] Adley Dyson and Judy Dyson (October 19, 2023).[175] CP2 LNG and CP Express filed an opposition to those untimely motions, raising a host of arguments that the parties failed to demonstrate good cause for intervening "so very late in the proceeding."[176] FERC rejected those arguments by Secretary's Notice on November 13, 2023, concluding that For a Better Bayou and the Dysons "have a direct interest in the proceeding that may not be adequately represented by other parties, and allowing the interventions will not disrupt the proceedings or cause any prejudice to or additional burdens upon the existing parties."[177]

Just five months later and shortly after its creation, on April 18, 2024, FISH filed its motion to intervene.[178] Notably, no party opposed FISH's motion.

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[171] Motion to Intervene of Anthony Theriot, *et al*., Docket Nos. CP22-21 and CP22-22 (March 13, 2023), Accession No. 20230313-5005.
[172] *See* Authorization Order, P 82 (summarizing DEIS comments filed).
[173] FEIS.
[174] Motion to Intervene of For a Better Bayou, Docket Nos. CP22-21 and CP22-22 (Oct. 16, 2023), Accession No. 20231016-5195.
[175] Motion to Intervene of Adley Dyson, *et al*., Docket Nos. CP22-21 and CP22-22 (Oct. 19, 2023), Accession No. 20231019-5009.
[176] Answer of CP2 LNG and CP Express Opposing the October 16, 2023 *et al*. Untimely Motions to Intervene, Docket Nos. CP22-21 and CP22-22 (Oct. 30, 2023), Accession No. 20231030-5063.
[177] Notice Granting Late Interventions, Docket Nos. 20231113-3045 (Nov. 13, 2023), Accession No. 20231113-3045.
[178] Motion to Intervene of FISH ("FISH Motion"), Docket Nos. CP22-21 and CP22-22 (April 18, 2024), Accession No. 20240418-5083.

D. FERC's Approval of the CP2 LNG Facility and CP Express Pipeline.

Following a public meeting on June 27, 2024, FERC issued its Authorization Order granting CP2 LNG's and CP Express' requested authorizations subject to certain conditions.[179] Commissioner Clements dissented from the Order, rightly concluding that "the CP2 LNG Project's adverse environmental and socioeconomic impacts are so great that I am compelled *to find that approving the project is inconsistent with the public interest.*"[180] She also pointed out that FERC has "no clear standard for making [ ] public interest determinations" under Section 3, and consequently there is "no record on the economic or other benefits from LNG exports and [the Commission] therefore cannot weigh them against the adverse impacts from construction and operation of the CP2 LNG Project."[181] She criticized FERC's failure to meaningfully address the Project's GHGs[182] FERC's deficient cumulative air pollutant analysis,[183] its inadequate review of impacts to commercial fishing,[184] and its consideration of the totality of impacts on vulnerable and overburdened environmental justice communities.[185]

The Authorization Order also wrongfully denied FISH's unopposed Motion to Intervene.[186] The Authorization Order did not explain how FISH's Motion was any different from those of For a Better Bayou or the Dysons, whose motions to intervene had been approved over Venture Global's opposition. The Authorization Order did not explain how For a Better Bayou and the Dysons' motions would not prejudice any party, but the passage of five months suddenly rendered FISH's intervention prejudicial. FISH is an organization created to advocate for the interests of commercial fishermen in and around Cameron Parish.[187] FISH filed its motion to

[179] Authorization Order, 166 FERC ¶ 61,199 (June 27, 2024).
[180] Authorization Order, Clements Dissent, P 1, fn. 179 (emphasis added).
[181] *Id*., P 1, fn. 179.
[182] *Id*., PP 2-11.
[183] *Id*., PP 12-17.
[184] *Id*., PP 18-21.
[185] *Id*., PP 22-26.
[186] Authorization Order at P 17.
[187] *Id*.

intervene approximately five months after the organization was formed.[188] Although FISH did not exist during the eight business days during which FERC permitted intervention, or during the public comment period on the DEIS, the Order asserts that FISH had not demonstrated good cause why it did not file its motion during those time periods.[189] The Order also erroneously concluded that the interests of dozens of fishermen who are part of the FISH coalition, each of whom have profoundly unique circumstances, are adequately represented by the participation of Travis Dardar and a host of organizations whose missions have nothing to do with protecting the interests of commercial fishermen.[190]

III. ARGUMENT

A. CP Express, an Export-Only Pipeline, Cannot be Approved Under Section 7 of the NGA.

The CP Express Pipeline, which is dedicated solely to exporting gas, is not engaged in interstate commerce and therefore cannot be approved under Section 7 of the NGA. First, the Commission may issue a Section 7 authorization only for *transportation in interstate commerce*.[191] In *City of Oberlin, Ohio v. FERC*, 937 F.3d 599 (D.C. Cir. 2019) ("*Oberlin I*"), the D.C. Circuit confirmed that interstate commerce does not include foreign, *i.e.*, export commerce.[192] The NGA defines interstate commerce as "commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but *only insofar as such commerce takes place within the United States*."[193] The courts have looked to this language as Congress placing a clear limit on the scope of FERC's

[188] FISH Motion at 3 ("FISH did not exist until November 2023…hosted its first event in December 2023, and incorporated with the State of Louisiana in January 2024").
[189] Authorization Order at P 17.
[190] Authorization Order at P 17.
[191] 15 U.S.C. § 717f(c)(2) (emphasis added).
[192] *See also, Alabama Municipal Distributors Group v. FERC*, 100 F.4th 207, 213 (D.C. Cir. 2024) ("The Natural Gas Act *excludes* authority over *foreign* transport from FERC's authority over interstate transport.") (Emphasis in original.)
[193] 15 U.S.C. § 717a(7) (emphasis added).

Section 7 authority: it specifically "defin[ed] 'interstate commerce' in a way that excludes foreign commerce."[194] Here, it is undisputed that the purpose of the Pipeline is to transmit gas destined *exclusively* for export to foreign countries, and not from one state for use in another. Therefore this Project cannot be said to transport gas in interstate commerce as required under Section 7.

Additionally, an export pipeline may not be approved under the NGA because it does not satisfy either the type of public benefits contemplated under the NGA, especially that the pipeline transport "for ultimate distribution to the public," 15 U.S.C. § 717(a), or the public use requirement of the U.S. Constitution's Fifth Amendment. Furthermore, as in *Oberlin I*, here, the Commission failed to give sufficient reasoning as to why it should be lawful to credit export agreements towards a finding that a pipeline is in the public convenience and necessity, especially where an applicant would be able to invoke eminent domain.[195] Except the instant situation is even worse than in *Oberlin I*, because at least in *Oberlin I*, some of the gas was, in fact, destined for domestic use. Here, all of the gas (but for the *de minimis* portion that is being used by CP2 LNG to operate the Facility) is going to be exported. In other words, all of the gas is either (1) being exported or (2) being burned in order to facilitate gas export. There is zero evidence–and Venture Global and its subsidiaries do not argue–that any of the gas that will flow via the Pipeline will ever enter the domestic marketplace.

The Commission's Order entirely fails to or inadequately addresses these arguments.

1. CP Express, a project exclusively supplying exports, is not engaged in interstate commerce and cannot be approved under Section 7.

The Commission fails to address whether the delivery of gas exclusively for export overseas can be considered interstate, as opposed to foreign, commerce. FERC's simple assertion

[194] *City of Oberlin I,* 39 F.4th at 726; *see also* 15 U.S.C. § 717a(7).
[195] *See* Niskanen DEIS Comments at 24-25 (March 13, 2023) (arguing that FERC is not authorized to approve a pipeline providing feedstock to export gas under Section 7).

that the Pipeline is a Section 7 pipeline because it would "transport gas in interstate commerce" is legally insufficient.[196]

Courts have recognized that the question of whether a pipeline like CP Express—which crosses state lines but exclusively transports gas for export—engages in "interstate commerce," is an open question of statutory construction and interpretation.[197] It is well established, however, that statutes like the NGA that "confer[] the right of eminent domain are strictly construed to exclude those rights not expressly granted."[198] In circumstances where eminent domain authority is expressly conferred in one part of a statute, but not in others, the other portions of the statute must be interpreted to exclude the power of eminent domain.[199]

The NGA created two distinct regimes for pipelines: Section 3 governs permitting facilities necessary to import and export gas; and Section 7 governs permitting interstate gas pipelines. When Congress amended Section 7 in 1947 to include eminent domain authority, it aimed to resolve the gap created by state court decisions holding that such interstate pipelines were not entitled to use state eminent domain procedures; interstate pipelines which "[do] not distribute natural gas in each of the States crossed, would not have the right of eminent domain under the constitutions and statutes of such States authorizing the taking of property for a public use."[200] Congress remedied this by adding federal eminent domain authority to Section 7, but not

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[196] Authorization Order P 33.
[197] *Oberlin II*, 39 F.4th 719, 726, fn. 3 (D.C. Cir. 2022) ("We need not, and do not, decide whether it is within FERC's Section 7 authority to grant a certificate for a pipeline that crosses state lines but exclusively transports gas ultimately bound for export.")
[198] *E.g.*, *E. Tenn. Nat. Gas Co. v. Sage*, 361 F.3d 808, 826 (4th Cir. 2004) (eminent domain authority under the Natural Gas Act must be strictly construed); *Transwestern Pipeline Co. v. 17.19 Acres of Prop.*, 550 F.3d 770, 774 (9th Cir. 2008) (strictly construing the NGA).
[199] *Alliance for Property Rights and Fiscal Responsibility v. City of Idaho Falls*, 742 F.3d 1100, 1104 (9th Cir. 2013) ("These express grants of extraterritorial eminent domain power evidence that (1) the Idaho Legislature knows how to grant extraterritorial eminent domain power to the cities of Idaho and (2) does so expressly and for a specific purpose when it intends that the cities have that power.").
[200] S. Rep. 429 (July 3, 1947) at 2.

Section 3, even though export pipelines would run into the exact same "public use" limitations under state law as interstate pipelines. This reflected a deliberate choice by Congress to grant eminent domain to interstate gas pipelines, but not for export projects, a choice FERC must honor.

Section 7 states that FERC may "issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas . . . ."[201] A "natural-gas company" is "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."[202] "Interstate commerce," in turn, is defined as "commerce between any point in a State and any point outside thereof . . . but only *insofar as such commerce takes place within the United States*."[203] FERC's Authorization Order offers no analysis supporting the bald conclusion that CP Express will become a "natural gas company" upon commencing operation of a pipeline transporting gas for export[204] or that CP Express would be used to transport gas in "interstate commerce."[205] Those unsupported conclusions wither under the slightest scrutiny.

Exports are not transformed into interstate commerce merely because they cross state lines on their way to foreign markets. The Supreme Court directed that one must consider the entire flow of gas, *from production all the way through to its ultimate consumption,* when determining what type of commerce is at issue.[206] In *Maryland v. Louisiana*, several states,

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[201] 15 U.S.C. § 717f(c)(2).
[202] 15 U.S.C. § 717a(6).
[203] 15 U.S.C. § 717a(7) (emphasis added).
[204] Authorization Order at P 4; *see generally* the case against FERC in its similar authorization of the Jordan Cove LNG and Pacific Connector Pipeline Project; *Opening Brief of Landowner Petitioners, et al., Evans, et al. v. FERC,* ECF #1905311 at 22-27, Case No. 20-1161 (D.C. Circuit) (discussing why gas for export is not interstate commerce under the NGA). The Jordan Cove Project was canceled prior to the D.C. Circuit reaching the merits of this case, and the case against FERC was dismissed.
[205] Authorization Order at P 33.
[206] *Maryland v. Louisiana*, 451 U.S. 725, 755 (1981).

FERC, and several pipeline companies challenged the legality of Louisiana's "first-use" tax, which taxed companies that drilled for gas in federal waters and sent the gas for processing in Louisiana before it was ultimately transported via pipeline to several other states.[207] Louisiana argued that the processing of the gas in Louisiana "interrupted" or broke the flow of gas in interstate commerce, rendering it a taxable local activity. The Supreme Court rejected this position, concluding:

> [I]t is clear to us that the flow of gas from the OCS wells, through processing plants in Louisiana, and through interstate pipelines *to the ultimate consumers* in over 30 States constitutes interstate commerce. Louisiana argues that the taxable "uses" within the State break the flow of commerce and are wholly local events. But although the Louisiana "uses" may possess a sufficient local nexus to support otherwise valid taxation, we do not agree that the flow of gas *from the wellhead to the consumer,* even though "interrupted" by certain events, is anything but a continual flow of gas in interstate commerce. Gas crossing a state line at any stage of its movement *to the ultimate consumer* is in interstate commerce during the entire journey.[208]

The *Maryland* decision is clear that, in order to determine the type of commerce at issue, one must trace the entire flow of gas "to the ultimate consumer."[209] An "ultimate consumer" under the NGA is the final end-user of gas, whether that be residential, commercial, or industrial, who purchases the gas for their own use rather than for resale.[210] As highlighted below, the concept of the "ultimate consumer" is central to the NGA's purpose of consumer protection.[211] Since the gas

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[207] *Id.* at 725.
[208] *Id.* at 755.
[209] *Maryland v. Louisiana*, 451 U.S. at 755.
[210] *See* 15 U.S. Code § 3301("'local distribution company' means any person, other than any interstate pipeline or any intrastate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption."); 15 U.S.C. § 3202(2) (defining a "local distribution company" as an entity engaged in the "the local distribution of natural gas, and the sale of natural gas to any ultimate consumer of natural gas."); Exhibit 31, U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration Request for Interpretation of 49 CFR 193.2001 (Apr. 18, 2011).
[211] *Infra*, Part III.A.1.

transported by CP Express ultimately would be sold and consumed in foreign economies, it is transported in foreign, not interstate, commerce.

In *Oberlin I*, the D.C. Circuit raised significant concerns about FERC's reliance on precedent agreements with shippers serving foreign customers to find a pipeline was "required by the public convenience and necessity."[212] The *Oberlin I* court made several key rulings, including that the Commission's recitation of findings that: (1) a substantial amount of gas is domestic; (2) all shippers have secondary delivery rights within the United States; and (3) the pipeline's application listing eleven interconnections with potential customers "d[id] not explain why it is lawful for the Commission to predicate a Section 7 finding of project need on precedent agreements with foreign shippers serving foreign customers."[213] Additionally, the court held that the Commission's decision was inconsistent with earlier judicial rulings where the court "refused to interpret interstate commerce within the context of the Act, to include foreign commerce."[214] Finally, the court ruled that "it is insufficient to assume that a finding [by DOE] that export is not inconsistent with the public interest under Section 3, which does not confer eminent domain, is equivalent to a finding that an export constitutes a public use within the meaning of the Takings Clause."[215]

The D.C. Circuit vacated and remanded the decision back to FERC. On remand, the central question posed to FERC was "why – under the Act, the Takings Clause, and the precedent of this Court and the Supreme Court – it is lawful to credit precedent agreements with foreign shippers *serving foreign customers* toward a finding that an interstate pipeline is required by the public convenience and necessity under Section 7 of the Act."[216]

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[212] *Oberlin I*, 937 F.3d at 606-08.
[213] *Id.* at 606.
[214] *Id.* at 607 (citing *Border Pipeline Line Co. v. Fed. Power Comm'n.*, 171 F.2d 149, 152 (D.C. Cir. 1948), and *Distrigas Corp. v. Fed. Power Comm'n.*, 495 F.2d 1057, 1063 (D.C. Cir. 1974)).
[215] *Id.*
[216] *Id.* at 607-08 (emphasis added).

After FERC's resulting Remand Orders,[217] and subsequent court challenge, the D.C. Circuit in *Oberlin II* found FERC's authorization of the project to be a proper use of FERC's Section 7 authority, "even though *some* of the gas transported in it will ultimately be exported."[218] *Oberlin II* found that *"if a pipeline were engaged in foreign, but not interstate, commerce . . . the pipeline would be outside FERC's Section 7 authority.*"[219] But the court concluded that the pipeline at issue there was "indisputably" transporting gas in interstate commerce primarily because its application: (1) "included six precedent agreements to transport gas from Pennsylvania and Ohio for sale across state lines"; and (2) the 17% of gas bound for export was "commingled with the gas bound for domestic, interstate use."[220] Critically, the *Oberlin II* court expressly reserved judgment on the present situation: "*We need not, and do not, decide whether it is within FERC's Section 7 authority to grant a certificate for a pipeline that crosses state lines but exclusively transports gas ultimately bound for export.*"[221]

Unlike the pipeline in *Oberlin II*, the CP Express pipeline does not transport any gas across state lines for ultimate sale within the United States; it is undisputed that the sole precedent agreement for capacity on CP Express is with its corporate affiliate, CP2 LNG.[222]

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[217] *Nexus Gas Transmission, Order on Remand*, 172 FERC ¶61,199 (September 3, 2020) (Remand Order); *Nexus Gas Pipeline, Notice of Denial of Rehearing By Operation of Law and Providing For Further Consideration*, 173 FERC ¶ 62,065 (Nov. 5, 2020).
[218] *Oberlin II*, 39 F.4th 719, 726 (D.C. Cir. 2022).
[219] *Oberlin II,* 39 F.4th at 726 (emphasis added).
[220] *Oberlin II,* 39 F.4th at 726.
[221] *Oberlin II,* 39 F.4th at 726, fn. 3 (emphasis added).
[222] Authorization Order, P 14 ("[I]t executed a binding precedent agreement with CP2 LNG for 100% of the firm transportation service provided by Phases I and II of the CP Express Pipeline Project for a term of twenty years at negotiated rates."); see also the Application, p. 27 (" No other entity bid in the open season or expressed interest in obtaining transportation capacity on CP Express.").

Furthermore, unlike *Oberlin II*, gas transported on the CP Express pipeline is undisputedly not "commingled with any gas bound for domestic, interstate use."[223]

The *Maryland* and *Oberlin* cases taken together stand for the unifying principle that one must consider the entire path of gas transport and ultimate consumption to determine its commerce type.[224] Since the purpose of the CP Express is to transport gas for ultimate sale for consumption overseas, this gas capacity is in foreign, not interstate, commerce, making it ineligible for Section 7 authorization.[225] It's the gas's destination for *ultimate sale and consumption* that determines whether it is in foreign commerce.[226]

The fact that CP2 LNG may use a small percentage of gas from CP Express on-site for liquefaction or other purposes does not change the analysis.[227] It is essential to recognize that the

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[223] *Oberlin II*, 39 F.4th at 726 (finding that "gas commingled with other gas indisputably flowing in interstate commerce becomes itself interstate gas.") (*citing Okla. Nat. Gas Co. v. FERC*, 28 F.3d 1281, 1285 (D.C. Cir. 1994)).

[224] *Maryland*, 451 U.S. at 755 (tracing gas "from the wellhead to consumers"); *Oberlin I*, 937 F.3d at 606 (making clear that it's concern was with contracts that serve "demand for export capacity."); *Oberlin II*, 39 F. 4th at 726 (gas was in interstate commerce where application (1) "included six precedent agreements to transport gas from Pennsylvania and Ohio for sale across state lines," and (2) the 17% of gas bound for export was "commingled with the gas bound for domestic, interstate use").

[225] *Border Pipe Line Co. v. Fed. Power Comm'n*, 171 F.2d 149, 150 (D.C. Cir. 1948) ("Interstate commerce and foreign commerce have been distinct ideas ever since they appeared as two concepts in the Constitution.")

[226] *Oberlin*, 937 F.3d at 606 (making clear that it's concern was with contracts that serve "demand for export capacity."); *see also Oberlin II*, 39 F.4th at 726 (finding the gas to be in interstate commerce, as its application 1) "included six precedent agreements to transport gas from Pennsylvania and Ohio *for sale across state lines*," and 2) the 17% of gas bound for export was "commingled with the gas bound for domestic, *interstate use*.") (emphasis added).

[227] *See, e.g.* Exhibit 32, *Natural gas explained,* EIA (July 31, 2023) (explaining that "approximately 7% to 15% of LNG feed gas is used for liquefaction processes, mostly to operate on-site liquefaction equipment," and further noting "U.S. Energy Information Administration does not publish data specifically on the volumes of natural gas consumed for LNG liquefaction.") (June 21, 2024,), available at https://www.eia.gov/energyexplained/natural-gas/liquefied-natural-gas.php (Last accessed July 24, 2024). Note that the maximum gas projected for use at CP2 is less than the 17% of gas bound for export in *Oberlin* that did not change the ultimate determination that the gas was transported in interstate commerce. Similarly, here, the small amount of gas that potentially could be used domestically should not alter the fact that the pipeline is transporting gas for foreign commerce.

purpose of this Project is to build and operate a "new liquefied natural gas (LNG) export terminal with 20 million metric tons per annum (MTPA) of nameplate liquefaction capacity and associated facilities [including a feeder pipeline]"[228] to export gas overseas. The onsite use of some of the gas is a necessary step in preparing the bulk of the capacity for export. Without this process, the export of LNG would not be possible, and its role is ultimately to facilitate the export of gas in foreign commerce and international trade.

Additionally, as FERC well knows, gas that has crossed state lines is not necessarily within FERC's Section 7 jurisdiction if Congress says otherwise. For instance, the NGA excludes from FERC's Section 7 jurisdiction "Hinshaw pipelines" that receive interstate gas "at the boundary of a State if all the natural gas so received is ultimately consumed within such State" and are subject to that State's regulation.[229] Thus, a pipeline located wholly within Virginia that carries gas that came from Oklahoma is not necessarily regulated under Section 7 if all its gas is consumed in Virginia.[230] Similarly, Congress excluded foreign commerce from the "interstate commerce" regulated under Section 7, and thus, even when a transaction crosses a state line, it is part of interstate commerce "only insofar as such commerce takes place in the United States."[231]

Given that this Pipeline is serving as a *de facto* export pipeline, it should be considered under Section 3 rather than Section 7, such as in the Alaska LNG Project, where FERC asserted Section 3 jurisdiction over an 806.9-mile gas pipeline in Alaska feeding an export LNG

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[228] Authorization Order at P 1.
[229] 15 U.S.C. § 717(c); *see also Intermountain Mun. Gas Agency v. FERC*, 326 F.3d 1281, 1282 (D.C. Cir. 2003) (describing Hinshaw pipelines).
[230] *Altamont Gas Transmission Co. v. FERC*, 92 F.3d 1239, 1246 (D.C. Cir. 1996); *Consumers Energy Co. v. FERC*, 226 F.3d 777, 779 (6th Cir. 2000) (Congress concluded that Hinshaw pipelines are "matters primarily of local concern" and more appropriately regulated by state agencies).
[231] 15 U.S.C. §717a(7).

terminal.[232] As FERC stated in the authorization of the Alaska LNG facilities, including the 800+ mile pipeline:

> Section 3(e)(1) of the NGA states that "[t]he Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal." 16 NGA section 2(11) defines LNG terminal as "all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is … exported to a foreign country from the United States … but does not include … any pipeline or storage facility subject to the jurisdiction of the Commission under [Section 7].[233]

Even assuming that the Pipeline qualifies as an "interstate pipeline" (which it does not), just as in the *Oberlin* cases,[234] "the Commission never explained why it is lawful to credit demand for export capacity in issuing a section 7 certificate to an interstate pipeline."[235] Thus, CP Express should not be authorized under Section 7, as its primary purpose is to serve foreign demand in foreign markets.

2. Neither export of gas nor purely economic benefits constitute a public use under Section 7 of the NGA or the Fifth Amendment of the U.S. Constitution.

Under the Takings Clause of the U.S. Constitution, the forced taking of property through eminent domain must serve a "public use."[236] The NGA declares that "the business of transporting and selling natural gas for *ultimate distribution to the public* is affected with a

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[232] *Alaska Gasline Dev. Corp.*, 171 FERC ¶ 61,134 , P9 (May 21, 2020) (authorizing the Alaska LNG Project under Section 3 of the NGA, which "include[d] a gas treatment plant located in the Prudhoe Bay Unit of Alaska's North Slope, two natural gas pipelines connecting production units to the gas treatment plant, liquefaction facilities on the Kenai Peninsula, and an approximately 806.9-mile-long, 42-inch-diameter pipeline connecting the gas treatment plant to the liquefaction facilities [...] and the pipeline proposed here will carry no gas in interstate commerce.") (emphasis added).

[233] *Alaska Gasline Dev. Corp.*, 171 FERC ¶ 61,134 , P10 (May 21, 2020) (citing to 15 U.S.C. § 717b(e)(1); *id.* § 717a(11).

[234] Which, unlike in this case, involved transportation and delivery of natural gas between *multiple* states before a mere 17% of the gas was exported to a hub that connected back with other pipes within the United States.

[235] *Oberlin I*, 937 F.3d at 606.

[236] U.S. Const. Amend. V.

public interest."[237] However, the type of public purpose envisioned by Congress in the NGA, *i.e.*, the "ultimate distribution to the public," is entirely absent from this Project, which will not distribute gas anywhere within the United States.

FERC presents no argument to suggest that an export project meets the Fifth Amendment's "public use" requirement. In *Oberlin I,* the D.C. Circuit emphasized that such flawed reasoning "beg[ged] the unanswered question of whether ... it is lawful for the Commission to credit precedent agreements for export toward a finding that a pipeline is required by the public convenience and necessity."[238] In *Oberlin II,* after FERC had considered the question on remand, the D.C. Circuit noted that "[s]o long as FERC's crediting of export agreements is consistent with the Natural Gas Act, it furthers a public purpose consistent with the Takings Clause."[239] The D.C. Circuit then found that FERC had lawfully credited the export agreements consistent with the NGA and it was thus consistent with the Takings Clause only because, unlike here, "FERC considered the export precedent agreements *as one of the many factors* in determining the public convenience and necessity, and thus did not conflate Sections 3 and 7 [as alleged by the petitioners]."[240]

FERC here should not be permitted to conflate the distinct standards under Sections 3 and 7. This Application should be denied, as unlike *Oberlin II*, here "the overall benefits of the proposed pipeline failed to outweigh the overall costs," there are no "myriad domestic benefits," and there is no increased likelihood based on where the gas is going that it will be re-imported back into the United States or any related articulable domestic benefit.[241] Certainly, FERC's

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[237] 15 U.S.C. § 717(a) (emphasis added).
[238] *Oberlin II,* 39 F.4th at 728–29 (D.C. Cir. 2022) (*citing Oberlin I*, 937 F.3d at 607)
[239] *Oberlin II,* 39 F.4th at 728 (comparing to *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 973 (D.C. Cir. 2000) (explaining that, since FERC lawfully declared that a pipeline would "serve the public convenience and necessity," it "served a public purpose").
[240] *Oberlin II*, 39 F.4th at 729 (emphasis added).
[241] *Oberlin II*, 39 F.4th at 727-728.

failing to articulate any public use or benefits whatsoever makes its analysis deficient to satisfy the Takings Clause's "public use" requirement.

To the extent that FERC attempts to parrot vague assertions of economic benefits on rehearing, the courts have held that there must be more than merely economic benefits to be considered a public benefit for Takings Clause purposes. In *Kelo v. City of New London*, *Conn*, the Court emphasized the need to defer to legislative judgments as to the best means of achieving such complex ends, which specifically included benefits beyond the merely economic:

> Those who govern the City were not confronted with the need to remove blight in the Fort Trumbull area, but their determination that the area was sufficiently distressed to justify a program of economic rejuvenation is entitled to our deference. The City has carefully formulated an economic development plan that it believes will provide appreciable benefits to the community, *including--but by no means limited to--new jobs and increased tax revenue.* As with other exercises in urban planning and development, the City is *endeavoring to coordinate a variety of commercial, residential, and recreational uses of land, with the hope that they will form a whole greater than the sum of its parts*.[242]

In fact, the Court rejected a second time the claim that there would only be economic benefits from the project: "To avoid this result, petitioners urge us to adopt a new bright-line rule that economic development does not qualify as a public use. *Putting aside the unpersuasive suggestion that the City's plan will provide only purely economic benefits,* neither precedent nor logic supports petitioners' proposal."[243]

As the Iowa Supreme Court noted while discussing *Kelo* in an oil pipeline eminent domain case:

> Like our colleagues in Illinois, Michigan, Ohio, and Oklahoma, we find that Justice O'Connor's dissent provides a more sound interpretation of the public-use requirement. If economic development alone were a valid public use, then instead of building a pipeline, Dakota Access could constitutionally condemn

[242] 545 U.S. 469, 483 (2005) (emphasis added, footnote omitted).
[243] *Kelo*, 545 U.S. at 484 (emphasis added).

> Iowa farmland to build a palatial mansion, which could be defended as a valid public use so long as 3100 workers were needed to build it, it employed twelve servants, and it accounted for $27 million in property taxes.[244]

And, as far as the argument that *Kelo* contemplated just that, i.e., that economic development without more sufficed as a public benefit, the court noted:

> In fairness to the *Kelo* majority, they did not say that any economic development benefit would meet the public-use test. If the economic benefits of merely building a project qualified as a public use, then the legislature could empower A to take B's house just because A planned to erect something new on the lot. Even the *Kelo* majority did not go that far. *See Kelo,* 545 U.S. at 487, 125 S. Ct. at 2667 ("Such a one-to-one transfer of property, executed outside the confines of an integrated development plan, is not presented in this case.").[245]

A taking is forbidden when enacted "under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit."[246] The *Kelo* Court emphasized that a taking would "no doubt be forbidden . . . for the purpose of conferring a private benefit on a particular private party."[247] And yet that is the situation here: CP Express plans to take landowners' property and destroy surrounding communities in order to build a Project of which it will be the *only* domestic beneficiary. This is exactly the "mere pretext" for conferring a private benefit that *Kelo* warned against. Therefore, the CP Express Pipeline, serving only private and export services, fails to meet the public use requirement under the Fifth Amendment.

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[244] *Puntenney*, 928 N.W.2d at 848.
[245] *Id.* at 848 n.4.
[246] *Kelo,* 545 U.S. at 477.
[247] *Kelo*, 545 U.S. at 477 (citation omitted).

B. FERC's Authorization of CP Express is Arbitrary, Capricious, a Violation of Section 7 of the NGA, the APA, and Otherwise Contrary to Law.

Given FERC's cavalier circumvention of its duties to the American public in the instant case,[248] the Commission must be reminded of its legal mandate: it may only authorize a gas pipeline under Section 7 if it is "or will be required by the present or future public convenience and necessity."[249] FERC's authorization is deeply flawed. It relies almost exclusively on a single contract with the affiliate corporate LNG facility, recites flawed market and need analyses, and adopts as gospel the word of an industry actor with questionable integrity and practices.[250] FERC further failed to articulate a single pertinent public benefit of this Project. In sum, the Commission once again adopted an "ostrich-like" approach, burying its head in the sand and outsourcing its decisionmaking to Venture Global and its subsidiaries.[251]

1. FERC erroneously determined market need for the CP Express Pipeline.

FERC's authorization of this Project fails to meet the required threshold demonstration of market need. The Commission's 1999 Certificate Policy Statement ("Certificate Policy") mandates that FERC must first consider the threshold question of the alleged need for a specific project.[252] The Certificate Policy identifies relevant factors for the Commission's evaluation of a

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[248] *See FPC v. Transcon. Gas Pipeline Corp.,* 365 U.S. 1, 7 (1961) (stating that the Commission's predecessor, the Federal Power Commission, "is the guardian of the public interest in determining whether certificates of convenience and necessity should be granted").
[249] 15 U.S.C. 717f(e); *Envtl. Def. Fund v. FERC*, 2 F.4th 953, 959 (D.C. Cir. 2021) ("*Spire*"), *cert. denied sub nom. Spire Missouri Inc. v. Envtl. Def. Fund*, 142 S. Ct. 1668 (2022) ("The Commission may issue Certificates only if, among other things, it finds that the proposed construction or extension 'is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied.'") (citing 15 U.S.C. § 717f(e)).
[250] *See supra*, Part II.A.2 (discussing Venture Global's highly questionable business practices).
[251] *See Spire*, 2 F.4th at 975 (finding that, "FERC's ostrich-like approach flies in the face of the guidelines set forth in the Certificate Policy Statement"); *see also, e.g., Motor Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983) (holding that an agency decision is arbitrary and capricious if it "entirely fail[s] to consider an important aspect of the problem") ("*Motor Vehicles Mfrs. Ass'n*").
[252] *See* Certificate Policy, 88 FERC ¶ 61,227, 61,747 (Sept. 15, 1999), *clarified*, 90 FERC ¶ 61,128, 61,748 (Feb. 9, 2000), *further clarified*, 92 FERC ¶ 61,094, 61,373 (July 28, 2000).

proposed project's need—and precedent agreements are but one factor discussed for consideration.[253] FERC's 2022 Draft Policy Statement re-confirmed this approach.[254]

An applicant like CP Express may demonstrate project need through a wide-range of evidence, such as "precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market."[255] "[T]he evidence necessary to establish the need for the project will usually include a market study…[including] available studies by [theEnergy Information Administration] … for example, showing projections of market growth."[256] Notably, precedent agreements with corporate affiliates are subject to higher scrutiny[257] and are considered less meaningful indicators of need.[258] Where a proposed project has extreme and adverse impacts on the local community, economy, ecology, and the environment—and results in the forced taking of private property—the amount of evidence necessary to establish project need and benefits *is even further heightened*.[259]

FERC failed to climb remotely close to such meaningful analytical heights in its authorization of CP Express. Specifically, FERC relied exclusively upon the existence of a single

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[253] Certificate Policy, 88 FERC ¶ 61,747-48 (1999) ("[r]ather than relying only on one test for need, the Commission will consider all relevant factors reflecting on the need for the project. These might include, but would not be limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.").
[254] 2022 Draft Policy Statement, 178 FERC ¶ 61,107, at P 54 (Feb. 18, 2022) (noting that the Certificate Policy Statement required a look at all relevant factors, and confirming that, "we find that we cannot adequately assess project need without also looking at evidence beyond precedent agreements."); Order on Draft Policy Statements, 178 FERC ¶ 61,197 (Mar. 24, 2022) (changing status of 178 FERC ¶ 61,197 to draft policy).
[255] Certificate Policy, 88 FERC ¶ 61,227, 61,747 (1999).
[256] Certificate Policy, 88 FERC ¶ 61,227, 61,747 (1999).
[257] *Spire*, 2 F.4th at 973 (finding that "evidence of "market need" is too easy to manipulate when there is a corporate affiliation between the proponent of a new pipeline and a single shipper who have entered into a precedent agreement.") (citations omitted).
[258] Certificate Policy at ¶ 61,744, 61,748.
[259] Certificate Policy at ¶ 61,748; *see also Spire*, 2 F.4th at 973.

affiliate precedent agreement, failed to examine whether any actual market need (besides the corporate self-dealing) actually supported granting the Application, and ignored the significant evidence of harm before it that supported denying Project, rendering its Authorization Order unlawful and unjust.[260]

a) Single Affiliate Precedent Agreement

FERC's seemingly exclusive reliance on a single affiliate precedent agreement to approve an alleged Section 7 pipeline is a violation of the NGA, arbitrary, capricious, and otherwise contrary to law. FERC's decision to approve the Pipeline under Section 7 of the NGA based on a single affiliate precedent agreement is both arbitrary and capricious and fails to meet the statutory requirement that a pipeline be "required by the present or future public convenience and necessity."[261] A key part of that inquiry is whether the pipeline has genuine market support.[262] A pipeline that the public cannot use or benefit from, by definition, cannot be "required by . . . public convenience and necessity."[263] Additionally, "[l]andowners should not be subject to eminent domain for projects that are not financially viable and therefore may not be viable in the marketplace."[264]

CP Express held an open season seeking bids on pipeline capacity for its proposed pipeline project during which it received no bids or other expressions of interest besides that of its corporate affiliate CP2 LNG.[265] FERC's Authorization Order dedicated a paltry three

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[260] Under the Administrative Procedure Act, an agency cannot ignore substantial evidence bearing on the agency decision. See 5 U.S.C. § 706; *see also, e.g., Motor Vehicles Mfrs. Ass'n* at 43 (holding that an agency decision is arbitrary and capricious if it "entirely fail[s] to consider an important aspect of the problem").
[261] 15 U.S.C. § 717f(e); *see also, e.g., Motor Vehicles Mfrs. Ass'n,* 463 U.S. 29, 43 (1983).
[262] Certificate Policy at ¶ 61,747-48.
[263] 15 U.S.C. § 717f(e).
[264] Certificate Policy at ¶ 61,746.
[265] Authorization Order at P 14 ("[I]t executed a binding precedent agreement with CP2 LNG for 100% of the firm transportation service provided by Phases I and II of the CP Express Pipeline Project for a term of twenty years at negotiated rates. CP Express received no other bids or expressions of interest during the open season"); *see* Application at 27 ("Venture Global

paragraphs to the foundational question of market need, finding market need for the CP Express pipeline based solely on CP Express' precedent agreement for 100% of the pipeline capacity with its corporate affiliate, CP2 LNG.[266] FERC's analysis completely ignored the substantive comments filed questioning the probative value of the alleged need,[267] noting that more than half of the Project (Phase II) may never get built and be operational,[268] and stating that CP2 LNG has less than 50% of its offtake contracted for—all on a conditioned on, among other publicly-undefined "conditions precedent," commercial operability.[269] The D.C. Circuit in *Spire* criticized such superficial practices:

> [W]e can find no judicial authority endorsing a Commission Certificate in a situation in which the proposed pipeline was not meant to serve any new load demand, there was no Commission finding that a new pipeline would reduce costs, the application was supported by only a single precedent agreement, and the one shipper who was party to the precedent agreement was a corporate affiliate of the applicant who was proposing to build the new pipeline. This is hardly surprising because evidence of "market need" is too easy to manipulate when there is a corporate affiliation between the proponent of a new pipeline and a single shipper who have entered into a precedent agreement.[270]

Application") ("No other entity bid in the open season or expressed interest in obtaining transportation capacity on CP Express").

[266] Authorization Order at PP 36-38.

[267] *See, e.g.,* Healthy Gulf, *et al.,* Scoping Comments, FERC Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20220311-5253 at 5-6 (Mar. 11, 2022) (noting that affiliate precedent agreements are generally insufficient to demonstrate need); Niskanen Center, *et al.*, Scoping Comments on Draft Environmental Impact Statement, Accession No. 20230113-5277 (Jan. 13, 2023) ("Niskanen Scoping Comments").

[268] *See supra*, Parts II.C and III.B.1.c (discussing Phase II); DOE FTA Order at 7 (noting that Phase II facilities will be in service "assuming timely and sufficient market support."); Application at 2 (acknowledging that CP2 LNG still requires off-take contracts, and construction of the Project's Phase II depends on market support).

[269] *See, e.g.* Exhibit 34f, LNG Sales and Purchase Agreement ("SPA") by and between CP2 LNG and China Gas Hongda Energy Trading Co., Ltd. (Feb. 21, 2023) (publicly-available document memorializing the agreement to FERC and the public outlining basic information; the submission of contract and details of such are submitted to FERC confidentially and unavailable to the public); *supra*, Part III.B.1.c, Table 2 (describing existing offtake agreements).

[270] *Spire*, 2 F.4th at 973.

Here, just as in *Spire*, there is a dearth of evidence supporting market need for the Project. For example, here is obviously no evidence that the proposed export pipeline would serve new load demand, as 100% of the gas is destined for overseas markets.[271] Even if FERC could consider serving new foreign load to be required by the public convenience and necessity under the NGA (which it cannot), demand for LNG is decreasing globally.[272] There is no finding that the Project will decrease costs; to the contrary, it is now well-established that LNG export can actually *increase* costs paid by domestic consumers.[273] And here, the Application is supported by a single precedent agreement with a corporate affiliate (and co-applicant), despite recent admonishments by the D.C. Circuit and other FERC Commissioners that doing so circumvents the purpose of Section 7.[274]

The recent D.C. Circuit decision in *Food & Water Watch v. FERC* is easily distinguishable as, there, FERC relied on far more than a precedent agreement to support its finding of need.[275] Further, the contract in question in *Food & Water Watch* was between non-affiliates,[276] and FERC relied heavily on a well-documented gas shortage in the relevant

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[271] Authorization Order at P 14 (stating that the CP2 LNG export facility has a binding precedent agreement for 100% of CP Express's capacity for a period of 20 years).
[272] *See supra*, Parts II.B (discussing decline in global demand for LNG as well as FERC's approval of every proposed LNG project before it); *infra*, Parts III.B.1.c and III.B.2.d.
[273] Response to Form Letters at 9-10; *see also* Response to Form Letters, Ex. 12 (U.S. Energy Information Administration, Annual Energy Outlook 2023) (concluding that "higher LNG exports create a tighter domestic natural gas market (all else held equal), increasing domestic natural gas prices").
[274] *Spire*, 2 F.4th at 973; see also *Spire STL Pipeline, LLC*, 181 FERC ¶ 61,232, P 4 (Dec. 15, 2022) (Comm'r Clements, concurring) ("Another important lesson is that the Commission must fully engage with arguments and evidence credibly challenging the probative value of a precedent agreement. The court found that the Commission's failure to do so in the Certificate Order was not "reasoned decisionmaking," but instead an "ostrich-like approach [that] flies in the face of the guidelines set forth in the Certificate Policy Statement." Although it may be simple and expedient to look only at precedent agreements and ignore other record evidence, that shortcut came at very high cost to all parties in this case, including Spire.") (citations omitted).
[275] *Food & Water Watch*, 104 F.4th at 336 (D.C. Cir. 2024).
[276] *Tenn. Gas Pipeline Co., L.L.C.*, 179 FERC ¶ 61,041, P 15 (Apr. 21, 2022) ("ConEd, *the project shipper unaffiliated* with Tennessee, states that demand for natural gas in the Westchester County service area has exceeded supply.") (emphasis added).

county that was the ultimate destination for the gas, where they *were trucking in gas to meet demand*.[277]

Similarly, in a legal challenge against FERC's authorization of Adelphia Gateway, LLC, the D.C. Circuit found FERC's finding of market need sufficient because the applicant, among other things, had "held an open season that produced precedent agreements with four different shippers for the large majority of the pipeline's capacity." And "crucially, most of the Project consists of existing pipeline that is merely changing ownership," making the four non-affiliate precedent agreements especially good evidence of demand for the pipeline's capacity.[278]

The absence here of substantial evidence supporting market need, relying exclusively on a single affiliate precedent agreement, coupled with the Project's sole focus on export and its extreme adverse harms, undermines the legitimacy of FERC's approval. FERC's authorization should be reconsidered to ensure compliance with its statutory mandate to protect the public interest.

b) Section 7 Independent of Section 3

FERC's obligation to consider market need under Section 7 exists independent of DOE's Section 3 Authority Over Exports. FERC failed to meet its obligations here and engage with the arguments and evidence "credibly challenging the probative value of a precedent agreement."[279]

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[277] *Food & Water Watch*, 104 F.4th at 347 (that "there was a natural-gas shortage in Westchester County, which was forcing ConEd to refuse service to certain new customers and to bring in compressed gas by truck during peak winter demand," "was more than enough to support a finding of need.").

[278] *Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 114 (D.C. Cir. 2022).

[279] *See Spire STL Pipeline, LLC, 181 FERC* ¶ 61,232 (Dec. 15, 2022) (Comm'r Clements, concurring, P 4) ("Another important lesson is that the Commission must fully engage with arguments and evidence credibly challenging the probative value of a precedent agreement. The court found that the Commission's failure to do so in the Certificate Order was not "reasoned decisionmaking," but instead an "ostrich-like approach [that] flies in the face of the guidelines set forth in the Certificate Policy Statement." Although it may be simple and expedient to look only at precedent agreements and ignore other record evidence, that shortcut came at very high cost to all parties in this case, including Spire.") (citations omitted).

This obligation under Section 7 applies even when the affiliate shipper is an exporter authorized by DOE under Section 3 of the NGA.[280] Contrary to FERC's assertions, nothing in Section 3 of the NGA divests FERC of its obligation to determine market need when it considers whether a Section 7 pipeline is "required by the present or future public convenience and necessity."[281] The extraordinary power of eminent domain granted under Section 7 further necessitates a rigorous analysis of market need.[282]

For that reason, the Authorization Order's disclaimer of responsibility to consider "market demand for LNG," contained in the discussion of the Section 3 public interest standard, is misplaced.[283] FERC disclaims this authority on the grounds that "the Secretary has not delegated to the Commission any authority to approve or disapprove the import or export of the commodity itself."[284] But that is a red herring. FERC's obligation to consider the evidence before it on need arises from FERC's obligations under Section 7.[285] FERC's Authorization Order fails to address that DOE's approval or disapproval of gas export under the more lenient standard of Section 3 is not dispositive of FERC's approval or disapproval of the export pipeline proposed under the more stringent and heightened threshold required by Section 7. Congress purposefully created a more exacting standard under Section 7 because Section 7 certificates carry the power of eminent domain.

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[280] *Compare* 15 U.S.C. § 717b(a), *and* 15 U.S.C. § 717f; *see Earthreports, Inc. v. FERC*, 828 F.3d 949, 952-53 (D.C. Cir. 2016) (discussing the differences between these provisions). In summary, the fact that CP Express would supply exports subject to DOE jurisdiction does not limit FERC's authority to look "behind" precedent agreements to determine need.
[281] 15 U.S.C. § 717f(e).
[282] *See* Certification Policy, ¶ 61,746.
[283] Authorization Order at P 27.
[284] Authorization Order at P 27.
[285] *See* 15 U.S.C. § 717f.

FERC argues that such determinations are strictly within DOE's purview in its approval of the export commodity, citing to itself and two D.C. Circuit opinions.[286] However, none of FERC's cited sources are dispositive, nor could they be. Inquiring into whether the Pipeline's sole customer is likely to become commercially viable and serve any alleged public interest does not intrude on any of the authority provided to DOE under Section 3. And DOE's approval or disapproval of export of the gas as a commodity is not dispositive of FERC's approval or disapproval of the proposed export facilities, including and especially an export pipeline proposed under the more stringent and heightened threshold of Section 7.[287]

FERC cites *Alaska Gasline Development Corp*., in which there was no Section 7 pipeline. There, FERC authorized a 800+ mile export pipeline and related LNG facility under Section 3, and disclaimed any authority or responsibility to examine economic claims.[288] FERC next cites the D.C. Circuit in *Freeport*, which found that it was the *DOE's* responsibility–not FERC's–to consider the environmental consequences under NEPA of exporting gas from the LNG terminal.[289] The court also explicitly noted that it was not deciding, because the petitioners had not challenged, "the propriety or scope of the Commission's delegated authority under the Natural Gas Act, or the interplay between the Commission and the Department of Energy."[290] And FERC cites the court in *Sabine Pass*, which held that "the Department of Energy alone has the legal authority to authorize Sabine Pass to increase commodity exports of liquefied natural

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[286] Authorization Order at P 27. These issues were raised in Jordan Cove, but they were never resolved by the D.C. Circuit because the project was canceled while the challenge against the FERC's authorization was pending. See *supra*, fn. 175 (discussing legal challenge against FERC's authorization of the Jordan Cove LNG Project).
[287] In any event, FERC's approval would not survive a Section 3 public interest inquiry either.
[288] *Alaska Gasline Dev. Corp*., 171 FERC ¶ 61,134, at P 15 (May 21, 2020) ("we decline to address commenters' economic claims (e.g., the state of world demand for LNG), which are relevant only to the exportation of the commodity of natural gas, which is within DOE's exclusive jurisdiction, and are not implicated by our limited action of reviewing proposed terminal sites").
[289] *Freeport*, 827 F.3d 36, 47-49 (D.C. Cir. 2016).
[290] *Freeport*, 827 F.3d at 45.

gas [and] the challenged Commission orders therefore are not the legally relevant cause of the indirect effects Sierra Club raises [under NEPA]."[291] Each of those cases concerned FERC's review of the siting, construction, and operation of export facilities under Section 3; none of those cases in any way limit FERC's obligation to consider market need under Section 7 and the Certificate Policy.

Nor does the D.C. Circuit's recent opinion in *Alabama Municipal Distributors Group v. FERC*, ("*Alabama Municipal*") absolve FERC of its statutory authority and obligation to consider evidence of market need in its consideration of authorization of a Section 7 pipeline, including one transporting gas for export. That case involved a challenge to FERC's NEPA review for a pipeline expansion project in the Southeast, where the gas transported on the pipeline would be delivered to an unaffiliated[292] LNG export terminal.[293] There, the court held that FERC was not required to analyze indirect environmental impacts from the gas for export in its NEPA analysis.[294] The court found that "agency has no obligation to gather or consider environmental information [in its NEPA analysis] if it *has no statutory authority to act on that information.*"[295] This case is inapposite for several reasons, including that the claims here challenge FERC's failures to meet its statutory obligations and perform its legally mandated duties under Section 7, and it certainly has the statutory authority—and the obligation to the American public—to do so.

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[291] *Sabine Pass*, 827 F.3d 59, 68 (D.C. Cir. 2016).
[292] *See* Commissioner Glick, concurring, P1, *Tennessee Gas Pipeline Co., L.L.C. S. Nat. Gas Co., L.L.C.,* 178 FERC ¶ 61,199, 62,368 (2022) (finding the fact that the contract was between unaffiliated corporate entities constituted evidence of need for the project, which was not rebutted, and that the "project's benefits outweigh its adverse impacts," in finding that the project was in the public convenience and necessity).
[293] *Alabama Municipal*, 100 F.4th at 210-11.
[294] *Alabama Municipal*, 100 F.4th at 213-14.
[295] *Alabama Municipal*, 100 F.4th at 213 (emphasis added) (internal citations omitted).

FERC's obligation to determine whether there is a need for a pipeline project under Section 7 applies even when the affiliate shipper is an exporter authorized by DOE under Section 3 of the NGA. FERC offers no explanation as to how or why consideration of the evidence before it would intrude on DOE's authority.

c) Market Misconceptions and Misleading Assertions

FERC cannot approve a pipeline under NGA Section 7 without a robust inquiry into whether the pipeline is required by the public convenience and necessity.[296] Had FERC looked beyond the single affiliate precedent agreement, as it was legally required to do, it would have found unrebutted evidence showing no market need or public use for this Project. The Project is not designed to service any domestic load growth–it only ships gas intended for consumption in foreign markets. A pipeline that the public cannot use or benefit from by definition cannot be "required by the . . . public convenience and necessity."[297]

Moreover, this Project will increase costs for domestic consumers and harm the domestic market.[298] This, in turn, will harm the competitiveness of the domestic manufacturing sector.[299] Simply stated, the Project is not intended to service any domestic market need contemplated by the NGA.[300]

Even if Section 7 of the NGA had been intended to authorize pipelines serving foreign market need (it was not), here, the record does not support a finding of market need. CP Express, if built, will be operating at less than 50% capacity[301] and the Facility will potentially be

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[296] *Spire*, 2 F.4th at 959 (D.C. Cir. 2021); Certificate Policy at ¶ 61,747-48; *See Spire STL Pipeline, LLC, 181 FERC* ¶61,232 (Dec. 15, 2022) (Comm'r Clements, concurring, P 4).
[297] 15 U.S.C. § 717f(e).
[298] *See, e.g.* Response to Form Letters at 9-10.
[299] Response to Form Letters at 9-10.
[300] Niskanen Scoping Comments at 5-7.
[301] *See supra*, Part II.C (discussing that Phase II of the Project, which consists of half the permitted capacity, is contingent upon "timely and sufficient market support" manifesting itself).

indefinitely commercially inoperable.[302] The Pipeline only exists to supply the Facility, and therefore, the Pipeline's capacity will not be used unless someone is purchasing LNG from the Facility. CP2 LNG itself made it clear that Phase II of the Project—comprising 2,200,000 Dth/day of service (or half of the Project's estimated capacity)[303]—is *contingent* upon a future determination of "sufficient market demand."[304] Thus the Facility currently has contingent contracts for less than 50% of its nameplate capacity, conditioned on commercial operability, as well as other undisclosed, non-public conditions.[305] The available public information is summarized below based on FERC and DOE[306] data:

[302] *See supra*, Part II.A.2 (discussing Venture Global's highly questionable business practices).
[303] *See* Authorization Order at P 55; Application at 14.
[304] Exhibit 30, *Venture Global CP2 LNG, LLC*, DOE Order No. 4812, DOE Docket No. 21-131-LNG at 7 (Apr. 22, 2022) ("DOE FTA Order") ("CP2 LNG states that it expects to have the Phase 1 facilities in-service by mid-2026, with the Phase 2 facilities to follow by '12 or fewer months after the first phase,' *assuming timely and sufficient market support*.") (emphasis added); Application at 7 ("The timing for construction of Phase 2 will depend upon market demand and the contracting by CP2 LNG for LNG off-take agreements; but, *assuming timely market support,* construction of Phase 2 would begin approximately twelve months after the start of Phase 1 construction.") (emphasis added).
[305] *See, e.g.,* Exhibit 34f , LNG Sales and Purchase Agreement by and between CP2 LNG and China Gas Hongda Energy Trading Co., Ltd. (Feb. 21, 2023) ("The obligations to sell and deliver, and to purchase and pay for, LNG under the contract become effective on the Commercial Operation Date of Phase 1 of the CP2 LNG Facility, provided that *all conditions precedent* are satisfied or waived.").
[306] *See, e.g*. Exhibit 33, *Venture Global CP2 LNG, LLC,* Semi-Annual Progress Report, FE Docket No. 21-131-LNG (Apr. 1, 2024), available at https://www.energy.gov/sites/default/files/2024-04/CP2%20April%201_%202024%20DOE%20Progress%20Report%20Draft%20%28final%29%20%28002%29.pdf.

Table 2. Public Summary of Delivery Contracts[307]

Company	Date	Amount (mtpa)
NFE North Trading, LLC	03/02/2022	1.0
ExxonMobil LNG Asia Pacific, a business name of ExxonMobil Asia Pacific Pte. Ltd.	04/29/2022	1.0
EnBW Energie Baden-Württemberg AG	executed 06/10/2022 amended 09/29/2022	1.0
Chevron U.S.A. Inc.	06/15/2022	1.0
INPEX Energy Trading Singapore Pte. Ltd.	12/26/2022	1.0
China Gas Hongda Energy Trading Co., Ltd.	02/21/2023	1.0
JERA Co., Inc.	04/27/2023	1.0
WINGAS GmbH	06/20/2023	2.25
	Total Firm Offtake	**9.25**
	Total Peak Capacity	**28.0**
	Total Nameplate Capacity	**20.0**

As of the date of FERC's authorization, the Project has only received the statutorily required authorization from DOE to export to FTA countries, which include:"Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore."[308]

Although CP2 LNG's application to export to non-FTA countries remains pending before DOE, on January 26, 2024, DOE announced a temporary pause on approval of new LNG exports to non-FTA countries, which included CP2's pending application for such approval before

[307] Exhibit 34a-f, U.S. Dep't of Energy Office of Fossil Energy and Carbon Mgmt., CP2 LNG Facility Long-Term Contract Information and Registrations at U.S. LNG Export Facilities (June 20, 2023), available at https://www.energy.gov/fecm/articles/venture-global-cp2-lng-llc-facility (last accessed July 28, 2024).
[308] *See* Exhibit 30, DOE FTA Order at 9.

DOE.[309] It therefore remains uncertain whether–and when–CP2 LNG will receive such authorization.

DOE's approval of the Project's exports to FTA countries did not entail any determination of the strength of the market for such exports, or that they were in fact likely to occur.[310] Moreover, in DOE's 2020 approval of Venture Global's CP1 request to export to non-FTA countries, DOE stated that "it is far from certain that all or even most of the proposed LNG export projects will ever be realized because of the time, difficulty, and expense of commercializing, financing, and constructing LNG export terminals, as well as the uncertainties inherent in the global market demand for LNG."[311] FERC's certification of an interstate pipeline under Section 7, amid these profound market uncertainties and without any inquiry into the market for LNG, was arbitrary and capricious.

Furthermore, the record includes unrebutted evidence showing that global gas markets, and LNG markets in particular, are saturated and are unlikely to prove more favorable to the Project in the future.[312] Given that roughly 73% of FERC's approved LNG facilities have yet to be constructed and become operational, representing an additional 35.93 Bcf/d of export

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[309] Exhibit 28, Dep't of Energy Fossil Energy and Carbon Mgmt., *The Temporary Pause on Review of Pending Applications to Export Liquefied Natural Gas* (Current as of Feb. 2024) ("DOE Fact Sheet"), available at https://www.energy.gov/sites/default/files/2024-02/The%20Temporary%20Pause%20on%20Review%20of%20Pending%20Applications%20to%20Export%20Liquefied%20Natural%20Gas_0.pdf (Last accessed July 9, 2024). A judge in the U.S. District Court for the Western District of Louisiana issued a temporary injunction purports to stay the DOE LNG Pause. *See Louisiana v. Biden,* W. D. LA, Case 2:24-cv-00406 Memorandum Ruling, (Doc. 72, July 1, 2024). That ruling, however, has no practical effect because the court has not ordered DOE to rule on any given LNG export application at any specific time. As a consequence, DOE can continue preparing the various reports necessary to determine whether granting additional export applications, including that for the CP2 project, are in the public interest.

[310] Exhibit 30, DOE FTA Order.

[311] Exhibit 35, *Venture Global Calcasieu Pass, LLC*, Opinion and Order Granting Long-term Authorization to Export Liquified Natural Gas to Non-Free Trade Agreement Nations, DOE/FE Order No. 4346, FE Docket No. 13-69-LNG (consolidated) (Mar. 5, 2019), available at https://www.energy.gov/sites/prod/files/2019/03/f60/ord4346.pdf (Last accessed July 9, 2024).

[312] *See supra*, Part II.B; Response to Form Letters at 16-19, Exs. 19-29.

capacity,[313] any alleged public interest of this proposed Project is illusory at best—especially when constructing the Project on top of an already overburdened community and oversaturated market.[314] As of February 2024, before the DOE's temporary pause on LNG export approvals to non-FTA countries, DOE had already authorized "48 billion cubic feet per day (Bcf/d) of U.S. natural gas–*an amount equal to over 45% of current domestic production*."[315]

Moreover, given that there are two other Venture Global facilities operating at less than nameplate capacity, one right next to the proposed Project,[316] and Venture Global's touting of its experience at increasing output from such facilities,[317] the Project's only impetus appears to be "if we build it, they will come." But this is not *Field of Dreams;* it's more like a field of nightmares for the good folks living in Cameron and the surrounding areas. In the two years after it began shipping LNG cargoes to foreign markets, CP1 has yet to declare commercial operations

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[313] *See supra*, Part II.B (Table 1 FERC-Approved LNG Export Projects), outlining all the LNG projects approved by FERC that have not yet been built. Of the 19 projects yet to be built out of a total of 26 FERC- approved LNG facilities, 12 have not formally reached a final investment decision needed to begin construction.

[314] Niskanen Scoping Comments, Ex. 11 (K. Hallahan, *et al.*, "CERAWEEK: Glick Says FERC Permitting Does Not Limit More LNG Exports to Europe," S&P Global (noting the capacity available from myriad approved but unbuilt LNG facilities, "Glick suggested that the ball is in the court of LNG developers who have applied for and received FERC permits but have not yet gone through with the projects.")); Niskanen Scoping Comments, Ex. 12 (A. Shaykevich, "The Market Can't Handle Fast-Tracking LNG. Neither Can the Climate," Oil and Gas Watch Newsletter ("The addition of the 18 FERC-approved but yet-to-be-constructed LNG facilities to the market "would expand export capacity enough to supply half of projected global needs in 2030."); *see also*, Response to Form Letters at 17 and Exs. 24 & 25 (demonstrating that 70 MTPA of nameplate LNG liquefaction and export capacity is currently under construction, and an additional 90 MTPA has been approved by FERC and DOE, but has not yet begun construction).

[315] Exhibit 28, U.S. Dep't of Energy, The Temporary Pause on Review of Pending Applications to Export Liquefied Natural Gas DOE Fact Sheet, at 1 (Feb. 2024) ("DOE Fact Sheet") (citing February 2024 Short-Term Energy Outlook from the U.S. Energy Information Administration) (emphasis added) *available at* https://www.energy.gov/sites/default/files/2024-02/The%20Temporary%20Pause%20on%20Review%20of%20Pending%20Applications%20to%20Export%20Liquefied%20Natural%20Gas_0.pdf (Last accessed July 21, 2024).

[316] Application at 6. Notably, Venture Global acknowledges that Plaquemines' Phase 2 investment and construction is subject to market demand for LNG exports.

[317] Application at 7.

and has been summoned to arbitration by its customers due to its failure to perform under long-term contracts.[318] Venture Global has demonstrated that it is not a reliable or trustworthy market actor, and its representations regarding its expertise runs counter to its performance. In any event, such a purpose–of increasing private market share or bolstering fossil fuel export markets, even if either were legitimate or did not run counter to the public interest–could be achieved by constructing or reconfiguring existing approved facilities, including Venture Global's own existing facilities.

FERC did not dispute the evidence provided regarding the dismal prospects for the Project, the lack of public use, or that less than 100% of the capacity has been conditionally contracted for on vague requirements of obtaining "market support"[319]; instead, it merely argued that this evidence is irrelevant, and that it does and cannot consider it.[320] FERC's lack of engagement with the evidence before it opens the door for further affiliate abuse, e.g., when parent companies can create newly formed pipeline subsidiaries, contract with their LNG affiliates, and justify the "need" for a major infrastructure project and obtain the highly desirable 14% return on equity, falls far below FERC's statutory obligations.[321] Put simply, FERC's refusal to confront evidence before it, bearing on a central question of whether the Project has a

[318] *See generally*, *supra*, Part II.A.2 (discussing Venture Global's questionable business practices); *see also* Exhibit 36, M. Rashad and C. Williams, *Shell, BP Pursue Arbitration Claims Against Venture Global LNG,* Reuters (July 12, 2023), available at https://www.reuters.com/business/energy/shell-bp-pursue-arbitration-claims-against-venture-global-lng-2023-07-12/ (last accessed July 18, 2024).
[319] Application at 2 (acknowledging that CP2 LNG still requires offtake contracts and construction of Project Phase II depends on market support).
[320] *See, e.g.,* Authorization Order at P 27 ("[W]e decline to address commenters' and protestors' economic claims (e.g., those regarding market demand for LNG), which are relevant only to the exportation of the commodity of natural gas, a matter within DOE's exclusive jurisdiction, and not implicated by our limited action of reviewing proposed terminal sites and facilities.").
[321] *See* Authorization Order at P 57 (authorizing a 14% return on equity for the CP Express Pipeline project).

demonstrated market need or will provide any benefits whatsoever, was arbitrary, capricious, and a violation of the NGA.

2. FERC failed to articulate any pertinent public benefits to warrant Section 7 authorization.

FERC erred in authorizing the Project under Section 7 of the NGA by failing to articulate *any* pertinent public benefits to justify authorization. The "need" in this Project is entirely derived from an agreement with a corporate affiliate that will export the gas to foreign markets. It thus has no nexus with domestic usage, sale, or ultimate consumption. FERC's authorization of this Project with no identified public benefit is the very definition of arbitrary and capricious.

The purpose of the NGA was to protect U.S. consumers from corporate abuse,[322] and to encourage the orderly development of gas infrastructure at reasonable prices.[323] Thus, the needs analysis must center on how the Project benefits U.S. consumers. The Commission's Certificate Policy Statement provides:

> [P]ublic benefits may include such factors as the environmental advantages of gas over other fuels, lower fuel costs, access to new supply sources or the connection of new supply to the interstate grid, the elimination of pipeline facility constraints, better service from access to competitive transportation options, and the need for an adequate pipeline infrastructure.[324]

Public benefits also include: meeting unserved demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, providing new interconnects that improve the interstate grid,

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[322] *See City of Clarksville, Tenn. v. FERC,* 888 F.3d 477, 479 (D.C. Cir. 2018) (citing *NAACP v. Fed. Power Comm'n,* 425 U.S. 662, 669-670 (1976); *Federal Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 610 (1944) (a "principal aim" of the NGA was to "protect[ing] consumers against exploitation at the hands of natural gas companies") (internal quotation marks omitted); *Atlantic Ref. Co. v. PSC of New York*, 360 U.S. 378, 388 (1959) ("The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges.").

[323] *See NAACP*, 425 U.S. at 669-70; *accord Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1307 (D.C. Cir. 2015).

[324] Certificate Policy, 88 FERC ¶ 61,227, 61,744.

providing competitive alternatives, increasing electric reliability, or advancing clean air objectives.[325]

Export pipelines, in general, do not provide any of the benefits above, and here, it is clear that the affiliate agreement provides *none* of these public benefits. What's more, the Authorization Order does not articulate *any benefits* related to the construction and operation of the CP Express Pipeline; no findings of benefits nor discussion thereof.[326] In its discussion of the CP2 LNG facility under Section 3, the Authorization Order merely acknowledges claims of international need expressed in comments from corporate entities slated to financially benefit from the Project, noting "that the project will contribute to energy security in Japan, Germany, and globally."[327] FERC neglects to address whether, and if so how, it relies on these alleged international benefits for its public interest finding under Section 7, or how these alleged global benefits will ultimately benefit the U.S. domestic public interest.[328]

To the extent that FERC may offer a response and adopt benefits alleged by the Venture Global, its affiliates, and the industry writ large on rehearing, Intervenors discuss below why such benefits are dramatically overstated or completely fabricated. Some Intervenors properly raised these arguments in a previous FERC filing prior to issuance of the Authorization Order; however, FERC utterly fails to discuss or even acknowledge these points in the Authorization Order.[329]

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[325] Certificate Policy, 88 FERC ¶ 61,227, 61,748.
[326] Authorization Order at PP 33-75.
[327] Authorization Order at P 25.
[328] *See supra*, Part III.B.2 (outlining several reasons why such reliance is unlawful); Authorization Order, Clements Dissent, P 1, n. 5 ("We have no record on the economic or other benefits from LNG exports and therefore cannot weigh them against the adverse impacts from construction and operation of the CP2 LNG Project.").
[329] *See generally,* Response to Form Letters (Accession No. 20240614-5192).

a) Investment in Facilities and Equipment

Venture Global's business model is premised on the strategic avoidance of domestic investment in facilities, equipment, and labor. As was the case in Venture Global's CP1 LNG and Plaquemines LNG facilities, the Project will not be constructed in the U.S. using American equipment, but rather the Project will be assembled on site from "modules" that are constructed overseas and shipped intact to the United States.[330]

Although this "modular construction" technique improves Venture Global's profit margin, it significantly decreases the domestic economic benefits of the Project. It ensures that much of the investment in facilities, equipment, and labor will benefit the economies of foreign nations–not the United States. In fact, Venture Global admits that only 10% of Project costs will be spent locally or regionally.[331] FERC should have taken this factor into account.

b) On Any Alleged Employment Benefits

Venture Global's offshore construction model also reduces the number and tenure of domestic jobs associated with the Project. Many of the engineering and construction jobs created by the Project will go to foreign workers.[332] Furthermore, modular construction significantly reduces the timeline to construct the facility as compared to facilities constructed domestically, which, in turn, dramatically reduces the tenure of any temporary construction jobs associated

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[330] Response to Form Letters, Ex. 14 (S. Sneath, Louisiana Illuminator, *Does Venture Global's Louisiana LNG plant profit from pollution?*)("In a rush to build an LNG export terminal as fast as possible in coastal Louisiana, in August 2019, Venture Global commissioned Baker Hughes to construct parts of the facility in Italy."); *see also*, Exhibit 37, Venture Global LNG Press Release, *Venture Global Calcasieu Pass Announces Arrival of First Factory-Fabricated Liquefaction Trains*, (Nov. 10, 2020),available at https://ventureglobalLNG.com/press/venture-global-calcasieu-pass-announces-arrival-of-first-factory-fabricated-liquefaction-trains/(last accessed July 18, 2024); Exhibit 38, LNG Prime Staff, *Venture Global gets first Plaquemines LNG modules*, (Aug. 11, 2023), available at https://lngprime.com/americas/venture-global-gets-first-plaquemines-lng-modules/88703/(last accessed July 18, 2024).

[331] FEIS, at 4-263.

[332] *See* Application, at 6 ("The facility design largely follows the successful approach pioneered by Venture Global with its Calcasieu Pass and Plaquemines LNG projects.").

with the Project.[333] This significantly decreases any employment benefits resulting from the Project.

The actual number of permanent jobs associated with the Project is also unclear. Venture Global's Application estimated that approximately 250 full-time workers would be employed at the Facility.[334] Project advocates, however, submitted a series of Form Letters that put this number at 130.[335] If true, the information in the Form Letters reflects a significant decrease in full-time employees and reflects the uncertainty surrounding how many jobs will be associated with the Facility. FERC should have evaluated this discrepancy, required Venture Global to explain this discrepancy and clarify how many full-time jobs are expected at the Facility, and applied Venture Global's explanation to its assessment of the alleged economic benefit of the Project to Southwest Louisiana.

While the job prospects at the Facility are unknown, it is clear that most of the jobs associated with the Project will be filled by non-residents. During construction of CP1,local hotels and makeshift RV parks were packed with out-of-state contract workers.[336] Intervenor Anthony Theriot invested over $40,000 to convert property he owns to be used as an RV park for these workers.[337] The workers who occupied his property were from out-of-state.[338] After he had operated for a couple of months, a large national company built a 500-space RV park and

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[333] Exhibit 39, Venture Global Press Release, *Venture Global LNG and JERA Announce Departure of Inaugural Commissioning Cargo From Calcasieu Pass* (Mar. 1, 2022), available at https://ventureglobalLNG.com/press/venture-global-lng-and-jera-announce-departure-of-inaugural-commissioning-cargo-from-calcasieu-pass/#:~:text=Calcasieu%20Pass%20now%20holds%20the,constructed%20in%20the%20United%20States(last accessed June 7, 2024) ("Calcasieu Pass now holds the global record for the fastest large-scale greenfield LNG facility ever to be built").
[334] Application at 42 (estimating "250 permanent workers after completion of Phase 2").
[335] *See*, *e.g.*, Comments of J. Brown, Accession No. 20240327-0010 (Mar. 27, 2024).
[336] Response to Form Letters, Ex. 4 (Declaration of A. Theriot), at ¶ 26.
[337] Response to Form Letters, Ex. 4 (Declaration of A. Theriot), at ¶ 26.
[338] Response to Form Letters, Ex. 4 (Declaration of A. Theriot), at ¶ 26.

Venture Global contracted with that company to house its out-of-state workforce.[339] Due to this arrangement between Venture Global and the new RV park, Mr. Theriot barely broke even on his investment.[340] And now that construction on CP1 has concluded, the various RV parks around Cameron sit vacant.[341]

Local residents' observation that the majority of the construction laborers at the CP1 LNG facility were from out-of-state is consistent with the results of a field survey of the CP1 LNG facility construction by the Southeast Laborers' District Council, which observed that roughly 75% of the license plates were from out-of-state.[342]

Furthermore, an analysis of local jobs data belies the claim that LNG facilities are responsible for increased job opportunities in the communities where they are located. Comments filed in November 2023 by the Institute for Energy Economics and Financial Analysis ("IEEFA") looked at the impact of the Sabine Pass LNG facility, operational since 2016, and concluded that "the project did not generate significant, vibrant new business development with indirect new jobs, and the local community did not thrive consistent with the prevailing economic theory."[343]

The same U.S. Census Bureau dataset referenced in IEEFA's comments shows that the CP1 LNG Facility has had almost no discernible influence on local employment numbers. In 2020, the Bureau estimated that there were 3,078 civilian jobs in Cameron Parish. During construction of the CP1 LNG Facility, in 2021, that number *dropped* to 2,558. In 2022, after CP1 began LNG operations, the total number of civilian jobs in Cameron Parish did increase: by only

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[339] Response to Form Letters, Ex. 4 (Declaration of A. Theriot), at ¶ 27.
[340] Response to Form Letters, Ex. 4 (Declaration of A. Theriot), at ¶ 28.
[341] Response to Form Letters, Ex. 4 (Declaration of A. Theriot), at ¶ 28.
[342] Environmental Comments Submitted on Behalf of Southeast Laborers' District Council, at 11 CP2 LNG and CP Express Projects, Accession No. 20220311-5234 (Mar. 11, 2022).
[343] IEEFA Comments re Final Authorization, at 4, CP2 LNG and CP Express Projects, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20231114-5044 (Nov. 14, 2023).

26.[344] Thus, to the extent the CP1 LNG Facility created any jobs, those new jobs were offset by losses elsewhere.

A trip around Cameron belies any notion that LNG terminals create a boom town. Over two years after the CP1 LNG Facility began operations, Cameron continues to worsen. Except for the road to the LNG plant, the Parish roads are potholed and deteriorating. There is no longer a functioning church in town. The abandoned church has become the residence for a family of racoons. The nearest hospital is over an hour away. Shipwrecked boats sit miles inland from the Gulf. Many homes still have yet to be rebuilt after Hurricane Laura in 2020, as their residents have moved on. Many others have fled precisely due to the influx of LNG facilities. In 2005, Cameron Parish had over 10,000 residents; today, fewer than 5,000 people remain.[345]

c) Cameron Parish Will Not Get Any 'Indirect Benefits'

To the extent the Project does create a small number of new permanent jobs, any alleged economic benefit of those jobs is far outweighed by the costs to Cameron taxpayers. Venture Global has stated that the Project may apply for Louisiana's Industrial Tax Exemption Program ("ITEP"), which would provide an *80% tax abatement on ad valorem tax for a five-year period with an almost certain extension for another five-year term*.[346] Venture Global also will likely apply to Louisiana's Quality Jobs tax incentive program, which would provide up to a 6% rebate

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[344] Response to Form Letters, Ex. 15 (U.S. Census Bureau, Table S2401, Occupation by Sex for the Civilian Employed Population 16 Years and Over (for the years 2020-2022)).
[345] Response to Form Letters, Ex. 16 (N. Cunningham, Gas Outlook, *LNG Expands on Louisiana's Vanishing Coastline*).
[346] Application, Volume 2, Resource Report 5 - Socioeconomics, at 5-35. An analysis by Together Louisiana concluded that 99.95%of ITEP extension applications have been approved. Exhibit 40, Together Louisiana, *Giving Away the Farm: A Cost-Benefit Analysis of the Industrial Tax Exemption Program in East Baton Rouge Parish, 1998-2017*, p. 3 (Aug. 2017) (available at https://d3n8a8pro7vhmx.cloudfront.net/togetherbr/pages/2303/attachments/original/1503346818/Final_TBR_Giving_away_the_farm_8-17-2017.pdf?1503346818, last accessed July 18, 2024)).

on annual payroll expenses for up to 10 years, and either (1) a state sales/use tax rebate on capital expenses or (2) a 1.5% Project facility expense rebate for qualifying expenses.[347]

Venture Global's utilization of these programs will greatly diminish the economic benefits of the Project. For example, Venture Global obtained ITEP benefits of $834 million and Quality Jobs benefits of $29.8 million over 10 years at its Plaquemines facility in Southeastern Louisiana.[348] Assuming the accuracy of Venture Global's estimated 300 full-time employees at the Plaquemines facility, this translates to a roughly $2.9 million corporate tax break for every job created. The corporate hand-outs related to the CP1 LNG Facility appear to be even more aggressive–Venture Global will avoid paying $3.4 billion in property taxes over 10 years for that facility through the ITEP program.[349]

FERC must consider the impact of these tax breaks on any analysis of Project benefits. The tax revenue for this massive Project would otherwise be devoted to the local community and the Parish. The revenue would have been used to make much-needed infrastructure improvements, improve schools, provide health care, fund sheriff's offices, and properly equip fire departments. Yet Cameron Parish and its residents will never realize any such benefits. Cameron Parish does not have a sales tax, and so the only tax benefits it would otherwise have realized are from property and payroll taxes, which will be subject to corporate tax breaks.

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[347] Exhibit 41, Louisiana Economic Development – Quality Jobs (available at https://www.opportunitylouisiana.com/business-incentives/quality-jobs, last accessed July 18, 2024); Exhibit 42, W. Patrick, The Center Square, *Governor Points to 34 Economic Development Projects in 2021* (Dec. 30. 2021) (available at https://www.stmarynow.com/state-business/governor-points-34-economic-development-projects-2021, last accessed July 18, 2024).

[348] Exhibit 43, R. Stewart, The Acadiana Advocate, *Multimillion-dollar Tax Breaks Approved for Plaquemines LNG, Louisiana Green Fuels* (Jan. 20, 2023) (available at https://www.theadvocate.com/acadiana/news/business/multimillion-dollar-tax-breaks-approved-for-plaquemines-lng-louisiana-green-fuels/article_6c62b8f0-98f5-11ed-8a87-4b1b4c9530e9.html, last accessed July 18, 2024).

[349] Response to Form Letters, Ex. 17 (S. Sneath, The Lens, *Venture Global Could Be Taking More Than it Gives in Plaquemines Parish)*.

Any alleged "indirect economic benefits" are illusory. A comprehensive analysis of Louisiana's ITEP program by the Ohio River Valley Institute compared ITEP utilization against various economic indicators on a parish-by-parish basis.[350] That study concluded that *projects that receive ITEP tax breaks have no statistically significant correlation with job growth or personal income growth.*[351] In fact, the study found that *parishes with the lowest rate of ITEP utilization often had the highest rates of job and income growth.*[352]

In short, the Project will not provide any benefit to the local community in Cameron Parish. Construction jobs will be performed by out-of-state workers, some portion of the permanent jobs created will displace existing jobs in other industries, and to the extent there are new jobs created, those jobs are so heavily subsidized that they appear to be a losing proposition for the local economy.

d) Alleged Support of National Security

Since Russia's invasion of Ukraine, the LNG industry has propagated the narrative that increased LNG exports will bolster U.S. national security by supplying LNG to strategic allies, this Project being no exception.[353] This claim was echoed in Venture Global's Form Letters,[354] suggesting that new LNG exports will significantly support the front lines in Ukraine, as well as other alleged national security benefits. However, as demonstrated (and promptly ignored by FERC) on the record, this argument is not substantiated by market data or geopolitical

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[350] Response to Form Letters, Ex. 18 **(**N. Messenger, Ohio River Valley Institute, *Giving Away the Future: How Louisiana's Industrial Tax Exemption Program Has Failed to Produce Prosperity*).
[351] *Id*. at pp. 15-18.
[352] *Id*.
[353] *See, e.g.*, Authorization Order at P 25 (noting industry filings touting the alleged security energy benefits of the project).
[354] Venture Global's Form Letters were discredited via a thorough analysis on the record, (*see, e.g.* Response to Form Letter, at 16-19), which FERC ignored and failed to reference or acknowledge in its Authorization Order, but not before making passing reference to "comments in support of the project, citing an increase in job opportunities and local economic investment." Authorization Order at P 19.

realities.[355] For example, an analysis of the joint U.S. and E.U. response to the Ukraine crisis exposes this industry talking point as pure subterfuge.[356] In fact, a group of over 60 members of the European Parliament called this claim "a false depiction of European energy needs being used as an excuse by the fossil fuel industry and their allies to dramatically expand US LNG exports to the global market."[357] Additionally, a German Parliamentarian remarkably filed a comment on *this docket* stating that contracts for LNG "contradict Germany's climate targets and the aim of phasing out all fossil fuels as quickly as possible."[358] There additionally were comments from German civil society groups telling FERC, "Germany has never had a gas shortage and was able to cope with the winter of 2022 without its own terminals."[359] There is no mention of any of this in FERC's Order.

Nor is there a burgeoning market for the Project's LNG exports among our allies in Asia. Japan and South Korea have historically anchored LNG demand in the region, but demand in both nations is on the decline. In fact, Japan has experienced consistent year-over-year demand

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[355] Response to Form Letters, pp. 16-19; *id*., Ex. 19 (Toussaint, M., *et al*., *La lettre de 60 parlementaires de toute l'Europe à Joe Biden*) *id*., Ex. 20 (The White House, Joint Statement on U.S.-E.U. Task Force on Energy Security); *id.*, Exs. 21-22 (documenting record decreases in European gas demand in 2022 and 2023); *id*., Ex. 27 (IEEFA Global LNG Outlook, 2024-2028); *see also* Comments of German Civil Society, CP2 LNG and CP Express Projects, Accession No. 20240117-5018 (Jan. 16, 2024); Comments of Kathrin Henneberger, German Member of Parliament, CP2 LNG and CP Express Projects, Accession No. 20240116-5255 (Jan. 15, 2024).
[356] Response to Form Letters, Ex. 20 (The White House, Joint Statement on U.S.-E.U. Task Force on Energy Security) (showing that increased European demand for LNG was satisfied using existing LNG export capacity); *see also id.*, Exs. 21-22 (documenting record decreases in European gas demand in 2022 and 2023).
[357] Response to Form Letters, Ex. 19 (Toussaint, M., *et al*., *La lettre de 60 parlementaires de toute l'Europe à Joe Biden*) ("The demand for new gas from industry voices in Europe is a false one, designed to lock-in the construction of new, polluting infrastructure that will quickly become stranded assets, the costs of which will be passed onto the public."); *see also* Comments of German Civil Society, CP2 LNG and CP Express Projects, Accession No. 20240117-5018 (Jan. 16, 2024) at p. 2.
[358] Comments of Kathrin Henneberger, German Member of Parliament, at 1, CP2 LNG and CP Express Projects, Accession No. 20240116-5255 (Jan. 15, 2024).
[359] Comments of German Civil Society, at 2, CP2 LNG and CP Express Projects, Accession No. 20240117-5018 (Jan. 16, 2024).

reductions since 2014 (with the exception of a minor increase in 2017).[360] As a result, Japan's gas utilities now face an over-contracted position of roughly 11 million tons per year for the remainder of the decade (even before the Project), and are focused on selling the fuel abroad.[361] Thus, while Japanese utilities JERA and Inpex have contracted gas from the Project, it is almost certain that gas will be resold elsewhere (and there is no guarantee that that resale will supply "America's strategic allies").

Similar to Japan, South Korea's gas demand decreased by 5% in 2023.[362] This is in part due to implementation of recently passed laws, which included investment in energy efficiency, increased renewable energy assets, and investments in the green industry space.[363] South Korea's *10th Basic Plan for Long-Term Electricity Supply and Demand*, released at the end of 2022, calls for continued growth of renewable and nuclear energy generation, and reduced reliance on fossil fuels, through at least 2030.[364] Due to implementation of these policies, it is expected that South Korean demand for LNG will fall by 20% through the mid-2030s.[365] The chart below shows some of these trends:

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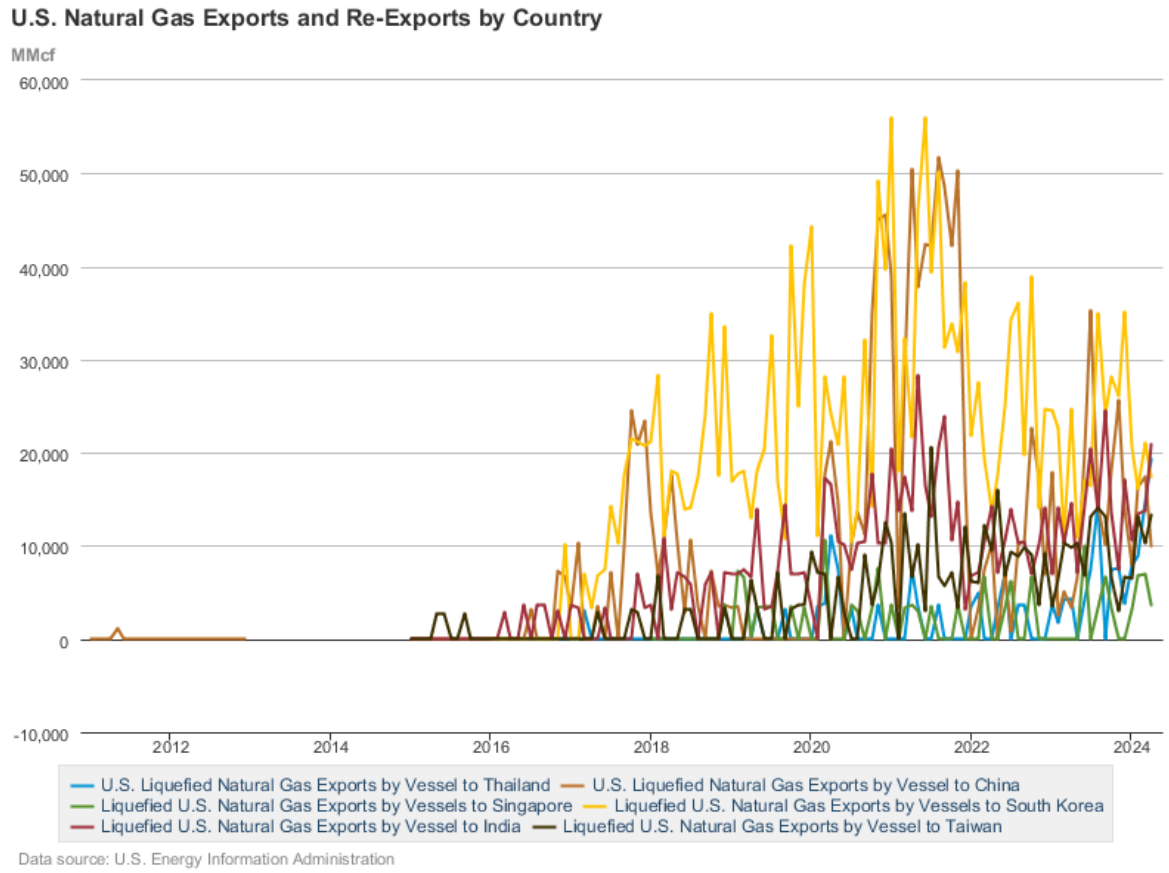
[360] Response to Form Letters, Ex. 26 (S. Reynolds, *et al*., IEEFA, *Japan's Declining Gas Demand Will Leave Utilities With Persistent LNG Oversupply Through 2030*).
[361] *Id*.
[362] Response to Form Letters, Ex. 27 (S. Alam, *et al*., IEEFA, *Global LNG Outlook 2024-2028*).
[363] Response to Form Letters, Ex. 28 (U.S. EIA, *Country Analysis Brief: South Korea*).
[364] Response to Form Letters, Ex. 28 (U.S. EIA, *Country Analysis Brief: South Korea*).
[365] Response to Form Letters, Ex. 27 (IEEFA, *Global LNG Outlook 2024-2028*).

Figure 3. U.S. Natural Gas Exports and Re-Exports by Country

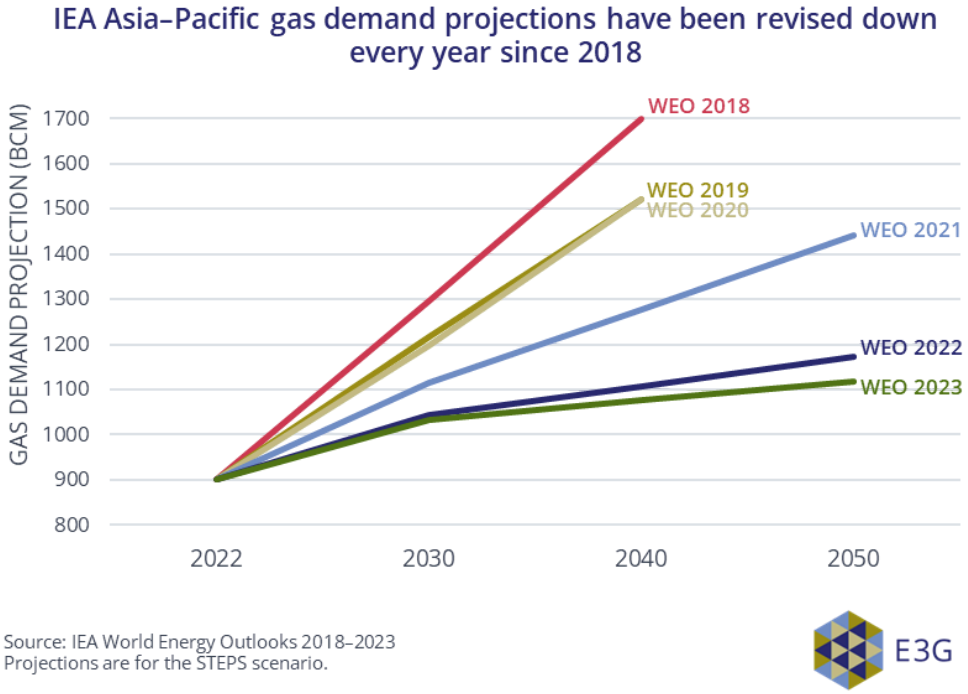


It similarly appears that the Project's LNG exports are not needed to supply Asia's emerging market economies, including China and the nations of South and Southeast Asia, to support projections of global demand increases. It must be noted, however, that the manufacturing sectors of those emerging economies are in direct competition with the American manufacturing sector, and therefore providing American LNG to improve those nations' competitiveness may result in serious harm to the American economy.[366]

Furthermore, the prediction of gas demand growth in those emerging economies may be overblown. As shown below, the IEA's annual projection of demand growth in Asia has been revised downward every year since 2018.

[366] Response to Form Letters, Ex. 13 (Industrial Energy Consumers of America, Comments to DOE at p.3 (March 1, 2022) ("Foreign government state owned enterprises [...] have unfair market power over domestic consumers. For U.S. homeowners, this means higher costs for heating and electricity. For the manufacturing sector, the consequences are much greater.").

Figure 4. IEA Asia-Pacific gas demand projections, revised down yearly since 2018



Given this trend, it is unclear whether the Project's marginal export capacity will be needed to meet any unmet demand in Asia's emerging economies. This uncertainty is further bolstered by the impact of supply and price disruptions caused by the Ukraine crisis. IEEFA has concluded that:

> [I]n many Asian nations, LNG has now acquired a reputation as a costly and unreliable fuel. Proposed LNG import projects in the region now face increased delay and cancellations risks, while governments in key LNG growth markets have announced new policies designed to limit dependance on global gas imports . . . High prices will put downward pressure on Asian demand growth, particularly among price-sensitive emerging markets that were widely expected to be the primary drivers of global LNG demand.[367]

These factors, combined with a massive wave of new global export capacity expected through 2028, are predicted to send LNG markets into oversupply within two years. IEEFA projects that global LNG liquefaction capacity from projects that have already begun construction will add 193 MTPA of new supply capacity worldwide between now and 2028.[368]

[367] Response to Form Letters, Ex. 27 (IEEFA, *Global LNG Outlook 2024-2028*).
[368] Response to Form Letters, Ex. 27 (IEEFA, *Global LNG Outlook 2024-2028*).

IEEFA further estimates global capacity to reach 666.5 MTPA by 2028, but the IEA projects total LNG demand in 2050 to reach a maximum of 482 MTPA under its "stated policies scenario."[369] The IEA now acknowledges that the massive addition of new LNG supplies could oversaturate the global market, warning that "[t]he strong rise in [LNG] capacity … risks creating a supply glut, given that global gas demand growth has slowed considerably."[370]

Critically, the projections of a coming supply glut include only LNG export projects currently under construction. Accordingly, they do not include the nameplate capacity of the Project, rendering the Project's export capacity superfluous in an oversaturated global market.

e) No Alleged Benefits to Natural Gas Producers or Supply Diversity

To be clear, FERC does not allege any benefits to gas producers, production, or increased or enhanced 'supply diversity' in support of the Authorization Order, but to the extent it might try to do so on rehearing—there is no evidence that this Project will have any domestic benefits whatsoever other than lining Venture Global's pockets. Moreover, FERC has disclaimed any ability or authority to rely on such benefits or related impacts, based on the D.C. Circuit's finding that DOE, not FERC, has exclusive authority over the effects of LNG exports on gas production and use.[371][372] If FERC were to argue that purported benefits relating to gas producers or supply could weigh in FERC's public interest balancing, FERC would then have to also thoroughly examine the foreseeable environmental impacts of any increased gas production, despite disclaiming this basic obligation.[373]

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[369] Exhibit 29, IEA, *World Energy Outlook 2023* (October 2023), available at https://www.iea.org/reports/world-energy-outlook-2023(last accessed July 18, 2024).
[370] Response to Form Letters, Ex. 29 (International Energy Agency, *The Energy World Is Set to Change Significantly by 2030, Based on Today's Policy Settings Alone*).
[371] Authorization Order at P 27.
[372] *See Freeport, 827 F.3d 36*, 47-48 (D.C. Cir. 2016).
[373] Authorization Order at P 166.

f) No Benefits in Support of Public Interest Finding

FERC failed to articulate benefits in support of its public interest finding because there are none. The Facility and Pipeline are predicated on outdated and incorrect assumptions about global LNG demand. The evidence demonstrates that the Project is not needed to meet the energy demands of Europe or Asia, and its construction will likely exacerbate a looming global LNG supply glut.[374] Accordingly, FERC's authorization of the Project is contrary to and inconsistent with the public interest and should be reconsidered. The Commission must take a hard look at the current and projected market conditions and the real-world community and environmental impacts of unnecessary infrastructure expansion. As Commissioner Glick noted in his dissent of FERC's approval of the ill-fated Jordan Cove LNG Project:

> [R]easoned decisionmaking requires that the Commission do more than simply point to the benefits of the Project and assert that the Project satisfies the relevant public interest standard, especially where, as here, the Project will also have considerable adverse impacts.[375]

C. FERC Failed to Weigh the Alleged Benefits and Adverse Impacts of the Project in Violation of the NGA.

Even if FERC had demonstrated that Venture Global's vague and ill-defined proffers of public benefits—such as facilitating the export of domestic gas to foreign buyers—would somehow benefit the American public, FERC is required to weigh those highly speculative benefits against the many definite harms that will arise from the construction and operation of

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[374] *See supra*, Part III.B.1 (describing lack of market need); Response to Form Letter, Ex. 19 (Toussaint, M., *et al*., *La lettre de 60 parlementaires de toute l'Europe à Joe Biden*, January 25, 2024 (available at https://www.marietoussaint.eu/actualites/lettre-joe-biden (last accessed June 7, 2024) (stating that the EU does not need US LNG exports); Response to Form Letters, Ex. 27 (S. Alam, *et al*., IEEFA, *Global LNG Outlook 2024-2028* (April 25, 2024), available at https://ieefa.org./resources/global-lng-outlook-2024-2028#:~:text=IEEFA%20anticipates%20that%20nameplate%20LNG,40%25%20increase%20in%20five%20years, accessed June 7, 2024) (finding the same throughout Asia).

[375] *Pacific Connector Pipeline LP,* 170 FERC ¶ 61,202 (Mar. 19, 2020) (Comm'r Glick, dissenting, P10).

the Pipeline and LNG terminal.[376] FERC has entirely failed to do so, violating the NGA, APA, and FERC's own Certificate Policy Statement.

The "public interest" encompassed by the NGA includes impacts on landowners, communities, and the environment.[377] FERC must consider these factors in making a public interest determination; FERC cannot limit itself to solely considering demand or market support.[378]

FERC's Certificate Policy Statement sets out a framework for Section 7 evaluations. Specifically, once FERC has determined that there is market support for a pipeline, adverse impacts are considered in two stages. The Authorization Order summarizes this framework, in which benefits are first weighed against community impacts and, if that test is satisfied, against environmental impacts.[379] However, FERC has utterly failed to apply this framework here. As discussed above, FERC failed to articulate *any* benefits of this Project other than for the Applicant.[380] Furthermore, while FERC did at least acknowledge some adverse impacts from the Project in its thet FEIS,[381] it did not factor them into its public interest analysis seemingly at all. FERC has deemed the Applicant's allegation of need for the Project to be synonymous with evidence of public benefits.[382] Yet, it has utterly failed to provide an explanation of why the

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[376] Certificate Policy at 61,743 ("In reaching a final determination on whether a project will be in the public convenience and necessity, the Commission performs a flexible balancing process during which it weighs the factors presented in a particular application. Among the factors that the Commission considers in the balancing process are the proposal's market support, economic, operational, and competitive benefits, and environmental impact"); *see also Motor Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29 (1983).
[377] *NAACP v. Fed. Power Comm'n,* 425 U.S. 662, 669-70 (1976).
[378] *Atl. Refining Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959); *Office of Consumers' Council v. FERC*, 655 F.2d 1132, 1147 (D.C. Cir. 1980).
[379] Authorization Order at P 35.
[380] *See supra* at Part III.B.2.
[381] *See e.g.*, *infra*, at Part III.I (discussing FERC's failure to take a hard look at adverse impacts to commercial fishing in FEIS); *infra*, at Part IV.A..2 (irreparable injury to fishermen).
[382] *Supra,* Parts III.B.1 and III.B.2.

highly speculative benefits outweigh the named, concrete, and significant adverse impacts, thus arbitrarily dismissing these irreversible harms.

1. FERC failed to properly take into account significant adverse impacts on commercial fishermen and the local community.

Unlike the vague and ill-defined benefits based on unexamined and incorrect market assumptions, the Project will cause certain and significant harm to commercial fishermen and the local community. Cameron Parish is home to a historic Louisiana fishing industry with a reputation for producing quality seafood such as shrimp, oysters, and crab.[383] The fishermen who make their living in the waters of Cameron Parish are deeply concerned about their livelihoods, their families' safety, and the increased pollution resulting from the CP2 LNG Terminal. Intervenors Travis Dardar, Anthony Theriot, and Kent Duhon, and all 60 of the commercial fishermen who make up the FISH coalition, have collectively fished the waters in and around Cameron for nearly a century.[384] The combined effect of increased vessel traffic, fishery depletion, and limited access to public docks due to CP2, will cause irreparable damage to their commercial fishing business' and threaten the historic culture that has developed around this important sector of the economy in Southwest Louisiana.

Contrary to the Authorization Order's conclusion that the impacts on recreational and commercial fishing would be "localized and less than significant" with temporary and minor cumulative impacts on commercial fisheries, the reality is far more severe.[385] As noted by

[383] FEIS 4-266 (acknowledging that "[t]he shrimp fishery was the most valuable commercial fishery in Louisiana and Texas in 2019").
[384] Motion to Intervene of Fishermen Anthony Theriot and Kent Duhon, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20230313-5005 (Mar. 13, 2023); Motion to Intervene of Travis and Nicole Dardar, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20230303-5103 (Mar. 3, 2023); Motion to Intervene of Fishermen Involved in Sustaining our Heritage, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20240418-5083 (Apr. 18, 2024). *See also* Exhibit 44 Fishermen Involved in Sustaining our Heritage Testimonials (June 2024) ("FISH Testimonials") (containing comments from Cameron fishermen affected by Venture Global's LNG export facilities).
[385] Authorization Order at P 113.

Commissioner Clements in her dissent, FERC "ignores the risk that temporary impacts on fisheries might permanently adversely affect commercial fishing businesses."[386] Fishermen have already noticed a staggering decline in their annual catch—up to 50%—due to the construction and operation of existing facilities.[387] The threat to fishermen's families and livelihoods from the massive expansion of the gas export industry in Cameron and Calcasieu Parishes is far from theoretical, and even a single season of reduced catch could put fishermen out of business.[388]

FERC has unquestionably failed to address these adverse impacts on the commercial fishing industry or offer meaningful insight into how the Project will address serious issues that may destroy fishermen's very way of life. Moreover, the Authorization Order's reliance on Venture Global's Community Advisory Group as a mechanism for identifying these concerns—a group lacking any commercial fishermen within its membership—underscores this insufficiency and FERC's fundamental and willful misunderstanding of this industry and the people that make it up. FERC simply parrots Venture Global in the FEIS and Authorization Order to check a what has become a meaningless box that FERC labels 'engagement.'[389] It is futher impossible for

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[386] Authorization Order, Clements Dissent, P 18.

[387] Response to Form Letters, Ex. 5 (Nicholas Cunningham, "Louisiana LNG Could Be "Nail in the Coffin" for Local Fishermen"); Ex. 4 (Declaration of Anthony Theriot) at ¶¶ 22-23.

[388] *See e.g.,* Exhibit 45 Louisiana Shrimp Task Force Letter (January 17, 2023) ("This industry is a priceless aspect of Louisiana culture as well as an economic engine in the state. This industry will be gone forever if you permit any more of the proposed facilities, all of which are huge companies based outside of Louisiana."); *see also* Authorization Order, Clements Dissent, P 18 n.66 (referencing comments made by a Mr. Eustis at a Public Comment Meeting regarding impacts to shrimpers "discontinuity of one season can be the difference between -- can bankrupt the family").

[389] *See* FEIS at 4-270 ("CP2 LNG states if there are issues and/or concerns in Cameron Parish related to Project impacts on the shrimping community, the Community Advisory Group would allow Venture Global LNG to continue to hear and address them accordingly."); *see also* Authorization Order at P 113 ("CP2 LNG committed to continuing to develop its Engagement Plan for Local Commercial Shrimp Fishery, and Venture Global created the Calcasieu Pass Community Advisory Group to ensure residents of Cameron Parish can communicate issues and concerns directly to Venture Global") and P 137 ("CP2 LNG has committed to continuing the development of its Engagement Plan for Local Commercial Shrimp Fishery and would provide updates on its engagement effort and on the Calcasieu Pass Community Advisory Group meetings within CP2 LNG's monthly construction reports").

FERC to adequately anticipate or respond to adverse impacts to the commercial fishing industry when it relies on a notoriously dishonest operator's alleged engagement.[390] To say that fishermen have not been able to have adequate input, or been given proper consideration by regulators in the decisions to approve a project that threatens to destroy their very way of life, is an understatement, especially when coupled with FERC's denial of intervention by the sole organization that is actually representative of commercial fishermen in Cameron Parish.[391]

There are significant, adverse, undeniable impacts to the commercial fishing industry in the siting, constructing, and operation of the Project. The addition of yet another LNG terminal[392] along the Calcasieu Pass ship channel will significantly increase ship traffic. Additional carriers for CP2 would increase ship traffic by 17% – and add seven to eight carrier visits per week at the terminal facilities once operational.[393] Security zone requirements necessitate that commercial and recreational fishing vessels exit the channel while the carriers pass, which can occur 4-5 times a day.[394] The LNG carriers then turn up large amounts of silt and mud that bury marine wildlife at the bottom of the channel. Large vessels, such as LNG tankers, cause the greatest sediment suspension,and fishermen have observed ships only getting bigger and bigger in the channel.[395] Moreover, the powerful wakes from passing LNG vessels pose a serious threat to the

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[390] *See* Cameron Fishing Community Concerns, at 5 ("the Plan is woefully insufficient to meet its articulated aims because it not only ignores the Applicant's (and regulators) failure to engage the commercial fishermen in Cameron throughout the years-long process for both of its local LNG projects, but it also relies on an advisory group that excludes the fishermen").
[391] *Infra*, Part III.E (FERC's unlawful and unjust denial of FISH Motion to Intervene).
[392] *See supra*, Part II.B (discussing rapid, harmful proliferation of LNG export facilities in Louisiana).
[393] Niskanen DEIS Comments at 27; For a Better Bayou *et al.*, DEIS Comments, FERC Docket Nos. CP22-21, CP22-22, Accession No. 20230313-5123 at 83 (Mar. 13, 2023) (referencing CP2 DEIS at 4-161). *See also* FEIS at 2-8, 4-267.
[394] Response to Form Letters, Ex. 4 (Declaration of Anthony Theriot) at ¶ 20.
[395] See e.g., Exhibit 44, FISH Testimonials at 8 (comments of Phillip Dyson Sr.) ("as the ships are getting bigger, every year the [fish catch] is lower, lower, and lower), at 29 (Jeffery Spell) ("These ships are just massive; these aren't the ships we saw as young people up and down the ship channel"), at 30 (Byron McCauley) ("The ships are like nothing we've ever seen before. I've been shrimping 39 years. This is like nothing we have ever seen"). See also *Identifying*

fishermen's safety and property.[396] In a recent survey of FISH members, 60% reported some form of damage to their boats in the past year from LNG tankers, and there is a serious need for enforcement of stricter speed limits to mitigate the impact of LNG tankers on fishing boats.[397]

An increase in ship traffic will make it more difficult for fishers and shrimpers to make their living, leading to increased pollution and churn, reduced catches, and decreased economic output from this sector of the economy.[398] In her dissent, Commissioner Clements highlighted two key deficiencies of FERC's failure to account for these impacts. First, CP2 is south of a narrow geographic bottleneck in the ship channel called the "firing line," where shrimp tend to migrate, and the FEIS fails to account for how marine traffic from CP2 may impact access to this important fishing area.[399] Second, the FEIS is inconsistent in predicting marine traffic effects on commercial fishing businesses, claiming few vessels use the Calcasieu Ship Channel at night in contradiction to the 2019 Port of Lake Charles Calcasieu Ship Channel Traffic Study, which

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Sediment Source and Optimizing Placement of Dredge Material to Protect Critical Infrastructure – Port of Lake Charles, Water Institute of the Gulf (May 30, 2019), *available at* https://thewaterinstitute.org/assets/docs/reports/Identifying-sediment-sources-and-optimizing-placement-of-dredge-material.pdf (on the sizeabe impact of sediment suspension in the wake of a large vessel).

[396] Cameron Fishing Community Concerns at 6 ("channel dredging and wake from passing tankers traveling at unsafe speeds present serious threats to the fishermen's property (including vessels and traps) as well as their personal safety").

[397] Exhibit 46, FISH, "Impact of LNG Tankers on Fishing Boats in Southwest Louisiana," (June 2024).

[398] *See, e.g.,* Cameron Fishing Community Concerns at 7 ("Wake from speeding tankers move, destroy, and bury traps in disturbed silt and sediment that finds its way into local's boat slips preventing them from ingress/egress to their property, and is destroying the bank."); Response to Form Letters, Ex. 5 (Nicholas Cunningham, *Louisiana LNG could be the "nail in the coffin" for local fishermen*, Gas Outlook (Feb. 23, 2024)).

[399] Authorization Order, Clements Dissent, P 20 ("While the proposed LNG terminal is south of the firing line and so will not directly impact traffic in this unique location, the EIS fails to consider how "[t]he moving security zone around LNG carriers [which] has the potential to close the channel to traffic" would impact access to the area around the firing line").

assumed unrestricted vessel transit at any time.[400] The Commission's analysis is thus flawed, and minimizes the impact of marine traffic on commercial fishing vessels.

Additionally, construction and dredging activities will displace aquatic species and impact critical habitat for wildlife migrations and historic lifecycles, which are crucial to the fishermen's livelihoods.[401] The Project will dredge six days a week over a period of 12-18 months, displacing a total of 6.4 million cubic yards of material from the channel.[402] As the FEIS states, dredging causes "temporary increases in turbidity in the water column may affect the health of fish, shrimp, and other marine fauna through gill blockage caused by increased suspended sediment[.],"[403] Nevertheless, FERC yet concludes that marine species are unlikely to be impacted any differently than the current dredging activities in the channel.[404] Impacts to aquatic species from artificial lighting, habitat conversion, and construction-related noise over an extended period are similarly dismissed in the Authorization Order.[405] It is difficult to conceive how such a significant change in habitat could somehow have no effect on those species. Increased traffic to the terminal and dredging requirements to accommodate LNG carriers will only compound the issue.

Venture Global has not consulted with fishermen regarding historic oyster beds or the disposal of dredged material in the past and it has previously taken to dredging just before the summer shrimping season.[406] This is expected to continue as per the Authorization Order, as

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[400] Authorization Order, Clements Dissent, P 19, n.68 ("It is clearly inconsistent to find that the cumulative impacts of all ship traffic in the channel would be minor when the impacts of ship traffic from the ships servicing CP2 would be moderate").
[401] *See* Migratory Clock for Calcasieu Region, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20220222-5066 (Feb. 20, 2022).
[402] FEIS at 2-25.
[403] FEIS at 4-178.
[404] FEIS at 4-178.
[405] Authorization Order at P 110.
[406] Response to Form Letters at Ex. 4 (Declaration of Anthony Theriot) at ¶¶ 4-5.

"construction activities are anticipated to occur during peak fishing and recreational seasons."[407] Moreover, CP2 LNG will limit the use of remaining public fishing docks, restricting access to the waterfront where fishermen make their living. Once free and accessible to the community, docking is now increasingly privatized, further straining local fishermen's resources to conduct their business.[408] FERC has not seriously considered (or quantified) the adverse impacts to the commercial fishing industry and the jobs the project will jeopardize or eliminate.[409]

Intervenor landowners also face numerous harms from the project's construction and operation, including signing easement agreements under the threat eminent domain, reduced property values, noise and ground disturbance, financial losses and damage to their local businesses, and increased air pollution. The Authorization Order asserts that "the CP Express pipeline is not expected to have more than negligible effects on property values."[410] Yet, this conclusion is based on flawed analysis in both the FEIS and DEIS, which do not consider relevant, peer-reviewed studies.[411] FERC fails to account for safety concerns, increased insurance costs for landowners living near natural gas infrastructure, and financial damages to local businesses. For instance, the Pipeline and/or right-of-way would likely extend under a pond that is integral to duck hunting and fishing on Landowner-Intervenor Jerryd Tassin's property. The placement of a 48-inch pipeline near his land may permanently preclude him from operating his

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[407] Authorization Order at P 125 ("Construction activities are anticipated to occur during peak fishing and recreational seasons").
[408] Niskanen Center, et al., DEIS Comments at Ex.14a (Nicholas Cunninham, "Louisiana LNG Terminals Spread Pollution on Local Districts"); Motion to Intervene of Fishermen Anthony Theriot and Kent Duhon, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20230313-5005 (Mar. 10, 2023); Motion to Intervene of Travis and Nicole Dardar, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20230303-5103 (Mar. 3, 2023).
[409] Niskanen Center, et al., DEIS Comments at 30-31; Response to Form Letters at 4-6.
[410] Authorization Order at P 41 (referencing the FEIS at 4-298).
[411] Niskanen Center, et al., DEIS Comments at 31-32 ("These studies only examine the effect on property values of compressor stations, not LNG Terminals – and the DEIS states as much."), at 36 ("The DEIS mentions only one unbiased study…a twelve-year-old magazine article, the conclusions of which were subsequently called into question in the same publication that originally ran the article.")

hunting and fishing guide service, which serves as his primary source of income.[412]

Adding another LNG terminal and related facilities to Cameron will double or triple the burdens this community is already experiencing.[413] The Project will exacerbate existing noise, light, and air pollution as well as visual and land use impacts that harm Cameron residents' health and well-being.[414] The Authorization Order clearly states that visual impacts resulting from the Facility's four 176-foot-tall and 300-foot-wide LNG storage tanks and a 197-foot-tall flare stack "will permanently change the viewshed and have a significant adverse effect on residents and passerby of the environmental justice communities near the project."[415] Cameron residents already experience day and night gas flaring from Venture Global's CP1 facility and have closely documented numerous, ongoing unreported flaring instances and operational issues at the facility. The concerns about this disturbing frequency of flaring were raised and filed before FERC,[416] which FERC failed to address and has done nothing to ensure this harmful pattern will not repeat with CP2.[417]

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[412] Niskanen Center, et al., DEIS Comments at 5; *see also* Motion to Intervene of Bernard Webb, Georgia Webb, and Jerryd Tassin, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20220610-5071 (June 10, 2022).

[413] Exhibit 47, Robert D. Bullard Center for Environmental and Climate Justice, *Liquefying the Gulf Coast: A Cumulative Impact Assessment of LNG Buildout In Louisiana and Texas,* at 174 (May 2024) ("Liquefying the Gulf Coast"), available at https://assets.website-files.com/614d88a190900e498857f581/664604a23f64fa6444dd2a2b_Bullard%20Center%20Liquefying%20the%20Gulf%20Coast%20Report.pdf.

[414] Niskanen Center, et al., DEIS Comments at 33; Response to Form Letters at 7-9.

[415] Authorization Order at P 132. *See also* Exhibit 44, FISH Testimonials at 10 (comments of Lerlene Rodrigue) ("It [LNG] has totally destroyed our community. Born and raised there. Memories are all gone. All you see is a plan when you open the door. It's not a place I want to be anymore.")

[416] Comments of John Allaire, Docket No. CP22-21, Accession No. 20230313-5068 (Mar. 12, 2023).

[417] *See infra*, at III.K.5; Response to Form Letter, Ex. 4 (Declaration of Anthony Theriot), at ¶ 24; Response to Form Letters, Ex. 9 (Louisiana Bucket Brigade, Gas Export Spotlight: Venture Globals Operational Failures & the Impacts on Fishermen); Exhibit 44, FISH Testimonials at 17 (comments of Phillip LeJune) ("Venture Global is only permitted 60 hours of flaring per year?! They are flaring more often than they are not flaring!").

Photos by John Allaire, who lives next door to the Calcasieu Pass facility and has been a daily witness to Venture Global's repeated operational issues and permit violations.

Living near fossil fuel and chemical facilities is linked to higher rates of respiratory and cardiovascular diseases.[418] CP1 LNG facility, along with the many other LNG facilities in Cameron and Calcasieu Parishes, have already exposed local residents to high levels of toxic and carcinogenic emissions far in excess of permitted levels.[419] It is no wonder that those who live and work near the CP1 LNG facility have reported chronic health problems and difficulty breathing.[420] For instance, Intervenor Travis Dardar used to live just 700 feet from the proposed Facility site.[421] He and his family, originally from Isle de Jean Charles, Louisiana, were displaced by several major hurricanes and the Deepwater Horizon oil spill. Living with LNG on their front doorstep and experiencing the health consequences, they were forced to relocate again due to CP2.[422]

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[418] Exhibit 9, Casey, J. *et al.*, Climate Justice and California's Methane Superemitters: Environmental Equity Assessment of Community Proximity and Exposure Intensity, Environ. Sci. Technol. (Oct. 20, 2021), available at https://pubs.acs.org/doi/10.1021/acs.est.1c04328.
[419] Response to Form Letters, Ex. 3 (Louisiana Dep't of Envt'l Quality, Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-22-00367).
[420] Response to Form Letters, Ex. 4 (Declaration of Anthony Theriot), at ¶ 24.
[421] Niskanen Center, *et al.*, DEIS Comments, Ex. 4 (Travis and Nicole Dardar Property Details).
[422] Exhibit 44, FISH Testimonials at 3 (comments of Travis Dardar) ("Vibrations from its operations were so intense they knocked pictures off my wall. My wife suffered a heart attack, and my children were frequently ill. Facing dire health consequences and daily interruptions, my

All of these impacts are cumulative and adverse to those already experienced by the affected community where the proposed Project would be sited—which already suffers from visual, ecological, and health harms from the massive increase in LNG export-related industry and the extraordinary awful storm-related and sea-level rise impacts from climate change. FERC needs to grapple with whether siting yet another LNG export facility of monstrous size in Southwest Louisiana–and building a dedicated 85.4-mile pipeline–could truly serve the public interest. At some point, it must be true that continuing to authorize this highly polluting infrastructure is inconsistent with the public interest as outlined in Section 3, and/or is not required by the present or future public convenience and necessity as outlined in Section 7.

2. Complete and utter failure to weigh the range of severe adverse impacts on Environmental Justice communities.

FERC's authorization of the CP2 LNG and CP Express project demonstrates a blatant disregard for the adverse impacts on environmental justice communities, violating the NGA. FERC is mandated to consider whether the alleged benefits of a project truly outweigh the significant, well-documented harms it imposes on vulnerable, already overburdened populations. In this case, FERC neglected to provide a thorough analysis or afford proper weight to how the environmental justice communities in Cameron Parish and along the Pipeline will bear the brunt of environmental and socio-economic damages, contrary to the NGA's requirements.

These communities, already overburdened by industrial pollution and environmental degradation, will suffer significantly from the increased emissions, environmental disruption, and socio-economic dislocation resulting from the construction and operation of the Project. While FERC acknowledges some of the harms in its FEIS, it failed to conduct the requisite weighing of those harms under Section 7 of the NGA, and to fully examine the interrelationship and cumulative impacts of multiple adverse impacts on environmental justice communities. For

family was driven from our home").

members of FISH and other commercial fishermen in the area, who reside in environmental justice communities (this intersection being acknowledged as a relevant, impacted population by FERC),[423] this Project will be the death knell for their livelihoods and their ability to support their families. As Commissioner Clements found:

> **Thus, the deficiencies in the analysis of adverse impacts on fishing blind the Commission to the adverse impacts on members of EJ communities.** EJ communities are especially vulnerable to those impacts since one bad season can significantly disrupt fishing businesses, and low-income fishers without significant savings likely would be among those least likely to recover from that disruption.[424]

FERC also failed to take into account the disproportionately high and adverse impact on the viewshed for environmental justice communities[425] and failed to adequately consider the disproportionate impacts of climate change—which "we *know* [] will have adverse impacts on EJ communities. Commission Staff found local mean sea level rise . . . [would be] 2.1 feet . . . between 2050 and 2060 (relative to year 2000) at the proposed project site area."[426] We also *know* that these impacts would put some of these communities *permanently underwater*—an impact that the Commission completely failed to consider or weigh.[427]

The projected emissions alone, estimated at 8,510,099 metric tons of CO2e per year, will exacerbate existing health issues and environmental conditions, disproportionately affecting low-income and minority populations. FERC's failure to grapple with this is not only "disturbing,"[428] to use Commissioner Clements' descriptor, but also legally deficient. It appears

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[423] Authorization Order, Clements Dissent, P 23 (The EIS acknowledges that "commercial users in the Calcasieu Ship Channel . . . would likely include individuals from environmental justice communities.") (quoting FEIS at 4-545).
[424] *Id.*, P 23 (emphasis added, citations omitted).
[425] *See* Authorization Order, Clements Dissent, P 22.
[426] Authorization Order, Clements Dissent, P 24 (citing EIS 4-453 (emphasis in original, internal quotations omitted).
[427] Authorization Order, Clements Dissent, P 24.
[428] Authorization Order, Clements Dissent, P 25.

that despite statements made over a year ago, environmental justice remains no "more than just a catch phrase" to FERC.[429]

A German Parliamentarian recognized after visiting Calcasieu Pass in the summer of 2023, "and hold[ing] in-depth discussions with the local residents affected [that] *[t]he existing environmental racism will be further reinforced by the planned expansion and new construction of LNG infrastructure and cannot be justified.*"[430] If a foreign government official can recognize and acknowledge these very obvious realities, why can't FERC? FERC should steer its regulatory ship in the right direction against the tide of continuing to build project after project on top of Environmental Justice communities. Talk is grossly insufficient; communities want to see action (and denials) from FERC on projects, such as this one, that exacerbate these harms. If FERC truly examined the impacts on environmental justice communities, it would find no rational avenue that this Project is in the public interest, let alone that any of the still undefined 'benefits' outweigh such harms.

D. The CP2 LNG Project is Affirmatively Inconsistent with the Public Interest.

FERC exercises delegated authority under Section 3 of the NGA to "approve or deny an application for the siting, construction, expansion, or operation" of facilities used to export LNG. 15 U.S.C. 717b(e)(1). However, this authority remains undefined and lacks a clear legal standard, leading to arbitrary decision making that fails to account for or align with the public interest, such as the Authorization Order at issue here.

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[429] Chairman Phillips Opening Remarks at the Environmental Justice and Equity Roundtable (AD23-5), *available at*: https://www.ferc.gov/news-events/news/chairman-phillips-opening-remarks-environmental-justice-and-equity-roundtable-ad23 (last visited July 28, 2024).

[430] Comments of Kathrin Henneberger, German Member of Parliament, at 1, CP2 LNG and CP Express Projects, Accession No. 20240116-5255 (Jan. 15, 2024) (emphasis added).

NGA Section 3 contains a statutory grant of power for the Commission to approve or deny applications for LNG terminal siting, construction, and operation, *but contains no legal standard governing the exercise of that power*:

> (1) The Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal. Except as specifically provided in this chapter, nothing in this chapter is intended to affect otherwise applicable law related to any Federal agency's authorities or responsibilities related to LNG terminals.
>
> (2) Upon the filing of any application to site, construct, expand, or operate an LNG terminal, the Commission shall—
>
> (A) set the matter for hearing;
>
> (B) give reasonable notice of the hearing to all interested persons, including the State commission of the State in which the LNG terminal is located and, if not the same, the Governor-appointed State agency described in section 717b–1 of this title;
>
> (C) decide the matter in accordance with this subsection; and
>
> (D) issue or deny the appropriate order accordingly.[431]

The NGA provides separate authority for the approval of the gas for export as a commodity, which now falls under DOE's jurisdiction.[432] Unfortunately, FERC does not have a clear idea of its role in LNG terminal approvals under 15 U.S.C. 717b(e). As a result, FERC improperly conflates the two standards, which taints its authorizations; this one being no exception. Former Chairman Glick identified this quagmire, writing separately on Commonwealth LNG: "I am concerned that section 3 of the NGA does not provide a sufficient framework for consideration of the adverse impacts associated with a proposed LNG facility."[433]

[431] 15 U.S.C. § 717b(e).
[432] 15 U.S.C. 717b(a).
[433] *Commonwealth Order*, Glick, Chair, concurring, P 2 (2022).

In response to the on-the-record comments and analysis highlighting this issue for FERC's consideration,[434] FERC casually dismisses the notion that they "lack a coherent standard" under Section 3.[435] It is clear that FERC's reliance on the NGA's designation *of FTA exports* being deemed to be in the public interest has replaced any meaningful inquiry that would enable the Commission to develop substantial record evidence that could support relying on the rebuttable presumption that the siting, construction and operation of this particular Facility is not inconsistent with the public interest.[436] FERC merely asserts that it has a coherent standard, and then fails to articulate or identify one.[437] After it makes vague and undefined assertions of a coherent standard, FERC then disclaims both the authority or obligation to address the evidence before it on the adverse economic impacts of the facility (*see supra*, Part III.C, discussing this further under FERC's Section 7 obligations).[438] Then, relying seemingly only on the fact that the land has been "secured through agreements with landowners," and that "most impacts" identified in the FEIS "would not be significant or would be reduced to less-than significant levels" with

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[434] For a Better Bayou, *et al.*, Comments on the CP2 and CP Express, Docket No. CP22-21-0000 et al., Accession No. 20230313-5123 (March 12, 2023) at 1-3; Natural Resources Defense Council (NRDC), Comments on the Draft Environmental Impact Statement ("NRDC DEIS Comments"), Docket No. CP22-21-0000 et al., Accession No. 20230313-5222 (March 13, 2023) at 2-3; Niskanen Center *et al.*, Comments on the Draft Environmental Impact Statement ("Niskanen DEIS Comments"), Docket No. CP22-21-0000 et al., Accession No. 20230313-5225 (March 13, 2023) at 8-9.

[435] Authorization Order at P 23.

[436] *See* Authorization Order at P 23; As set out just above and in comments (*e.g.,* Niskanen March 13th comments at 7-9), FERC holds itself bound to this as a governing legal standard by which it will decide whether to approve an LNG terminal. And also in comments, this standard is simply assumed in relevant jurisprudence and found nowhere in the statute itself. *See*, *e.g.*, *Vecinos*, 6 F.4th at 1326 ("The Commission must authorize the construction and operation of a proposed LNG facility unless it determines that the facility 'will not be consistent with the public interest.'") (citing 15 U.S.C. 717b(a) without acknowledging that it governs commodity export determinations specifically); *EarthReports, Inc. v. FERC*, 828 F.3d 949, 953 (D.C. Cir. 2016) (baldly stating that an "*LNG proposal* shall be authorized unless the proposal will not be consistent with the public interest...") (emphasis added to note the conflation of commodity export with export facilities).

[437] Authorization Order at P 23.

[438] Authorization Order at PP 24, 27.

alleged various 'mitigation measures' proposed, and basic compliance with federal safety standards, FERC finds that the Project is "not inconsistent with the public interest."[439]

Even accepting as correct the Commission's reading of relevant jurisprudence to indicate that the Commission could and should conflate the NGA's "not inconsistent with the public interest" standard by which DOE determines whether to approve the export of the commodity[440] with FERC's responsibility to determine whether to approve the siting, construction, and operation of LNG terminals and related facilities,[441] this still leaves the Commission in a quandary because it has not articulated any policy respecting how it will implement that standard—and what, if anything, it considered in its public interest balancing.

In fact, FERC has previously asserted its authority under 717b(e) in the denial of an application for an import terminal citing safety concerns and the application for an LNG terminal thus not being in the public interest.[442] In the *Keyspan* rehearing denial, FERC explicitly noted that the consideration and denial of the proposed project was under its NGA authority, and not under safety statutes and regulations.[443] FERC noted in its *Keyspan* Authorization Order:

> [U]nder [the Commission's] regulatory scheme, the Commission must determine if LNG construction proposals are consistent with the public interest. As part of [the Commission's] determination,

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[439] Authorization Order at PP 32, 99.
[440] The DOE is required to approve the export of gas to FTA countries and imports into the United States, 15 USC 717b(c), but not exports to Non-FTA countries, which is governed by 15 USC 717b(a).
[441] *See* Authorization Order at P 22-23.
[442] *KeySpan LNG, L.P.*, 112 FERC ¶ 61,028, , PP 5-6 (July 5, 2005) (denying the application based on safety concerns and it being contrary to the public interest, despite "the construction and operation of additional facilities to import LNG [being] vitally important to help meet energy demands."); *See also Distrigas Corp. v. FPC*, 495 F.2d 1057, 1064 (D.C. Cir. 1974) (finding that "[u]nder [NGA] Section 3, the Commission's authority over imports of natural gas is at once plenary and elastic," and that the Commission "*may deny import authorization altogether*") (emphasis added).
[443] *KeySpan LNG, L. P.,* 114 FERC ¶ 61,054, P 19 (Jan. 20, 2006) ("consideration of the proposal[] is conducted pursuant to [the Commission's] regulations and the criteria of the Natural Gas Act, not the [Natural Gas Pipeline Safety Act ("Pipeline Safety Act")] or the [Department of Transportation]'s regulations."

> [it] must examine safety issues. [The Commission] ha[s] the authority to apply terms and conditions to *ensure that the proposed construction and siting is in the public interest and the discretion to, instead, deny an application where we determine that it is not in the public interest to approve it.*[444]

Here, the Commission utterly failed in its duties to ensure that its approving projects that are in the public interest, as the demonstrated adverse harms from the Project are far from theoretical. As Commissioner Clements stated, "[t]he CP2 LNG Project's adverse environmental and socioeconomic impacts *are so great that I am compelled to find that approving the project is inconsistent with the public interest.*"[445]As noted throughout the instant filing, the Project would significantly and irreversibly adversely impact fishermen's ability to sustain their way of life.[446] It would harm essential resources, including air, climate, and viewsheds. It may completely destroy landowners' ability to remain in their homes and on their land.[447] The whole human and ecological community will be adversely impacted, with many resulting irreversible harms.[448] And impacted landowners could face numerous challenges, including the forced taking of their property via eminent domain, reduced property values, noise and ground disturbance caused by construction activities, financial losses and damage to their local businesses, and increased air pollution.[449] Fishermen who are impacted by the project would experience reduced catch, struggle to find available dock space, contend with increased ship traffic, and encounter various other disruptions to their daily work and lives.[450]

It is thus unsurprising that the Authorization Order offers little to no insight on how or what it relied on or considered in its Section 3 finding that the project was affirmatively not

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[444] *KeySpan LNG, L.P.*, 112 FERC ¶ 61,028, P 58 (July 5, 2005).
[445] Authorization Order, Clements Dissent, P 1, n.5 (emphasis added).
[446] *See supra*, Parts II.A.3 and II.C.1; *see also infra* Parts III.I and IV.A.2.
[447] *See infra*, Part IV.A.1.
[448] *See supra*, Parts II.A.1 and III.C; *see also infra*, Parts III.H, III.J, III.K, III.M, III.O, and IV.A.3.
[449] *See supra*, Parts III.C.1; *see also infra*, Part IV.A.1.
[450] *See supra*, Parts II.A.3 and II.C.1; *see also infra* Parts III.I and IV.A.2.

inconsistent with the public interest.[451] It certainly failed to sufficiently address and analyze these well-documented and articulated adverse impacts. As former FERC Chairman Glick worried, "surely there is a degree of adverse impact so great that the public interest requires the Commission to reject a section 3 application."[452] FERC's failure to meaningfully engage and articulate a policy or basis for its decision-making and balancing is in itself a violation of the NGA and the basic principles of administrative law under the APA.[453]

And while the Pipeline's purpose and need should trigger an adverse impacts inquiry independently subject to an actual legal standard under Section 7,[454] where, as here, the Pipeline's only purpose is to supply a project for which FERC has no legal standard governing approval (but says it will approve unless the record demonstrates inconsistency with the public interest), those processes are conflated beyond recognition.

The harms to impacted landowners and fishermen, together with adverse impacts on the surrounding community and resources, render this Project inconsistent with the public interest. Moreover, the harms are cumulative to those already suffered.

E. FERC's Denial of FISH's Motion to Intervene was Arbitrary and Capricious, and Contrary to Law and the Fundamental Tenets of what is Just, Fair, and Equitable.

FERC's denial of FISH's unopposed Motion to Intervene was arbitrary and capricious. FERC's long standing practice has been to grant motions to intervene filed prior to the Commission's issuance of an order; that has been particularly true when such motions are unopposed and where the party seeking intervention would be directly impacted by the proposed

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[451] Authorization Order at P 29.
[452] Commonwealth Order, Chairman Glick, concurring, at P 7.
[453] See Motor Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983).
[454] *See* 15 U.S.C. 717f(e) (the Commission will approve only those projects required by the public convenience and necessity). This determination accords no presumption of public interest to the proposed pipeline – rather, the applicant bears the burden of affirmatively establishing that it serves the public interest. But, as indicated by the Commission, when it analyzes public interest, it must look at all factors having bearing on it.

project.[455] FISH filed its Motion to Intervene nearly two months before FERC issued its Authorization Order, and no party to these proceedings opposed its Motion.[456] Nonetheless, FERC denied FISH's Motion without providing any reasoned explanation as to why it is departing from its longstanding practice.[457] For that reason alone, FERC's denial of FISH's Motion was arbitrary and capricious.[458]

Adding insult to injury, FERC has singled FISH out for differential treatment, applying a more rigorous standard for what constitutes "good cause" to FISH's motion than it has in considering similar motions filed by other parties, especially those filed by fossil fuel companies, and including motions filed on this very docket.[459] FISH did not "sleep on its rights," but rather filed its Motion to Intervene as soon as practicable after its formation.[460] And contrary to FERC's statement, the diverse interests of the various commercial fishermen who form the FISH

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[455] *Mountain Valley Pipeline, LLC & Equitrans, L.P.*, 161 FERC ¶ 61,043, at P 22 (Oct. 13, 2017) ("To date, the Commission's practice in certificate proceedings has generally been to grant motions to intervene filed prior to the issuance of the Commission's order on the merits."); *see also Northern Natural Gas Co.*, 175 FERC ¶ 61,052 (April 15, 2021) (granting motion to intervene filed five days prior to issuance of order); *id*., C. Glick *Concurring*, P 3 ("we better serve the public interest by considering [a party's] views and stating on the record why we agree or disagree than by erecting procedural barriers just to keep the would-be party out of the proceeding.")

[456] *See generally*, Motion to Intervene of Fishermen Involved in Sustaining our Heritage ("FISH Motion"), pp. 1-2, Docket Nos. CP22-21 and CP22-22, Accession No. 20240418-5083 (April 18, 2024).

[457] Authorization Order at P 17.

[458] 5 U.S.C. § 706; *California Trout v. FERC*, 572 F.3d 1003, 1023 (9th Cir. 2009); *United Mun. Distrib. Group v. FERC*, 732 F.2d 202, 210 (D.C. Cir. 1984) (FERC "must conform to its prior practice and decisions or explain the reason for its departure from such precedent").

[459] *Compare* FISH Motion, p. 3, *with* Motion to Intervene Out-of-Time of Golden Pass LNG Terminal LLC ("Golden Pass Motion"), p. 2. Docket Nos. CP22-21 and CP22-22 (Jan. 7, 2022), Accession No. 20220107-5034; *and* Out-of-Time Motion to Intervene of Commonwealth LNG, LLC ("Commonwealth Motion"), p. 1, Docket Nos. CP22-21 and CP22-22 (Jan. 10, 2022), Accession No. 20220110-5178.

[460] *See* FISH Motion, p. 3 ("FISH did not exist until November 2023 . . . and incorporated with the State of Louisiana in January 2024.")

coalition are most certainly not adequately represented by the participation of individual fishermen or by the participation of various environmental groups.[461]

FERC's approval of the Project threatens to decimate the ability of FISH members to earn a living—quite literally to *feed their families*—as commercial fishermen. By arbitrarily denying FISH's Motion to Intervene, FERC has deprived them of their opportunity to participate and be heard. FERC should reconsider its ruling and grant FISH's unopposed Motion to Intervene.

1. FERC deviated its longstanding policy and practice.

FERC deviated without reasoned explanation from its longstanding policy and practice of liberally granting motions to intervene filed prior to Authorization Orders. FERC has broad discretion to manage its own dockets and set reasonable limits on intervention procedures, but it cannot afford intervening parties less protection than required under the APA and the Constitution.[462] Under the APA, when a regulatory agency such as FERC defines a policy by which it will exercise its discretion, "an irrational departure from that policy (as opposed to an avowed alteration of it) could constitute action that must be overturned as 'arbitrary, capricious, [or] an abuse of discretion' within the meaning of the [APA]."[463] It follows that FERC "must conform to its prior practice and decisions or explain the reason for its departure from such precedent."[464] An explanation must consist of "reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored."[465]

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[461] *See* FISH Motion, p. 3 ("Although there are several organizations that have intervened in these proceedings, no other entity specifically represents the interests of Southwestern Louisiana's commercial fishermen.")
[462] *Calif. Trout v. FERC*, 572 F.3d 1003, 1007 (9th Cir. 2009).
[463] *Calif. Trout*, 572 F.3d at 1023.
[464] *United Mun. Distrib. Grp. v. FERC*, 732 F.2d 202, 210 (D.C. Cir. 1984).
[465] *Greater Boston Int'l Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970); *see also E. Ky. Power Co-Op v. FERC*, 489 F.3d 1299, 1306 (D.C. Cir. 2007).

As relevant here, FERC has a longstanding practice of liberally granting interested parties' motions for intervention, so long as the motions are filed prior to FERC's order.[466] The policy of liberally granting intervention in pipeline and LNG cases is not implied; indeed, it has been expressly announced in several instances. In *Mountain Valley Pipeline*, for example, a coal mine owner filed a motion to intervene nearly two years after it received notice of the proposed project. The certificate order in that matter announced FERC's long standing practice: "[t]o date, the Commission's practice in gas authorization proceedings has generally been to grant motions to intervene filed prior to the issuance of the Commission's order on the merits."[467]

The *Mountain Valley Pipeline* precedent has not been overruled, and FERC has not deviated from this precedent. In *Tennessee Gas Pipeline*, an environmental organization sought to intervene in a certificate proceeding well after the deadline for intervention had passed and the organization's motion "cit[ed] no reason for the lateness of its intervention."[468] Despite these shortcomings, FERC ***granted*** the motion, while "express[ing] concern with the increasing degree to which participants in natural gas certificate proceedings have come to file late motions to intervene without adequately addressing the factors set forth in our regulations."[469] The Commission warned that "going forward, we will be less lenient in the grant of late interventions."[470] The motion in *Tennessee Gas Pipeline*, however, was granted, and the warning in that order addressed only motions where the moving party simply made *no attempt* to show good cause why FERC's time limitation should be waived.[471]

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[466] *Mountain Valley Pipeline, LLC & Equitrans, L.P.*, 161 FERC ¶ 61,043 (Oct. 13, 2017) ("*Mountain Valley Pipeline*"), at P 22.
[467] *Mountain Valley Pipeline*, 161 FERC ¶ 61,043, at P 22.
[468] *Tennessee Gas Pipeline Co., LLC*, Order Denying and Dismissing Rehearing, 162 FERC ¶ 61,167 (Feb. 27, 2018) ("*Tennessee Gas Pipeline*"), at P 46 (emphasis added).
[469] *Tennessee Gas Pipeline*, 162 FERC ¶ 61,167, at P 47.
[470] *Tennessee Gas Pipeline*, 162 FERC ¶ 61,167, at P 50.
[471] *Tennessee Gas Pipeline*, 162 FERC ¶ 61,167, at PP 46, 50.

After FERC's dicta in *Tennessee Gas Pipeline*, FERC's practice of liberally granting late intervention requests filed prior to issuance of a certificate order has continued unabated. In *Northern Natural*, for example, Enbridge Gas Pipeline's motion to intervene was filed so late (five days before FERC's order was issued) that the Commission did not have time to incorporate discussion of the late motion into its final certificate order.[472] Instead, a notice granting the motion to intervene was issued shortly *after* the certificate order.[473] Concurring in the notice, Commissioner Glick pointed out that "today's order, for all intents and purposes, overturns *Tennessee Gas*. Where a would-be party demonstrates good cause for intervening late, we better serve the public interest by considering its views and stating on the record why we agree or disagree than by erecting procedural barriers just to keep the would-be party out of the proceeding."[474] Thus, to this day, FERC's consistent policy announced in *Mountain Valley Pipeline*, has been "to grant motions to intervene filed prior to the issuance of the Commission's order on the merits."[475]

In fact, our review of 22 recent FERC gas decisional orders decided after *Tennessee Gas Pipeline* indicates that FERC approved nearly every motion for intervention that was filed after the formal deadline but before the granting of the orders. Specifically, FERC granted every single pre-decisional motion to intervene in its reviews of Spire Pipeline (2018), Calcasieu Pass LNG (2019), Driftwood LNG (2019), Rio Grande LNG (2019), Brownsville LNG (2019), Jordan Cove LNG (2020), Alaska LNG (2020), Northern Natural (2021), Evangeline Pass (2022), East

[472] *Northern Natural Gas Co.*, 174 FERC ¶ 61,189 (March 22, 2021).
[473] *Northern Natural Gas Co.*, 175 FERC ¶ 61,052 (April 15, 2021) (granting motion to intervene filed on March 17, 2021, just five days prior to issuance of order).
[474] *Northern Natural Gas Co.*, 175 FERC ¶ 61,052, C. Glick *Concurring*, P 3.
[475] *Mountain Valley Pipeline*, 161 FERC ¶ 61,043, at P 22.

300 (2022), Commonwealth LNG (2022), GTN Xpress (2023), Columbia Gas (2023), and Saguaro Pipeline (2024).[476]

Based on our review of those post-*Tennessee Gas Pipeline* decisional orders, FERC only denied three pre-decisional motions to intervene, and each of those involved dramatically different circumstances from the present case. In *Northern Natural*, Atmos Energy's late intervention was denied because the motion "provided no explanation for why it was unable to intervene in a timely manner."[477] In *Transcontinental Gas Pipeline*, 1.5 LLC's good cause argument "referenced documents . . . that did not exist in this proceeding and did not display an understanding of the specific proceeding it sought to intervene in."[478] Lastly, in *Double E Pipeline*, FERC denied an untimely motion to intervene where the purported reasons justifying

[476] *Spire STL Pipeline LLC,* 164 FERC ¶ 61,085 at P 16 (August 3, 2018) (granting three untimely motions); *Venture Global Calcasieu Pass, LLC,* 166 FERC ¶ 61,144 at P 13 (February 21, 2019) (granting one motion filed three year after notice of application); *Driftwood LNG LLC and Driftwood Pipeline,* 167 FERC ¶ 61,054 at P 22 (April 18, 2019) (granting one untimely motion); *Rio Grande LNG, LLC et al.*, 169 FERC ¶ 61,131 at P 14 (November 22, 2019) (granting "several" untimely motions); *Texas Brownsville LLC*, 169 FERC ¶ 61,130 at PP 8-9 (November 22, 2019) (granting undisclosed number of untimely motions); *Pacific Connector Pipeline*, 170 FERC ¶ 61,202 at P 21 (Mar. 19, 2020) (granting "numerous" untimely motions); *Alaska Gasline Development Corporation*, 171 FERC ¶ 61,134 at P 6 (May 21, 2020) (two untimely motions granted); *Evangeline Pass*, 178 FERC ¶ 61,199 at P 17 (March 25, 2022) (granting two parties' untimely motions); *East 300 Upgrade Project*, 179 FERC ¶ 61,041 at P 9 (Apr. 21, 2022) (granting three untimely motions); *Commonwealth LNG*, 181 FERC ¶ 61,143 at P 7 (November 17, 2022) (granting ten motions over project developer's opposition); *Gas Transmission Northwest, LLC*, 185 FERC ¶ 61,035 at P 7 (October 23, 2023) (granting two untimely opposed motions and one untimely unopposed motion); *Columbia Gas Transmission, LLC*, 182 FERC ¶ 61,171, at P 7 (granting one untimely motion); *Saguaro Connector Pipeline, LLC*, 186 FERC ¶ 61,114 at P 5 (February 15, 2024) (granting three untimely unoppose motions and three untimely opposed motions). No untimely motions were considered in the following: *Port Arthur LNG, LLC et al.*, 167 FERC ¶ 61,052 (April 18, 2019); *Gulf Liquefaction, et al.*, 168 FERC ¶ 61,020 (July 16, 2019); *Venture Global Plaquemines LNG LLC, et al.,* 168 FERC ¶ 61,204 (September 30, 2019); *ANR Pipeline Company*, 179 FERC ¶ 61,122 (May 19, 2022); and *Corpus Christi Liquefaction, LLC*, 183 FERC ¶ 61,126 (May 18, 2023).

[477] *Northern Natural Gas*, Notice Denying Late Intervention, Docket No. CP20-487 (Accession No. 20200831-3038, August 31, 2020).

[478] *Transcontinental Pipeline Co.*, Notice Denying Late Intervention, Docket No. CP21-94 (Accession No. 20220922-3082, September 22, 2022).

late intervention had been public knowledge for many years.[479] Thus, FERC's practice has been to grant every unopposed motion to intervene where the moving party in good faith explained (1) their interest in the proceeding and (2) the reason the motion was untimely. FERC's unexplained departure from this precedent for FISH's Motion to Intervene was illogical, discriminatory, and should be reversed.

FERC deviated dramatically from its longstanding precedent in denying FISH's Motion. As a threshold matter, FISH filed its motion to intervene over two months prior to FERC's June 27, 2024, Authorization Order.[480] Thus, FISH's Motion to Intervene should have been granted under the standard announced in *Mountain Valley Pipeline* and applied consistently thereafter, i.e., "to grant motions to intervene filed prior to the issuance of the Commission's order on the merits."[481] FERC's unexplained deviation from that standard was, itself, arbitrary and capricious.[482] Furthermore, FISH's Motion to Intervene was unopposed[483] and offered good faith explanations of both (1) FISH's profound interest in the proceeding[484] and (2) the reason it was unable to intervene during the short window FERC offered for intervention as of right.[485] Thus, FISH's Motion to Intervene included none of the infirmities that led FERC to deny the motion of

[479] *Double E Pipeline, LLC*, 173 FERC ¶ 61,074, at PP 14-26 (Oct. 15, 2020) (NAAQS exceedances predated by many years new data that intervenor claimed justified late intervention and claim that "long-term systemic decline of the oil and gas industry" was only discovered during COVID-19 pandemic was facially illogical).
[480] FISH Motion, p. 1 (filed April 18, 2024); Authorization Order (issued June 27, 2024).
[481] *Mountain Valley Pipeline*, 161 FERC ¶ 61,043, at P 22.
[482] *California Trout*, 572 F.3d at 1023.
[483] *See generally*, *Venture Global CP2, et al*., Docket Nos. CP22-21 and CP22-22 (no opposition filed on CP2 docket).
[484] FISH Motion to Intervene, pp. 1-2, Docket Nos. CP22-21 and CP22-22 (Accession No. 20240418-5083, April 18, 2024) (describing Project impacts to fishermen).
[485] FISH Motion to Intervene, p. 3, Docket Nos. CP22-21 and CP22-22 (Accession No. 20240418-5083, Apr. 18, 2024) ("FISH did not exist" during FERC's open intervention window).

Atmos Energy in *Northern Natural,*[486] that of 1.5 LLC in *Transcontinental Gas Pipeline*,[487] or that of the moving parties in *Double E Pipeline*.[488]

a) Good Cause

The Authorization Order cites *California Department of Water Resources* ("*CDWR*"), for the proposition that FISH should not be permitted to "sleep on its rights" and then seek untimely intervention.[489] That case is distinguishable on a number of grounds. There, the intervenors had submitted several sets of comments on the proposed hydroelectric project, which expressly discussed project impacts to steelhead trout, beginning months before the issuance of that public notice.[490] Over two years after submitting their first comments, the parties moved to intervene, alleging that good cause supported their tardy motions because new studies had been released showing additional impacts to steelhead trout.[491] In that context, FERC denied the motions to intervene because neither party "provided any convincing reason why they could not have intervened earlier in the proceeding."

FISH's Motion to Intervene is materially different from those at issue in *CDWR*. First, unlike the intervenors in *CDWR*, FISH did not exist during FERC's window for open intervention and therefore could not possibly have timely intervened.[492] That alone distinguishes the present case from *CDWR*.

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[486] *Northern Natural*, Notice Denying Late Intervention, Docket No. CP20-487 (Accession No. 20200831-3038, Aug. 31, 2020).
[487] *Transcontinental Pipeline Co.*, Notice Denying Late Intervention, Docket No. CP21-94 (Accession No. 20220922-3082, September 22, 2022).
[488] *Double E Pipeline, LLC*, 173 FERC ¶ 61,074, at PP 14-26.
[489] Authorization Order at P 17.
[490] *CDWR*, 120 FERC ¶ 61057, PP 3-5; *reh'g denied*, 120 FERC ¶ 61,248, *aff'd sub nom. Cal. Trout and Friends of the River v. FERC*, 572 F.3d 1003 (9th Cir. 2009).
[491] *CDWR*, 120 FERC ¶ 61057, PP 10-11.
[492] FISH Motion at 3.

Nor did FISH "sleep on its rights" for nearly two years after gaining knowledge of its interest in the proceedings, as did the intervenors in *CDWR*.[493] FISH was formed on November 25, 2023 and filed its motion to intervene less than five months later on April 18, 2024.[494] Before FISH filed intervention on behalf of the community it represented, it had to recruit fishermen representative of the community it sought to represent – thus the short delay in intervention was partly due to FISH holding its first meeting, becoming incorporated, and ensuring it was actively and meaningfully engaged with local fishermen.[495] It should go without saying that FISH could not possibly have been aware of its interests in this complex proceeding before it existed and had recruited a coalition of fishermen representative of the community, and therefore *CDWR* has no application here. By comparison, whereas FISH filed its motion only five months after it was founded, in *CP1*, FERC granted a motion filed by fossil fuel company Cameron LNG nearly three years after the notice of application.[496]

Even if this case were factually similar to *CDWR (*which it is not) FERC has significantly changed its policy and practice since that case was decided in 2007. As discussed in Part III.E.1, above, since at least 2018, FERC's consistent policy has been to liberally "grant motions to intervene filed prior to the issuance of the Commission's order on the merits."[497] *Mountain Valley Pipeline* involved a factual scenario almost identical to that in *CDWR*: the moving party (a fossil fuel company) failed to file a motion to intervene for nearly two years after receiving notice of the proposed project.[498] Despite that lapse of time, FERC granted the intervenor's motion

[493] *CDWR*, 120 FERC ¶ 61057, PP 3-5.
[494] FISH Motion at 3.
[495] *Id.*
[496] *Venture Global Calcasieu Pass, LLC,* 166 FERC ¶ 61,144 at P 13 (Feb. 21, 2019).
[497] *Mountain Valley Pipeline*, 161 FERC ¶ 61,043, at P 22.
[498] *Mountain Valley Pipeline*, 161 FERC ¶ 61,043, at P 22.

because it "demonstrated a sufficient interest in the proceeding."[499] Thus, *Mountain Valley* effectively overruled *CDWR*.

b) Differential Treatment of FISH

FERC singled FISH out for differential treatment as compared to fossil fuel companies that seek late intervention. "A fundamental norm of administrative procedure requires an agency to treat like cases alike. If the agency makes an exception in one case, then it must either make an exception in a similar case or point to a relevant distinction between the two cases."[500] In *Westar Energy*, the D.C. Circuit held that FERC's refusal to permit a utility to file a corrected form after a deadline was arbitrary and capricious where FERC had permitted another utility to do so and FERC had not offered a reasoned basis for that differential treatment.[501]

Here, as in *Westar Energy*, FERC has applied different standards to similar situations. Specifically, in denying FISH's Motion to Intervene, FERC has arbitrarily applied a "good cause" standard that is far more stringent than the standards FERC applied to motions filed by fossil fuel companies seeking late intervention in *Mountain Valley Pipeline*, *Northern Natural*, and perhaps most egregiously, other intervenors on this docket.

As discussed above, in *Mountain Valley Pipeline,* FERC granted a fossil fuel company's motion to intervene filed nearly two years after the deadline because "it demonstrated a sufficient interest in the proceeding."[502]

Similarly, in *Northern Natural*, a fossil fuel company (Enbridge) filed a motion to intervene only five days before the certificate order was issued, citing as good cause an order issued in *a separate FERC proceeding* to justify its late intervention, because "the Commission may announce generally applicable, industry-wide policy changes or change longstanding

[499] *Mountain Valley Pipeline*, 161 FERC ¶ 61,043, at P 22.
[500] *Westar Energy, Inc. v. FERC*, 473 F.3d 1239, 1241 (D.C. Cir. 2007).
[501] *Westar Energy*, 473 F.3d at 1241.
[502] *Mountain Valley Pipeline*, 161 FERC ¶ 61,043, at P 22.

Commission precedent in individual certificate dockets."[503] To be clear, Enbridge did not argue that it had any particular interest in the proceeding in which it sought to intervene other than the fact that, from a FERC order issued in a separate docket, it had learned that FERC orders carry precedential weight. Nonetheless, FERC granted Enbridge's motion in a notice issued after the certificate order,[504] with Commissioner Glick writing separately to note "we better serve the public interest by considering its views and stating on the record why we agree or disagree than by erecting procedural barriers just to keep the would-be party out of the proceeding."[505]

In the present case, the Authorization Order granted out-of-time intervention to 11 entities.[506] FERC granted an out-of-time motion to intervene filed by Golden Pass LNG Terminal LLC and Golden Pass Pipeline LLC (together, "Golden Pass").[507] Golden Pass' motion did not identify any meaningful interest in this proceeding, vaguely asserting that it is the owner of an LNG terminal "in the vicinity of" of a portion of the CP Express pipeline[508] but not explaining how that vague assertion of general proximity implicated its interests in any way. Furthermore, when explaining its reason for filing late, Golden Pass merely stated that "it only recently became aware" that the CP Express pipeline would be "in the vicinity of the existing [Golden Pass Pipeline]."[509] Golden Pass' late motion to intervene did not assert that some change to the location of the CP Express pipeline justified its late intervention, but rather that Golden Pass, through its own negligence, had failed to discover this alleged proximity.

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[503] Exhibit 48, *Northern Natural Gas Co.*, Docket No. CP20-487 (March 17, 2021), Accession No. 20210317-5167.
[504] *Northern Natural Gas Co.*, 175 FERC ¶ 61,052 (Apr. 15, 2021) (granting motion to intervene filed on March 17, 2021, just five days prior to issuance of order).
[505] *Northern Natural Gas Co.*, 175 FERC ¶ 61,052, Comm'r Glick, concurring, P 3.
[506] Authorization Order at P 16.
[507] Motion to Intervene Out-of-Time of Golden Pass LNG Terminal LLC, Docket Nos. CP22-21 and CP22-22 (Accession No. 20220107-5034, Jan. 7, 2022).
[508] Motion to Intervene Out-of-Time of Golden Pass LNG Terminal LLC, p. 3, Docket Nos. CP22-21 and CP22-22 (Accession No. 20220107-5034, Jan. 7, 2022).
[509] Motion to Intervene Out-of-Time of Golden Pass LNG Terminal LLC, pp. 3-4, Docket Nos. CP22-21 and CP22-22 (Accession No. 20220107-5034, Jan. 7, 2022).

Similarly, FERC granted an out-of-time motion to intervene filed by Commonwealth LNG, LLC ("Commonwealth").[510] Like Golden Pass, Commonwealth's sole interest in the proceeding is proximity to the proposed Project – Commonwealth did not articulate how that proximity might affect its interests.[511] Commonwealth stated that it was unable to timely file its motion to intervene "due to an administrative error."[512]

Also on this docket, For a Better Bayou and the Dysons filed their motion to intervene in October 2023, over 21 months after the initial deadline for open intervention and seven months after the deadline for comments on the DEIS.[513] Those motions were opposed by CP2 LNG and CP Express, who made several arguments that the intervenors failed to demonstrate good cause for intervening "so very late in the proceeding."[514] FERC rejected those arguments by Secretary's Notice on November 13, 2023, concluding that For a Better Bayou and the Dysons "have a direct interest in the proceeding that may not be adequately represented by other parties, and allowing the interventions will not disrupt the proceedings or cause any prejudice to or additional burdens upon the existing parties."[515] FERC's order did not address the good cause standard.[516]

Against that backdrop, one can only conclude that FERC has singled FISH out for differential, and more stringent, treatment from other parties seeking late intervention. Consider

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[510] Out-of-Time Motion to Intervene of Commonwealth LNG, LLC, Docket Nos. CP22-21 and CP22-22 (Accession No. 20220110-5178, Jan. 10, 2022).
[511] Out-of-Time Motion to Intervene of Commonwealth LNG, LLC, Docket Nos. CP22-21 and CP22-22 (Accession No. 20220110-5178, Jan. 10, 2022).
[512] Out-of-Time Motion to Intervene of Commonwealth LNG, LLC, Docket Nos. CP22-21 and CP22-22 (Accession No. 20220110-5178, Jan. 10, 2022).
[513] Motion to Intervene of For a Better Bayou, Docket Nos. CP22-21 and CP22-22 (Oct. 16, 2023), Accession No. 20231016-5195; Motion to Intervene of Adley Dyson, *et al*., Docket Nos. CP22-21 and CP22-22 (Oct. 19, 2023), Accession No. 20231019-5009.
[514] Answer of CP2 LNG and CP Express Opposing the October 16, 2023 *et al*. Untimely Motions to Intervene, Docket Nos. CP22-21 and CP22-22 (Oct. 30, 2023), Accession No. 20231030-5063.
[515] Notice Granting Late Interventions, Docket Nos. 20231113-3045 (Nov. 13, 2023), Accession No. 20231113-3045.
[516] Notice Granting Late Interventions, Docket Nos. 20231113-3045 (Nov. 13, 2023), Accession No. 20231113-3045.

that, in *Mountain Valley Pipeline,* FERC, *in 2017,* FERC granted a motion filed almost two years after the intervention deadline without addressing the good cause standard where a party "demonstrated a sufficient interest in the proceeding,"[517] that, *in 2021*, in *Northern Natural Gas, FERC* found good cause for late intervention where the intervenor contended it filed late because a FERC order filed in a separate docket indicated FERC orders generally might carry precedential weight.[518] And with respect to untimely motions filed by For a Better Bayou and the Dysons *in 2023*, FERC granted the motions based solely on those parties' direct interests in the proceeding and, once again, without addressing the good cause standard.

But here, FERC decides to say no to a group of fishermen, who live and work in Cameron Parish, whose livelihoods are entirely dependent on maintaining the vibrancy and accessibility of their local waters and the Louisiana Gulf Coast, and when the group did not exist at the timely intervention stage.[519] FERC leapfrogged over its recent precedents from 2023, 2021, and 2017, using its favorite game of "logical hopscotch,"[520] and cited a 2007 case as its authority for the proposition that FISH did not show good cause for its late motion.[521]

Further, unlike the motions filed by Golden Pass and Commonwealth, FISH's motion to intervene described in painful detail how FISH's members would be directly harmed by the proposed Project.[522] And unlike Golden Pass and Commonwealth, FISH's motion was not late due to an error of the filing party, but rather, as FISH's motion explained, FISH *did not exist* until November 2023, did not host its first meeting to begin to establish its coalition of fishermen until

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[517] *Mountain Valley Pipeline*, 161 FERC ¶ 61,043, at P 22.
[518] *Northern Natural Gas Co.*, 175 FERC ¶ 61,052 (Apr. 15, 2021)
[519] Authorization Order at P 17.
[520] *Pacific Connector Pipeline LP*, 171 FERC ¶ 61,136 (May 22, 2020), Comm'r Glick, dissenting, at p. 5.
[521] Authorization Order at P 17, *citing CDWR*, 120 FERC ¶ 61057.
[522] FISH Motion, pp. 1-2, Docket Nos. CP22-21 and CP22-22 (Accession No. 20240418-5083, April 18, 2024).

December 2023, and did not receive its incorporation as an entity from Louisiana until January 2024.[523]

FERC also cannot argue that it was justified in denying FISH's Motion to Intervene because it was brought soon before the issuance of the Authorization Order. FERC, *in 2021*, allowed a fossil fuel company to intervene despite that its motion was filed only five days prior to the issuance of a certificate order, with Commissioner Glick writing that "we better serve the public interest by considering [a party's] views and stating on the record why we agree or disagree than by erecting procedural barriers just to keep the would-be party out of the proceeding."[524] FERC cannot arbitrarily and without justification treat FISH differently from that fossil fuel company, especially considering that, here, FISH's motion was filed over two months prior to the issuance of the Authorization Order. Sadly, the only reasonable conclusion is that FISH is being treated differently because it is not part of the 'good old boys club' – something that fundamentally undermines FERC's reputation and feeds into community distrust and frustration with the Commission.

FERC cannot arbitrarily pick and choose when it will strictly apply the good cause standard and when it will apply a relaxed standard.[525] But that is precisely what FERC has done here. FERC's differential treatment of FISH, and its failure to adhere to its long standing precedent in this case, are the very definition of arbitrary and capricious decision-making.[526]

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[523] FISH Motion, p. 3, Docket Nos. CP22-21 and CP22-22 (Accession No. 20240418-5083, April 18, 2024).
[524] *Northern Natural Gas Co.*, 175 FERC ¶ 61,052, Comm'r Glick, concurring, P 3.
[525] *Westar Energy*, 473 F.3d at 1241.
[526] *United Mun. Distrib. Group*, 732 F.2d at 210 (FERC "must conform to its prior practice and decisions or explain the reason for its departure from such precedent"); *Greater Boston Int'l Television*, 444 F.2d at 852 (where FERC departs from long standing practices, it must provide "reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored"); *see also E. Kentucky Power Co-Op*, 489 F.3d at (same).

2. FISH has unique interests in this proceeding that are not addressed by the participation of others.

FERC's Authorization Order erroneously concluded that "FISH's interests are adequately represented by other parties to the proceeding, including its Executive Director, Travis Dardar, as well as For a Better Bayou and Louisiana Bucket Brigade."[527] This conclusion is plainly erroneous.

FISH is a diverse coalition of nearly 60 commercial fishermen whose only similarity may be that they all fish the waters in and around Cameron Parish, Louisiana.[528] Contrary to FERC's conclusion in denying FISH's Motion to Intervene, this community is not a monolith, but rather reflects a diverse group of individuals who are impacted by the Project in unique ways.[529] For example, the Project impacts a fisherman that primarily fishes for shrimp up and down the Calcasieu Ship Channel far differently than another fisherman who primarily harvest oysters in intertidal and subtidal inlets. Whereas the former may suffer harms due to Venture Global's irrational choice to dredge the Calcasieu Ship Channel[530] during prime shrimping season (which harms shrimp embryos), the latter may be more concerned with Venture Global's irrational choice to dispose of dredged spoils in areas where oysters are known to spawn.

These harms, in turn, are meaningfully different from those suffered by another fisherman who, in addition to fishing for resale, also provides guide service for recreational fishermen seeking prize fish like flounder, redfish, and drum. In that case, the primary harm caused by the Project is the reputational harm to the area's fishing industry caused by the presence of heavy industry on the shoreline. Further complicating the analysis, each individual

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[527] Authorization Order at P 17.
[528] FISH Motion to Intervene, p. 1, Docket Nos. CP22-21 and CP22-22 (Accession No. 20240418-5083, April 18, 2024).
[529] *See* Exhibit 44, FISH Testimonials (including statements from Cameron fishermen whose jobs, heritage, and way of life will be impacted by CP2).
[530] And they plan to dredge over 6.4 million cubic yards of existing terrestrial habitat. FEIS at 5-11.

fisherperson may fish for different species during different parts of the year or at different times of the day, the fishermen differ in how they have traditionally utilized public fishing infrastructure that will be impacted by the Project, in the size and composition of their fishing vessels and how those vessels may be impacted by tanker traffic. In short, no single fisherperson can represent the collective and diverse interests of the impacted fishermen in the area.

FERC's insulting and profoundly naive insinuation that the interests of FISH's diverse members are adequately represented by the participation of Travis Dardar as an individual reflects only that FERC has utterly failed to meaningfully engage with and understand the layered and complex fabric of this community. And how can FERC possibly have a reasoned basis to conclude that the Project will not have a significant impact on commercial fishing if it does not understand the different types of commercial fishermen and their catch who work in and around the Project? FERC's ignorance in denying FISH's Motion to Intervene strongly suggests that it failed to properly educate itself about the various livelihoods that will be affected by continued LNG expansion in the Calcasieu Ship Channel.

Nor are FISH's interests represented by For a Better Bayou or the Louisiana Bucket Brigade. FISH's interests are grounded in their concern that this Project will endanger their livelihoods, their way of life, and their ability to provide for their families.[531] While FISH is dedicated to preservation of the environment, that dedication is rooted in the fact that a healthy environment is integral to the commercial fishermen's livelihood. This focus is reflected in FISH's mission statement – "to protect the rights of *commercial* fishermen to *flourish* and *prosper*."[532] None of the other organizations represent—nor do they claim to represent—the specific and nuanced interests of the commercial fishermen of Southwest Louisiana. The

[531] FISH Motion to Intervene, p. 1, Docket Nos. CP22-21 and CP22-22 (Accession No. 20240418-5083, April 18, 2024).
[532] Exhibit 49, Fishermen Involved in Sustaining Our Heritage webpage, available at https://www.fishermenfightback.org/ (last accessed July 26, 2024).

relationship amongst FISH, For a Better Bayou, and the Louisiana Bucket Brigade, is far more diffuse than the relationship amongst Cheniere, Venture Global, and Sempra, and yet FERC's precedent clearly supports that it understands that these companies' commercial interests are not identical. Just as above, FERC's analysis here is not only blatantly wrong, but it is insulting.

Lastly, to state the obvious, the fact that FISH "jointly filed comments" with other groups, or that "it partners with other groups" does not mean that FISH's interests are adequately represented by those other groups.[533] While FISH's interests may be aligned with those other groups in some ways, in that FISH and those other groups all stand in opposition to the Project, those groups do not represent the interests of Cameron's commercial fishing community. Under that logic, no pipeline that collaborates or shares views with the Interstate Natural Gas Association of America ("INGAA") should ever be allowed to intervene in a docket where INGAA is intervened, because INGAA evidently is a sufficient substitute. Again, to put it mildly, FERC's analysis here is not only wrong, but insulting.

In sum, FERC grievously erred in denying FISH's motion to intervene in this proceeding. Frankly, there may be no community that will suffer greater impacts from this Project than Cameron's commercial fishermen, and FISH is the *only* organization that is dedicated to championing their rights. Venture Global and FERC have long disregarded the voices of the fishermen. FERC has a choice: it can either feed the stereotype that FERC is a captive agency, sworn to serve the fossil fuel industry, or it can support hard-working Americans whose job is to actually feed others. This is FERC's last chance to reconsider its sidelining of the fishermen and grant FISH intervenor status. FERC should reconsider its denial of FISH's motion to intervene and grant FISH intervenor status.

[533] Authorization Order at P 17.

F. FERC Violated NEPA and the APA.

NEPA is our national charter for the protection of the environment.[534] Its purposes include "promot[ing] efforts which will prevent or eliminate damage to the environment," and ensuring that federal agencies incorporate environmental concerns into the decisionmaking process.[535] The Council on Environmental Quality ("CEQ") has promulgated regulations implementing NEPA, which are "binding on all Federal agencies"[536] including FERC, except where those regulations are inconsistent with the statutory requirements of the Commission.[537] NEPA requires federal agencies to prepare a "detailed statement" evaluating all "major Federal actions significantly affecting the quality of the human environment."[538] An FEIS must analyze the direct, indirect, and cumulative effects of the proposed action, and the agency must perform this duty using high-quality, accurate scientific information and must ensure the scientific integrity of its analyses.[539] An FEIS "forces the agency to take a 'hard look' at the environmental consequences of its actions, including alternatives to its proposed course."[540] Conducting sound environmental analysis before agencies take actions reduces conflict and waste in the long run by avoiding unnecessary harm and uninformed decisions.[541] An FEIS is deficient, and the agency action it undergirds is arbitrary and capricious, if the FEIS does not contain sufficient discussion of the relevant issues and opposing viewpoints or if it does not demonstrate reasoned

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[534] 40 C.F.R. § 1500.1.
[535] 42 U.S.C. § 4321. § 4331(a)–(b).
[536] 40 C.F.R. § 1500.3(a) (compliance with the CEQ regulations "is applicable to and binding on all Federal agencies . . . except where compliance would be inconsistent with other statutory requirements").
[537] 18 C.F.R. § 380.1.
[538] 42 U.S.C. § 4332(2)(C).
[539] 40 C.F.R. § 1508.25(c); §§ 1500.1(b), 1502.24.
[540] *See Sierra Club v. FERC*, 867 F.3d 1357, 1367 (D.C. Cir. 2017); *see also Robertson v. Methow.*
Valley Citizens Council, 490 U.S. 332, 349 (1989).
[541] *See, e.g.,*42 U.S.C. § 4332; *Laclede Gas Co.* v. *FERC,* 873 F.2d 1494, 1499 (D.C. Cir. 1989) ("When so much depends upon the agency having a sure footing, it is not too much for us to demand that it look first, and then leap if it likes.").

decisionmaking.[542] Relatedly, under the APA, "the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained."[543]

CEQ completed a multi-phased review of its regulations[544] with the issuance of a final rule[545] on May 1, 2024. This regulatory framework applies to FERC, and many aspects of the 2024 regulations require higher duties[546] than those which FERC believes it should be held to. Reviewing courts have stated they will cite and look to regulations "in effect at the time of [an Order]."[547] Accordingly, the CEQ regulations FERC was subject to at the time of its June 27, 2024 order were the 2024 final rules, and FERC should be held to that standard. Despite this, FERC cites to the replaced 2022 regulations, which were available at the time it issued its FEIS.[548] Despite this error, when FERC's FEIS is held to the mandates of either edition, FERC's FEIS violates NEPA and the APA and, as applied to its Authorization Order, the NGA.

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[542] *Sierra Club v. FERC*, 867 F.3d 1357, 1368 (D.C. Cir. 2017).
[543] *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943).
[544] 40 C.F.R. § 1500.
[545] Council on Environmental Quality, National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35442-35577 (May 1, 2024).
[546] *See* 40 C.F.R. 1500.2(e)–(f) (Federal agencies shall to the fullest extent possible: **"**use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment, such as alternatives that will reduce climate change-related effects or address adverse health and environmental effects that disproportionately affect communities with environmental justice concerns" and "[u]se all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.")
[547] *See Healthy Gulf*, 2024 WL 3418863, at *2, n.1 (*Citing* Ctr. for Biological Diversity v. FERC, 67 F.4th 1176, 1181 n.2 (D.C. Cir. 2023)).
[548] 87 Fed. Reg. 23,453 (Apr. 20, 2022).

G. FERC's FEIS Defines the Purpose and Need for the Project so Narrowly as to Preclude Analysis of Reasonable Alternatives, Including the No-Action Alternative, and Is Unlawful.

While NEPA does not require an agency's FEIS to consider "every conceivable alternative to a proposed action"[549] it does require that agencies examine "a reasonable range of alternatives that will foster informed decision making."[550] This requirement to articulate and examine a range of alternatives is considered the "heart of the environmental impact statement."[551] NEPA's requirement that agencies consider alternatives "is not merely to force the agency to reconsider its proposed action, but, more broadly, to inform Congress, other agencies, and the general public about the environmental consequences of a certain action in order to spur all interested parties to rethink the wisdom of the action."[552]

FERC's unlawful adoption of CP2 LNG's and CP Express' purpose and need flies in the face of both NEPA caselaw and FERC's own regulations (through its deference to CEQ regulations[553]). Here, FERC brazenly and admittedly chose not to engage in a meaningful, independent inquiry to determine project purpose and need. FERC's willful failure to formulate a genuine statement of purpose and need is arbitrary, capricious, and insufficient to satisfy NEPA's mandates. As a result of this failure, FERC taints the entirety of its alternative analysis. If the presentation of a range of alternatives is the "heart" of the NEPA exercise, an unduly narrow statement of purpose and need (such at this one) poisons the entire alternatives analysis and the FEIS as a whole.

NEPA requires an agency to "[e]valuate reasonable alternatives to the proposed action," including "the no action alternative."[554] In doing so, an agency must articulate in its FEIS a

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[549] 40 C.F.R. § 1502.14(a).
[550] *Id.*
[551] 40 C.F.R. § 1502.14.
[552] *National Resources Defense Coun., v. Hodel*, 865 F.2d 288, 296 (D.C. Cir. 1988).
[553] Fn. 517, supra.
[554] 40 C.F.R. § 1502.14.

statement of purpose and need, which is "a statement that briefly summarizes the underlying purpose and need for the proposed agency action."[555] As the courts and CEQ have laid out, "an agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality."[556] The range of alternatives considered in the FEIS must be "reasonable" in that they "meet the purpose and need for the proposed action,"[557] but the statement of purpose should not be so narrow as to "compel the selection of a particular alternative."[558] To ensure the appropriate alternatives are evaluated, the FEIS must "specify the underlying purpose and need to which the agency is responding."[559] Although the purpose and need statement appropriately considers an applicant's purpose, the agency cannot define the purpose so narrowly that only the applicant's proposal will fulfill it.[560] And yet, in its FEIS for the Project, FERC does exactly that.

In its purpose and need section (1.1), FERC explicitly adopts, wholesale, CP2 LNG's and CP Express' whims and desires as its statement of purpose and need—down to the exact MTPA and Bcf/d quantities proposed by each applicant. In its FEIS, FERC copies and pastes the purpose and need straight from the Project application , saying "CP2 LNG states that the purpose of the proposed Project is to liquefy, store, and export a nameplate liquefaction capacity of 20 MTPA of liquefied LNG, with approximately 28.0 MTPA capacity possible under optimal conditions, to overseas markets via marine transport by ocean-going vessels."[561] Going further,

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[555]40 C.F.R. § 1502.13.
[556] *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).
[557] 40 C.F.R. § 1508.1(z).
[558] *Conservation Law Found. v. Ross*, 374 F. Supp. 3d 77, 112 (D.D.C. 2019) (quoting *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 73 (D.C. Cir. 2011)); *accord Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997).
[559] 40 C.F.R. § 1502.13.
[560] *Theodore Roosevelt Conservation P'ship*, 661 F.3d at 73; *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).
[561] FEIS at 1-3 (emphasis added).

FERC parrots CP2 LNG's stated motivations for exporting gas, noting that "CP2 LNG also states that conversion of natural gas to LNG would promote a global natural gas trade and greater diversification of global supplies."[562] FERC notes that "CP Express states that the purpose of the Pipeline System is to create the firm transportation capacity needed to transport 4.4 billion cubic feet per day (Bcf/d) of feed gas required for the proposed LNG export operations from natural gas supply points in east Texas and southwest Louisiana to the Terminal Facilities."[563] The Commission further states that, "[b]ased on CP2 LNG's Application for Long-term Authorization to Export LNG to Free Trade and Non-Free Trade Agreement Nations, submitted to the U.S. Department of Energy (DOE) and pending approval, CP2 LNG has entered into a precedent agreement, initially lasting 20 years, with CP Express to subscribe to 100 percent of its firm capacity" and notes that "CP2 LNG has entered into 20-year LNG Sales and Purchase Agreements with four counter-parties (affiliates of New Fortress Energy, ExxonMobil, and Chevron, as well as one of the largest energy companies in Germany, EnBW Energie Baden-Württemberg AG)."[564]

The Commission itself acknowledges that it has "received multiple comments from the public during scoping periods and in response to [its D]EIS stating that the Commission should not approve the Project due to a narrow purpose and need[.]" Yet, in an astonishing admission, FERC shrugs at its responsibility to define the project purpose and need on its own, instead returning to its happy place "ostrich-like" approach to decisionmaking.[565] FERC states it "does not plan, design, build, or operate natural gas transmission infrastructure" but that as "an independent regulatory commission, the FERC reviews proposals to construct and operate such facilities" and "[a]ccordingly, the project proponent is the source for identifying the purpose for

[562] *Id.*
[563] *Id.*
[564] *Id*.
[565] *Id.*

developing, constructing, and operating a project" and "CP2 LNG's and CP Express' purpose and objective in proposing the Project were defined *in its application with the Commission*."[566]

Whether FERC misunderstands or merely dislikes its obligation to craft its own statement of purpose and need, NEPA demands more of FERC than engaging in a "copy and paste" exercise, as it did here. CEQ and courts have acknowledged that agencies must, naturally, consider the aims of a project when "summariz[ing] the *underlying* purpose and need for the proposed agency action"[567] FERC's approach fell far beneath crafting a summary of the *underlying* purpose of the project; FERC simply re-stated the words of CP2 LNG and CP Express. This approach is unlawful, and FERC tainted its analysis of all other alternatives as a result.

FERC's narrow statement of purpose and need for the Project undermines its meager analysis of the no-action alternative. NEPA requires that an agency "[e]valuate reasonable alternatives to the proposed action," including "the no action alternative."[568] Where the agency is evaluating a proposal for a project, "'no action' . . . would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward."[569] CEQ's most recent NEPA implementing regulations underscore the importance of an agency's examination of the no-action alternative, stating that agencies shall "identify the environmentally preferable alternative" among those explored, and that the "environmentally preferable alternative may be…the no action alternative[.]"[570] Here, the no-action alternative analysis states:

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[566] *Id*.
[567] 40 C.F.R. § 1502.14 (emphasis added).
[568] *Id.*
[569] Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981).
[570] 40 C.F.R. 1502.14(f).

> under the No-Action Alternative, the Project would not be developed and CP2 LNG and CP Express' objective of liquefying and exporting natural gas to foreign markets would not be realized. In addition, the potential environmental impacts discussed in section 4.0 of this EIS would not occur. The No-Action Alternative might result in end users of LNG making different arrangements to meet their needs. Although it is speculative to predict what actions might be taken by policymakers or end users if the No-Action Alternative is selected, it is possible that renewable energy sources (e.g., solar power), traditional energy sources (e.g., coal or fuel oil), or traditional long-term energy sources (e.g., nuclear power) could be used in lieu of the Project. But the location of the facility and use of the fuel (electricity, heating, industrial feed stock, etc.) would also be speculative. In addition, alternative energy sources would not meet the Project objective of liquefying natural gas for export and are beyond the scope of this EIS.[571]

The no-action alternative analysis is germane to the entire NEPA review exercise, as it is the control group against which all of the Project's potential harms are evaluated. But here, the Commission's no-action alternative contravenes basic NEPA principles, is not a genuine no-action alternative, and conforms with no-actions statements that CEQ has prohibited.[572] FERC's decision to merely assume, without evidence, that the need outlined by CP2 LNG and CP Express is so genuine and severe (a fact that itself is contravened by the LNG glut, see Fn. 103, infra), that it will certainly be filled by some other mechanism, belies the entire purpose of NEPA review. . FERC's improper statement of purpose and need, paired with its myopic view as to which energy sources could be used by speculative end-buyers, fully defeats the purpose of NEPA.

While the FEIS claims that "[t]he Commission will determine the Project need and could choose the No-Action Alternative," FERC's actual words do not support any conclusion that FERC meaningfully entertained, considered, or addressed the no-action alternative in the

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[571] FEIS at 3-37.

[572] *See* 46 Fed. Reg. at 18,027 (defining "no action" in instances involving federal decisions on proposals for projects) (also reminding all federal decision makers not to "simply assume that if the federal action does not take place, another action will perfectly substitute for it and generate identical emissions, such that the action's net emissions relative to the baseline are zero.")

Authorization Order.[573] But this is far from a surprising result given the problematic way the Commission lays out the no-action alternative in its FEIS.

The Commission's characterization of its no-action alternative skewed the agency's entire analysis of alternatives, failing to serve as the 'measuring stick' that allows for meaningful comparison between the purported benefits of the proposed action and its environmental impacts. Particularly when read together, the Commission's flawed statement of purpose and need and its disingenuous no-action alternative render any conclusion other than building the Project foregone. This is precisely the sort of thing that NEPA caselaw and CEQ guidance have aimed to avoid.

H. FERC Failed to Take the Required Hard Look at Greenhouse Gas Emissions.

FERC estimates that operation of the CP2 LNG Terminal and the CP Express Pipeline will emit approximately 8,510,099 metric tons per year of CO2e,[574]a quantity annually equivalent to putting more than 1,850,000 additional gasoline-fueled automobiles on the road each year.[575] FERC does not dispute that NEPA requires FERC to take a hard look at these emissions, or that they must be considered in FERC's Natural Gas Act evaluation of the public interest.[576]

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[573] Venture Global CP2 LNG, LLC, 187 FERC ¶ 61,199 (2024) (Order).
[574] Authorization Order at P 165.
[575] *See* Authorization Order, Clements Dissent, P 10.
[576] *See Vecinos*, 6 F.4th at 1329 (finding the Commission's analysis of climate change impacts deficient under *both* the NGA and NEPA and directing the Commission to revisit its public interest determination after correcting deficiencies); *see also Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 109, 115 (D.C. Cir. 2022) (finding "the Commission's NGA section 7 balancing of public benefits and adverse consequences reasonably accounted for potential environmental impacts" and noting that in some circumstances "[g]reenhouse gas emissions are a reasonably foreseeable effect of a pipeline project" that must be studied under NEPA); *Food & Water Watch v. FERC*, 28 F.4th 277, 282 (D.C. Cir. 2022) (recognizing the NGA Section 7 certificate process incorporates environmental review under NEPA, which includes analysis of downstream GHG emissions); *Birckhead v. FERC*, 925 F.3d 510, 518-19 (D.C. Cir. 2019) (affirming previous holdings that the Commission is the "legally relevant cause of the direct and indirect environmental effects of pipelines it approves," including reasonably foreseeable GHG emissions (cleaned up)); *Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (addressing

However, FERC failed to take the hard look at these emissions that NEPA requires. Specifically, FERC acted arbitrarily in concluding that it could not determine whether these emissions were a "significant" impact,[577] that it could not assess or determine the "significance" of these emissions,[578] and by failing to provide the required discussion of these emissions' foreseeable actual effects.

1. As In *Healthy Gulf*, FERC arbitrarily refused to determine whether greenhouse gas emissions were "significant."

The Authorization Order argues that FERC is not determining whether the Project's greenhouse gas emissions are significant because FERC lacks a methodology for doing so.[579] FERC does not dispute that if it was possible to make such a determination, FERC would be required to do so. Nor could FERC: FERC's regulations and practice clearly require such a determination. And here, FERC's conclusion that it was impossible to make such a determination is unsupported, for the reasons recently identified in the D.C. Circuit in *Healthy Gulf*.[580]

FERC regulations and practice require FERC to identify, for each environmental impact, whether that impact is "significant."[581] We recognize that the D.C. Circuit recently held, in *Food & Water Watch v. FERC*, that the Council on Environmental Quality's general NEPA regulations only require a "discussion of the significance" of individual impacts, and that CEQ's regulations did not require a determination of whether individual environmental impacts are "significant or

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Commission's treatment of GHG emissions and explaining that the Commission's public convenience and necessity determination must weigh a project's environmental effects).

[577] Authorization Order at P 179.

[578] *Id.*

[579] Authorization Order at P 179-180.

[580] *See Healthy Gulf v. FERC*, No. 23-1069, 2024 WL 3418863 (D.C. Cir. July 16, 2024).

[581] 18 C.F.R. § 380.7(a), (d).

insignificant."[582] But that case did not consider FERC's own, more specific regulation, 18 C.F.R. § 380.7. Subsection 380.7(a) requires FERC to provide a summary of the "significant environmental impacts of [a] proposed action." The plain language of this regulation requires FERC to decide whether each individual impact is or is not "significant."[583] This plain language interpretation is consistent with FERC's actual practice: in this proceeding, and in every other FERC proceeding Intervenors are aware of, FERC has labeled all environmental impacts other than greenhouse gas emissions as significant or insignificant.[584] And identification of impacts as "significant" under this subsection has consequences for the rest of FERC's analysis. This regulation requires FERC to address mitigation, and FERC has explained that a finding that an impact is significant compels FERC to address whether that specific impact can be mitigated.[585] And the regulation specifically requires FERC to identify whether individual impacts will remain "significant" despite mitigation.[586] FERC's determination of whether an impact influences its Natural Gas Act public interest analysis only occurs if the impact has been determined to be "significant."[587]

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[582] *Food & Water Watch v. FERC*, 104 F.4th 336, 346-47 (D.C. Cir. 2024) (quoting 40 C.F.R. § 1502.16 (2022)) (modifications omitted).
[583] 40 C.F.R. § 1501.3(d). Although not considered by *Food and Water Watch*, CEQ's 2024 revisions to its NEPA regulations replace the requirement to consider whether "effects" generally "are significant" with a requirement to consider whether an individual "adverse effect … is" significant, paralleling the FERC regulations. https://www.ecfr.gov/compare/current/to/2020-09-14/title-40/chapter-V/subchapter-A/part-1501/section-1501.3 (juxtaposing different versions of 40 C.F.R. § 1501.3(d)).
[584] *See* FEIS at with all other impacts of the project as described throughout the FEIS, *e.g*. as described throughout the Executive Summary. FEIS at P1-1 to P1-19.
[585] *Interim GHG Policy*, 178 FERC ¶ 61,108, PP79, 106 (Feb. 18, 2022). *Accord* Council on Environmental Quality, *NEPA Guidance on Consideration of Greenhouse Gases,* 88 Fed. Reg. 1196, 1206 (Jan. 9, 2023).
[586] 18 C.F.R. § 380.7(d).
[587] *See Venture Global Calcasieu Pass LLC*, 166 FERC ¶ 61,144 (2019) (Glick, Comm'r, dissenting at P 6) ("[R]ecognizing the impacts as significant ensures that those impacts factor into the Commission's public interest determination.")

Here, although the Authorization Order summarizes this *Food & Water Watch* holding in a footnote, the Order does not rely on this holding. That is, the Authorization Order appropriately does not argue that if it is possible to do so, FERC is nonetheless not required to determine whether greenhouse gas emissions are significant or insignificant. FERC's regulations clearly require such a finding, and it would have been contrary to law for FERC to argue otherwise. Instead, the Authorization Order only argues that it was impossible to determine whether greenhouse gas emissions were significant.

That claim of impossibility was arbitrary, as the D.C. Circuit affirmed in *Healthy Gulf* FERC argued that it did not have a threshold for use in determining when impacts rise to the level of significance, whether expressed in tons of greenhouse gas emission or in terms of monetized impact.[588] But here, the 8.5 million tons per year of direct greenhouse gas emissions clearly exceed any threshold FERC or any other agency could plausibly adopt, so the fact that FERC has not yet adopted a specific threshold is irrelevant. FERC adopted a similar approach in *Northern Natural Gas,* 174 FERC ¶ 61,189 (Mar. 22, 2021). *Northern Natural* presented the converse situation of facially insignificant greenhouse gas emissions. There, FERC concluded that although it had not yet identified a significance threshold for greenhouse gases, the 315 tons per year of emissions at issue were clearly below any threshold FERC could plausibly adopt, and therefore insignificant.[589] Here, the emission are 85 times FERC's previously-proposed significance threshold of 100,000 tons per year,[590] which was itself equal to or greater than any threshold proposed by any other agency.[591] Although FERC withdrew that interim policy, and FERC may have doubts about whether a threshold should be somewhat higher or lower, FERC

[588] Authorization Order at PP 179-180.
[589] 174 FERC ¶ 61,189, PP29, 33.
[590] 178 FERC ¶ 61,108, P79
[591] 178 FERC ¶ 61,108, PP93-95.

has never suggested that the threshold should be anywhere near the level of emissions at issue here, nor has FERC ever offered any argument that would support such a high threshold.

In *Healthy Gulf*, the D.C. Circuit held that FERC acted arbitrarily in failing either to follow *Northern Natural* in evaluating the greenhouse gas emissions of the Commonwealth LNG terminal or to explain why it would be inappropriate to do so.[592] So too here. Although the dissent faults FERC's failure to follow *Northern Natural*,[593] the Authorization Order fails to even acknowledge this FERC precedent. For the reasons stated in *Healthy Gulf*, this renders the Authorization Order arbitrary, both in its NEPA analysis and its Natural Gas Act public interest determination.[594] And the *Northern Natural* approach would plainly suffice here: although *Healthy Gulf* faulted FERC for failing to either follow or distinguish *Northern Natural*, it is clear that *Northern Natural* can't actually be distinguished.

2. FERC also failed to evaluate the "effects" and "significance" of greenhouse gas emissions.

FERC's failure to take a hard look at greenhouse gas emission extends beyond failing to make a finding as to whether the effects of the project's greenhouse gas emissions were "significant" or "insignificant." FERC was also required to take a hard look at the "effects" of these emissions, including their reasonably foreseeable impacts on "ecological … aesthetic, historic, cultural, economic, social, or health" resources.[595] And FERC was required to take a hard look at the "significance" of those effects, pursuant to 40 C.F.R. § 1502.16(a)(1) (2022).[596] These are conceptually distinct requirements.[597] Whereas the question of whether impacts are

[592] 2024 WL 3418863, at *4-*5.
[593] Authorization Order, Clements Dissent, P 8.
[594] 2024 WL 3418863, at *5, *9; *accord Gulf S. Pipeline Co., LP v. FERC*, 955 F.3d 1001, 1011-12 (D.C. Cir. 2020) (holding that FERC had failed to distinguish *Texas Eastern Transmission*, 139 FERC ¶ 61,138 (May 21, 2012)).
[595] 40 C.F.R. § 1508.1(i)(4) (2024).
[596] Although CEQ revised this section in 2024, both the 2022 and 2024 versions of the regulation require assessment of significance.
[597] *See Food & Water Watch*, 104 F.4th at 346.

"significant" requires an up-or-down, yes-or-no answer, "significance" is open ended. For example, a project that emits 1 million tons per year of greenhouse gases and one that emits 10 million tons per year would both have facially "significant" impacts, but the latter has much greater significance, and the NEPA and Natural Gas Act analyses must reflect this fact.

FERC violated its obligation to take a hard look at the effects of greenhouse gas emissions and to discuss the significance thereof here. Although the social cost of carbon/social cost of greenhouse gases provides a generally accepted method for taking this hard look, FERC refused to endorse this tool, claiming that it did not "provide a mechanism or standard for judging 'significance'"[598] and citing prior FERC orders that mistakenly argued that the tool was not appropriate for "project-level" review.[599] These unwarranted aspersions undermined the efficacy of FERC's "disclosu[re]," "for informational purposes" of the estimates of social cost here.[600] And the discussion FERC provided aside from social cost fails to provide a hard look at effects of these emissions. For example, FERC purported to "place the project's GHG emissions in context by comparing them to the total GHG emission of the United States as whole and at the state level."[601] But expressing emissions as a percent of national or state inventories provides no analysis or evidence as to the "effects" those emissions will actually have, and therefore does not satisfy 40 C.F.R. § 1508.1(i)(4). And such comparisons are inherently unsuitable for cumulative problems like climate change: after all, "a small fraction of a large number can still

[598] Authorization Order at P 179 n.430.
[599] Authorization Order at P 179 n.431.
[600] Authorization Order at P 179.
[601] Authorization Order at P 171.

be a large number."[602] Accordingly, the Council on Environmental Quality,[603] EPA,[604] courts,[605] and even FERC's own draft greenhouse gas policy[606] agree that comparison with emission inventories is not an adequate way to discuss greenhouse gas emissions.

Thus, FERC failed to discuss the effects or significance of greenhouse gas emissions. And FERC does not argue otherwise. The Authorization Order asserts that FERC cannot and did not "assess" or "determine significance" of greenhouse gas emission.[607] In disclaiming having done so, the Authorization Order does not draw the distinction *Food and Water Watch* drew between providing a "discussion of significance" and labeling impacts as significant or insignificant.[608] Instead, the Authorization Order asserts that FERC cannot do either.

FERC's claim that it did not have tools to use to assess significance is unsupported, because the social cost of greenhouse gases is such a tool. In the alternative, FERC's claim that the means to assess significance of the effects of greenhouse gas emission are not known triggers a requirement to "evaluat[e]" those effects using "methods generally accepted in the scientific community," pursuant to 40 C.F.R. § 1502.21(c). As the D.C. Circuit explained in *Vecinos*, this regulation can require FERC to use social cost "notwithstanding" FERC's concerns regarding the tool.[609] The cases that the Authorization Order cites in purported support of FERC's refusal to use social cost either explicitly held

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[602] *Bd. of Cnty. Commissioners of Weld Cnty., Colorado v. EPA*, 72 F.4th 284, 291 (D.C. Cir. 2023).
[603] 88 Fed. Reg. 1196, 1201 (Jan. 9, 2023).
[604] EPA, Draft EIS Comments for the CP2 LNG and CP Express Project (Mar. 13, 2023) 5, Accession No. 20230314-5012; EPA Final EIS Comments for the CP2 LNG and CP Express Project (Aug. 31, 2023) 3, Accession No. 20230901-5067.
[605] *Dine Citizens Against Ruining Our Env't v. Haaland*, 59 F.4th 1016, 1043-44 (10th Cir. 2023).
[606] 178 FERC ¶ 61,108, P96.
[607] Authorization Order at PP 179-180.
[608] *Food & Water Watch,* 104 F.4th at 346.
[609] *Vecinos para el Bienestar de la Comunidad Costera v. FERC* ("*Vecinos*"), 6 F.4th 1321, 1329 (D.C. Cir. 2021).

that arguments based on section 1502.21 had been waived[610] or simply did not consider this regulation.[611]

No evidence supports FERC's suggestion that social cost is not generally accepted in the context of project-level review. The Council on Environmental Quality states that NEPA reviews should use social cost of carbon "in most cases."[612] As FERC has previously acknowledged, other agencies have used the tool for project-level NEPA review.[613] Other agencies have continued to do so since *Mountain Valley*.[614] FERC itself admits, in this order, that social cost is useful in the context of "rulemakings," but offers no explanation as to why project-level review differs in a way pertinent to the utility of social cost.[615] We reiterate, however, that as *Vecinos* held, for purposes of 40 C.F.R. § 1502.21(c), the question is whether social cost is "generally accepted in the scientific community;" not whether FERC thinks the tools *should* be accepted, or whether such acceptance is misguided.

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[610] *Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1184 (D.C. Cir. 2023); *Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 112 (D.C. Cir. 2022).
[611] *Ala. Mun. Distributors Grp. v. FERC*, 100 F.4th 207, 214 (D.C. Cir. 2024); *Food & Water Watch v. FERC*, 28 F.4th 277, 290 (D.C. Cir. 2022); *accord Healthy Gulf*, 2024 WL 3418863.
[612] *Interim NEPA Guidance on Consideration of Greenhouse Gases*, 88 Fed. Reg. 1196, 1202 (Jan. 9, 2023); *accord* https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa_final_ghg_guidance.pdf (CEQ's draft 2016 guidance).
[613] *Mountain Valley Pipeline*, 163 FERC ¶ 61,197 P281 n.772 (June 15, 2018) (citing examples from the Bureau of Ocean Energy Management and Office of Surface Mining Reclamation and Enforcement).
[614] *See, e.g.*, Maritime Administration, Final EIS for the Sea Port Oil Terminal Deepwater Port Project, App'x BB (July 2022), available at https://www.regulations.gov/document/MARAD-2019-0011-5032; Bureau of Land Management, Draft SEIS for the Coastal Plain Oil and Gas Leasing Program, App'x F-3 to F-4 (August 2023), available at https://eplanning.blm.gov/public_projects/2015144/200492847/20085217/250091399/Coastal_Plain_Draft_SEIS_Vol3_508.pdf; Bureau of Ocean Energy Management, Final Programmatic EIS for the 2024-2029 National Outer Continental Shelf Oil and Gas Leasing Program, at 30-31 (Sept. 2023), available at https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/2024-2029NatOCSOilGasLeasing_FinalPEISVol1_0.pdf.
[615] Authorization Order at P 179.

FERC's other, equally-misplaced criticism of social cost of carbon is that there is no generally recognized threshold for when monetized impacts become significant.[616] As discussed above, FERC can determine whether greenhouse gas emissions are significant without needing social cost. On the other hand, social cost can be used to evaluate the effects of greenhouse gas emission, and to provide an open-ended "discussion" of their "significance,"[617] regardless of whether there is a threshold delineating "significant" impacts. Accordingly, the D.C. Circuit's holding in *Healthy Gulf* that social cost of carbon did not, itself, provide a method for determining whether impacts were significant or insignificant does not address use of social cost of carbon in these open-ended inquiries;[618] nor did *Healthy Gulf* address § 1502.21(c).

In *Food & Water Watch*, the D.C. Circuit held that FERC had satisfied its obligation to discuss the significance of greenhouse gas emission by estimating the social cost of carbon, alongside comparing emission with state and national totals.[619] That case did not address whether estimates of social cost could satisfy this obligation, in review of an individual project, even where FERC disparaged those estimates as inappropriate for project-level review. Nor did that case confront a FERC statement that FERC had not, in fact, assessed significance. But FERC cannot meet its obligation to inform decisionmakers and the public by putting forth an estimate that FERC concurrently argues is uninformative.

In summary, independent of FERC's obligation to determine whether the effects of the project's greenhouse gas emissions were significant or insignificant, FERC violated its separate obligations to take a hard look at the effects of these emissions and to provide a discussion of their significance. FERC itself claims that it did not evaluate significance.[620] Comparison of project emissions with state and

[616] Authorization Order at P 179.
[617] 40 C.F.R. § 1502.16(a) (2020).
[618] 2024 WL 3418863 at *3-*4.
[619] 104 F.4th at 346.
[620] Authorization Order at P 179.

national emission totals does not provide the hard look NEPA requires. And while FERC could have used social cost of carbon to meet these obligations, FERC did not do so here, by its own admission.

I. FERC Failed To Take the Legally Required 'Hard Look' at Impacts to Commercial Fishing in Violation of NEPA.

As detailed in multiple comments, the fishing and shrimping industries are vital to Louisiana's economy and culture.[621] The FEIS acknowledges that "[t]he shrimp fishery was the most valuable commercial fishery in Louisiana and Texas in 2019,"[622] and yet fails to take seriously the impacts of CP2 on commercial fishing. Council on Environmental Quality regulations require that FERC take a hard look at "environmental impacts … and the significance of those impacts."[623] The Project will cause two primary impacts that individually and in tandem will significantly impact the commercial fishing industry and FERC failed to take the requisite hard look at either. Specifically, the Project will first directly impact fish, shrimp, and oyster habitat and populations, and second, it will impact the ability of fishermen to safely access fishing locations due to increased marine traffic.

Despite an abundant amount of evidence to the contrary (much of which is outlined herein), the FEIS concludes that impacts to fish populations would be short-term and therefore not significant, erroneously and arbitrarily ignoring evidence that a single season of decreased catch "threatens to irrevocably end shrimping business ventures in the area."[624] The FEIS claims that "[a]s shrimp and crabs are mobile, some of the populations would be expected to disperse during construction or maintenance" and "[c]onstruction and operation impacts on fish, shrimp, and blue crabs would be localized and are not expected to have a significant impact on

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[621] *See e.g.*, Cameron Fishing Community Concerns; Response to Form Letters, at 4-5; Sierra Club's Comments on FEIS, Docket No. CP22-21 (Oct. 16, 2023) Accession No. 20231016-5193; Motion to Intervene of For a Better Bayou, Docket No. CP22-21 (Oct. 16, 2023), Accession No. 20231016-5195.
[622] FEIS at 4-266.
[623] 40 C.F.R. § 1502.16(a)(1).
[624] Authorization Order, Clements Dissent, P 18.

commercial fisheries."[625] Moreover, the FEIS dismisses concerns about CP2 LNG's impacts on commercial fishing because "the location [of the Project] does not have any unique features or habitat characteristics that would draw recreational or commercial users to this particular location. The Project area does not support special habitat that is different from the miles of surrounding habitat."[626]

The FEIS completely ignores the real observations of the commercial fishermen presented in the record. For example, the record before FERC contains declarations of the dramatic decrease in fish catch already caused by existing LNG facilities.[627] Fishermen throughout the Cameron region are reporting a 50% decrease in annual catches.[628] The record also demonstrates how dredging seriously disrupts valuable oyster beds, fisheries, and shrimping areas.[629] While the FEIS acknowledges the impacts of dredging to fish populations and ecosystems,[630] it fails to consider the impacts to the commercial fishing industry. The fact that FERC expects shrimp and fish populations to "rebound within a few seasons" in no way addresses the very real short-term impacts to the fishing community. *See* Response to Form Letters. Simply put, "the EIS ignores the risk that temporary impacts on fisheries might permanently adversely affect commercial fishing businesses."[631]

The Commission's analysis of marine traffic impacts on commercial fishing is also inadequate. The FEIS explains how during operations of the Facility the "Rules of the Road" that require commercial fishing vessels to give way to LNG vessels will apply. The FEIS approximates that fishing vessels will be interrupted for 20 minutes to an hour.[632] The FEIS

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[625] FEIS at 4-271.
[626] FEIS at 4-321; *see also* Authorization Order at P 112.
[627] *See* Response to Form Letters, at 5-6; Cameron Fishing Community Concerns.
[628] Response to Form Letters, at 6.
[629] *See, e.g.,* Response to Form Letters, Ex. B.
[630] *See,* FEIS at 4-206.
[631] Authorization Order, Clements Dissent, P 18.
[632] FEIS at 4-270.

dismisses this disruption, claiming that "[t]ypically, shrimp are most active at night when few vessels are using the Calcasieu Ship Channel."[633] The FEIS cites no authority for either the conclusion on how long the interruptions would be or that there are fewer vessels at night. The FEIS also ignores evidence and declarations that marine traffic is already disrupting fishing, and thus that the 17% increase in traffic FERC expects from CP2 alone cannot be insignificant.

The 2019 Port of Lake Charles Calcasieu Ship Channel Traffic Study ("Marine Traffic Study") seems to be the primary authority the FEIS relies on for its marine tariff analysis, but the Marine Traffic Study does not support the conclusions in the FEIS. The Marine Traffic Study models the Calcasieu Ship Channel and projects future marine traffic. It projects that "[b]y 2025, the traffic in the channel is forecasted to more than double from 2018 levels."[634] It also details extended wait times for vessels with "the median wait time for a vessel increased by 2.8 hours"—a projected 80% increase that is "largely driven by LNG vessels."[635] This does not comport with the delay described in the FEIS.

Moreover, the Marine Traffic Study models all vessels as "able to transit the channel at night, with no further restrictions and no preference given to either day or night transits."[636] As Commissioner Clements rightly argues:

> Either the EIS is incorrect in its assertion that few vessels use the Calcasieu Ship Channel at night, and thus the impact on shrimpers is larger than the EIS contemplated, or the Marine Traffic Study does not paint a representative picture of traffic by assuming no preferences for channel transit time, in which case daytime fishers will face greater impacts than the EIS considered. Either way, the Commission's analysis of marine traffic impacts on commercial fishing is flawed.[637]

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[633] FEIS at 4-270.
[634] Port of Lake Charles, Calcasieu Ship Channel, Traffic Study – 2018 Update, Final Report, at 4 (June 12, 2019) (cited in FEIS) ("Marine Traffic Study").
[635] Marine Traffic Study at 5.
[636] *Id*. at 20.
[637] Authorization Order, Clements Dissent, P 19.

The FEIS does not consider that increased marine traffic does not simply create delays, but also increases safety concerns for smaller vessels. The FEIS ignored reasonable concerns and grievances voiced by the commercial shrimp and fishing communities in Cameron and Calcasieu Parishes. These communities explained that they already "struggle to find safe locations to wait out passing large vessel traffic, and even boat access to reach fishing grounds" and that they "feel there are no longer any safe spots to shrimp in Cameron because of the existing large vessel traffic from the existing LNG terminal facilities."[638]

Finally, the Commission ultimately rests its conclusion that there will be no significant impact on commercial fishermen on Venture Global's Community Advisory Group.[639] We have pointed out multiple times—and the Commission continues to ignore, but not directly refute—that the Community Advisory Group does not include a single commercial fisherman.[640]

Rather than arbitrarily dismissing the facts on the ground of the significant impact CP2 is likely to have on the commercial fishing industry, NEPA requires the Commission to take a hard look at these significant impacts.

J. FERC Fails To Address The Risks Posed By Climate-Driven Extreme Weather Events, Coastal Erosion, and Sea-Level Rise, In Violation Of NEPA.

FERC acknowledges that "[h]urricanes, tornadoes, and other meteorological events have the potential to cause damage or failure of facilities due to high winds and floods."[641] Mounting scientific evidence demonstrates that climate change will make hurricanes, flooding, extreme

[638] Cameron Fishing Community Concerns, at 7.
[639] Authorization Order at P 113.
[640] *See* Cameron Fishing Community Concerns; Response to Form Letters, at 5; *id*., Ex. 4 at P 18 (describing how Venture Global failed to consult fishermen prior to disastrous dredging of Shipping Channel *during peak shrimp season*); *see also id*. Ex. 4 at P 21 (describing concerns regarding disposing of dredged spoils directly on oyster beds).
[641] FEIS at 4-447.

heat, *etc.*, more severe and more frequent.[642] Yet, in the FEIS, FERC relies on CP2 LNG's historic evaluation of meteorological and climate hazards.[643] Especially when combined with sea-level rise, erosion, and subsidence, all of which will impact this region more than the rest of the country,[644] climate-driven extreme weather events pose major risks to coastal infrastructure like the Project.

EPA, Sierra Club, and others raised concerns about the DEIS's failure to conduct a forward-looking analysis of the risks from climate-driven increases in storm intensity and frequency.[645] While FERC used future forecasts for sea-level rise modeling, EPA explained that FERC failed to address the forecasted risks of coastal erosion and sea-level rise with respect to pipelines and buildings.[646] EPA also recommended that FERC evaluate the forecasted future risks from "extreme temperatures effects such as on building materials and seals and extreme precipitation events."[647]

In response, FERC inserted new analysis attempting to retroactively justify the conclusions from its historical analysis through a forward-looking review that in fact undermines the agency's conclusions. This new review contained numerous flaws regarding the project's capacity to withstand climate-driven extreme weather hazards. For instance, FERC appears to

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[642] *See, e.g.*, Ex. 50, U.S. Global Change Research Program, *Fifth National Climate Assessment*, at 9-5 to 9-12 (Nov. 2023) https://nca2023.globalchange.gov/downloads/NCA5_2023_FullReport.pdf.
[643] FEIS at 4-447.
[644] FEIS at 4-453 (recognizing that the Western Gulf of Mexico is subject to more significant sea-level rise forecasts than the global average), 4-451 ("The Texas and Louisiana Gulf Coast area is experiencing the highest rates of coastal erosion and wetland loss in the United States."), 4-558 (Louisiana has the highest rates of relative seal level rise in the U.S.).
[645] *See, e.g.*, U.S. EPA Comments on Draft Environmental Impact Statement, at 6, Docket No. CP22-21 (Mar. 13, 2023) Accession No. 20230314-5012; Comments of For A Better Bayou et al. on Draft Environmental Impact Statement, at 26, Docket No. CP22-21 (Mar. 13, 2023) Accession No. 20230313-5123.
[646] U.S. EPA Comments on Draft Environmental Impact Statement, at 6, Docket No. CP22-21 (Mar. 13, 2023) Accession No. 20230314-5012.
[647] *Id*. at 6.

assume that CP2's proposed 31.5 foot stormwall will protect all of the project's proposed facilities from flooding.[648] Yet, as EPA noted, FERC fails to acknowledge that nearly all of the pipeline facilities and many portions of the terminal infrastructure will be outside the stormwall.[649] This is particularly concerning for the fully-exposed LNG loading infrastructure located on Monkey Island, which will be at extreme risk of flooding and damage during a hurricane or other severe weather event.

Even for the facilities within the storm wall, FERC's new discussion that the stormwall will not be overtopped actually shows that the facility would be vulnerable to flooding during a Category 4 hurricane, contrary to FERC staff's conclusions.[650] Combining FERC's storm surge and wave height estimates with a simple linear addition of forecasted 2055 sea level rise (2.1 feet) indicates a Category 4 storm could produce water levels up to 31.9 feet, which would overtop the proposed 31.5 foot stormwall.[651] The problem is even more pronounced for a Category 5 storm, with combined storm surge, wave height, and sea-level rise reaching 32.9 feet to 40.6 feet above current sea level.[652] In other words, a Category 5 storm could overtop the wall by more than 10 feet of water. Yet, FERC provides no discussion of what risks overtopping

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[648] FEIS at 4-449.

[649] FEIS at 2-3 to 2-4, Figs. 2.1-1 & 2.1-2 (showing LNG transfer lines and utilities as well as marine facilities, pipeline, and Moss Lake compressor station outside of the stormwall at the terminal). While FERC's discussion of the pipeline included reference to future sea-level rise forecasts and general flooding risks, FERC does not address whether and how climate change related extreme weather events will exacerbate risks to the pipeline infrastructure, including the Moss Lake compressor station. FEIS at 4-96 to -99.

[650] FEIS 4-450. While FERC staff did not define a specific threshold for which they would evaluate significance of hurricane exposure, the FEIS indicates that FERC staff conclude the stormwall would withstand a Category 4 hurricane and thus "would provide adequate protection for the CP2 LNG project site." FEIS at 4-450.

[651] FEIS at 4-450 (adding 2.1 feet of sea level rise by 2055 to the 24.4-30.8 feet range for a Category 4 storm). The 2055 timeline is within the 30-year lifespan FERC estimates for the terminal. Even if construction commenced immediately, Phase 1 of the facility would not be operational for another 3 years, FEIS at 2-18, meaning that a 30-year operating life will reach into the late 2050s.

[652] FEIS at 4-450 (adding 2.1 feet of sea level rise by 2055 to the 30.8 feet to 38.5 feet range for a Category 5 storm).

would cause or how to ensure the facility would remain safe to surrounding communities in the aftermath of such a storm. FERC's analysis of the facilities' ability to withstand damage from wind gusts[653] does not resolve the risks of storms overtopping the stormwall and flooding the facility.

These concerns are compounded by the fact that FERC's estimates are based on current understandings of hurricane intensities, not forecasted future increases. And even for historic review, the FEIS only evaluated the potential hurricane exposure to historical records through 2020.[654] This misses more recent years, which continue to show increasing risks. Twenty-one named storms, four of which were major hurricanes, occurred in 2021.[655] The 2022 hurricane season produced 14 named storms, eight of which became hurricanes, and two intensified to major hurricanes.[656] During the most recent 2023 hurricane season, there were 20 named storms, seven of these were hurricanes and three intensified into major hurricanes.[657]

FERC dismisses concerns about risks from a Category 5 storm hitting the project site based on its conclusion that "[t]here is no known historic Category 5 Hurricane, which has made direct landfall within 60 nautical miles of Project site."[658] This historical justification entirely misses the point. The concern is about the likelihood, using a forward-looking analysis, that the project site will be subject to increasingly frequent and severe storms. That a Category 5 storm has not previously made landfall in the immediate area is not an indication that the CP2 facility does not face such a risk. Rather, mounting scientific evidence demonstrates that the risk of such

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[653] FEIS at 4-452 to 4-453.
[654] FEIS at 4-448.
[655] Ex. 51, *Active 2021 Atlantic hurricane season officially ends*, NOAA (Nov. 30, 2021) https://www.noaa.gov/news-release/active-2021-atlantic-hurricane-season-officially-ends.
[656] Ex. 52, *Damaging 2022 Atlantic hurricane season draws to a close*, NOAA (Nov. 29, 2022) https://www.noaa.gov/news-release/damaging-2022-atlantic-hurricane-season-draws-to-close .
[657] Ex. 53, *2023 Atlantic Hurricane Season Wraps Up*, NOAA (Nov. 28, 2023) https://www.nesdis.noaa.gov/news/2023-atlantic-hurricane-season-wraps.
[658] FEIS at 4-449.

an occurrence is increasing.[659] The same is true of FERC's claim that the facility will withstand a 500-year flood event—by definition, a 500-year analysis is a solely historical analysis that fails to account for forward-looking risks.

FERC's analysis also fails to account for cascading or compounding extreme weather events, which will become increasingly likely due to climate change.[660] These risks are more than hypothetical. In the same area surrounding the CP2 LNG site, recovery efforts were delayed and damage was exacerbated when Hurricane Delta hit within 12 miles of Hurricane Laura's path, roughly 6 weeks later. For example, "[m]any buildings that had roof or structural damage caused by Hurricane Laura still had temporary tarping, which was ripped off by the hurricane force winds of Delta."[661] Particularly relevant to FERC's analysis of flooding or overtopping risks, "Delta's large circulation and rain shield dropping 12 to 18 inches of rainfall . . . coupled with the debris in the drainage ditches, caused significant flooding, especially in the flood pronged areas."[662] FERC failed to mention Hurricane Delta in its FEIS, let alone discuss similar flooding risks due to potential debris interfering with CP2 proposed water drainage systems. Although FERC acknowledged the role compounded extreme weather events may have in increasing the vulnerability of environmental justice communities to risks from climate change,[663] it failed to address how those compounding risks could impact the CP2 and CP Express infrastructure.

FERC also erroneously concluded that the pipeline system would not be impacted by coastal erosion because the closest pipeline component would be located 1,000 feet from the

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[659] Ex. 50, U.S. Global Change Research Program, *Fifth National Climate Assessment,* at 22-11 (Nov. 2023) https://nca2023.globalchange.gov/downloads/NCA5_2023_FullReport.pdf ("With additional global warming, more North Atlantic hurricanes are expected to strengthen to at least Category 4 intensity and to undergo rapid intensification, sea level rise is expected to worsen storm surge inundation, and tropical cyclone–related rainfall is expected to increase.").
[660] *Id.* at F1-4.
[661] Ex. 54, Nat'l Weather Service, *Hurricane Delta 2020*, Weather.gov (last visited July 19, 2024) https://www.weather.gov/lch/2020Delta.
[662] *Id*.
[663] FEIS at 4-549.

shoreline. While FERC acknowledged coastal erosion rates of 5-to-30 feet per year, it concluded that "the Pipeline System would not be affected by erosion of the Gulf of Mexico shoreline within the 30-year design lifespan of the Project."[664] Looking at the Facility's lifespan was inappropriate, however, because the FEIS anticipates that the Pipeline will have a 50-year lifespan, minimum.[665] In 50 years, there may be up to 1,500 feet of erosion, indicating that pipeline components only 1,000 feet from shoreline may be at risk. FERC fails to account for how this increased erosion may impact pipeline infrastructure.

FERC's analysis also entirely ignored EPA's recommendation to examine the risks extreme temperatures pose to the ongoing integrity of building materials and seals. The Cybersecurity & Infrastructure Security Agency confirms that "[e]xtreme heat threatens critical infrastructure across the country."[666] Concrete, for example, can degrade due to direct sunlight and heat exposure, causing "cracks, dimpling of the material, expansion within the structure which allows moisture to infiltrate and break down the stability of the foundation/support."[667] "Overheating of materials can permeate buildings and cause greater energy needs for cooling, dangerous internal heat levels during power outages, and degraded refrigerant abilities."[668] Particularly for a facility that is heavily dependent on refrigeration, potential risks from extreme heat are nontrivial. With average and extreme temperatures rising consistently, FERC must examine whether CP2 LNG's infrastructure will pose greater risks if materials are exposed to increasingly high temperatures. Without doing so, FERC has failed to take the requisite hard look at the Project's impacts.

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[664] FEIS at 4-96.
[665] FEIS at 4-259, Table 4.10.1-2.
[666] Ex. 55, Cybersecurity & Infrastructure Security Agency, Extreme Heat (last visited July 19, 2024) https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/extreme-weather-and-climate-change/extreme-heat.
[667] *Id*.
[668] *Id*.

Even if the facility itself is safe from structural damage during an extreme weather event, FERC has also failed to examine the increased pollution that CP2 LNG may emit during hurricanes and other extreme weather. The Sabine Pass facility already demonstrated that extreme weather events exacerbate air pollution impacts: in 2020, for example, Sabine Pass experienced significant unplanned emission releases due to Hurricane Laura—including 51.5 tons of methane, 7.5 tons of nitrogen oxide, and 64.4 tons of carbon monoxide.[669] More recently, Freeport LNG "purged" extensive volumes of air pollutants leading up to Hurricane Beryl, including over 1000 pounds each—nearly three times its permitted emission level—of ethylene and propane as well as over 1500 pounds of carbon monoxide and over 760 pounds of nitrogen oxides from the liquefaction flare.[670] Shutting down Freeport LNG's pretreatment facility emitted another 3300 pounds of CO (nearly 12 times the permitted level), and 426 pounds of NOx (roughly three times the permitted level).[671] Nor are these issues limited to LNG facilities: Winter Storm Uri's impact on the Texas grid caused an estimated 3.5 million pounds of additional toxic air pollution at refineries and chemical plants—at many of the same facilities that released toxic air pollution during shutdown and start-up in response to Hurricane Harvey.[672] FERC must examine whether these risks of pollution, driven by extreme weather, will be heightened as climate-driven disasters are more frequent and severe. Especially when combined with a

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[669] Ex. 47, Robert D. Bullard Center for Environmental & Climate Justice, *Liquefying the Gulf Coast a Cumulative Impact Assessment of LNG Buildout in Louisiana and Texas*, at 28 (May 2024) https://assets.website-files.com/614d88a190900e498857f581/664604a23f64fa6444dd2a2b_Bullard%20Center%20Liquefying%20the%20Gulf%20Coast%20Report.pdf.

[670] Ex. 56, Texas Council on Envt'l Quality, Air Emission Event Report Database, Incident No. 425982 (July 7, 2024), https://www2.tceq.texas.gov/oce/eer/.

[671] Ex. 57, Texas Council on Envt'l Quality, Air Emission Event Report Database, Incident No. 425983 (July 7, 2024), https://www2.tceq.texas.gov/oce/eer/.

[672] Ex. 47, Robert D. Bullard Center for Environmental & Climate Justice, *Liquefying the Gulf Coast a Cumulative Impact Assessment of LNG Buildout in Louisiana and Texas*, at 28 (May 2024), https://assets.website-files.com/614d88a190900e498857f581/664604a23f64fa6444dd2a2b_Bullard%20Center%20Liquefying%20the%20Gulf%20Coast%20Report.pdf.

complete analysis of the cumulative air pollution in the region, these concerns highlight the unacceptable risks CP2 LNG poses to surrounding communities.

K. FERC Failed to Take A Hard Look at Air Pollution in Violation of NEPA.

FERC violated NEPA by failing to take the required hard look at both the individual and cumulative impacts of the project's air pollution. In particular, and as discussed in further detail below:

- FERC repeats the error identified by the D.C. Circuit in *Healthy Gulf v. FERC*, by concluding that because the project's individual impact on air pollution would be less than significant, that there was no need to further address cumulative air pollution. As the D.C. Circuit affirmed in *Healthy Gulf*, this premise does not entail this conclusion.

- The Authorization Order's conclusion that all of the modeled NAAQS exceedances would occur without the project is factually incorrect.

- FERC relied on predictions of cumulative air quality that arbitrarily ignore reasonably foreseeable emissions from mobile sources associated with other FERC-jurisdictional projects, such as LNG tankers. Omitting these foreseeable emissions undermined both FERC's cumulative effects analysis and FERC's conclusion that the project's contribution to modeled NAAQS violations would not exceed the SIL.

- FERC failed to respond to comments asking FERC to explain discrepancies between FERC's approach to evaluating the CP2 project and FERC's approach for the neighboring Commonwealth LNG export terminal.

- FERC fails to account for emissions from additional tanker traffic associated with use of the project's peak capacity; such emissions are foreseeable given the history of other projects requesting and receiving post-authorization approval to increase output.

- FERC failed to adequately respond to EPA concerns about potential NAAQS violations during project construction

- FERC refused to supplement the EIS to address new information about how lower levels of particulate pollution could be harmful (represented by EPA's decision to lower the PM2.5 NAAQS) or about the neighboring CP1 project's increased PM2.5 emissions.

1. As *Healthy Gulf* held, analysis of cumulative impacts requires more than merely concluding that the project's impact is individually insignificant.

The Authorization Order relies on modeling that predicts that ambient air quality around the Facility will exceed the NAAQS for NO2 and PM2.5.[673] However, the Authorization Order concludes that CP2 LNG's contribution to any exceedance falls below the "significant impact level" (SIL) for each pollutant used under the Clean Air Act,[674] and FERC halts its analysis there. The Authorization Order then concludes that the project is "environmentally acceptable"[675] notwithstanding the fact that it will emit NO2 and PM2.5 in a region already experiencing unhealthy levels of those pollutants. Similarly, the FEIS concludes that operation of the Project "would only contribute a minor amount to cumulative air impacts within the geographic scope of this analysis,"[676] and that the cumulative impact on air pollution "would not" be "significant."[677]

As the D.C. Circuit recently held in *Healthy Gulf*,[678] this approach fundamentally misunderstands, and violates, FERC's obligation to take a hard look at cumulative impacts, as currently codified at 40 C.F.R. § 1508.1(i)(3). "A project's incremental emissions do not exist in a vacuum, and requiring consideration of the overall state of the surrounding environment helps ensure that agencies do not overlook the full impact of those emissions."[679] Cumulative effects analysis is particularly concerned with issues that "can result from individually minor but collectively significant actions taking place over a period of time,"[680] i.e., the possibility of a

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[673] Authorization Order at P 186 (citing FEIS 4-552 to 4-553); FEIS at 4-371 to 4-373, Tables Table 4.12.1-22 & 4.12.1-23.
[674] *See, e.g.*, FEIS at 4-371 to 4-374; Authorization Order at PP 186, 194, 197.
[675] Authorization Order at P 198
[676] FEIS at 4-554.
[677] FEIS at 5-24 (finding that all cumulative impacts other than visual and greenhouse gas impacts would be insignificant).
[678] *Healthy Gulf*, 2024 WL 3418863, at *5-*7.
[679] *Id.* at *5.
[680] 40 C.F.R. § 1508.1(i)(3).

'death by a thousand cuts.' Arguing that any one particular cut is small misses the point and fails to respond to this concern.

But that is what FERC did here. Just as FERC did in *Healthy Gulf*, "FERC found the Project's NO2 emissions' cumulative effects insignificant because the Project's incremental NO2 emissions fell below the 1-hour NO2 SIL at each NAAQS exceedance location."[681] This approach is arbitrary, because under it "the cumulative effect of a Project's emissions would never be deemed significant unless the Project's incremental emissions were already significant on their own. That approach would eviscerate the purpose behind requiring a distinct cumulative effects analysis in the first place, which is to account for 'collectively significant' environmental impacts that may result from 'individually minor' actions."[682]

Taking a hard look at cumulative effects is particularly important here, because the modeling FERC relies on should have compelled the conclusion that cumulative air pollution is a serious problem in Southwest Louisiana. The FEIS's prediction for the terminal site (which understates pollution by emitting foreseeable emission sources, see *infra*) is that 1-hour NOx pollution will reach 201 micrograms per cubic meter, 7% higher than the NAAQS.[683] FERC's modeling for area around the Moss Lake compressor station predicts 1-hour NOx to reach 263.5 $\mu g/m^3$, 40% beyond the NAAQS, and that 24-hour PM2.5 will reach 44.5 $\mu g/m^3$, exceeding the NAAQS by over 27%.[684] And these are not isolated incidents: the EIS estimates hundreds of NAAQS exceedances.[685]

Moreover, although the Project's contribution to modeled exceedances falls below the SILs, those contributions are not facially insignificant. For many modeled exceedances, the

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[681] *Healthy Gulf*, 2024 WL 3418863, at *6; *see* Authorization Order P 186.
[682] *Healthy Gulf*, 2024 WL 3418863, at *6 (quoting what is now 40 C.F.R. § 1508.1(i)(3)).
[683] FEIS at 4-371.
[684] FEIS at 4-373.
[685] FEIS Appendix K.

project contribution exceeds 1 µg/m3.[686] For nine, it exceeds 3 µg/m3.[687] Even if FERC could lawfully conclude that these contributions were not individually significant (*e.g.*, because they do not exceed the SIL), they are certainly more than *de minimis* contributors to the cumulative impact problem.[688] And even where CP2 LNG's incremental contribution will be smaller, cumulative contributions to unhealthy air quality in communities, including environmental justice communities cannot be reasonably characterized as insignificant or *de minimus*, even if, for the purposes of PSD permitting evaluation, CP2 LNG itself is not projected to exceed the SIL at a violating modeling receptor location.[689]

Thus, as in *Healthy Gulf*, FERC failed to take the required hard look at cumulative impacts. This failure has consequences for the rest of FERC's analysis. CEQ has explained that "the results of cumulative effects analysis can and should contribute to refining alternatives and

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[686] FEIS Appendix K at 1.
[687] FEIS Appendix K at 1.
[688] EPA has made clear that use of the SILs "may not be appropriate" and may be "misuse[d]" where, as here, modeling shows that the area is already exceeding the NAAQS. 75 Fed. Reg. 64,864, 64,894 (Oct. 10, 2020); Exhibit 58, EPA, *Guidance on SILs for Ozone and Fine PM in the PSD Program*, 3 (2018) (citing 75 Fed. Reg. 64,864, 64,892 (Oct. 20, 2010) and Memorandum from Stephen D. Page, EPA OAQPS, to EPA Regional Air Division Directors, "Guidance for PM2.5 Permit Modeling," (May 20, 2014)), *available at* https://www.epa.gov/sites/production/files/2018-04/documents/sils_policy_guidance_document_final_signed_4-17-18.pdf. In such cases, "[a]dditional discretion may need to be exercised in such cases to ensure that public health is protected." NO_2 Modeling Guidance at 1, 10; *see also* EPA, Guidance Concerning the Implementation of the I-hour NO NAAQS for the Prevention of Significant Deterioration Program, at 5 (June 29, 2010) (Where "the applicant can show that the NOx emissions increase from the proposed source will not have a significant impact at the point and time of any modeled violation, the permitting authority *has discretion* to conclude that the source's emissions do not cause or contribute" to an exceedance of the NAAQS). That is because pollution increases within the SIL can still cause or contribute to nonattainment. *See* 75 Fed. Reg. at 64,892, 64,894/2.
[689] EPA guidance indicates that "the significant contribution analysis should be based on a source's contribution to the modeled violation paired in time and space." Exhibit 59, EPA, Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO_2,National Ambient Air Quality Standard at 3 (Mar. 1, 2011) (hereinafter "NO_2 Modeling Guidance").

designing mitigation."[690] If FERC had recognized the cumulative impacts issue here, it could have led FERC and the public to more rigorously explore alternatives and mitigation to reduce that impact. Similarly, FERC's regulations require an EIS to identify which impacts are "significant," and to evaluate mitigation for all significant impacts.[691] Here, as in other EISs, FERC followed this regulation to label individual impacts (other than the impact of greenhouse gas emissions) as significant or insignificant.[692] FERC followed that practice with cumulative impacts, concluding that air impacts were insignificant.[693] This finding of insignificance in turn informed FERC's conclusion that the project was environmentally acceptable. But if FERC had taken a harder look at the cumulative air pollution problem facing Southwest Louisiana, and in particular its impacts on environmental justice communities there, this should have led FERC to revisit its conclusion that the project was consistent with the public interest.

2. FERC incorrectly asserted that all modeled NAAQS exceedances would occur without the Project.

As explained above, FERC would be required to take a harder look at cumulative impacts *even if* FERC had supported its conclusion that the projects' individual air pollution impacts were insignificant. But that conclusion of individual insignificance was also flawed. One basis FERC provided for that conclusion is the Authorization order's statement that "where the modeling predicted an exceedance of a NAAQS threshold, that exceedance would occur even in the absence of the projects' emissions."[694] This statement is simply incorrect.

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[690] Council on Environmental Quality, *Considering Cumulative Effects Under the National Environmental Policy Act*, at 8 (Jan. 1997), https://www.energy.gov/nepa/articles/considering-cumulative-effects-under-national-environmental-policy-act-ceq-1997.
[691] 18 C.F.R. § 380.7(a), (d).
[692] FEIS Chapter 5.
[693] FEIS at 5-24.
[694] Authorization Order at P 186 (citing FEIS 4-553).

The FEIS identified at least 16 instances in which the predicted 1-hour NO2 levels would exceed the NAAQS by an amount less than the project-only contribution to the NAAQS.[695] In other words, the EIS identified 16 instances in which a NAAQS violation would not occur but for the project. The project's contribution to cumulative 1-hour NO2 levels in these instances ranged from 1.88 to 3.68 μg/m3;[696] less than the SIL, but between 1% and 2% of the NAAQS. The body of the FEIS did not disagree with the data in the appendix: the EIS stated that *some* modeled NAAQS exceedances would occur even without the Project, but not that *all* of them would.[697]

The fact that FERC's analysis of air pollution, including FERC's conclusions that this pollution is insignificant and "environmentally acceptable," relies on a factually incorrect premise renders that analysis and those conclusions arbitrary, independent of the other problems identified in this request.

Of course, even if the Authorization Order had been correct in asserting that all predicted NAAQS exceedances would occur without the Project, that would not have been sufficient to demonstrate that no further analysis was necessary.[698] NAAQS are neither a floor nor a ceiling for health impacts: increasing pollution beyond the NAAQS makes health impacts worse. EPA has explained that "there is little evidence of any effect threshold" for short-term nitrogen dioxide exposures and that the relationship between exposures and adverse impacts "appear linear within the observed range of data."[699] Even where nitrogen dioxide pollution would reach unhealthy levels anyway, adding more pollution is a problem, because it both increases health impacts and makes it harder to reduce pollution back to healthy levels.

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[695] FEIS Appendix K at 1.
[696] *Id.*
[697] FEIS at 4-553.
[698] *See* Authorization Order at P 186.
[699] Primary National Ambient Air Quality Standards for Nitrogen Dioxide, 75 Fed. Reg. 6,474, 6,480 (Feb. 9, 2010).

3. The EIS' modeling omitted emissions from other LNG terminals' tankers and other mobile sources, causing FERC to understate cumulative emissions.

For the reasons stated above, the conclusions FERC drew from the air modeling regarding cumulative and individual impacts were arbitrary. Separately, the modeling itself was incomplete, and understates foreseeable cumulative impacts, by omitting foreseeable mobile source emission (such as from LNG tankers) from nearby LNG terminals. As *Healthy Gulf* affirmed, NEPA analysis needs to consider the context in which the project will occur. Cumulative effects analysis must include "reasonably foreseeable actions,"[700] which include future actions. Consistent with this obligation, FERC required Venture Global to provide air modeling that included the cumulative effect of tankers from both the CP1 and CP2 LNG projects.[701] FERC's conclusion that emissions from tankers serving *other* nearby terminals need not be included is arbitrary.

In its cumulative effects analysis here, FERC identified seven other LNG export terminals (including CP1) with the potential to contribute to cumulative air impacts.[702] Each of these facilities will require LNG tanker traffic. FERC knows that ship traffic is, in general, an important part of the problem: even in the authorization order here, FERC concluded that "marine vessels operating in the nearby Calcasieu Ship Channel[] are the *primary drivers* of NAAQS exceedances in the project area."[703] And FERC has recognized that, in the context of an LNG export terminal, tanker and tug traffic needs to be considered and constitutes a meaningful share of the emission associated with the terminal, as demonstrated by multiple environmental

[700] 40 C.F.R. § 1508.1(i)(3).
[701] *See* Authorization Order at PP 196-197.
[702] FEIS Table 4.14.1-1. These are CP1 (Calcasieu Pass Project), Driftwood LNG, Lake Charles Liquefaction, Cameron LNG expansion, Commonwealth LNG, Delfin LNG, Magnolia LNG,
[703] Authorization Order at P 186 (emphasis added).

information requests in this particular proceeding.[704] The Project FEIS estimated large volumes of mobile source emissions during both operation[705] and construction.[706]

Here, FERC only partially complied with these obligations: FERC required modeling to consider the cumulative effects of mobile sources from both CP2 LNG and CP1, but the models did *not* include mobile sources from other LNG terminals, including the six other terminals that FERC identified as contributing to cumulative air impacts. In response to Sierra Club's comments on this issue, FERC argued that it could deliberately exclude these mobile source emissions related to other terminals from analysis. FERC's arguments for excluding these emissions are arbitrary.

First, FERC argued that because the Clean Air Act did not require these mobile sources to be considered in modeling performed pursuant to that statute, FERC could ignore these emissions in its NEPA analysis.[707] This is incorrect: FERC was required to consider these emissions in its NEPA analysis even if the emission could lawfully be excluded from the Clean Air Act permitting analyses. As *Healthy Gulf* and numerous other cases have affirmed, NEPA imposes obligations that differ from, and in this case are broader than, those imposed by the Clean Air Act.[708] "[T]he existence of permit requirements overseen by another federal agency or state permitting authority cannot substitute for a proper NEPA analysis."[709] And FERC offers no argument that these mobile source emissions are outside *NEPA's* scope. NEPA requires FERC to consider the cumulative effect that "result from the incremental effects of the action when added

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[704] *See, e.g.,* Environmental Information Request, Docket No. CP22-21, Accession No. 20220211-3045 (Feb. 11, 2022) at 4, 23-24; Environmental Information Request, Docket No. CP22-21, Accession No. 20220715-3054 (July 15, 2022) at 9.
[705] FEIS at 4-361 to 4-364 & Tables 4.12.1-14 through 4.12.1-16 (listing emissions from marine vessels during CP2 terminal operations).
[706] FEIS at 4-347 to 4-348.
[707] Authorization Order at PP 184-188.
[708] *Healthy Gulf*, 2024 WL 3418863, at *6.
[709] *Sabal Trail*, 867 F.3d at 1375 (citing *Calvert Cliffs' Coord. Comm. v. Atomic Energy Comm'n*, 449 F.2d 1109, 1122–23 (D.C. Cir. 1971)).

to the effects of other past, present, and reasonably foreseeable actions."[710] FERC states that it included mobile source emissions from CP1 because that project is "owned/controlled by the same company,"[711] implicitly juxtaposing CP1 with other projects with different ownership, but this is a distinction without a difference: ownership is irrelevant to the scope of NEPA analysis, and FERC offers no argument to the contrary. FERC does not claim that the mobile source emissions associated with nearby, FERC-jurisdictional LNG terminals are unforeseeable. Nor could FERC. Although these mobile source emissions are not included in LDEQ's emission inventories,[712] FERC had already estimated mobile source emissions associated with many other terminals in FERC's EISs for those terminals, and Sierra Club collected that information and presented it to FERC in the October 16, 2023 comments in this docket.[713] Finally, FERC has previously recognized that NEPA requires it to consider the cumulative effects of marine vessels from neighboring LNG terminals, in a case where the terminals all had separate owners.[714] FERC has failed to articulate any rational justification for treating cumulative emission from neighboring LNG terminals' marine vessels differently in *Rio Grande* than FERC did here, and this failure renders FERC's treatment here arbitrary.[715]

Second, FERC argued that it had no obligation to include mobile source emissions from other terminals because doing so would not change its analysis. This argument fails for two reasons.

One is the same cumulative effects argument discussed above: FERC needs to take a hard look at cumulative effects even if FERC supports the conclusion that CP2 LNG's emissions to a

[710] 40 C.F.R. § 1508.1(i)(3).
[711] Authorization Order at P 195.
[712] Authorization Order at P 185.
[713] *See* Authorization Order at P 183 (summarizing these comments); Authorization Order, Clements Dissent, P 15.
[714] *Rio Grande LNG, LLC*, Order on Rehearing, 170 FERC ¶ 61,046, P 55 (2020).
[715] *Gulf S. Pipeline Co., LP v. FERC*, 955 F.3d 1001, 1012 (D.C. Cir. 2020).

modeled NAAQS exceedance do not exceed the SIL.[716] The first step in that cumulative impact analysis is addressing what the cumulative impact will actually be, which requires considering all foreseeable contributions to the cumulative impact.

The other problem is that FERC's premise—that accounting for mobile sources wouldn't change the SIL analysis—is also unsupported. Adding cumulative mobile source emissions will potentially increase the number of modeled NAAQS exceedances. FERC offers no reason to assume that, for those modeled receptors in which the NAAQS *would* be exceeded when cumulative mobile sources are considered but the NAAQS *would not* be exceeded otherwise, that CP2 LNG's contribution to those additional exceedances would be below the SILs. FERC notes that the EIS predicts that, for 1-hour NO2, the highest contribution *to a NAAQS* exceedance is 3.7 µg/m3, or "about half the SIL."[717] But for receptors for which the current, no-cumulative-mobile-sources modeling does *not* predict a NAAQS exceedance, CP2's contribution for many pollutants exceeds the SIL; CP2 LNG's highest contribution to 1-hour NO2 is 26.7 µg/m3, or more than four times the SIL.[718] If one or more of the modeled above-the-SIL contributions coincides with a NAAQS exceedance that only occurs when mobile sources are included, then CP2's individual contribution to air pollution would be significant even under FERC's chosen methodology. Nothing in the record rules out, or even addresses, the possibility that if cumulative mobile source emissions are included, this will predict that CP2's contribution to one or more NAAQS exceedances will exceed the applicable SILs.

Although FERC has not made any argument about the magnitude of cumulative mobile source emissions, it bears emphasizing that these emissions are substantial. Where FERC has estimated these mobile source emissions for nearby LNG terminals, mobile sources represent a

[716] Authorization Order at P 186.
[717] Authorization Order at P 187.
[718] FEIS 4-369 to 4-370; *accord* Accession No. 20220801-5238, Air Quality Impacts Assessment at 4-2.

large fraction of the project total. Looking specifically at NOx emissions, mobile sources represent a 27% increase in NO_x emissions, beyond the stationary source emissions included in the cumulative effects analysis for CP2 LNG.[719]

Table 3. Nearby LNG Terminals Stationary and Mobile NOx Emissions

Facility[720]	Dockets	NOx Emissions, tons per year		% increase when mobile added
		Stationary Sources	Mobile Sources	
Calcasieu Pass LNG	CP15-550	476.54	176.8	37%
Driftwood LNG	CP17-117	2195.25	96.5	4%
Lake Charles Liquefaction	CP14-120	750.41	448	60%
Commonwealth LNG	CP19-502	376	178	47%
Magnolia LNG	CP14-347, CP14-511, CP19-19	811	364	45%
Totals:		4609.2	1263.3	27%

Cumulative mobile sources also emit foreseeable and substantial volumes of other pollutants, beyond NOx.

[719] Sierra Club's Comments on Final Environmental Impact Statement, at 3, Docket No. CP22-21 (Oct. 16, 2023) Accession No. 20231016-5193. As those comments explained, this table represents only part of the problem. At the time these comments were filed, mobile emission estimates were not available for the Cameron LNG expansion or the Delfin LNG project, two other projects whose stationary source emissions FERC included in its cumulative impact analysis. While there is some estimate of mobile source emissions related to these projects, no agency has yet estimated the specific emissions from the Cameron LNG expansion project (versus Cameron LNG as a whole) or whether emissions from marine vessels serving Delfin LNG will occur within the CP2 cumulative impact radius. The table (and Driftwood EIS it relies on) also likely understates the Driftwood project's mobile source emissions, given that the estimate for that project is a *dramatic* outlier relative to the others.

[720] Exhibit 60, Compilation of NOx Emissions Data from EISs from Calcasieu Pass LNG (Accession No. 20181022-3001), Driftwood LNG (Accession No. 20190118-3018), Lake Charles Liquefaction (Accession No. 20150814-4001), Commonwealth LNG (Accession No. 20220909-3017), and Magnolia LNG (Accession No. 20151113-4001).

In summary, FERC recognizes that a large source of air pollution associated with any given LNG terminal comes from ship traffic and other mobile sources, rather than stationary sources regulated under the Clean Air Act's prevention of significant deterioration program; FERC also recognizes that radius for cumulative impact analysis for CP2 LNG must include seven other LNG export terminals, but the reasons FERC gave for excluding foreseeable mobile source emissions from those other terminals (except CP1) from its analysis here are arbitrary.

4. FERC's analysis here is inconsistent with FERC's analysis for the neighboring Commonwealth LNG terminal.

Although FERC has reviewed and approved numerous LNG export terminals, including many specifically in Southwest Louisiana, FERC has acted inconsistently in its review of these projects. Notably, FERC recently reviewed and approved the Commonwealth LNG terminal, which would be located merely half a mile from the CP2 site.[721] Commonwealth would be smaller than CP2, with a capacity of only 8.4 MTPA[722] to CP2's 20, and with roughly commensurately smaller air pollution emissions. However, despite Commonwealth being the smaller project, FERC's analysis for the Commonwealth LNG project predicted a massively higher maximum 1-hour NO2 level than FERC predicts for CP2 (302 µg/m3,[723] vs. 201 µg/m3 for CP2[724]), and FERC's analysis of cumulative air pollution impacts for Commonwealth includes numerous sources not included in the analysis for CP2.[725]

These counterintuitive discrepancies appear to be entirely unexplained. FERC appears to have used a wider geographic scope for its analysis of Commonwealth than FERC used for CP2

[721] FEIS at 4-519.
[722] FEIS at 4-519.
[723] Final Environmental Impact Statement for Commonwealth LNG, LLC for the Commonwealth LNG Project, at 4-392, Docket No. CP19-502-001 (Sept. 9, 2022) Accession 20220909-3017.
[724] FEIS at 4-371.
[725] *See* FEIS at 4-553; For A Better Bayou, et al., Comments on DEIS, at 9-10, Docket No. CP22-21 (Mar. 13, 2023) Accession No. 20230313-5123; Sierra Club's Comments on Final Environmental Impact Statement, Docket No. CP22-21 (Oct. 16, 2023) Accession No. 20231016-5193.

LNG, but even insofar as this explains the differences in maximum NO2 and number of projects considered, that merely passes the buck: FERC has not explained *why* it was appropriate to limit its analysis for CP2 LNG to a narrower scope than FERC used for the neighboring but smaller Commonwealth project. FERC's failure to explain this discrepancy, and FERC's failure to respond to comments specifically asking FERC to do so, both rendered FERC's decision arbitrary.

5. FERC fails to account for the project's maximum potential emissions or reasonably foreseeable future increase in emissions.

In addition to FERC's extensive errors regarding its cumulative air impacts analysis, FERC undercounts the project's foreseeable, direct emissions. In identifying the annual emissions from operation of the terminal facilities, FERC explains that "[t]he estimated rates represent operation of the Terminal Facilities at the peak liquefaction capacity of 28 million tons (or tonnes) per annum."[726] This is the correct approach. However, FERC does not contain similar disclaimers when it quantifies the emissions from vessels calling on the project. The FEIS attempted to address this issue by stating that the air impacts analysis assumed 412 vessel calls per year.[727] But that number of vessels appears to correspond only to the facilities' nameplate capacity of 20 MTPA.[728] The FEIS apparently does not estimate total vessel traffic at the facilities' anticipated peak capacity of 28 MTPA. Assuming a pro rata increase, operating the facility at its peak capacity could result in 40% more vessel trips, or up to an additional 165 trips annually. This represents a potentially significant increase in vessel emissions that FERC failed to address.[729]

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[726] FEIS at 4-358.
[727] FEIS at 4-356.
[728] FEIS at 2-8 (estimating that the nameplate production volumes would be able to accommodate about seven to eight LNG carrier calls per week, or up to 416 calls per year, after Phase 2 facilities are placed into service).
[729] *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014) (quoting *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C. Cir.

In addition to the peak capacity, FERC can and should address a reasonably foreseeable request for CP2 to uprate its capacity. While CP2 LNG has not yet requested an update amendment, it is reasonable to expect that it will do so. Venture Global promises to utilize the same technology at CP2 that it has implemented at both of its other facilities.[730] Venture Global requested a 13% uprate to capacity at the Plaquemines LNG project.[731] Venture Global also requested a more limited roughly 3% increase to the authorized capacity at CP1.[732] Numerous other LNG terminals have requested similar uprate amendments shortly after FERC has approved their initial capacity requests.[733] The premise of the uprate amendments is typically that the company has figured out how to squeeze more LNG out of the same equipment, by designing the equipment more efficiently. Given this regular practice among industry actors, particularly Venture Global, FERC should evaluate whether an alternative design with a smaller nameplate capacity could achieve the same overall output after accounting for these design efficiencies.

Regardless, FERC should account for the likely overall emissions from the project, accounting for such an uprate proposal. Even where liquefaction equipment operates more efficiently to increase output without increasing emissions from that equipment, increasing output necessarily increases emissions from other sources, such as pretreatment of feed gas—when more gas is liquefied, there is more feed gas, and thus more impurities that must be

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1973) ("Reasonable forecasting and speculation is … implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry.' ").

[730] Venture Global CP2 LNG's Application for Authorizations, at 7, Docket No. CP22-22-000 (Dec. 2, 2021) Accession No. 20211202-5105 ("CP2 LNG will use the same liquefaction technology that was previously approved for Calcasieu Pass and Plaquemines.").

[731] Venture Global Plaquemines LNG, LLC; Notice of Application To Amend and Establishing Intervention and Protest Deadline, 87 Fed. Reg. 18,787 (Mar. 31, 2022) (application to increase capacity from 24.0 million metric tons per annum (MTPA) to 27.2 MTPA).

[732] Venture Global Calcasieu Pass, LLC; Notice of Application To Amend and Establishing Intervention and Protest Deadline, 86 Fed. Reg. 72,952 (Dec. 23, 2021).

[733] Magnolia LNG, LLC, LLC, 83 Fed. Reg. 63,849 (Dec. 12, 2018) (Notice of Application); Golden Pass LNG Terminal LLC, 85 Fed. Reg. 34,187 (June 3, 2020) (Notice of Application).

removed, regardless of how efficiently the subsequent liquefaction equipment runs. FERC's failure to account for this reasonably foreseeable incremental pollution was arbitrary.

Finally, FERC failed to address public comments highlighting concerns about the potential frequency of flaring at CP2 LNG in light of Venture Global's consistent flaring practices at its CP1 facility.[734] The two facilities will utilize the same technology and liquefaction process.[735] Other than acknowledging that CP1's technical problems have resulted in more flaring than anticipated, FERC has no discussion about how to ensure those same issues will not happen at CP2.[736] FERC can and should address this issue and ensure that Venture Global does not repeat the same issues that have repeatedly plagued its CP1 facility.

6. FERC's failure to address EPA concerns about NAAQS violations during construction is arbitrary.

In comments on the DEIS, EPA identified several concerns regarding CP2 LNG's construction emissions.[737] EPA suggested implementing additional mitigation measures to reduce fugitive dust and criteria pollutants during construction, including for example, "use of alternatively fueled or zero-emission equipment and low-sulfur fuel, newer tier equipment, diesel emissions controls, and strategies and technologies to enforce idling time (e.g., automatic engine shut-off)."[738] FERC responded by citing, in the FEIS, CP2 LNG's *voluntary* commitment to develop a future air quality monitoring plan to "monitor PM2.5 (24-hour), PM10 (24-hour), and NO2 (1-hour) concentrations during construction and commissioning of the CP2 LNG

[734] *See, e.g.*, Comments of John Allaire, Docket No. CP22-21, Accession No. 20230313-5068 (Mar. 12, 2023).
[735] Venture Global CP2 LNG's Application for Authorizations, Accession No. 20211202-5105 (Dec. 2, 2021) at 7 ("CP2 LNG will use the same liquefaction technology that was previously approved for Calcasieu Pass and Plaquemines.").
[736] FEIS 4-359 to 4-360.
[737] Comments of United States Environmental Protection Agency Region 6 re the Draft Environmental Impact Statement for the CP2 LNG and CP Express Project, Docket No. CP22-21 et al., Accession No. 20230314-5012 (Mar. 13, 2023) at 3.
[738] *Id*.

Terminal."[739] In subsequent comments, EPA reiterated its concerns, encouraging FERC to require a construction monitoring or mitigation plan, require that monitoring values approaching the NAAQS (e.g., 75% of the NAAQS) should automatically trigger identified mitigation measures, and mandate the use of zero-emitting or higher tier construction equipment.[740] In its Authorization Order, FERC refused to conduct additional air dispersion modeling to better understand the issue, arguing that modeling would require too many assumptions.[741] FERC noted that staff may "consider" EPA's proposed mitigation in the future, but FERC otherwise refused to engage on the issue, require EPA's recommended mitigation measures, or require monitoring that would ensure compliance with the NAAQS during construction.[742]

FERC's approach fails to resolve EPA's concerns. FERC cannot base its conclusion that a project is environmentally acceptable on the basis of yet-to-be-created mitigation measures. NEPA requires FERC to consider possibilities for mitigation, and the NGA provides FERC with authority to require mitigation. And, in some circumstances, NEPA permits agencies to rely on mitigation measures to determine that a given environmental effect is less than significant.[743] But when an agency does so, it must "sufficiently demonstrate that the mitigation measures adequately address and remediate the adverse impacts so that they will not significantly affect the environment."[744] Thus, agencies are required to provide "a serious and thorough evaluation"

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[739] FEIS at 4-355. CP2 would take other measures as well. FEIS 4-355 to -356. But these measures are not responsive to EPA's concerns, and are seemingly not intended to be responsive to EPA's concerns.
[740] Comments of U.S. Environmental Protection Agency, Region 6 re Final Environmental Impact Analysis for the CP2 LNG and CP Express Project, Docket No. CP22-21 et al., Accession No. 20230901-5067 (Sept. 1, 2023).
[741] Authorization Order at P 116.
[742] Authorization Order at P 118.
[743] *Cabinet Mountains Wilderness/Scothman's Peak Grizzly Bears v. Peterson*, 685 F.2d 678, 681-82 (D.C. Cir. 1982).
[744] *O'Reilly v. U.S. Army Corps of Engineers*, 477 F.3d 225, 234 (5th Cir. 2007); *accord Nat'l Audubon Soc. v. Hoffman*, 132 F.3d 7, 16-17 (2d Cir. 1997).

of proposed mitigation measures.[745] "[M]ere perfunctory or conclusory language will not be deemed to constitute an adequate record and cannot serve to support the agency's" determination that an effect lacks significance.[746] Because the monitoring and mitigation plan is currently hypothetical, it is impossible to determine its effectiveness.[747] And even if relying on a future plan were acceptable, CP2 provides virtually no information about its plan. There is no indication that mitigation would actually be required in the event of an exceedance—FERC merely notes that having accurate monitoring data could better facilitate future, unspecified mitigation measures if it chooses to do so.[748] Nor does FERC make developing or implementing this monitoring plan a condition on FERC's approval of the project. There is also no indication that FERC's analysis of construction emissions accounted for the lower PM2.5 NAAQS—for which fugitive dust during construction plays a critical role[749]—cumulative mobile source emissions, or emissions from the 36 cumulative sources demonstrably missing from FERC's air quality analysis.[750] Instead, FERC relies on an unproven future monitoring plan and unenforceable commitment to "consider" EPA's measures in the future. This lackadaisical approach fails to resolve EPA's concerns and renders arbitrary its conclusion that, with proposed mitigation, construction emissions will not cause significant impacts.

7. FERC's failure to supplement the EIS in the face of significant new circumstances and information relating to air pollution violated NEPA.

Independent of the substantive flaws in FERC's air pollution analysis identified above, FERC's air quality analysis is procedurally flawed: FERC recognized multiple changes pertinent

[745] *O'Reilly*, 477 F.3d at 231 (internal quotations omitted).
[746] *Id.*
[747] *Cf. Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA's EIS requirement "ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.").
[748] Authorization Order at P 118.
[749] FEIS at 4-354 ("[F]ugitive dust accounts for most of the PM emissions during the construction period for the Project[.]").
[750] *Supra* Sections A.1, 3-4.

to the air analysis post-dating the FEIS, but FERC failed to present analysis of those changes in a supplemental EIS.

Two new circumstances or information required supplementation here. First, on May 6, 2024, EPA revised the primary annual PM2.5 National Ambient Air Quality Standard (NAAQS) from 12.0 $\mu g/m^3$ to 9.0 $\mu g/m^3$, reducing the standard by 25%.[751] FERC's FEIS had concluded that CP2 would cause PM2.5 ambient air concentrations of 9.4 $\mu g/m^3$.[752] Correctly recognizing that ambient air levels of 9.4 $\mu g/m^3$ would violate the new PM2.5 standard, FERC appropriately required CP2 LNG to update the modeling of PM2.5 air impacts.[753] FERC subsequently failed to conduct a supplemental NEPA analysis or provide public comment opportunities based on FERC's own analysis.

Second, on March 17, 2023, Venture Global requested to increase air emissions from CP1—the adjacent facility constructed by CP2's parent company. CP1's new emission rates will increase cumulative PM2.5 and NOx impacts in the surrounding area.[754] FERC requested CP2 to conduct updated modeling accounting for CP1's updated PM2.5 and NOx emissions.[755] FERC failed to supplement its NEPA analysis with this new information, conduct an independent analysis of PM2.5 and NOx impacts, provide access to CP2 LNG's new modeling details, or subject CP2's new modeling to public comment.

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[751] *Reconsideration of the National Ambient Air Quality Standards for Particulate Matter*, 89 Fed. Reg. 16,202 (Mar. 6, 2024).
[752] FEIS at 4-372, Table 4.12.1-22.
[753] Environmental Information Request, Docket No. CP22-21, Accession No. 20240326-3070 (Mar. 26, 2024) (asking CP2 to explain whether and why there will not be a violation of the new PM2.5 NAAQS).
[754] Authorization Order at PP 196-97.
[755] Environmental Information Request, Docket No. CP22-21, Accession No. 20240515-3058 (May 15, 2024) (requesting CP2 to address increased emission rates of PM2.5 and NOx from the CP1 facility).

Under NEPA, significant new circumstances or information require supplementation.[756] Supplementation is required whenever there is *any* new information or circumstances bearing on the project's impacts, or when there have been *any* pertinent changes to the project, provided that some "major Federal action remains to occur."[757] The question is not simply whether there has been a change in the proposed federal action *itself*.[758] Rather, "[w]hen new information comes to light the agency must consider it, evaluate it, and make a reasoned determination whether it is of such significance as to require implementation of formal NEPA filing procedures."[759]

Here, as the dissent recognizes,[760] the new PM2.5 NAAQS and CP1 emissions of PM2.5 and NOx require supplementation. Major federal action remained because FERC had not yet decided whether to approve the project when the new NAAQS were adopted, the new NAAQS took effect, or CP1 requested to increase its emissions. And the new circumstances or information plainly "bear on" on FERC's evaluation of adverse air impacts.[761]

Looking first at the PM2.5 NAAQS, the new information constituted EPA's recognition that air pollution levels that EPA had previously determined to be safe actually constituted a threat to human health and welfare. Thus, EPA's decision to lower the standard represented EPA's new conclusion that exposure 24-hour exposure to fine particulate matter at levels the EIS predicted would occur here would have adverse impacts on human health. That is, the project's $PM_{2.5}$ impacts, as estimated in the EIS, became significant under the standard FERC had chosen.

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[756] 40 C.F.R. § 1502.9(d).
[757] 40 C.F.R. § 1502.9(d).
[758] 40 C.F.R. § 1502.9(d)(1)(ii) (requiring supplementation when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts").
[759] *People Against Nuclear Energy v. U.S. Nuclear Regulatory Comm'n*, 678 F.2d 222, 234 (D.C. Cir. 1982), *rev'd on other grounds sub nom. Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983) (quotation omitted); *N. Alaska Env't Ctr. v. U.S. Dep't of the Interior*, 983 F.3d 1077, 1096 (9th Cir. 2020) (agencies retain the "obligation … to analyze new circumstances and new information under the supplementation rubric").
[760] Authorization Order, Clements Dissent, P 13.
[761] 40 C.F.R. § 1502.9(d)(ii).

The Authorization Order mistakenly argues that this new information nonetheless did not require supplementation because it did not "provide[] a *seriously* different picture of the environmental landscape."[762] FERC argues that this standard is not met because the FEIS concluded that the PM2.5 NAAQS would not be exceeded, and FERC's new, post-FEIS analysis reaches the same conclusion. *Id.* But cases applying this standard have upheld agency decisions not to supplement an FEIS when the agency was still relying on the EIS.[763] Here, FERC is not relying on the FEIS's particulate matter analysis. FERC required new modeling, changed its estimate of what resulting ambient air quality would be. FERC also switched the monitor used for the choice of baseline; continuing to use the monitor used in the FEIS would have led to the conclusion that PM2.5 impacts were significant. This is too much: the "seriously different picture" caselaw cannot be read to hold that an supplemental EIS is not required whenever an agency reaches the same bottom-line conclusion, regardless of how severely the agency changed the path leading to that conclusion.

The same is true of CP1's emissions increases. FERC acknowledges that emissions of both PM2.5 and NOx from CP1 will increase.[764] And once again, FERC's request for information demonstrated that CP1's new emissions were significant enough to require additional scrutiny.[765] Yet, FERC failed to subject CP2 LNG's updated analysis to independent verification or public comment. Supplementation was required to examine these new circumstances.

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[762] Authorization Order at P 193 (quoting *Stand Up for Cal.! v. Dep't of the Interior*, 994 F.3d 616, 629 (D.C. Cir. 2021) (emphasis in original).
[763] *See, e.g., Stand Up for California!*, 994 F.3d at 629; *Friends of Cap. Crescent Trail v. Fed. Transit Admin*., 877
F.3d 1051, 1058-62 (D.C. Cir. 2017), *Nat'l Comm. for the New River v. FERC*, 373 F.3d 1323, 1327-31 (D.C. Cir. 2004), *City of Olmsted Falls, OH v. FAA*, 292 F.3d 261, 274 (D.C. Cir. 2002).
[764] Authorization Order at P 197.
[765] Environmental Information Request, Docket No. CP22-21, Accession No. 20240515-3058 (May 15, 2024) (requesting CP2 to address increased emission rates of PM2.5 and NOx from the CP1 facility).

When supplementing its NEPA analysis, an agency must go through the same public process as for an EIS, including putting out a draft that details the *agency's* rationale for public comment.[766] FERC's failure to do so is itself a NEPA violation. As the dissent explains, that violation is far from harmless here.[767] Not only is public review a core purpose of NEPA,[768] but the record indicates that public engagement would have substantively assisted FERC's review. In fact, FERC updated its information request to address the CP1 change in emissions after Sierra Club identified obvious flaws in CP2's rushed and incomplete analysis.[769] Yet, Sierra Club's responses could only address the limited information provided—here, by CP2 LNG. Before issuing the final order, FERC never provided an explanation of its *own* rationale for accepting CP2 LNG's flawed analysis. And FERC approved the project only 24 days after CP2 LNG provided this updated analysis. NEPA requires the agency to disclose and evaluate all the impacts, including potential health impacts to communities from the pollution increases. And the public is entitled to an opportunity to review, understand and comment on those effects. Without access to modeling details and FERC's rationale or sufficient time to review CP2 LNG's analysis, Sierra Club and other public commenters did not have an opportunity to fully understand and evaluate the potential direct and indirect health effects or provide further critiques regarding CP2 LNG's PM2.5 pollution or the proposed increases of PM2.5 and NOx pollution from CP1.[770]

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[766] 40 C.F.R. § 1502.9.
[767] Authorization Order, Clements Dissent, P 17.
[768] *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983) (NEPA's procedural requirements have "twin aims": to ensure that the agency's decisions are fully informed, and to facilitate public participation by ensuring "that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking") (citation omitted).
[769] Environmental Information Request, Docket No. CP22-21, Accession No. 20240515-3058 (May 15, 2024) (requesting CP2 to address increased emission rates of PM2.5 and NOx from the CP1 facility); Environmental Information Request, Docket No. CP22-21, Accession No. 20240529-3080 (May 29, 2024) (requiring CP2 to incorporate LNG tanker and support vessel emissions in its updated modeling).
[770] Authorization Order, Clements Dissent, P 12.

Moreover, FERC failed to "independently evaluate" the information provided by the applicant that the agency wanted to use in its environmental review.[771] FERC fails to demonstrate that it scrutinized CP2 LNG's modeling inputs or protocols beyond simply regurgitating what CP2 LNG provided. For example, despite public comments calling into question the validity of the new background monitor CP2 LNG selected,[772] FERC provides no discussion of whether FERC adopted CP2 LNG's choice of PM2.5 air monitor, and if so, why.[773]

8. FERC's analysis of Environmental Justice air impacts is arbitrary.

In addition to the extensive flaws with FERC's analysis of air quality impacts on the general population, FERC's environmental justice analysis erroneously dismissed disproportionate and adverse air impacts as insignificant without addressing the actual impacts communities will face. In conducting its NEPA review, FERC follows Executive Order 12898, which directs federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority and low-income populations (*i.e.*, environmental justice communities).[774] A disproportionately high and adverse effect on an environmental justice community means the adverse effect is predominantly borne by an environmental justice population.[775] As EPA has explained, "disproportionately high and adverse effects should trigger the serious consideration of alternatives and mitigation actions in

[771] 40 C.F.R. § 1506.5(b)(2).
[772] Sierra Club's Comments on the Response to FERC's March 26, 2024 Environmental Information Request, Docket No. CP22-21, Accession No. 20240422-5288 (Apr. 22, 2024).
[773] Authorization Order at P 192 (regurgitating CP2's rationale without indicating whether FERC agreed, disagreed, or had a different basis for accepting the background monitor).
[774] Authorization Order at P 119; Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994); *see also* 18 C.F.R. § 380.12(g) (2021) (requiring applicants for projects involving significant aboveground facilities to submit information about the socioeconomic impact area of a project for the Commission's consideration during NEPA review); Exhibit 61, FERC, *Guidance Manual for Environmental Report Preparation* at 4-76 to 4-80 (Feb. 2017), *available at* https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf.
[775] FEIS at 4-317.

coordination with extensive community outreach efforts."[776] Thus, if the project could lead to disproportionate or adverse health impacts or effects, FERC must spell those impacts out. FERC failed to do so here.

At the threshold, FERC asked the wrong question: it failed to determine whether air quality impacts would be "disproportionate and adverse" or identify which environmental justice communities would experience those impacts. Instead, FERC stated that the project "would not have significant adverse air quality impacts on the minority and low-income populations in the Project area."[777] But as FERC recognizes elsewhere, whether impacts are "significant" and whether there are "disproportionate adverse impacts to environmental justice communities" are two separate questions. Agencies cannot dismiss impacts on environmental justice communities without "focusing the analysis on aspects of context and intensity most relevant to the impacted community."[778] Indeed, EPA's *Promising Practices* guidance, which FERC purports to apply here,[779] states that "[a] finding of no significant impacts to the general population is insufficient (on its own) to base a determination that there are no disproportionately high and adverse impacts to" environmental justice communities.[780] Having recognized this principle in general,

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[776] EPA, *Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses* § 3.2.2. (Apr. 1998), *available at* https://www.epa.gov/sites/default/files/2015-02/documents/ej_guidance_nepa_epa0498.pdf. attached to For a Better Bayou, et al., Comments on CP2 and CP Express, Accession No. 20230313-5123

[777] FEIS at 4-323 to -325; *see also* Authorization Order at PP 138-143.

[778] Federal Interagency Working Group on Environmental Justice & NEPA Committee, *Promising Practices for EJ Methodologies in NEPA Reviews* (Feb. 2016), https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf attached to For a Better Bayou, et al., Comments on CP2 and CP Express, Accession No. 20230313-5123

[779] FEIS at 4-300.

[780] Federal Interagency Working Group on Environmental Justice & NEPA Committee, *Promising Practices for EJ Methodologies in NEPA Reviews* (Feb. 2016), https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf (attached to For a Better Bayou, et al., Comments on CP2 and CP Express, Accession No. 20230313-5123) .

FERC offers no explanation for its failure to apply this principle to analysis of the projects' air impacts.

FERC's acknowledgement that impacts to environmental justice communities, *in general*, would be disproportionately adverse,[781] does not relieve FERC of the obligation to identify and disclose the disproportionate and adverse impacts to *air quality* specifically. Evaluating environmental justice, like evaluating significance, serves to inform FERC's analysis of whether to deny the project, whether to require an alternative that reduces those effects, or whether to require other forms of mitigation.[782] Those analyses are necessarily effect-specific: if the problem is air pollution, mitigating visual impacts would be of little help. They are also necessarily location specific: if the problem harms a particular community, reducing air pollution in another community would not solve the issue. Thus, neither FERC's assertion that air impacts would be insignificant nor FERC's concession that environmental justice communities would generally suffer some disproportionately high and adverse impacts satisfied FERC's obligation to take a hard look at the environmental justice impacts of air pollution. FERC did not require air pollution mitigation specific to environmental justice communities here,[783] but could have if it knew where to mitigate which impacts.

Perhaps because of its myopic focus on significance to the general population, FERC failed to actually determine impacts that CP2 will cause to *environmental justice* communities. Like it did with respect to impacts on the general population, FERC bypassed analyzing the cumulative impacts of CP2's air emissions on environmental justice communities by erroneously writing off cumulative problems based only on CP2 LNG's individual emissions. This approach

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[781] Authorizing Order PP162-63 (concluding that the terminal and pipeline "would have a disproportionately high and adverse impact on environmental justice communities because the impacts would be predominantly borne by those communities").
[782] *Sabal Trail*, 867 F.3d at 1370; 18 C.F.R. § 380.7(d).
[783] FEIS 4-327 to -328.

violates NEPA, as discussed above.[784] FERC's "insignificance" determination is also based on the erroneous premise that air pollution is of no concern so long as it remains below the NAAQS. This approach erroneously equates the NAAQS with being definitive thresholds below which health impacts will not occur. To the contrary, particulate matter, nitrogen-dioxide, and ozone are recognized as pollutants for which no threshold of exposure fully protects human health. For example, although the current NAAQS for ozone is 70 parts per billion, EPA has recognized that ozone levels of 65, or even 60 parts per billion adversely impact short- and long-term respiratory mortality, and significantly impact morbidity. With forecasted ambient ozone levels of about 65.2 parts per billion, CP2 LNG will exceed this threshold. Yet, FERC dismissed CP2 LNG's ozone impacts as insignificant, without discussion of the actual health impacts communities will suffer.

Even if FERC's approach were acceptable for the general population, it fails to address or evaluate issues that are of particular concern for environmental justice communities. For example, FERC's pollutant-by-pollutant analysis ignores these communities' cumulative exposure to multiple pollutants.[785] This risk of multiple exposure may not be captured by the NAAQS because EPA sets the NAAQS in a context of assessing "acceptable" risks, not eliminating all risk.[786] Risks tolerated by EPA when setting one-size-fits-all nationwide regulations may be amplified in the context of EJ communities.[787] The single-pollutant approach also ignores the potential interplay between pollutants. NO_2 pollution, for example, contributes to

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[784] *See Healthy Gulf*, 2024 WL 3418863, at *5-*7; *see also supra* Section A.2.
[785] Council on Envtl. Quality, Environmental Justice: Guidance Under the National Environmental Policy Act (1997), available at https://www.epa.gov/sites/default/files/2015-02/documents/ej guidance nepa ceq1297.pdf (attached to Accession No. 20230313-5123) at 9 ("Agencies should consider … multiple or cumulative exposures to human health or environmental hazards in the affected population").
[786] *Murray Energy Corp. v. EPA*, 936 F.3d 597, 609 (D.C. Cir. 2019).
[787] *See, e.g.*, *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 86, 92 (4th Cir. 2020) (finding the Board's state law environmental justice analysis incomplete when it failed to consider "the potential degree of injury to the local population independent of NAAQS").

the formation of harmful particulate matter and ozone pollution, for which EPA has similarly found that there are no zero-risk thresholds below which adverse health effects will not occur.[788] Thus, FERC fails to demonstrate why it can extend the NAAQS to determining adverse impacts to environmental justice communities.

FERC also failed to consider how health and socioeconomic factors influence environmental justice communities' susceptibility to air pollution. FERC acknowledges "that NAAQS attainment alone may not assure there is no localized harm to [vulnerable populations] due to project emissions of [air pollutants] and issues such as the presence of non-Project-related pollution sources, local health risk factors, disease prevalence, and access (or lack thereof) to adequate care."[789] Yet, FERC failed to actually determine how these factors actually apply here. FERC responded to comments about disproportionate health risks by providing an additional health risk assessment regarding operational emissions of 16 hazardous air pollutants.[790] But that analysis entirely ignores environmental justice communities' potential heightened susceptibility to criteria pollutants. And even with regard to hazardous pollutants, FERC only evaluated the cancer and non-cancer health risks stemming from individual pollutants, without apparent consideration of the unique characteristics of environmental justice communities that may heighten susceptibility. FERC failed to analyze, *inter alia*, three factors that could result in disproportionate impacts on environmental justice communities: (1) levels of existing asthma, respiratory disease, or cancer by income and area; (2) age disparities; and (3) lack of access to health care.[791] By failing to perform any susceptibility analysis for criteria or hazardous air

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[788] Exhibit 62, EPA, *Policy Assessment for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter* at 3-25, 3-30, 3-31, 3-33, 3-51 (May 2022), https://www.epa.gov/system/files/documents/2022-05/Final%20Policy%20Assessment%20for%20the%20Reconsideration%20of%20the%20PM%20NAAQS_May2022_0.pdf*; see also* 80 Fed. Reg. 65,292, 65,355/2-3 (Oct. 26, 2015) (EPA's ozone NAAQS); *accord* 80 ed. Reg. 65,334/2-3.
[789] FEIS at 4-324.
[790] FEIS at 4-324.
[791] FEIS at 4-324 to -325.

pollutants, FERC fails to take a hard look at the impacts of declining air quality on environmental justice populations.

FERC also arbitrarily failed to acknowledge that air quality will exceed the PM2.5 PSD increment—which FERC accepts as a measure of significant air quality deterioration[792]—within FERC's environmental justice analysis. Yet, in the environmental justice section, FERC notes that the modeling shows "compliance of Project operations with applicable NAAQS and Class II PSD Increments for the pollutants subject to PSD review."[793] That is directly contradicted by FERC's conclusion, in the air impact section, finding an exceedance of the PM2.5 24-hour PSD increment.[794] FERC might attempt to explain away this inconsistency by arguing that CP Express's contribution to the PSD increment exceedance was so minor as to render the impact insignificant—as it did in the general air discussion.[795] But such an argument would suffer from the same flaw as FERC's application of the SIL to NAAQS violations. FERC cannot simply ignore this cumulatively significant problem—and particularly how it may disproportionately and adversely impact environmental justice communities—based solely on an individualistic look at CP Express's emissions. FERC's failure to address the PSD increment violation falls short of the hard look NEPA requires.

Additionally, as explained in detail above, FERC's analysis fails to account for all reasonably foreseeable and cumulative air pollution impacts.[796] This infects FERC's environmental justice analysis, which is meant to identify disproportionate environmental harms from cumulative sources of pollution.[797] These cumulative impacts must be assessed with a

[792] FEIS at 4-373.
[793] FEIS at 4-548.
[794] FEIS at 4-374.
[795] FEIS at 4-374.
[796] *See supra* Section A.1, 3-4.
[797] *See, e.g.*, FEIS at 4-317.

particular focus on understanding the compounding risks facing environmental justice communities.

Overall, FERC's analysis of environmental justice air impacts remains unlawfully meager despite Sierra Club's, NRDC's and others' DEIS comments requesting more robust review. Despite the widespread predicted exceedances of the NAAQS across the Lake Charles area, FERC failed to specifically examine adverse and disproportionate air impacts on environmental justice communities. Nor did FERC give any "serious consideration of alternatives and mitigation actions in coordination with extensive community outreach efforts."[798] As a result, FERC arbitrarily and unlawfully failed to take a hard look at the impacts of CP2's significant air pollution on environmental justice communities, and whether those impacts could be avoided or minimized.[799] Ultimately, because FERC's analysis of the project's impacts on environmental justice communities was deficient, FERC must also revisit its determinations of public interest and convenience under Sections 3 and 7 of the NGA.[800]

L. FERC Failed to Address The Impacts of The Proposed Beyond-the-Fenceline Carbon Capture and Sequestration Infrastructure, and FERC Arbitrarily Dismissed Alternatives or Mitigation Involving More Extensive Carbon Capture.

FERC approved CP2's proposal to capture carbon dioxide from gas pretreatment emissions,[801] which will be transported by a CO2-specific pipeline and then sequestered offsite,

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[798] EPA, *Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses* § 3.2.2. (Apr. 1998), *available at* https://www.epa.gov/sites/default/files/2015-02/documents/ej_guidance_nepa_epa0498.pdf, also attached to Comments of For a Better Bayou, Accession No. 20230313-5123 (March 13, 2023). The only mitigation FERC contemplates is either entirely voluntary (e.g., construction monitoring efforts) or simply restating basic legal requirements (e.g., complying with air quality regulations). FEIS at 4-551.

[799] *Cf. Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 86, 92 (4th Cir. 2020) (finding the Board's state law environmental justice analysis incomplete when it failed to consider "the potential degree of injury to the local population independent of NAAQS").

[800] *See Vecinos*, 6 F.4th at 1331.

[801] Authorization Order at P 9.

presumably by injection into in a saline aquifer.[802] FERC estimates that this system will capture and sequester 500,000 tons of carbon dioxide emissions per year;[803] for comparison, even with such capture, FERC estimates that the operation project will emit 9.4 million tons per year of carbon dioxide equivalent.[804] Thus, carbon capture is expected to reduce project greenhouse gas emissions by roughly 5 percent.

We strongly agree with FERC's conclusion that CCS facilities within the terminal fenceline (up to the entry point of the send-out pipeline) are within FERC's jurisdiction,[805] and FERC appropriately included the environmental impact of these facilities within the EIS. Nonetheless, FERC's analysis of CCS was deficient, both with regard to the CCS facilities CP2 has proposed, and with FERC's treatment of alternatives using more extensive CCS.

First, FERC failed to take a hard look at the environmental impacts of the non-FERC-jurisdictional portions of the proposed CCS system, including the CO2 send-out pipeline and the ultimate sequestration wells. FERC appears to claim that it actually addressed the impact of these facilities in its NEPA analysis of cumulative impacts, stating that "the CCS facilities within the Terminal Facilities footprint are described further in section 2.1 (Proposed Facilities), and potential environmental impacts associated with all non-jurisdictional facilities located outside of the Project footprint are discussed in section 4.14 (Cumulative Impacts)."[806] However, EIS section 4.14 fails to take a hard look at the impact of these facilities. The section provides an 88-word description of them:

> The CP2 LNG Carbon Capture Sequestration project would originate within the proposed CP2 LNG Terminal Site in Cameron Parish, Louisiana and extend approximately 3 miles to an offshore platform in State of Louisiana waters. The pipeline alignment,

[802] *E.g.*, FEIS at 1-13 to 1-14.
[803] Authorization Order at P 177.
[804] Authorization Order at P 165.
[805] Authorization Order at P 21.
[806] EIS 1-14.

> platform location, and well location are in the siting stage of project development. CP2 LNG plans to capture and sequester an estimated 500,000 tons per year of CO2 emissions from the proposed Terminal Facilities. CP2 LNG proposes to compress the CO2 and transport via pipeline to be injected into saline aquifers.[807]

But the EIS provides no discussion of the *effects* of this infrastructure. The cumulative impacts analysis does not discuss the impact on wetlands or waterbodies associated with construction of the pipeline. There is no mention of the air impacts associated with the equipment that will inject capture carbon dioxide underground. No discussion of the impacts of this marine infrastructure on species. *Etc*. Thus, while FERC appears to have recognized that NEPA required FERC to take a hard look at the impacts of CP2's outside-the-fenceline, non-FERC-jurisdictional CCS infrastructure, FERC is factually mistaken in claiming that it actually did so.

When FERC corrects this error and addresses the effects of the additional infrastructure that is a foreseeable part of CP2's CCS proposal, these portions of CP2's proposal must be considered as a connected action, rather than merely through the lens of cumulative effects. Federal actions or decisions are connected where they:

> 1. Automatically trigger other actions that may require NEPA review;
>
> 2. Cannot or will not proceed unless other actions are taken previously or simultaneously; or
>
> 3. Are interdependent parts of a larger action and depend on the larger action for their justification.

40 C.F.R. § 1501.3(b) (2024); *accord* 40 C.F.R. § 1501.9(e) (2020) (prior codification of this this requirement). Here, the CP2 project, and in particular the FERC-jurisdictional CCS facilities within the fenceline, are plainly interdependent parts of a larger plan that cannot proceed without the non-jurisdictional CO2 pipeline and injection facilities. Neither the

[807] EIS 4-523.

jurisdictional nor non-jurisdictional portion of the CCS project has substantial independent utility. And as FERC has recognized, some, if not all, CCS components that FERC is not asserting jurisdiction over are still federal projects.[808]

Federal approvals of beyond-the-fenceline carbon capture and sequestration infrastructure are "connected" to FERC's action here even though they are actions taken by different federal agencies. We recognize that FERC has previously argued that actions can only be connected if they are both before the same federal agency. It appears that no court has directly ruled on the issue, although in *Sierra Club v. U.S. Army Corps of Eng'rs*,[809] the D.C. Circuit assumed that separate agencies' actions can be connected within the meaning of the regulation. There are compelling reasons to interpret the regulation as spanning actions taken by multiple agencies, and FERC has never provided sound arguments for a narrower interpretation. Nothing in the text of the regulatory definition of connected actions requires, or even suggests, that actions proposed to different agencies cannot be connected. The problems the connected action regulation serves to address are present when separate agencies' actions depend upon or are interrelated with one another. Many "integrated project[s]" require approval of multiple agencies, and those agencies will individually and collectively be better able to "assess the true costs" of the project, and to "evaluate different courses of action and mitigate anticipated effects," if they are informed by a comprehensive analysis.[810]

Second, separate from FERC's failure to actually evaluate the effects of the CP2's actual CCS proposal (whether viewed through connected actions or cumulative effects), FERC arbitrarily rejected comments calling for rigorous exploration of other, more extensive CCS possibilities. CP2 only proposes to capture emissions from the pipeline gas pretreatment

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[808] Authorization Order at P 21 n.33.
[809] *Sierra Club v. U.S. Army Corps of Eng'rs*, 803 F.3d 31, 35-36, 48-51 (D.C. Cir. 2015).
[810] *City of Bos. Delegation v. FERC*, 897 F.3d 241, 251-52 (D.C. Cir. 2018) (internal quotation marks omitted).

process, amounting to only 5% of the total facility greenhouse gas emissions. Other projects, such as NextDecade's Rio Grande LNG project, have proposed more ambitious carbon capture, including capture of post-combustion emissions from on-site gas combustion turbines.[811] Here, multiple comments argued that FERC's analysis of the CP2 proposal needed to consider alternatives such as post-combustion carbon capture and sequestration, which would avoid or mitigate a larger amount of the project's direct emissions.[812] FERC failed to meaningfully respond to these comments. The EIS's discussion of alternatives does not acknowledge the possibility of more stringent CCS, and provides no reason to conclude that more rigorous CCS would be technologically infeasible, economically infeasible, or less environmentally beneficial here. Instead, FERC simply asserted, without explanation or justification, that "the use of CCS beyond that already proposed to be included as part of this Project, is beyond the scope of this EIS."[813] FERC's responses to comments similarly failed to provide any explanation for refusal to consider such an alternative.[814] This complete failure to respond to comments, or to explain why an alternative other LNG terminals are pursuing was completely excluded from consideration here, falls short of FERC's NEPA obligations to consider alternatives and mitigation.

M. The FEIS Fails to Take the Requisite Hard Look at the Project's Effects on the Critically Endangered Rice's Whale in Violation of NEPA.

The Rice's Whale ("the species") is gravely imperiled–CP2 and industrial activity in the Gulf poses an imminent extinction risk to the species. The Rice's whale is considered one of the planet's most endangered marine mammals, with a total estimated population of less than 50

[811] *See, e.g., Rio Grande LNG, LLC,* Application for Limited Amendment to Section 3 Authorization, Docket No. CP22-17-000 (Nov. 17, 2021).
[812] *See* For a Better Bayou et al., DEIS Comments at 19-20; *see also* NRDC DEIS comment at 9-10.
[813] FEIS at 4-561.
[814] EIS Appendix N-61 (CO4-22), citing EIS Appendix N-21 (CO3-7).

individuals.[815, 816] The species is the only resident baleen whale exclusively inhabiting the Gulf of Mexico.[817] Although once believed to reside only in the northeastern Gulf, recent evidence demonstrates that the whale persistently occurs in the western and central Gulf,[818] the epicenter of oil and gas industrial activities and infrastructure development off our nation's coasts. This includes the location of all oil and gas export and related pipeline, processing and loading operations and infrastructure. Oil and gas industry activities in the central and western Gulf of Mexico generate underwater noise, pose risk of vessel strikes and oil, gas and chemical pollution. These activities present the most significant threat to the species' long-term survival, and are driving the Rice's whale toward extinction.[819] The scientific community has concluded

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[815] The Rice's whale was listed as an endangered species in 2019. 84 Fed. Reg. 15446 (Apr. 15, 2019). Sometimes called the Gulf of Mexico whale, the Rice's whale was previously known as the Bryde's whale before it was found to be a genetically distinct species in 2021.

[816] Exhibit 63, S.A. Hayes, E. Josephson, K. Maze-Foley, P.E. Rosel, J. McCordic, and J. Wallace, eds., U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2022, at 116-24 (2023) (NOAA Tech. Memo. NMFS-NE-304). Under the Marine Mammal Protection Act, the annual rate of sustainable, human-caused loss of a marine mammal species or stock, known as Potential Biological Removal (PBR), is quantified as the product of the species' minimum population size, one-half of its maximum net productivity rate, and a recovery factor. 16 U.S.C. § 1362. According to NMFS' most recent Stock Assessment Report for the Rice's whale (2022), the minimum population size for the species is 34, the maximum productivity rate is 0.04 (the default value for cetaceans), and the recovery factor is 0.1 because the stock is listed as endangered. We therefore calculate PBR for the Gulf of Mexico whale as 0.068, or about one whale lost to human impacts every fifteen years. (In our view, PBR should not be rounded up to 0.07, as is done in the Stock Assessment Reports.)

[817] Exhibit 64, M.S. Soldevilla, A.J. Debich, L.P. Garrison, J.A. Hildebrand, and S.M. Wiggins, Rice's whales in the northwestern Gulf of Mexico: call variation and occurrence beyond the known core habitat, Endangered Species Research 48: 155-74 at 155 (2022).

[818] Exhibit 64, M.S. Soldevilla, A.J. Debich, L.P. Garrison, J.A. Hildebrand, and S.M. Wiggins, Rice's whales in the northwestern Gulf of Mexico: call variation and occurrence beyond the known core habitat, Endangered Species Research 48: 155-74 (2022) (The Rice's whale's habitat range extends along the upper depths of the Gulf's continental shelf break, between the 100 meter and 400 meter isobaths, from DeSoto Canyon across the northern Gulf of Mexico, including waters off Louisiana and Texas.); *See also* Sierra Club, Supplemental Comments Regarding Impacts Of CP2 LNG on the Critically Endangered Rice's Whale, Accession No. 20240305-5045 (March 5, 2024) at Exhibit T (NOAA Map of Proposed Rice's whale Critical Habitat (includes much of the extended range), *available at* https://www.fisheries.noaa.gov/s3/2023-07/Rices-Whale-Proposed-CH-Map-508-Final.pdf).

[819] 84 Fed. Reg. 15,446, 15,479-84 (Apr. 15, 2019).

that "small-scale incremental impacts over time or a single catastrophic event,"[820] or even the loss of a single whale could lead to the species' loss.[821]

Oil and gas industry activities and operations degrade the whale's habitat and cause behavioral abnormalities, illness, injury, and death. For example, the species' endangered listing status review concluded that the high level of low frequency noise caused by vessel activity in the Gulf of Mexico has resulted in "significant biological impacts."[822] Elevated noise conditions

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[820] Exhibit 65, P.E. Rosel, P.J. Corkeron, L. Engleby, D. Epperson, K. Mullin, M.S. Soldevilla, and B.L. Taylor, Status review of Bryde's whales (Balaenoptera edeni) in the Gulf of Mexico under the Endangered Species Act, at iv (2016) (NOAA Tech. Memo. NMFS-SEFSC-692).

[821] Sierra Club et al., Supplemental Comments re Potential Impacts on the Critically Endangered Rice's Whale at the Calcasieu Pass 2 Project, Accession No. 20240305-5045 (March 5, 2024), Exhibit U (Comments of A.J. Strelcheck, NMFS Regional Administrator for the Southeast Regional Office, to Tershara Matthews, Chief of Emerging Programs, BOEM, at 6 (Feb. 9, 2022) (scoping comments on Draft Environmental Assessment for commercial leasing wind power development on the Outer Continental Shelf in the Gulf of Mexico) (original recommendation in bold type)).

[822] 84 Fed. Reg. 15,446 at 15,483; *See also* 88 Fed. Reg. 47,453 at 461 (Jul. 24, 2023) (NMFS Proposed Critical Habitat Rule) (Underwater sound is a fundamental component to the Rice's whale's habitat. The species "normal use and occupancy" of its habitat requires sufficiently quiet conditions without significant impediment, for all life functions, to "receive and interpret sound for the purposes of navigation, communication, and detection of prey, predators and other threats.); *See, e.g.,* Exhibit 66, B.J. Estabrook, D.W. Ponirakis, C.W. Clark, and A.N. Rice, Widespread spatial and temporal extent of anthropogenic noise across the northeastern Gulf of Mexico shelf ecosystem, Endangered Species Research 30: 267-282 (2016); Exhibit 67, M.R. Rafter, K.E. Frasier, M.S. Soldevilla, L. Hodge, H. Frouin-Mouy, and I. Perez Carballo, LISTEN GoMex, 2010-2021: Long-term investigations into soundscapes, trends, ecosystems, and noise in the Gulf of Mexico (2022) (MPL Tech. Memo. No. 662); Exhibit 68, S.M. Wiggins, J.M. Hall, B.J. Thayre, and J.A. Hildebrand, Gulf of Mexico low-frequency soundscape impacted by airguns, Journal of the Acoustical Society of America 140: 176-83 (2016) (Acoustic data demonstrates that chronic anthropogenic noise (from airguns, shipping and other industrial noise) limits whale communication space resulting in significantly decreased detection ranges especially in the northwestern Gulf.); *See*, *e.g*., 84 Fed. Reg. 15,446, 15,474 (Apr. 15, 2019); Exhibit 69, NMFS, Endangered Species Act Rice's Whale Critical Habitat Report: Proposed Information Basis and Impact Considerations of Critical Habitat Designation, at 19 (2023); Exhibit 70, Rosel and Wilcox, Genetic evidence reveals a unique lineage of Bryde's whales (2014), *supra*, at 31; Exhibit 65, P.E. Rosel, P.J. Corkeron, L. Engleby, D. Epperson, K. Mullin, M.S. Soldevilla, and B.L. Taylor, Status review of Bryde's whales (Balaenoptera edeni) in the Gulf of Mexico under the Endangered Species Act, at 55 (2016) (NOAA Tech. Memo. NMFS-SEFSC-692); Exhibit 64, Soldevilla et al. 2022, Rice's whales in the northwestern Gulf of Mexico. (Noise conditions are so elevated in this region that "whales would be unlikely to hear their nearest neighbors."); Exhibit 71, M.L. Nielsen, L. Bejder, S.K. Videsen, F. Christiansen, and P.T. Madsen, Acoustic crypsis in southern right whale mother–calf pairs:

cause hearing loss or impairment and habitat displacement; increase stress and alter stress hormone levels; mask communication and environmental cues and change vocalization behavior; and cause changes in diving and foraging behavior that lead to reduced foraging and reproductive success.[823] Scientists conclude that the species is unlikely to compensate from noise induced impacts, leading to energetic and fitness consequences that could lead to extinction.[824] Thus, sufficiently quiet conditions are necessary to ensure a sustainable environment for the whale.[825]

Infrequent, low-output calls to avoid predation? Journal of Experimental Biology 222(13): p.jeb190728 (2019); Exhibit 72, S.E. Parks, D.A. Cusano, S.M. Van Parijs, and D.P. Nowacek, Acoustic crypsis in communication by North Atlantic right whale mother-calf pairs on the calving grounds, Biology Letters 15: art. 20190485 (2019); Exhibit 73, S.K. Videsen, L. Bejder, M. Johnson, and P.T. Madsen, High suckling rates and acoustic crypsis of humpback whale neonates maximise potential for mother-calf energy transfer, *Functional Ecology* 31: 1561-73 (2017). An example of crypsis in Rice's whales may have been recorded by an archival tag. Exhibit 74, *See* M.S. Soldevilla, K. Ternus, A. Cook, J.A. Hildebrand, K.E. Frasier, A. Martinez, and L.P. Garrison, Acoustic localization, validation, and characterization of Rice's whale calls, Journal of the Acoustical Society of America 151: 4264-78 (2022); Exhibit 74, Soldevilla et al., Acoustic localization, validation, and characterization of Rice's whale calls, *supra*, at 4271 (summarizing results from acoustic tags deployed on Rice's whales). (Anthropogenic noise masks whale calls, leading to disruption of essential life stages and behaviors, including mother-calf separation with deadly consequences to the calf, missed breeding opportunities, disruption to foraging, and effects on social cohesion.)

[823] 84 Fed. Reg. 15446 at 15466, 15481, 15483 (Apr. 15, 2019), referencing Rosel et. al. (2016).

[824] *See* Exhibit 75, A.C.M. Kok, M.J. Hildebrand, M. MacArdle, A. Martinez, L.P. Garrison, M.S. Soldevilla, and J.A. Hildebrand, Kinematics and energetics of foraging behavior in Rice's whales of the Gulf of Mexico, Scientific Reports 13: 8996 at 7 (2023); *see also* Exhibit 76, *see also* J.M. Van der Hoop, A.E. Nousek‐McGregor, D.P. Nowacek, S.E. Parks, P. Tyack, and P.T. Madsen, Foraging rates of ramfiltering North Atlantic right whales, Functional Ecology 33: 1290-1306 (2019).

[825] NMFS Proposed Critical Habitat Rule at 47,461; *See* Exhibit 71, M.L. Nielsen, L. Bejder, et al. Acoustic crypsis in southern right whale mother-calf pairs, *supra* at note 819 (2019); Exhibit X, S.E. Parks, et al., *supra* at note 819 (2019); Exhibit 74, S.K. Videsen, et al., *supra* at note 819 (2017); *see* Soldevilla et al., Acoustic localization, validation, and characterization of Rice's whale calls, *supra* at note 819 (summarizing results from acoustic tags deployed on Rice's whales); *see* Exhibit 64, Soldevilla et al. 2022, Rice's whales in the northwestern Gulf of Mexico, supra, at 170-71 ; *see, e.g.,* Exhibit 77, Blair, H.B., Merchant, N.D., Friedlaender, A.S., Wiley, D.N. and Parks, S.E., 2016, Evidence for ship noise impacts on humpback whale foraging behaviour, Biology Letters 12(8): p.20160005 (2016) (alterations in foraging from chronic noise); Exhibit 78, Castellote, M., Clark, C.W. and Lammers, M.O., Acoustic and behavioral changes by fin whales (Balaenoptera physalus) in response to shipping and airgun noise (2012), Biological Conservation, 147(1), pp.115-122 (changes in vocalizations over large foraging area);

Rice's whales are particularly vulnerable to serious injury or death from vessel strikes because they spend most of their time near the water's surface.[826] Other factors, such as difficulty sighting a whale at the surface at night and the inability of large ships to change course quickly to avoid a whale, contribute to the whale's high vessel strike susceptibility.[827] Scientists conclude that vessel strikes and related mortalities pose a significant threat to the species as a whole, and "any increase in the number of vessels in [Rice's whale] habitat … would increase the severity of the threat."[828]

Oil and chemical spills from fossil fuel industry activities cause physical injury, behavior changes, or death, and are considered a "high" severity threat to the Rice's whale.[829] One significant example, the 2010 Deepwater Horizon oil spill disaster, killed approximately 17% of the species' population and 22% of females experienced reproductive failure.[830] Additionally, between 2011 and 2013 alone, there were approximately 46 smaller-scale spills associated with oil and gas related activities and infrastructure, including from platforms, vessels and pipelines exposing the species to acute and chronic impacts with lethal and sub-lethal effects.[831] Oil and chemical exposure leads to reproductive failure, lung and respiratory impairments, decreased

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Exhibit 79, Parks, S.E., Johnson, M., Nowacek, D. and Tyack, P.L., Individual right whales call louder in increased environmental noise. Biology letters, 7(1), pp.33-35 (changes in vocalization from chronic noise) (2010); Exhibit 80, Rolland, R.M., Parks, S.E., Hunt, K.E., Castellote, M., Corkeron, P.J., Nowacek, D.P., Wasser, S.K. and Kraus, S.D., Evidence that ship noise increases stress in right whales, Proceedings of the Royal Society B: Biological Sciences 279: 2363-68 (evidence of chronic stress response) (2012).

[826] Exhibit 81, Soldevilla et. al., Spatial distribution and dive behavior of Gulf of Mexico Bryde's whales: potential risk of vessel strikes and fisheries interaction, 32 Endang. Species Res. 533-550 (2017) (providing evidence of tagged whale spending 70% of its time over an entire day within 15 meters of the water's surface, and 88% of its nighttime hours – hours when it would not be easily visible to vessels – near the surface).

[827] 84 Fed. Reg. 15446 at 15463.

[828] *Id*.

[829] *Id.* at 15475.

[830] *Id.* at 15458.

[831] 84 Fed. Reg. 15446 at 15475.

body condition and overall health, and increased susceptibility to other diseases and infection.[832] The species may also experience long-term effects through persistent exposures in the environment, reduction or contamination of prey, direct ingestions of contaminated prey, or displacement from preferred habitat.[833]

The Rice's whale's extremely small population size and restricted range within the Gulf of Mexico make the species particularly susceptible to the threats described above.[834, 835] Indeed, just one significant event or even incremental change compounding existing industrial effects could lead to the species' extinction.[836] Moreover, the scientific community and federal decision-makers acknowledge the risk of extinction is made more acute given the absence of regulatory mechanisms in the Gulf of Mexico to address vessel strikes, and the inadequacy of other protective measures to control threats posed by vessel noise and spills generated by oil and gas industry operations.[837] In July 2023, the National Marine Fisheries Service ("NMFS") proposed critical habitat designation for the Rice's whale that summarizes evidence of the species' range, including its persistent occurrence, throughout the northeastern, central and

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[832] *Id.*
[833] *Id.*
[834] *Id.* at 15470, 15483.
[835] NMFS repeatedly provides that the Rice's whale is one of the most endangered marine mammal species on earth, with a dangerously small population size, a highly restricted range, and evidence of poor body condition in individual animals. *See, e.g.*, 84 Fed. Reg. at 15,484-85 (listing decision, determining that the whale is at a "high risk of extinction" under three statutory factors); comments of A.J. Strelcheck, *supra*, at 818 (formal comments to BOEM on wind energy leasing in the Gulf); *see e.g.*, NMFS, "Rice's whale," available at fisheries.noaa.gov/species/rices-whale (accessed March 2024), attached to For a Better Bayou, et al., Comments on the CP2 and CP Express Projects, Accession No. 20230313-5123 (March 13, 2023) ("With likely fewer than 100 individuals remaining, Rice's whales are one of the most endangered whales in the world. Recovery of the species depends upon the protection of each remaining whale.").
[836] *See supra* notes 817 and 818.
[837] *Id.* at 15479; Rosel et. al. 2016.

western Gulf of Mexico.[838] The studies serve as part of the proposed designation's bases for including waters 100 to 400 meters deep along the Gulf's *entire* continental shelf.[839]

CP2 LNG's infrastructure and operations encompass the activities described above, including 400 to 800 loaded LNG carriers and numerous support barges and construction vessels traversing endangered Rice's whale habitat each year.[840] CP2 LNG operations would generate ongoing construction and vessel noise, risk of vessel strike and gas and chemical spills[841] that all

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[838] 88 Fed. Reg. 47,453, 47,457, 47461 (July 24, 2023), currently undergoing final OIRA review, (The Rice's whale relies almost entirely on the shelf break – 100 meter to 400 meter isobaths – to support all the species' life history stages, including individual growth, foraging, communication, reproduction, development, calf rearing, migration, socializing and overall population growth. Evidence also relying a genetically confirmed sighting of a Rice's whale in the western Gulf, as well as acoustic monitoring data detecting Rice's whale calls year-round in the western and central Gulf).

[839] Exhibit 82, NMFS, "Trophic Interactions and Habitat Requirements of Gulf of Mexico Rice's Whales," available at https://www.fisheries.noaa.gov/southeast/endangered-species-conservation/trophic-interactions-and-habitat-requirements-gulf-mexico; A five year study has resulted in publication of several of the study's components; Exhibit 64, M.S. Soldevilla, A.J. Debich, L.P. Garrison, J.A. Hildebrand, and S.M. Wiggins, Rice's whales in the northwestern Gulf of Mexico: call variation and occurrence beyond the known core habitat, Endangered Species Research 48: 155-74, at 71 (2022) (species occurrence in extended range is "persistent" based on well-established acoustic monitoring practices to detect cetacean density; vocalizations detected as frequently as one in every six days consistently throughout the year at the westernmost survey site; scientists further concluded findings were underestimates of Rice's whale calling frequencies in the northwestern Gulf due to shipping and seismic background noise); Exhibit 83, J. Litz, L. Aichinger Dias, G. Rappucci, A. Martinez, M. Soldevilla, L. Garrison, and K. Mullin, NOAA SEFSC Cetacean and Sea Turtle Spatial Density Models for the Gulf of Mexico: Additional Information and Data Dictionary (2022). (NMFS's Rice's whale distribution spatial estimates across the Gulf, revised in 2022 relying on siting data alone, indicate that 94% of the population is contained within the extended 100 meter to 400 meter band of habitat, with nearly half the population occurring outside the eastern Gulf's DeSoto Canyon area) (percentages cited calculated by Dr. Ben Best, a spatial modeler, from the density shapefiles provided by Litz et al.) ; Exhibit 84, J.J. Kiszka, M. Caputo, J. Vollenweider, M.R. Heithaus, L.A. Dias, and L.P. Garrison, Critically endangered Rice's whale (Balaenoptera ricei) selectively feed on high-quality prey in the Gulf of Mexico, Scientific Reports 13: art. 6710 (2023) at 10 (species' wide-ranging shelf-break habitat, detected by large vessel surveys, acoustic monitoring and NOAA habitat suitability models, is consistent with the species' foraging behavior for high energy content fish – Ariomma Bondi – that also favor the same shelf-break habitat throughout the northern Gulf of Mexico where the whales have been shown to persistently occur).

[840] FEIS 4-126 – 127 (The number of LNG carrier visits provided in the EIS were doubled to account for round trip movement through whale habitat).

[841] FEIS at 4-184, 4-221 - 4-224, 4-235 - 4-236, 4-508, 4-535.

threaten the whale with lethal and sub-lethal harm, and present a real and significant risk of species level consequence.[842] The effects of CP2 operations would be direct, indirect, and cumulative, compounding the effects of other FERC-approved LNG export facilities producing similar threats in the whale's central and western Gulf or Mexico habitat, as well as the actions of other federal agencies tasked with licensing and permitting oil and gas infrastructure development in the area.[843] As set forth below, CP2's FEIS fails to evaluate or even disclose these effects in violation of NEPA.[844]

1. The FEIS fails to disclose and evaluate CP2's direct and indirect effects on the Critically Endangered Rice's Whale in violation of NEPA.

NEPA requires FERC to "carefully consider[ ] detailed information concerning significant environmental impacts" before committing to a decision.[845] To that end, NEPA requires an agency conduct environmental review of all major federal actions. Here, that review must be completed "before authorizing the construction and operation of a proposed LNG facility."[846] Federal agencies must take a "hard look" at the environmental consequences of its actions[847] by analyzing the direct, indirect and cumulative environmental effects of the action, encompassing all reasonably foreseeable effects, even those that may result later in time, as well as those with catastrophic consequences where the probability of occurrence is low.[848] An action's environmental consequences, and the "significance" of those consequences, must be disclosed in sufficient detail to allow for public understanding.[849] The agency must perform this

[842] *See supra* notes 816, 817, 818.
[843] 40 C.F.R. § 1508.1(i)(3).
[844] 40 C.F.R. §§ 1502.16, 1508.1(i).
[845] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).
[846] *Vecinos*, 6 F.4th at 1325.
[847] *Sierra Club v. FERC ("Sabal Trail")*, 867 F.3d 1357, 1367 (D.C. Cir. 2017).
[848] *Healthy Gulf,* 2024 WL 3418863, at *5; *See* 40 C.F.R. §§ 1502.16(a)-(b), 1508.1; 40 C.F.R. § 1502.21(d).
[849] *Healthy Gulf*, 2024 WL 3418863, at *2 (citing 40 C.F.R. § 1502.16(a)(1) (CEQ NEPA regulations), 18 C.F.R. § 380.7(a), (d) (FERC regulations implementing NEPA), *Birckhead v. FERC*, 925 F.3d 510, 515 (D.C. Cir. 2019) (per curiam)); *Found. On Econ. Trends v. Heckler*,

duty using high-quality, accurate scientific information that ensures the scientific integrity of its analyses.[850] NEPA also requires an agency to show its work, including "methodologies used and … make explicit reference to the scientific and other sources relied upon for conclusions."[851]

The Project's FEIS fails in its entirety to disclose or analyze any effects of the project's construction and operations on the critically endangered Rice's whale.[852] The document's few vague references to the species[853] provide no description of the scope and magnitude of stressors that CP2 LNG would generate directly within and near Rice's whale habitat, including vessel noise, risk of ship strike and possible gas, oil and other chemical spills. The FEIS fails to disclose the degree of potential harm – lethal and sublethal – that could result from these threats, and the potential "significance" of effects on both individual whales and the species as a whole. The FEIS makes no mention of the species dangerously small population and what that means for the degree of harm that could occur as a result of CP2 LNG construction and decades of export and maintenance operations. Moreover, the FEIS lacks any reference to recent scientific studies providing evidence addressing the species' highly imperiled status. Nor does it reference the scientific evidence documenting the species' extended range throughout central and western Gulf waters where oil and gas industry activities are centered, including LNG exports. The FEIS omits discussion of other highly relevant scientific information, including: the range of potential injuries likely to occur from vessel and other underwater noise, even the effects of incremental noise increases above existing levels; the whale's increased susceptibility to vessel strikes

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756 F. 2d 143, 157 (D.C. Cir. 1985) (agency's NEPA obligations are more than a technicality, providing important requirements serving the public and agency before major federal actions occur).

[850] 40 C.F.R. §§ 1500, 1506.6; *see Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005) ("hard look" requirement prohibits agency from relying on incorrect assumptions or data) (citing 40 C.F.R. § 1500.1(b)).

[851] 40 C.F.R. § 1506.6.

[852] 40 C.F.R. §§ 1502.16, 1508.1(i).

[853] FEIS at 4-215, 224, 235, 535.

resulting from evidence of significant time spent near the surface; and the long and short term effects of small pollution events and catastrophic spills.[854]

The few references to the Rice's whale in the FEIS are included in short discussions on whales generally. The FEIS concludes that the risk of vessel strike to whales is low because the likelihood of potential collision with the more abundant sperm whale is low, and because ships would remain in established shipping lanes.[855] The FEIS reaches this conclusion with no discussion of whale behavior – sperm, Rice's whale or otherwise – in relation to shipping lanes and vessel traffic. A single statement that marine mammals are capable of moving freely away from disturbances fails to constitute justification for the conclusion that risk will remain low.[856]

Critically, the species' extremely small population, and thus its rareness, do not translate to a low probability of collision risk and resulting detrimental effects. The FEIS omits recent science documenting the Rice's whale's persistent occurrence within the 100 to 400 meter isobaths of the central and western Gulf. This band of whale occupancy traverses the entire region, thus making habitat unavoidable to vessel traffic serving CP2 LNG, as well as all other oil, gas and LNG facilities operating in the northern Gulf of Mexico. Nor does the FEIS discuss the vulnerability of the Rice's whale to ship strike and other threats based on studies documenting frequent near-surface activity, and how that may increase potential collision risk.[857] But even if the conclusion of low strike risk were accurate, it nowhere explains the consequences of even a low probability strike on a single Rice's whale or the population as a whole in light of the species' dangerously small population.[858]

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[854] *Supra* pages 166 – 173.
[855] FEIS at 4-224.
[856] FEIS at 4-184.
[857] *Supra* note 823.
[858] *Supra* notes 823, 824, 825, 831, 832.

The FEIS similarly fails to disclose or explain the direct and indirect effects on the Rice's whale from possible spill incidents and vessel noise, including from LNG carriers and barges, generated by CP2 LNG.

Given the evidence that the species can only sustain human-induced loss of no more than one whale every fifteen years to avoid extinction,[859] even a "rare" strike, noise impact or spill occurrence could result in consequential injury or death, potentially leading to species level harm. In sum, the EIS falls far short of NEPA mandate absent reasonable discussion of the range of direct and indirect effects and the significance of potential harm to the Rice's whale that could result from the Project.[860]

The FEIS' erroneous and vague assumptions that possible mitigation will somehow minimize impacts to insignificant levels without explanation does not satisfy NEPA's mandate to disclose and explain project effects.[861] Specifically, the FEIS relies on the mere possibility that operators will implement *voluntary* "Vessel Strike Avoidance Measures" because the company (without agency enforcement) will provide copies of those measures to encourage compliance. By assuming implementation of the measures, the FEIS then concludes risk of vessel strike to whales will be minimized.[862] But providing copies of measures does not constitute evidence of impact avoidance or reduction, or that the mitigation, in fact, will occur. The FEIS also references a U.S. Coast Guard requirement for operators to develop spill response plans for pollution incidents to justify its conclusion that "the Project may affect, but is not likely to adversely affect federally listed whales."[863] Indeed, the existence of, or mere possibility that voluntary impact-reduction measures will be implemented, and reliance on a forthcoming spill

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[859] *See supra* note 813.
[860] 40 C.F.R. § 1502.21(d); *supra* notes 816, 817, 818, 819, 821, 825, 826.
[861] FEIS at 4-215, 4-224, 4-235, 4-535; 40 C.F.R. §§ 1502.16, 1508.1(i).
[862] FEIS at 4-224, 4-235.
[863] FEIS at 4-224.

response plan do not relieve the agency of its NEPA duty to disclose and evaluate the project's environmental consequences in the first instance.[864] Detailed evaluation is the only way decision makers and the public can fully understand a project's environmental consequences and the true impact reduction benefits of any possible mitigation.[865]

Absent disclosure and discussion of the full range of effects on the Rice's whale, the FEIS's conclusion that the project "may affect but is not likely to adversely affect" the species remains unexplained and unsupported. To the extent FERC relies on an Endangered Species Act ("ESA") informal consultation determination[866] in the EIS to reach its conclusion of non-significant impacts, the agency must include the substantive documentation that forms the basis of that conclusion.[867] The docket provides no such support, and the FEIS remains devoid of any specific information on the species itself, the particular threats it faces given its highly imperiled status, the direct and indirect risks CP2 LNG operations pose to the species, and the range of harms that it may sustain as a result of the project's construction and operation. This vacuum of information deprives the public from meaningful participation in the NEPA review process,[868] and violates NEPA's "hard look" requirement.[869]

2. The FEIS fails to disclose and evaluate cumulative effects on the Rice's Whale.

NEPA mandates consideration of "not only the project's direct and indirect effects on the environment – which together are the project's incremental effects – but also its cumulative

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[864] *Sierra Club v. FERC ("Sabal Trail")*, 867 F.3d 1357, 1375 (D.C. Cir. 2017); 40 C.F.R. § 1508.1
[865] *Id*.
[866] FEIS at 4-212, 4-215, 4-224.
[867] 40 C.F.R. §§ 1500, 1506.6.
[868] 42 U.S.C. § 4332(c); 40 C.F.R. §§ 1502.9, 1503.1; *See Grazing Fields Farm v. Goldschmidt*, 626 F.2d 1068, 1072-74 (1st Cir. 1980) (failure to present data and analysis supporting agency's decision in EIS hampers public comment, "mut[ing] those most likely to identify problems and criticize decisions").
[869] *Sierra Club v. FERC*, 867 F.3d at 1367 (D.C. Cir. 2017).

effects."[870] Cumulative effects are the "effects on the environment that result from incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency … or person undertakes such other actions," and "can result from individually minor but collectively significant actions taking place over a period of time."[871] As the D.C. Circuit recently held, "[a] project's incremental [effects] do not exist in a vacuum, and requiring consideration of the overall state of the surrounding environment helps ensure that agencies do not overlook the [project's] full impact [ ]."[872] Importantly, an action agency cannot simply conclude cumulative effects are insignificant based on a finding that the project's individual, incremental effects were insignificant.[873] That narrow approach would perpetually evade a finding of "significance" for a project's cumulative effects, thus "eviscerat[ing] the purpose behind requiring a distinct cumulative effects analysis in the first place, [ ] to account for 'collectively significant' environmental impacts that may result from 'individually minor' actions."[874]

Contrary to this directive, the CP2 LNG FEIS summarily concludes that the project's cumulative effects on whales would not be significant, because: (1) the project's individual strike risk to whales is low (again relying on the existence of possible mitigation measures and vessel strike projections for sperm whales), and (2) the project would only contribute a minor increase in vessel traffic.[875] This isolated discussion of CP2 LNG's incremental effects absent any analysis of the full scope of cumulative impacts is precisely what the D.C. Circuit in *Healthy Gulf*

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[870] *Healthy Gulf*, 2024 WL 3418863, at *5 (internal quotations omitted); 40 C.F.R. §§ 1508.1(i)(1)–(3).
[871] *Id.* § 1508.1(i)(3).
[872] *Healthy Gulf*, 2024 WL 3418863, at *5 (citing See *Grand Canyon Trust v. FAA*, 290 F.3d 339, 342 (D.C. Cir. 2002) (agencies "must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum").
[873] *Healthy Gulf*, 2024 WL 3418863, at *6 (finding such conclusion arbitrary).
[874] *Healthy Gulf*, 2024 WL 3418863, at *6; 40 C.F.R. § 1508.1(i)(3).
[875] FEIS 4-535.

rejected.[876] Moreover, the FEIS limits the cumulative discussion to vessel strike risk, omitting any explanation of other potential extensive cumulative effects to whales from vessel noise and spill incidents.

The FEIS never discloses or analyzes the possible range and magnitude of cumulative effects on whales, in particular on the critically endangered Rice's whale. Instead it provides a cursory statement that whales would incur risks and permanent impacts without articulating any specific effects, or explaining why "permanent" impacts would not be considered significant especially for a highly imperiled endangered species. Not only does this violate NEPA mandate to realistically evaluate total impacts beyond the project's isolated individual effects,[877] but it is unsupported by the scientific evidence concluding that even incremental increases in these known threats could result in significant harm or possible extinction to the Rice's whale.[878] For example, CP2 LNG would result in 4,550 barge trips during construction and 400 to 800 annual vessel trips during operation,[879] but the FEIS entirely overlooks evidence providing that even one vessel strike or noise-induced behavioral modification resulting in loss or harm to a single whale could be detrimental to the species.[880] In that sense, CP2 LNG's contributions to total effects, even if incremental, could result in an overall increased likelihood of significant and irreversible impacts that the FEIS cannot simply ignore.[881] At bottom, the total absence of analysis of cumulative effects on the species plainly violates NEPA.[882]

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[876] *Healthy Gulf*, 2024 WL 3418863, at *5-*7.
[877] *Id*.
[878] *Supra* note 816, 817, 818, 819, 821, 825, 826, 832.
[879] FEIS 4-126 – 127 (The number of barge and LNG carrier visits provided in the EIS were doubled to account for round trip movement through whale habitat).
[880] *Supra* note 818.
[881] 40 C.F.R. §§ 1502. 16, 1508.1(i).
[882] 40 C.F.R. § 1508.1(i).

Moreover, in its consideration of cumulative effects on whales, the FEIS indicates that it only considered LNG terminals located within the HUC-12 subwatershed.[883] But that directly violates NEPA's explicit requirement to review the cumulative effects of other actions "regardless of what agency … undertakes [them]."[884] The FEIS failed to consider numerous other industrial facilities – existing, proposed, and recently approved – that would operate in the region and generate similar risks of vessel strike, underwater noise and chemical spills that scientists conclude could result in consequential species-level harm to the Rice's whale.[885] An additional table of facilities in the cumulative effects section is also incomplete.[886] It omits all of FERC's approved Texas LNG export projects (Rio Grande LNG, Texas LNG, Corpus Christi, Freeport LNG, and Port Arthur LNG) and the FERC approved southeast Louisiana facility, Plaquemines LNG. The list also excludes ongoing oil and gas leasing, drilling and exploration activities, and large-scale deepwater oil export projects[887] which have reached licensing decisions or are currently under review. Ship traffic from these projects would unquestionably cause "reasonably

[883] FEIS at 4-535.
[884] 40 C.F.R. § 1508.1(i)(3)
[885] 84 Fed. Reg. 15,446, 15,479-84 (Apr. 15, 2019); *supra* notes 817, 818.
[886] FEIS at 4-511 – 4-523
[887] Following are a list of licensed and proposed deepwater port oil export facilities capable of transporting one to two million barrels per day of crude through Rice's whale habitat: Sea Port Oil Terminal (SPOT), proposed approximately 30 nautical miles off the coast of Freeport, TX (MARAD issued licensing decision November 21, 2022); Texas GulfLink LLC, proposed 26.6 nautical miles off the coast of Brazoria County, TX; Bluewater Texas Terminals LLC, proposed 15 nautical miles off the coast of San Patricio County, TX; Blue Marlin Offshore Port LLC, proposed in federal waters off the coast of Cameron Parish, Louisiana; Louisiana Offshore Oil Port (LOOP), operates 18 miles southeast of Port Fourchon, Louisiana in the Gulf of Mexico.

foreseeable" cumulative effects on the Rice's whale and its habitat.[888, 889] Thus, limiting the analysis to LNG terminals within the subwatershed is grossly insufficient.

Even if the list of projects considered in the cumulative effects analysis was adequate, it fails to list marine mammals and whales as a "cumulatively affected" resource.[890] At bottom, A valid cumulative effects analysis must at the very least disclose and analyze the total number and frequency of vessel trips, risk of vessel strike and effects, noise output and effects, and the risk of effects of projected leaks and spills from all such facilities' ship traffic, pipelines and other

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[888] *See* Supplemental Comments of Sierra Club, Accession No. 20240305-5045, Exhibits E – J (SPOT Final Environmental Impact Statement, Exhibit E; Texas GulfLink Supplemental Draft Environmental Impact Statement, Exhibit F; SPOT and Texas GulfLink Biological Opinion, Exhibit G; Bluewater Draft Environmental Impact Statement, Exhibit H; Blue Marlin Notice of Application, Exhibit I; Blue Marlin Request for Section 7 NMFS Consultation, Exhibit J); The Louisiana Offshore Oil Port (LOOP), located 18 miles offshore of Port Fourchon, Louisiana, was licensed in 1977 as an oil import facility. In 2018, LOOP began exporting U.S.-produced crude oil but no EIS exists for that significant operational change. Nonetheless, Very Large Crude Carriers ("VLCC") serving the facility necessarily travel through Rice's whale habitat in the central and western Gulf posing threats of vessel strike and noise impacts that remain unevaluated; *see also* Supplemental Comments of Sierra Club, Accession No. 20240305-5045, Exhibit B (Report prepared by Aaron Rice, Ph.D. for Sierra Club, "Possible Risks to Marine Protected Species from Construction and Operation of the Delfin LNG Offshore Terminal," at 8, 20, 24-28 (Feb. 2, 2022) (presenting maps of stranded Rice's whales, and visualizations of cumulative vessel traffic generating noise and strike risk throughout central and western northern Gulf of Mexico waters; this report was completed prior to the publication of NOAA studies and findings evidencing the Rice's whale's persistent occurrence in habitat extending throughout the central and western northern Gulf of Mexico, beyond the species' previously designated northeastern Gulf "biologically important area.")).

[889] *See* Supplemental Comments of Sierra Club, Accession No. 20240305-5045. Vessel trip impacts on the Rice's whale and its habitat are evident from the EISs and EAs for these projects which are in FERC's possession, excerpts of which are in Exhibits K – S (Freeport LNG Phase II Final Environmental Impact Statement, Exhibit K; Corpus Christi LNG Final Environmental Impact Statement, Exhibit L; Texas LNG Brownsville Final Environmental Impact Statement, Exhibit M; Rio Grande LNG Final Environmental Impact Statement, Exhibit N; Rio Grande LNG, Corpus Christi LNG, and Texas LNG Brownsville Section 7 NMFS Consultation, Exhibit O; Port Arthur LNG Final Environmental Impact Statement, Exhibit P; Port Arthur LNG Section 7 NMFS Consultation, Exhibit Q; Plaquemines LNG Final Environmental Impact Statement, Exhibit R; Plaquemines LNG Section 7 NMFS Consultation, Exhibit S) (Analyses completed before 2022 do not reflect new evidence and information of Rice's habitat and occurrences extending throughout the central and western Gulf of Mexico. These consultations must be reinitiated pursuant to ESA requirement.).

[890] FEIS at 4-511 – 4-523.

loading infrastructure that cross Gulf waters, particularly continental shelf waters extending the 100 to 400 meter isobaths where Rice's whales are known to persistently occur. Failure to include any substantive analysis of these existing and proposed projects' cumulative effects violates NEPA.[891]

3. FERC violated NEPA by failing to conduct Supplemental Environmental Review in light of recent science and significant circumstances bearing on the Project's impacts on the Rice's Whale.

As Sierra Club pointed out in its supplemental comments on the FEIS,[892] FERC was required to prepare a supplemental EIS in light of "significant new circumstances [and] information relevant to environmental concerns [ ] bearing on [CP2 and] its impacts," particularly with regard to effects on the critically endangered Rice's whale.[893] Notably, there have been numerous protective actions taken by other federal agencies to reduce impacts on the species in the same region that CP2 LNG would operate and pose similar threats. Yet, FERC failed to consider or even acknowledge these efforts, or engage in similarly rigorous analyses in the CP2 NEPA process. These actions include:

1. NMFS's determination that Outer Continental Shelf oil and gas leasing and production activities would jeopardize the continued existence of the Rice's whale. Notably, this determination was made even prior to publication of evidence of the whale's persistent occurrence in the extended habitat range of the central and western Gulf of Mexico.[894]

[891] 40 C.F.R. § 1508.1(i)(3).
[892] Supplemental Comments of Sierra Club, Accession No. 20240305-5045 at 2, 6, and 11.
[893] 40 C.F.R. § 1502.9(d)(1) (A Supplemental EIS "shall" be prepared where a major federal action remains to occur, and "(i) The agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts"); *see also Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 374 (1989) ("[T]he decision whether to prepare a supplemental EIS is similar to the decision whether to prepare an EIS in the first instance: If there remains 'major Federal actio[n]' to occur, and if the new information is sufficient to show that the remaining action will 'affec[t] the quality of the human environment' in a significant manner or to a significant extent *not already considered*, a supplemental EIS must be prepared.") (footnote and citation omitted, emphasis added).
[894] Supplemental Comments of Sierra Club, Exhibit W (National Marine Fisheries Service (NMFS) Biological Opinion on Federally Regulated Oil and Gas Program Activities in the Gulf of Mexico (March 12, 2020) at 550-554, *available at*

2. NMFS's Proposed designation of critical habitat for the Rice's whale, which extends through the entire northern Gulf of Mexico, encompassing the 100 to 400 meter isobaths of the central and western Gulf.[895] A critical habitat designation underscores the need for "special management considerations or protection."[896] The proposal demonstrates the existence of the species in CP2's vessel impact zone and the imperative of protecting it from known threats.
3. Bureau of Ocean Energy Management's ("BOEM") exclusion of Rice's whale habitat in the central and western Gulf from wind energy development lease areas.[897]

These protective actions, combined with the numerous recently published studies on the Rice's whale described and referenced above at footnotes 812, 813, 815, 817, 818, 819, 821, 822, and 823, underscore the need to rigorously evaluate the species' highly imperiled state and to proceed with caution when licensing projects that pose direct threats to the species' survival, if not deny projects all together. Indeed, this scientific data represents the most up-to-date, "credible [ ] evidence" on the species' status, widely "accepted in the scientific community," and it is highly "relevant to evaluating the reasonably foreseeable adverse impacts" of CP2 on the Rice's whale, both individually and cumulatively.[898] The FEIS's omission of this critical information represents egregious deficiencies in FERC's NEPA process that must be corrected through supplemental review.

Further, FERC should have prepared a supplemental EIS for CP2 LNG given the significant insufficiencies in the FEIS cumulative effects analyses, particularly the omission of

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https://www.fisheries.noaa.gov/resource/document/biological-opinion-federally-regulated-oil-and-gas-program-activities-gulf-mexico).

[895] National Marine Fisheries Service (NMFS) Proposed Designation of Critical Habitat for the Rice's whale, 88 Fed. Reg. 47,453 (Jul. 24, 2023).

[896] 16 U.S.C. § 1532(5)(A)(defining critical habitat).

[897] Exhibit 85, Bureau of Ocean Energy Management (BOEM), Memorandum from M. Celata, Regional Director for BOEM Gulf of Mexico Regional Office, to A. Lefton, BOEM Director (July 20, 2022) (request for concurrence on preliminary Wind Energy Areas for the Gulf of Mexico Area Identification Process Pursuant to 30 C.F.R. § 585.211(b)).

[898] 40 C.F.R. § 1502.21(c)(3),(4),(d).

numerous LNG facilities and other oil and gas industry operations within the central and western Gulf region that together pose compounding threats to the critically endangered whale.[899]

At bottom, this highly relevant information presents "new circumstances or information relevant to environmental concerns [that] bear [ ] on the proposed action or its impacts," thereby requiring supplemental NEPA review to correct deficiencies prior to any licensing certifications, conditioning or denials.[900]

N. Failure to Conduct Formal Section 7 Consultation On The Rice's Whale Violates The Endangered Species Act.

Congress enacted the Endangered Species Act ("ESA") in 1973 "to provide a program for the conservation of . . . endangered species and threatened species."[901] Federal agencies play the central role in species protection under the Act. Section 7— which courts have described as the "heart of the ESA"—contains both substantive and procedural provisions with which all federal agencies must comply.[902] Substantively, Section 7(a)(2) requires that "[e]ach Federal agency shall . . . insure that any action authorized, funded, or carried out by such agency. . . is not likely to jeopardize the continued existence of any endangered species or threatened species" or adversely modify their designated critical habitat.[903]

To meet these substantive obligations, the ESA and its implementing regulations have several procedural requirements. Fulfillment of each stage of this process is the only means by which an agency can satisfy its substantive duty to ensure against jeopardy under Section 7(a)(2). Specifically, the ESA requires each agency, referred to as the "action agency," to "consult" with

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[899] In fact, a Supplemental EIS is necessary for the EISs/EAs of all FERC approved LNG export facilities that impact the Rice's whale and its habitat, to address the cumulative nature of their impacts.
[900] 40 C.F.R. § 1502.9(d)(1)(ii),(2).
[901] 16 U.S.C. § 1531(b).
[902] *Karuk Tribe of Cal. v. U.S. Forest Serv.*, 681 F.3d 1006, 1019 (9th Cir. 2012); *Forest Guardians v. Johanns*, 450 F.3d 455, 457 (9th Cir. 2006).
[903] *Id.* at 1020 (quoting 16 U.S.C. § 1536(a)(2)).

the Fish and Wildlife Service ("FWS") or the National Marine Fisheries Service ("NMFS," collectively, "Services") to obtain the Services' "expert opinion" on species impacts.[904] Under these procedural obligations, the action agency "shall . . . request" information from the Services regarding whether any listed species "may be present" in the area, and if so, the action agency must prepare a "biological assessment" or engage in "informal consultation" with the Services to determine whether listed species will be adversely affected by the proposed action.[905] If the biological assessment or informal consultation concludes that a proposed action "may affect" any listed species or critical habitat, the agency must engage in formal consultation with the Services.[906] The "may affect" standard is a low one: "[a]ny possible effect, whether beneficial, benign, adverse, or of an undetermined character, triggers the formal consultation requirement."[907]

The action agency's ESA duties do not end with the completion of the initial consultation. The agency must review the ongoing impacts of the action and reinitiate consultation when: (a) the amount or extent of species "taking"[908] specified in the incidental take statement is exceeded; (b) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (d) if a new species is listed or critical habitat designated that may be affected by the identified action.[909] When reinitiation is required, "the original biological opinion loses its validity" and can no longer be

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[904] 16 U.S.C. § 1536(A)(2). Generally, the FWS is responsible for terrestrial species, and NMFS is responsible for marine species. *See* 50 C.F.R. § 402.01(b).
[905] *Id.* § 1536(c); 50 C.F.R. §§ 402.12(c), (d), 402.13(a).
[906] 50 C.F.R. § 402.14.
[907] *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 496 (9th Cir. 2011) (citation omitted).
[908] The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. 16 U.S.C. § 1532(19).
[909] 50 C.F.R. § 402.16.

relied on by the action agency to satisfy its substantive duty to ensure its actions do not jeopardize listed species.[910] Importantly, both the action agency and the consulting agency have a duty to reinitiate consultation where necessary.[911]

Here, FERC engaged in informal ESA consultation and reached a conclusion that CP2 is "not likely to adversely affect" the endangered Rice's whale.[912] And NMFS filed a concurrence letter on May 12, 2023.[913] However, FERC and NMFS nowhere provide documentation upon which the agencies relied in reaching this initial conclusion. Nor does the FEIS provide justification that "permanent" effects do not constitute adverse effects.[914] To the contrary, there is widely accepted, peer reviewed scientific evidence, referenced and described herein, demonstrating that the threats posed by CP2 LNG – underwater noise, risk of strike and potential spills – present grave risk to the species' long-term survival.[915] Moreover, the evidence documents the species' "persistent occurrence" in the central and western Gulf of Mexico in areas directly impacted by vessels serving CP2 LNG.[916] Indeed, this evidence justifies a different conclusion consistent with the statute's standard for determining project "effects" and requiring completion of formal Section 7 consultation.[917] The docket simply fails wholesale to address the scientific evidence and the project's potential significant adverse effects on the species.

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[910] *Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 698 F.3d 1101, 1108 (9th Cir. 2012). During consultation and until the requirements of section 7(a)(2) are satisfied, section 7(d) provides that an agency "shall not make any irreversible or irretrievable commitment of resources" toward an action that would foreclose "the formulation or implementation of any reasonable and prudent alternative measures." 16 U.S.C. § 1536(d).

[911] *See Salmon Spawning & Recovery All. v. Gutierrez*, 545 F.3d 1220, 1229 (9th Cir. 2008)("The duty to reinitiate consultation lies with both the action agency and the consulting agency."); *Envtl. Prot. Info. Ctr. v. Simpson Timber Co.*, 255 F.3d 1073 (9th Cir. 2001) (same).

[912] FEIS at 4-215.

[913] FERC docket no. CP22-21; Accession No. 20230531-5388. https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20230531-5388&optimized=false.

[914] FEIS at 4-535.

[915] *See supra* notes 813, 814, 819, and 821.

[916] *See supra* note 814 at p. 172 (2022).

[917] 16 U.S.C. § 1536; 50 C.F.R. § 402.14.

Notably, since NMFS's concurrence letter, the agency proposed designation of critical habitat for the Rice's whale to include the continental shelf break throughout the Gulf of Mexico in areas directly impacted by CP2 LNG.[918] That critical habitat designation is expected to be finalized in 2024.[919] The proposed designation incorporates the scientific evidence, referenced and described herein, underscoring the imperiled status of the species and its specific vulnerabilities to oil and gas infrastructure in the central and western Gulf region.[920] Indeed, this development and current scientific evidence on the species "reveal[] effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered."[921]

Moreover, formal Section 7 consultation completed by sister agencies BOEM and the Maritime Administration ("MARAD") for projects producing similar threats to the species in the same region,[922] further demonstrates that the agencies' "not likely to adversely affect" conclusion for CP2 and the decision to forego formal consultation are arbitrary and lack support. At bottom, FERC and NMFS's failure to engage in formal Section 7 consultation regarding CP2's impacts on the endangered Rice's whale violates the Endangered Species Act.[923]

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[918] 88 Fed. Reg. 47,453 (Jul. 24, 2023). *See also* Sierra Club, Supplemental Comments Regarding Impacts Of CP2 LNG on the Critically Endangered Rice's Whale, Accession No. 20240305-5045 (March 5, 2024) at Exhibit T (NOAA Map of Proposed Rice's whale Critical Habitat (includes much of the extended range), *available at* https://www.fisheries.noaa.gov/s3/2023-07/Rices-Whale-Proposed-CH-Map-508-Final.pdf).
[919] Exhibit 86, NOAA Fisheries, "Overview of Proposed Rule to Designate Critical Habitat for the Rice's Whale," at 7 (Aug. 13, 2023), *available at* https://gulfcouncil.org/wp-content/uploads/E-4a-Rices-Whale-GMFMC-August-2023.pdf.
[920] *Supra* note 915.
[921] 50 C.F.R. § 402.16(a)(2).
[922] National Marine Fisheries Service (NMFS) Biological Opinion on Federally Regulated Oil and Gas Program Activities in the Gulf of Mexico (March 12, 2020) at 550-554, *available at* https://www.fisheries.noaa.gov/resource/document/biological-opinion-federally-regulated-oil-and-gas-program-activities-gulf-mexico (Accession No. 20240305-5045, Supplemental Comments of Sierra Club, *Exhibit W*).
[923] 50 C.F.R. § 402.16.

O. FERC's Determination that the Project's Wetland Impacts Would Be Less Than Significant is Arbitrary and Unlawful.

The description of the project's extensive adverse impacts to wetlands in FERC's FEIS is insufficient and inaccurate, and in violation of NEPA. The EIS fails to take the required hard look at wetland impacts, and cannot support the statement that FERC expects wetlands impacts to be "reduced to less than significant levels" through mitigation,[924] thus rendering the conclusions within the Order unsupported.[925] The FEIS concludes that impact to wetlands will be fully mitigated because the Army Corps of Engineers will require such mitigation as a condition of approval.[926] NEPA prohibits passing the buck in this manner. FERC cannot circumvent the requirements of NEPA by punting this analysis.

FERC must scrutinize the quantity and character of impacts on wetlands from the Project, and consider the effect of temporal losses on the capacity of these coastal wetlands to properly function. FERC did not do this. Similarly, to properly analyze the direct, indirect, and cumulative impacts from the project, FERC should have assessed whether impacts to wetlands within the Project footprint will have effects on wetlands outside the project footprint. As explained in the Army Corps' regulations, "[a]lthough a particular alteration of a wetland may constitute a minor change, the cumulative effect of numerous piecemeal changes can result in a major impairment of wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it may be part of a complete and interrelated wetland area."[927] NEPA mandates that an EIS consider a proposed project's ""[c]umulative effects."[928] As discussed supra, cumulative effects are the "effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably

[924] FEIS at 4-145
[925] Authorization Order at PP 129, 151.
[926] FEIS at 4-125.
[927] 33 C.F.R. § 320.4(b)(3).
[928] 40 C.F.R. §§ 1508.1(i)(1)–(3) (2024).

foreseeable actions regardless of what agency . . . or person undertakes such other actions."[929] They "can result from individually minor but collectively significant actions taking place over a period of time."[930] And, yet again, FERC did not do this. NEPA requires that an agency take a "hard look" at the cumulative impacts.

As explained within Sierra Club et al.'s DEIS comments,[931] FERC's NEPA review failed to accurately identify and evaluate both project-specific wetland impacts, and cumulative wetland impacts from the project and surrounding projects, to allow the public to appreciate the true impacts of the Project and provide meaningful comment on the project's impacts. Accurate identification and evaluation of wetland impacts is critical as these are regionally vital coastal wetlands. Loss of wetlands reduces the prosperity, health, and safety of people and infrastructure to natural disasters like flood, drought, and wildfire, decreased food security, reduction in clean water, increased harmful algal blooms and related increases in toxins and oxygen depleted dead zones, greater vulnerability to sea level rise and storms, and reduced recreational opportunities.[932]

FERC acknowledges that "[w]etland impacts would occur within several identified environmental justice communities; therefore, the loss of wetland habitat and the subsequent decrease in wetland benefits could affect those environmental justice communities within and near the project,"[933] and that "environmental justice communities in the study area would experience cumulative impacts on wetlands but that these impacts would not be significant."[934] FERC simply asserts that because the project will implement mitigation measures "in accordance

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[929] *Id*. § 1508.1(i)(3).
[930] *Id*.
[931] Comments of For a Better Bayou, et al., Accession No. 20230313-5123 (March 13, 2023).
[932] Exhibit 87, Lang, M.W., Ingebritsen, J.C., Griffin, R.K. 2024. *Status and Trends of Wetlands in the Conterminous United States 2009 to 2019*, U.S. Department of the Interior; Fish and Wildlife Service (May 2024), available at: https://www.fws.gov/sites/default/files/documents/2024-04/wetlands-status-and-trends-report-2009-to-2019_0.pdf
[933] Authorization Order at P 129; *see also id.* P150.
[934] *Id*.

with the requirements of the federal and state agencies,"[935] the impacts will not be significant. FERC's determination that many of these impacts are less-than-permanent is entirely unsupported and is arbitrary. For example, FERC makes the arbitrary conclusion that impacted wetlands will revegetate. But FERC never determines how long revegetation will take or how likely revegetation efforts are to be successful.[936] Without these predicate determinations, FERC cannot conclude that these impacts will be less-than-permanent; nor can it justify a conclusion that effects will be insignificant.

Instead, the FEIS attempts to downplay the project's wetland impacts by asserting that "the Project represents about 1.3 percent of the approximately 108,500 acres of wetlands contained within the HUC 12 watersheds crossed by the Project."[937] The EIS fails to explain how directly impacting, even destroying, more than 1,400 acres of wetlands is not actually substantial and will not cause significant harm. This is especially glaring considering the thousands of acres of additional wetlands impacted,[938] both temporarily and permanently, from nearby projects. The EIS provides "[q]uantitative information regarding total construction related wetland impacts"[939] for projects and reasonably foreseeable future actions with potential to contribute to cumulative impacts, but does not actually do any sort of analysis disclosing and evaluating the type and degree of impacts, rendering any conclusion on significance arbitrary and capricious.

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[935] Authorization Order at P 151.
[936] FERC even acknowledges that revegetation may not be successful, but even where revegetation is not successful after three years, the EIS indicates that additional compensatory mitigation for successful mitigation will not be required, but that the applicant would develop and implement a "remedial revegetation plan to actively revegetate wetlands*." See 4-136.* FERC seems to only ask the applicant to make an attempt but does not require it to be successful. This violates even the flawed understanding of mitigation for wetlands impacts represented in FERC's NEPA review.
[937] FEIS at 4-141.
[938] FEIS at 4-511 – 517, Table 4.14.1-1.
[939] FEIS at 4-529.

This is especially egregious, given the critical role of wetlands in Louisiana. Wetlands are integral to Louisiana in a way unlike any other state: Louisiana has 40% of the wetlands of the continental United States country's wetlands, and wetlands account for 11% of the state's landmass.[940]

But Louisiana is losing wetlands at an exceptional rate: over 90% of the coastal marsh loss in the continental United States occurs in Louisiana.[941] FERC fails to adequately address the fact that as more wetlands are lost, the state, local communities, and the environment become less and less able to tolerate further losses, relying on a diminishing acreage of wetlands to, for example, protect against storm surges,[942] or provide habitat.[943]

FERC's general acknowledgement of impacts and unsupported conclusion that impacts will not be significant due to mitigation does not constitute a hard look. For decisionmakers and the public to understand the project's full scope of environmental consequences, FERC was required to look at the total impacts of the project on wetlands before it can consider potential reduction benefits resulting from mitigation that might occur.[944] In sum, the FEIS must provide a full and fair discussion of significant environmental impacts and providing all information essential to a reasoned decision.[945]

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[940] Exhibit 88, S. Jeffress Williams, *Louisiana Coastal Wetlands: A Resource At Risk*, U.S. Geological Survey, https://pubs.usgs.gov/fs/la-wetlands/.
[941] Exhibit 89, *Louisiana's disappearing WETLANDS*, Southeastern Louisiana University, https://www2.southeastern.edu/orgs/oilspill/wetlands.html#:%7E:text=While%20Louisiana%20has%2040%25%20of,the%20turn%20of%20the%20century.
[942] *Louisiana Coastal Wetland Functions and Values*, https://lacoast.gov/reports/rtc/1997/4.htm.
[943] *Id.*
[944] *Sierra Club v. FERC*, 867 F.3d 1357, 1375 (D.C. Cir. 2017).
[945] 40 C.F.R. § 1502.1.

IV. INTERVENORS' MOTION FOR A STAY

A. Commencement of the Project Will Cause Irreparable Injury to Intervenors, Their Members, and the Environment.

In addition to their request for rehearing, Intervenors also move the Commission for a stay of the Authorization Order until the conclusion of judicial review.[946] The Commission has the authority to issue such a stay under 5 U.S.C. § 705, and should do so where "justice so requires."[947] In determining whether to issue a stay, FERC's policy is to consider "(1) whether the party requesting the stay will suffer irreparable injury without a stay, (2) whether issuing a stay may substantially harm other parties; and (3) whether a stay is in the public interest."[948]

1. The Project will irreparably injure Landowners.

If FERC does not grant a stay, Intervenor Landowners Mary Alice Nash's and Jerryd Tassin's ("Landowners") land will be absolutely and irreparably injured. While a presumptive stay under FERC's rules and regulations[949] offer some temporary protection, without the more robust stay requested here through the conclusion of judicial review, CP Express will irreversibly damage Landowners' property before they have had a judicial determination on the questions discussed above on whether FERC failed to do its job in approving this project, and properly examine and take into account—among other things—the significant evidence before it on the lack of need. The risk that Landowners, as well as other impacted landowners generally along

[946] This request is beyond the presumptive stay in 18 CFR 157.23(b) (no authorization to proceed with construction activities will be issued "If a timely request for rehearing rais[es] issues reflecting opposition to project construction, operation, or need.").
[947] 5 U.S.C. § 705.
[948] *Tennessee Gas Pipeline Co., L.L.C.*, 154 FERC ¶ 61,263, P 4 (2016).
[949] *See* 18 CFR 157.23(b).

the route, face is something that affected landowners along the Spire[950] and Atlantic Coast[951] pipelines are all too familiar with—the irreversible, permanent destruction of their land for a project that never should have been approved by FERC. A stay is necessary to preserve the status quo and ensure such unnecessary destruction does not occur while judicial review is pending.

As outlined in Landowners' filings before the Commission,[952] if no stay is in place and the Project begins construction, their land will suffer from significant, irreversible damage, including, but not limited to: permanent impacts on their property value, adverse impacts on its environmental integrity, and their ability to use and enjoy their land.

Ms. Nash owns land in Calcasieu Parish upon which Venture Global now claims a permanent easement of .42 acres and a temporary workspace of .68 acres on her property. While she did not wish to sign the easement and remains opposed to the project, she signed an easement agreement under the threat of eminent domain, reasonably believing that Venture Global would take her land anyway. If the more robust stay is not put into place by FERC, Venture Global will be able to clear and grade the 125- to 150- foot wide construction construction right-of way,[953]

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[950] *See, e.g.*, Order Reissuing Certificates, Spire STL Pipeline LLC, 181 FERC ¶ 61,232 (2022) (Glick, Chair, concurring, P 6) (noting that three years after the pipeline entered service, "several landowners' properties still ha[d] not been adequately restored, notwithstanding a Commission order and efforts by Commission staff to ensure that Spire fulfills its obligations to remediate the land affected by the pipeline."); Impacted Landowners' Motion for Order to Show Cause, *Spire ST Pipeline LLC*, FERC Docket CP17-40, Accession No. 20221213-5195, pp. 5-7 (Dec. 13, 2022) (describing years of extensive ongoing damage to properties impacted by the Spire pipeline, including erosion, litter and construction debris, soil compaction, and ponding, which continue to this day).

[951] Along the canceled Atlantic Coast Pipeline ("ACP"), ACP installed approximately 31.4 miles of pipe, completed an additional 82.7 miles of clearing and grading, and felled trees in 222.5 miles of the pipeline right-of-way before canceling the project. Order on Rehearing and Directing Compliance, *Atlantic Coast Pipeline, LLC*, 180 FERC ¶ 61,059, P 4 (2022).

[952] Motion to Intervene of Mary Alice Nash, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20220913-5085 (Sept. 13, 2022); Motion to Intervene of Bernard Webb, Georgia Webb, and Jerryd Tassin, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20220610-5071 (June 10, 2022).

[953] *Venture Global CP2 LNG LLC*, FEIS at 4-145.

including any and all trees, rocks, and roots.[954] Venture Global would lay a 48-inch diameter gas pipeline in a trench a few feet in the ground across Ms. Nash's land.[955] If the Pipeline becomes operational, Venture Global would hold 50-foot-wide permanent easement. Impacts associated with this permanent land disturbance include serious safety concerns, "increased soil compaction and erosion, increased potential for the introduction and establishment of noxious and invasive species, and a local reduction in available wildlife habitat."[956]

Construction would also adversely impact and interfere with Landowner Tassin's recreational use, business revenue, and enjoyment of his land.[957] Tassin already has an existing pipeline easement directly adjacent to his land, and the removal of significant vegetation and dredging activities for that easement have already caused damage to his pond; adversely impacting the water quality and habitat, driving wildlife from the property. Tassin runs a hunting and fishing guide service, 'Fowl Language Guide Service,' on his impacted property in Lake Charles, Louisiana. Tassin takes his clients fishing in the pond and duck hunting on the property.

Mr. Tassin's business likely could not continue during construction of the pipeline because of the significant disruption such construction will pose—including from loud vehicles and equipment, as well as workers on or around the property.[958] After construction is complete, the wildlife upon which his business depends may not return to the area, which could permanently preclude him from running his business.[959] The pipeline and/or right-of-way would likely extend under the pond that is integral to duck hunting and fishing on the property. If a pipeline were to be entrenched under the pond, the entire ecosystem of the pond would be

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[954] *Venture Global CP2 LNG LLC*, FEIS at 2-26.
[955] *Venture Global CP2 LNG LLC*, FEIS at 2-27.
[956] *Venture Global CP2 LNG LLC*, FEIS at 4-146.
[957] *See* Niskanen Center, et al., DEIS Comments at 5; *see also* Motion to Intervene of Bernard Webb, Georgia Webb, and Jerryd Tassin, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20220610-5071 (June 10, 2022).
[958] Niskanen Center, *et al.*, DEIS Comments at 6.
[959] Niskanen Center, *et al.*, DEIS Comments at 5.

disturbed, even if the pipeline only ran under part of the pond.[960] Without wildlife in the pond, fishing and hunting on the property would be difficult if not impossible.[961] Additionally, fishing with significant construction going on near or right by is not only far from ideal for a catch; if the pipeline runs near or through the ponds, it could seriously compromise the habitat of the fish.[962] 'Fowl Language' is Tassin's primary source of income, and any immediate impacts resulting from construction activities and the installation of permanent gas infrastructure on or near his property pose an irreparable threat to his business.[963] His business likely could not continue due to the significant disruptions construction will pose—including from loud vehicles and equipment, damage to wildlife habitat, and workers on or around the property.[964]

2. The Project will irreparably injure Fishermen and the Commercial Fishing Industry.

Travis Dardar, Anthony Theriot, Kent Duhon, and the 60 commercial fishermen who are members of FISH ("the Fishermen") make their living catching shrimp, oysters, and crabs in Calcasieu Pass in Cameron Parish, Louisiana, where the CP2 LNG Terminal is proposed.[965] Fishing is their primary source of income and their way of life, which would be irreversibly damaged or destroyed by construction of the Project.[966]

Mr. Duhon has lived in Cameron, Louisiana his entire life and fished there for almost 35 years.[967] Mr. Theriot has lived and fished in Cameron, Louisiana for almost 30 years, and he is

[960] Niskanen Center, *et al.*, DEIS Comments at 5.
[961] Niskanen Center, *et al.*, DEIS Comments at 6.
[962] Niskanen Center, *et al.*, DEIS Comments at 6.
[963] *See* Niskanen Center, *et al.*, DEIS Comments at 5-6.
[964] Niskanen Center, *et al.*, DEIS Comments at 5.
[965] *See* Motion to Intervene of Fishermen Anthony Theriot and Kent Duhon, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20230313-5005 (Mar. 13, 2023); Motion to Intervene of Travis and Nicole Dardar, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20230303-5103 (Mar. 3, 2023); Motion to Intervene of Fishermen Involved in Sustaining Our Heritage at 1, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20240418-5083 (Apr. 18, 2024) ("Motion to Intervene of FISH").
[966] Motion to Intervene of FISH at 1-2;
[967] Niskanen Center, et al., DEIS Comments at 6.

also co-owner of Cameron's last remaining shrimp shop, called K&T Seafood.[968] Mr. Dardar has fished in Cameron for 9 years and is also the founder of FISH, a non-profit organization dedicated to protecting the rights and cultural history of commercial fishermen in Southwestern Louisiana, which moved to intervene in this proceeding.[969]

The CP2 Project and commencement of its construction would impede or preclude the Fishermen's use of the few remaining fishing docks along Calcasieu Pass, which would reduce access to fishing grounds and make it more difficult to fish.[970] Noise and light pollution will disrupt the wildlife and the Fishermen's harvest.[971] The CP2 LNG facility and commencement of construction[972] will also increase the already crowded ship traffic in the Calcasieu Ship Channel, which makes it more difficult to harvest shrimp, oysters, and crabs in the channel that they rely on as a primary source of income.[973]According to the Fishermen, they must halt their activities four or five times per day to make room for the LNG ships passing by due to the security zone requirements. Even after the ships pass, the Fishermen have trouble resuming fishing and shrimping activities because the barges churn up silt and mud, which disrupts the wildlife.[974] The

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[968] Niskanen Center, et al., DEIS Comments at 6.
[969] Motion to Intervene of Fishermen Involved in Sustaining Our Heritage, Docket Nos. CP22-21-000, CP22-22-000, Accession No. 20240418-5083 (Apr. 18, 2024) ("Motion to Intervene of FISH").
[970] *See* Motion to Intervene of Fishermen Anthony Theriot and Kent Duhon.
[971] Niskanen Center, et al., DEIS Comments at 6.
[972] FEIS 4-348 ("Construction equipment and materials, including modular facility components/structures, would be delivered to the Terminal Facilities site primarily by barge. CP2 LNG estimates that approximately 2,275 marine deliveries would be needed for the two phases of the Project, with the peak being approximately 32 deliveries per week (earlier on in the construction period). Barge/tug operations would result in fuel combustion emissions from the diesel-fired engines.").
[973] *See* Motion to Intervene of Fishermen Anthony Theriot and Kent Duhon at 1; Motion to Intervene of Travis and Nicole Dardar; Motion to Intervene of FISH.
[974] *See, e.g.*, Exhibit 44, FISH Testimonials at 30 (comments of Byron McMauley) ("Sometimes we have to turn around headed to our boats when we see those LNG ships are moving up channel because we already know the day is done. We will be in a hole with gas and time because shrimp won't be there. That's really hard to swallow"); see also Niskanen Center, et al., DEIS Comments at 7.

increased ship and tanker traffic would greatly exacerbate this problem.

As noted by Commissioner Clements in her dissent, FERC "ignores the risk that temporary impacts on fisheries might *permanently adversely affect commercial fishing businesses.*"[975] Fishermen have already noticed a staggering decline in their annual catch—up to 50%—correlated with the construction and operation of existing facilities.[976] The threat to fishermen's families and livelihoods from the massive expansion of the gas export industry in Cameron and Calcasieu Parish is far from theoretical, and even a single season of reduced catch could put fishermen out of business.[977] Even the deficient discussion of fisheries in the FEIS recognized that construction of the CP2 LNG Facility will cause temporary impacts to local fisheries and the commercial fishermen whose livelihoods depend on those fisheries.[978] The CP2 LNG Facility and commencement of its construction threatens to permanently and irreversibly impact commercial fishermen, putting some of them out of business and out of their homes for good.[979]

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[975] Authorization Order, Clements Dissent, P 18 (emphasis added).
[976] Response to Form Letters, Ex. 5 (Nicholas Cunningham, "Louisiana LNG Could Be "Nail in the Coffin" for Local Fishermen"); Ex. 4 (Declaration of Anthony Theriot) at ¶¶ 22-23.
[977] *See e.g.,* Exhibit 45 Louisiana Shrimp Task Force Letter (January 17, 2023) ("This industry is a priceless aspect of Louisiana culture as well as an economic engine in the state. This industry will be gone forever if you permit any more of the proposed facilities, all of which are huge companies based outside of Louisiana."); *see also* Authorization Order, Clements Dissent, P 18, n. 66 (referencing comments made by a Mr. Eustis at a Public Comment Meeting regarding impacts to shrimpers "discontinuity of one season can be the difference between -- can bankrupt the family"); see also Exhibit 44, FISH Testimonials at 29 (comments of Melissa Richard), at 5 (comments of Eddie Lejuine), at 11 (comments of Ray Mallet and Stephney Mallet), at 21 (comments of Carla Mallett and Mervin Mallet), at 22 (comments of Roddy Aguillard), at 26 (comments of Randy Richard), at 27 (comments of Frankie Mock), at 29-30 (comments of Jeffery Spell), at 30 (comments of Byron McCauley).
[978] *See* FEIS at 4-206; *see also supra*, Part III.I (deficiencies of FEIS discussion of fisheries and impacts to commercial fishermen).
[979] Authorization Order, Clements Dissent, P 18.

Such harms to Impacted Landowners and Fishermen, together with adverse impacts on the surrounding community and resources, are cumulative to those already suffered - and render this Project inconsistent with the public interest.

3. Environmental harm will cause irreparable injury to Intervenors.

A stay is also necessary to ensure the Project does not proceed with any activities that will cause or lead to irreparable environmental harm. As noted above, the construction of this Project, as conditionally authorized by the Order, would cause impacts to surface waters, the commercial fishing industry, environmental justice communities, air quality, and climate change, and noise from construction and operation of the Project.[980] Any construction activities or permanent alteration of the land that Venture Global begins while challenges to the Commission's Order are pending will cause irreparable harm to the environment. For example, construction of the Project will have permanent and significant adverse impacts, such as modification and/or destruction of more than 1,400 acres of wetlands,[981] would impact over 2,300 acres of vegetation, "of which approximately 62 percent consists of wetland vegetation,"[982] and release significant amounts of hazardous air pollutants.[983] Any tree that is within 15 feet of the pipeline would be cut and removed along the 80+ mile route.[984] As discussed above,[985] and in Commissioner Clement's dissent,[986] construction and operation of the Project will have a disproportionately high and adverse impact on environmental justice communities.[987] The Project would also fill 1.51 miles of waterbodies at the Terminal during construction and operation, and

[980] *See* Part III.C.
[981] FEIS at 4-133, 4-135, 4-529.
[982] FEIS at 4-530.
[983] FEIS at 3-349, Table 4.12.1-5
[984] FEIS at 2-15.
[985] Parts III.C., and III.K.8.
[986] Authorization Order, Clements Dissent, PP 22-26.
[987] FEIS at 4-328.

adversely impact water quality in the area.[988] The potential impacts to groundwater resources are quite serious—the Project will be in the Coastal Lowlands Aquifer System, which is the principal source of fresh groundwater in Louisiana.[989] It also will protect one protected wellhead and Texas and two in Louisiana.[990] Over 2,600 acres of wildlife habitat would be impacted by the Project.[991]

The Project would also inflict lasting harm on the citizens and businesses of Cameron, and threaten the natural resources and communities that Intervenor For a Better Bayou, a community-based organization, works to protect.[992] The organization's founder, James Hiatt, was born, raised, and lives in Southwest Louisiana, near the planned CP2 Pipeline route, and has long-standing ties to the Cameron community, having spent much of his childhood there. A balancing of hardships offers no serious comparison in this instance where commercial fishermen—many of whom are also residents of Cameron–stand to lose their business and way of life for a potentially unnecessary project.

The Supreme Court has explained that injury to the environment is often irreparable because, "by its nature, [it] can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable.'"[993] The Court has also stated that "[p]art of the harm NEPA attempts to prevent in requiring and EIS is that, without one, there may be little if any information about prospective environmental harms and potential mitigating measures."[994] The NEPA process is especially crucial when an agency is considering an activity with unknown or uncertain effects on the environment.[995] And, reflecting the importance of

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[988] FEIS at 4-131.
[989] FEIS at 5-4.
[990] Id.
[991] *FEIS at 5-9.*
[992] *See* Motion to Intervene of For a Better Bayou.
[993] *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987).
[994] *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 23 (2008).
[995] *See Monsanto v. Geertson Farms*, 561 U.S. 139, 177 (2010) (Stevens, J. dissenting).

NEPA review, the Ninth Circuit has explained "in the NEPA context, irreparable injury flows from the failure to evaluate the environmental impact of major federal action."[996] The same is true under the ESA. In fact:

> the strict substantive provisions of the ESA justify *more* stringent enforcement of its procedural requirements.....The ESA's procedural requirements call for a systematic determination of the effects of a federal project on endangered species. If a project is allowed to proceed without substantial compliance with those procedural requirements, there can be no assurance that a violation of the ESA's substantive provisions will not result. The latter, of course, is impermissible.[997]

As a result, a stay is necessary to prevent any construction or construction related activities while the Commission reconsiders this rehearing request.

B. Any Harm to the Applicant from a Stay Would be Temporary, Reparable, and Outweighed by Imminent, Irreparable Harm to Intervenors.

A stay will not significantly harm the Applicants. Any harm associated with a stay would be minimal, redressable, and purely economic.[998] As indicated *supra*, public need simply does not exist for this export Project.[999] Meanwhile, as outlined above, harm to Intervenors, affected landowners and fishermen, and the environment and imperiled species would be irreversible and extraordinary.[1000] A balancing of hardships offers no serious comparison in this instance, where the environment and privately owned land will be permanently damaged and altered for a proposed pipeline wherein there is no demonstrated need—and consequently, may never be built.

Moreover, as the Supreme Court has found, where injury to the environment is at stake, "the balance of harms will usually favor the issuance of an injunction to protect the

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[996] *High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d 630, 642 (9th Cir. 2004).
[997] *Thomas v. Peterson*, 753 F.2d 754, 764 (9th Cir. 1985) (emphasis in original).
[998] *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) ("Monetary loss may constitute irreparable harm only where the loss threatens the very existence of the movant's business.").
[999] *See supra*, Part III.B at X.
[1000] *Supra*, at Part IV.A X.

environment."[1001] For that reason, the Ninth Circuit has explained that issuing an injunction when balancing a defendant's potential financial harm against potentially irreparable environmental harm is a "classic, and quite proper, examination of the relative hardships in an environmental case."[1002]

Additionally, in general, "when [a] plaintiff is claiming the loss of a constitutional right, courts commonly rule that even a temporary loss outweighs any harm to defendant and that a preliminary injunction should issue."[1003] Intervenors have no ability to challenge a Fifth Amendment public use determination during their condemnation proceedings in district court, and can only do so before the Commission.[1004]

Similarly, where injury to the environment is at stake, "the balance of harms will usually favor the issuance of an injunction to protect the environment."[1005] For that reason, the Ninth Circuit has explained that issuing an injunction even over defendant's pecuniary loss is a "classic, and quite proper, examination of the relative hardships in an environmental case."[1006] Moreover, in the ESA context, Congress has already struck the balance, taking away the courts' traditional equitable discretion.[1007] Thus, given the potential long-term impact to the environment, and the area's already imperiled species, and the negligible impact to the applicant from the request stay leads to the singular conclusion that the balance of harms tips towards granting the requested stay.

[1001] *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 545 (1987).
[1002] *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1125 (9th Cir. 2005).
[1003] 11A Fed. Prac. & Proc. Civ. § 2948.2 (3d ed.).
[1004] *See, e.g., Transcon. Gas Pipe Line Co., LLC v. Permanent Easements for 2.14 Acres,* 907 F.3d 725, 740 (3d Cir. 2018), *cert. denied sub nom., Like v. Transcon. Gas Pipe Line Co., LLC*, 139 S. Ct. 2639 (2019) (rejecting landowners' attempt to challenge FERC's public use determination during condemnation proceedings: "Landowners are attacking the underlying FERC order, but review of the underlying FERC order is only properly brought to FERC on rehearing and then to an appropriate circuit court.").
[1005] *Amoco Prod. Co. v. Village of Gambell,* 480 U.S. 531, 545 (1987).
[1006] *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1125 (9th Cir. 2005).
[1007] *See TVA v. Hill,* 437 U.S. 153, 174 (1978).

C. A Stay is in the Public Interest Given the Significant Evidence Demonstrating There is No Need for this Project.

There is a fundamental public interest in granting a stay in an export project proceeding of first impression wherein there are significant and substantiated challenges to project need, and where land will be taken, long standing commercial fishing industry and the environment irreversibly destroyed, and species imperiled for a project that will not be utilized or used by the public. As discussed at Part III.B, the Commission did not conduct the proper public need analysis before issuing the Order. Without a stay, the construction and operation of this Project would actively harm the public, as commercial fishermen and landowners would bear the full and irreversible costs of the project while the Applicant stands to make a profit.

The Project will also cause or contribute to increased upstream gas production and locking in existing wells' usage through hydraulic-fracking and infrastructure development, including all adverse environmental impacts associated therewith, and result in major adverse downstream environmental impacts from combustion of the gas. Both the NGA and NEPA require the Commission to consider those adverse impacts, including the effects of burning gas that will produce tons of GHGs, NOx, volatile organic compounds ("VOCs"), and hazardous air pollutants ("HAPs"). The pollutants that result from combusting gas are known to cause serious adverse health effects, and the GHGs are well-understood to contribute significantly to adverse climate change impacts. Thus, there is a strong interest in protecting the public from those effects, particularly when there is substantial record evidence showing FERC's authorization violated the NGA, NEPA and the APA.

FERC should thus ensure that a stay remains in place for as long as permitted under the law. If it fails to do so, the nightmare scenario outlined by then-Chairman Glick in the Spire Order on remand could play out, as "[b]y the time the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) hear[s] argument on the Commission's order[], the pipeline [will

be] operating and . . . [Venture Global shippers will begin] taking actions that would have the effect of establishing a need for the pipeline that simply did not exist at the time the Commission issued its certificate."[1008]

Here, given the significant issues underlying the justification for the authorization of this project, FERC should grant the stay, and not lift the stay or grant any construction-related authorizations until well past when the record has been filed with the relevant court of appeals, or until the conclusion of judicial review.

V. CONCLUSION

For the foregoing reasons, Intervenors respectfully request that the Commission:

1. Grant Intervenors' request for rehearing;
2. Grant Intervenors' motion for stay with its authority under 5 U.S.C. 705, and immediately stay Applicant and its contractors form taking any action authorized by the Authorization Order pending final disposition of the rehearing process and judicial review;
3. On completion of the rehearing process, rescind the Authorization Order; and
4. Grant any and all other relief to which Intervenors are entitled.

[1008] Order on Remand and Reissuing Certificates, *Spire STL Pipeline Co., LLC,* 181 FERC ¶ 61,232 (2022) ("Spire Order") (Glick, concurring, P 2). FERC arbitrarily authorized the Spire pipeline, and the D.C. Circuit vacated this authorization because its need determination was unsupported (*Env't Def. Fund v. FERC*, 2 F.4th 953 (D.C. Cir. 2021)), but significant destruction of property and environmental resources occurred while the case was pending. *See* Spire Order (Glick, concurring, P 6) (in the "over three years after [the pipeline] first entered service[,] several landowners' properties still have not been adequately restored").

Dated: July 29, 2024

Respectfully submitted,

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[1009] Grace Olson is not an attorney and works under the direction and supervision of attorneys licensed to practice law.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served or caused to be served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: July 29, 2024

/s/ Megan C. Gibson
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Exhibit List

Exhibit	Vol.	Title
1	I	Greenhouse Gas Emissions from a Typical Passenger Vehicle
2	I	Venture Global Calcasieu Pass Authorization
3	I	Venture Global Calcasieu Pass Limited Notice to Proceed
4	I	Venture Global Calcasieu Pass Approval to Introduce Hazardous Fluids
5	I	Venture Global Calcasieu Pass, LLC, Notification of First Export Cargo
6	I	Authorization to Commence Service of Liquefaction Blocks 7-9 and Modified Commissioning and In-Service Schedule
7	I	Venture Global Calcasieu Pass Commissioning Update
8	I	Venture Global Calcasieu Pass FEIS Volume 1 (Excerpt)
9	I	Climate Justice and California's Methane Superemitters: Environmental Equity Assessment of Community Proximity and Exposure Intensity
10	I	Air pollution and health impacts of oil & gas production in the United States
11	I	Louisiana Bucket Brigade Joint Letter to EPA Region 6 Administrator E. Nance
12	I	March - Natural Gas Imports and Exports Monthly 2024
13	I	Venture Global Calcasieu Pass, Request for Extension of Time, If Necessary
14	I	April - Natural Gas Imports and Exports Monthly 2024
15	I	Shell executive accuses Venture Global of 'deceitful actions' over contracts
16	I	Venture Global Calcasieu Pass Submission of Contract Amendment and Summary of Major Provisions of Contract for Public Posting
17	I	Request for Rehearing of Repsol LNG Holding, S.A.
18	I	Venture Global Calcasieu Pass, Order Establishing Procedures Before an Administrative Law Judge
19	I	Venture Global Calcasieu Pass Deficiency Letter
20	I	Request for Clarification or, In the Alternative, Rehearing of Shell NA LNG LLC
21	I	UPI Archives, Louisiana Nation’s Top Fish Producer
22	I	Sempra Cameron LNG webpage
23	I	Cameron LNG Amended Expansion Project Fact Sheet
24	I	Cheniere Sabine Pass Liquefaction webpage

25	I	FERC's U.S. LNG Export Terminals—Existing, Approved not Yet Built, and Proposed
26	I	State of Louisiana v. Biden, Defendants' Motion to Dismiss and Opposition to Plaintiffs' Motion for Stay or Injunction
27	I	Notice Dismissing Request for Rehearing, Commonwealth LNG, LLC
28	I	The Temporary Pause on Review of Pending Applications to Export Liquefied Natural Gas DOE Fact Sheet
29	I	IEA World Energy Outlook 2023
30	I	DOE Order No. 4812 (Venture Global CP2 LNG, LLC)
31	I	Request for Interpretation of 49 CFR 193.2001
32	I	Natural Gas Explained
33	I	Venture Global CP2 LNG, LLC Semi-Annual Progress Report (April, 2024)
34	I	CP2 LNG Facility Long-Term Contract Information and Registrations at U.S. LNG Export Facilities
34a	I	NFE SPA
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34c	I	EnBw SPA
34d	I	Chevron SPA
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34f	I	China Gas Hongda Energy Trading Co SPA
34g	I	JERA Co., Inc. SPA
34h	I	WINGAS SPA
35	I	Venture Global Calcasieu Pass, LLC, Opinion and Order Granting Long-term Authorization to Export Liquified Natural Gas to Non-FTA Nations
36	I	Shell, BP pursue arbitration claims against Venture Global LNG
37	I	Venture Global Calcasieu Pass Announces Arrival of First Factory-Fabricated Liquefaction Train
38	I	Venture Global gets first Plaquemines LNG modules
39	I	Venture Global LNG and JERA Announce Departure of Inaugural Commissioning Cargo From Calcasieu Pas
40	I	Giving Away the Farm: A Cost-Benefit Analysis of the Industrial Tax Exemption Program in East Baton Rouge Parish, 1998-2017

41	I	Louisiana Economic Development – Quality Jobs
42	I	Governor Points to 34 Economic Development Projects in 2021
43	I	Multimillion-dollar Tax Breaks Approved for Plaquemines LNG, Louisiana Green Fuels
44	I	Testimonials from Cameron Fishermen on Venture Global's CP2 LNG Export Facility
45	I	Louisiana Shrimp Task Force Letter on Protecting Louisiana's Shriming Industry and Coastal Families
46	I	Impact of LNG Tankers on Fishing Boats in Southwest Louisiana
47	I	Liquefying the Gulf Coast: A Cumulative Impact Assessment of LNG Buildout in Louisiana and Texas
48	I	Motion for Leave to Intervene Out-of-Time of Enbridge Gas Pipelines
49	I	FISH Website
50	II	Fifth National Climate Assessment
51	III	Active 2021 Atlantic hurricane season officially ends
52	III	Damaging 2022 Atlantic hurricane season draws to a close
53	III	2023 Atlantic Hurricane Season Wraps Up
54	III	Hurricane Delta 2020
55	IV	Extreme Heat
56	IV	Texas Council on Envt’l Quality, Incident No. 425982
57	IV	Texas Council on Envt’l Quality, Incident No. 425983
58	IV	Guidance on SILs for Ozone and Fine PM in the PSD Program
59	IV	Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO2
60	IV	Compilation of NOx Emissions Data from EISs
61	IV	Guidance Manual for Environmental Report Preparation
62	IV	Policy Assessment for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter
63	V	U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2022
64	V	Rice’s whales in the northwestern Gulf of Mexico: call variation and occurrence beyond the known core habitat
65	V	Status review of Bryde’s whales (Balaenoptera edeni) in the Gulf of Mexico

66	V	Widespread spatial and temporal extent of anthropogenic noise across the northeastern Gulf of Mexico shelf ecosystem
67	V	Long-term investigations into soundscapes, trends, ecosystems, and noise in the Gulf of Mexico
68	V	Gulf of Mexico low-frequency soundscape impacts by airguns
69	V	Endangered Species Act Rice's Whale Critical Habitat Report
70	V	Genetic evidence reveals a unique lineage of Bryde's whales
71	V	Acoustic crypsis in southern right whale mother–calf pairs
72	V	Acoustic crypsis in communication by North Atlantic right whale mother–calf pairs on the calving grounds
73	V	High suckling rates and acoustic crypsis of humpback whale
74	V	Acoustic localization, validation, and characterization of Rice's whale calls
75	V	Kinematics and energetics of foraging behavior in Rice's whales
76	V	Foraging rates of ramfiltering North Atlantic right whales
77	V	Evidence for ship noise impacts on humpback whale foraging behaviour
78	V	Acoustic and behavioural changes by fin whales
79	V	Individual right whales call louder in increased environmental noise.
80	V	Evidence that ship noise increases stress in right whales
81	V	Spatial distribution and dive behavior of Gulf of Mexico Bryde's whales
82	V	Trophic Interactions and Habitat Requirements of Gulf of Mexico Rice's Whales
83	V	Cetacean and Sea Turtle Spatial Density Models for the Gulf of Mexico: Additional Information and Data Dictionary
84	V	Critically endangered Rice's whale (Balaenoptera ricei) selectively feed on high-quality prey in the Gulf of Mexico
85	V	Memorandum from M. Celata, Regional Director for BOEM Gulf of Mexico Regional Office, to A. Lefton, BOEM Director
86	V	Overview of Proposed Rule to Designate Critical Habitat for the Rice's Whale
87	V	Status and Trends of Wetlands in the Conterminous United States 2009 to 2019
88	V	Louisiana Coastal Wetlands: A Resource At Risk
89	V	Louisiana's disappearing WETLANDS