ORAL ARGUMENT NOT YET SCHEDULED

No. 24-1291(L), 24-1292

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TRAVIS DARDAR, *et al.*,

Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent.

On Petition for Review of Orders
of the Federal Energy Regulatory Commission

PETITIONERS' JOINT MOTION FOR STAY PENDING REVIEW

Spencer Gall
Deirdre Dlugoleski
Southern Environmental Law Center
120 Garrett Street, Suite 400
Charlottesville, Virginia 22902
(434) 977-4090
sgall@selcva.org

Megan C. Gibson
Southern Environmental Law Center
122 C Street NW, Suite 325
Washington, DC 20001
(202) 828-8382
mgibson@selcdc.org

Counsel for Travis Dardar, Nicole Dardar, Kent Duhon, Mary Alice Nash, Jerryd Tassin, Anthony Theriot, For a Better Bayou, and Fishermen Involved in Sustaining Our Heritage

Additional counsel listed on inside cover.

Caroline Reiser
Morgan Johnson
Thomas Zimpleman
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington DC, 20005
(202) 717-8341
creiser@nrdc.org

Counsel for Natural Resources Defense Council

Nathan Matthews
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5695
nathan.matthews@sierraclub.org

Rebecca McCreary
Sierra Club
1650 38th Street, Suite 103W
Boulder, CO 80301
(305) 449-5595 ext. 103
rebecca.mccreary@sierraclub.org

Counsel for Louisiana Bucket Brigade, Healthy Gulf, Sierra Club, Texas Campaign for the Environment, and Turtle Island Restoration Network

Dated Sept. 23, 2024

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties

1. Petitioners

In No. 24-1291, Petitioners are Travis Dardar, Nicole Dardar, Kent Duhon, Mary Alice Nash, Jerryd Tassin, Anthony Theriot, For a Better Bayou, Fishermen Involved in Sustaining Our Heritage, and Natural Resources Defense Council.

In No. 24-1292, Petitioners are Louisiana Bucket Brigade, Healthy Gulf, Sierra Club, Texas Campaign for the Environment, and Turtle Island Restoration Network.

2. Respondent

Federal Energy Regulatory Commission

3. Respondent Movant-Intervenors

Venture Global CP2 LNG, LLC

Venture Global CP Express, LLC

B. Rulings Under Review

1. Order Granting Authorizations Under Section 3 and 7 of the Natural Gas Act, *Venture Global CP2 LNG, LLC*, Nos. CP22-21-000 & CP22-22-000, 187 FERC ¶ 61,199 (June 27, 2024).

2. Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, Venture Global CP2 LNG, LLC, Nos. CP22-21-000 & CP22-22-000, 188 FERC ¶ 62,109 (August 29, 2024).

C. Statement of Related Cases

The petition on review has not previously been before this Court or any other court. Counsel for Petitioners are unaware of any related cases within the meaning of DC Circuit Rule 28(a)(1)(C).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

FERC Decisions

Other Authorities

INTRODUCTION AND TIME EXIGENCIES

Petitioners move for a stay of the Federal Energy Regulatory Commission ("FERC") orders under review in this case, pending completion of judicial review, pursuant to Federal Rule of Appellate Procedure 18,[1] or in the alternative, to expedite this case, pursuant to D.C. Cir. Handbook § VIII.B.

Petitioners challenge FERC's approval of a liquefied natural gas ("LNG") export terminal ("Terminal") and associated 85.4-mile gas pipeline ("Pipeline") (together, the "Project"), which Venture Global plans to build atop already overburdened multi-generational fishing and environmental justice communities. *Venture Global CP2 LNG,* 187 FERC ¶ 61,199 (June 27, 2024) ("Authorization Order," attached as Exhibit 1). Absent a stay, irreversible harms will occur during construction before the completion of judicial review.

Under its rules, FERC may authorize Venture Global to begin construction soon. Petitioners timely sought rehearing and a stay of the

[1] For purposes of Rule 18(2)(A)(ii), Petitioners state that they applied for a stay from FERC on July 29, 2024. FERC has neither acted on this application nor indicated when, if ever, it will do so.

Authorization Order before FERC. *See* Request for Rehearing and Motion for Stay of For a Better Bayou *et al.*, Docket Nos. CP22-21 and CP22-22, Accession No. 20240729-5111 (July 29, 2024) ("Rehearing Request," attached as Exhibit 2). FERC can permit Venture Global to commence construction as soon as the Rehearing Request "is no longer pending"—a trigger that could arrive at any time since the Rehearing Request was filed nearly two months ago. 18 C.F.R. § 157.23(b)(1). FERC failed to act on the Rehearing Request within the time prescribed by the Natural Gas Act and the Request was deemed denied by operation of law on August 29, 2024, but FERC issued a notice that day stating that it "will" issue a future order addressing the Request. Notice of Denial of Rehearing, *Venture Global CP2 LNG,* 188 FERC ¶ 62,109 (August 29, 2024). Once FERC issues its promised order, a notice to proceed with construction may be issued. 18 C.F.R. § 157.23(b)(1). In all events, FERC may authorize construction 90 days after the date the Rehearing Request was deemed denied, 18 C.F.R. § 157.23(b)(3), which in this case is November 29, 2024.

On the other hand, "this Court's review of Certificate Orders for pipeline projects often occurs at least one year after the pipeline's

construction has begun." *N.J. Conservation Found. v. FERC*, 111 F.4th 42, 64 (D.C. Cir. 2024) (petition for review filed March 13, 2023; decided FERC authorization unlawful July 30, 2024); *Healthy Gulf v. FERC*, 107 F.4th 1033 (D.C. Cir. 2024) (petition for review filed March 15, 2023, decided July 16, 2024). Even when this Court has granted accelerated argument, more than twelve months have elapsed between the petition for review and the opinion issuing. *See City of Port Isabel v. FERC*, 111 F.4th 1198 (D.C. Cir. 2024) (petition for review filed July 10, 2023, order on motion to expedite Mar. 1, 2024, opinion issued Aug. 6, 2024). Thus, absent a stay, it is likely that a year or more of construction and the accompanying irreversible harms will occur before judgment.

RELIEF REQUESTED

Petitioners ask the Court to stay the Authorization Order and any related FERC approvals, pending resolution of these petitions for review. In the alternative, Petitioners ask the Court to expedite this case.

STANDARD OF REVIEW

The factors considered when reviewing a motion to stay are: (1) whether Petitioner "has made a strong showing" that Petitioner is "likely to succeed on the merits," (2) whether Petitioner "will be irreparably injured absent a stay," (3) "whether issuance of the stay will substantially injure the other parties," and (4) whether a stay would be in the public interest. *Nken v. Holder*, 556 U.S. 418, 425–26 (2009).

In evaluating the merits of Petitioners' claims, the question is whether FERC's action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). At this stage, Petitioners only need to show a "substantial case" on the merits, not a "mathematical probability" of success. *Washington Metro. Area Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

For a request to expedite, this Court considers whether (1) the decision under review is subject to substantial challenge; (2) delay will cause irreparable injury; and (3) the public has an unusual interest in prompt disposition. D.C. Cir. Handbook § VIII.B.

ARGUMENT

I. PETITIONERS ARE LIKELY TO PREVAIL ON THE MERITS

Petitioners are likely to prevail on the merits, because FERC's authorization of the Project violated Section 7 of the Natural Gas Act, 15 U.S.C. § 717f, the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*, and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq*.

A. FERC Failed in Its Duty Under Section 7 of the Natural Gas Act.

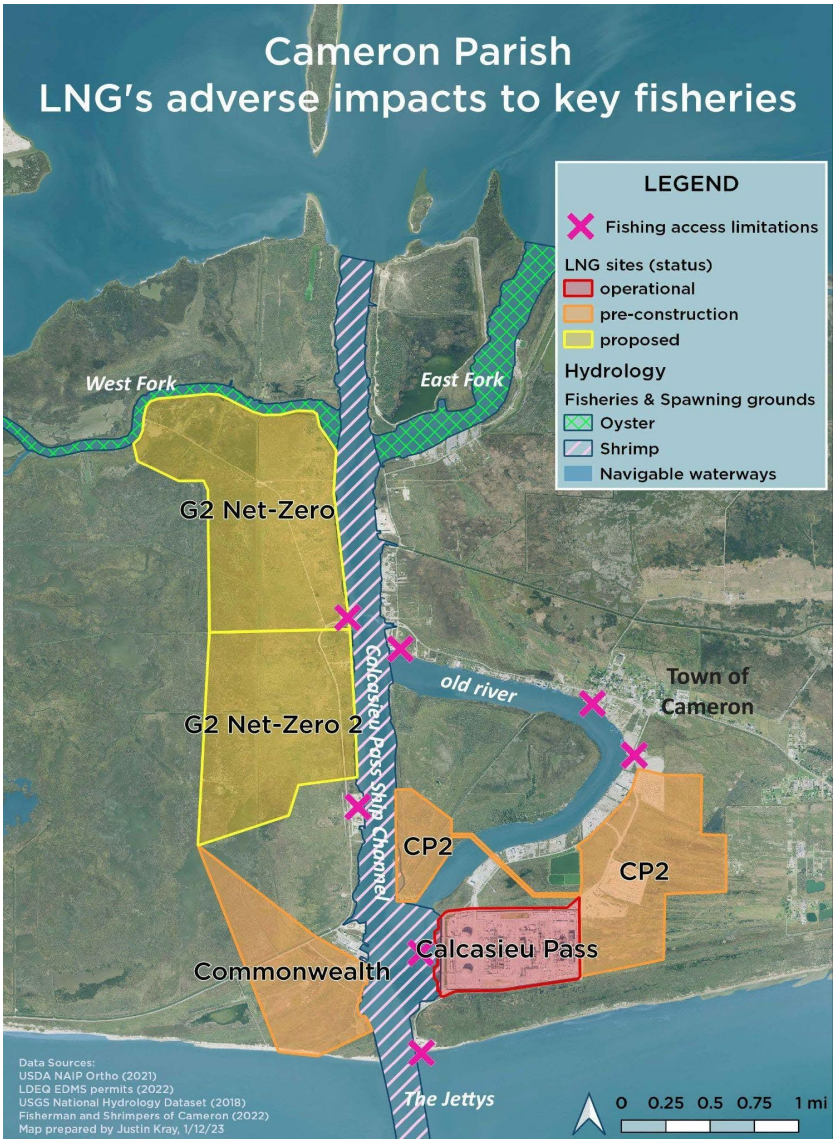
FERC may not approve an application under Section 7 of the Natural Gas Act unless it finds the proposed project "is or will be required by the present or future public convenience and necessity." 15 U.S.C. § 717f(e). This standard requires FERC to "evaluate all factors bearing on the public interest," *Atl. Refin. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959), and decide whether "a balance of all the circumstances weighs against certification." *FPC v. Transcon. Gas Pipe Line Corp.*, 365 U.S. 1, 17 (1961). Ultimately, FERC "will issue a certificate of public convenience and necessity only if a project's public benefits (such as meeting unserved market demand) outweigh its adverse

effects (such as deleterious environmental impact on the surrounding community)." *City of Oberlin v. FERC*, 937 F.3d 599, 602 (D.C. Cir. 2019).

In this case, FERC failed on both sides of the ledger. FERC's cursory treatment of the purported market need and public benefit to be served by the Pipeline fell short of what is required by this Court's precedent and ran "counter to the evidence before the agency." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). And FERC turned a blind eye to the Project's serious adverse impacts—including the substantial likelihood that the Project will sound the death knell for the local commercial fishing industry—and entirely failed to consider important aspects of the problem. *Id.*

The Project is the latest FERC-sanctioned blow to communities in Southwest Louisiana. Following years of reflexive approvals for LNG facilities, FERC has transformed the region—once known for its thriving fishing industry and natural beauty—into an industrial hub of foreign commerce and a sacrifice zone at the expense of domestic communities, industry, and ecosystems. Just in and around Cameron, where the Terminal would be located, FERC has approved three LNG facilities with two more waiting in the wings, as shown below.

Figure 1. LNG in Cameron Parish



Meanwhile, roughly 73% of FERC-approved LNG facilities across the United States, representing an additional 35.93 billion cubic feet per day of export capacity, have yet to become operational. *See* Rehearing Request at 24 & n.27. Against that backdrop, any supposed public benefit from the Project is illusory and its adverse impacts are exacerbated.

Purported Market Need and Public Benefit. FERC failed from the outset because its determination of market need and public benefit was arbitrary and contrary to law. FERC relied exclusively on an affiliate precedent agreement between two Venture Global entities to justify the Project. Under this Court's precedent, FERC should have looked beyond the precedent agreement because it was executed between corporate siblings and FERC was confronted with serious evidence undermining the affiliate agreement's probative value. *Environmental Defense Fund v. FERC ("Spire")*, 2 F.4th 953, 973 (D.C. Cir. 2021) ("[E]vidence of 'market need' is too easy to manipulate when there is a corporate affiliation between the proponent of a new natural gas pipeline and a single shipper who have entered into a precedent agreement.") (citations omitted). Instead, FERC spent three cursory paragraphs discussing market need, relying entirely on the affiliate precedent agreement, *see* Authorization Order PP 36–38, and unlawfully disclaimed its obligation to ensure a rigorous evaluation of record evidence cutting against need by invoking the Department of Energy's separate authority over the export of gas as a commodity, *see id.* PP24–27. Whatever the scope of the Department's authority, it does not relieve FERC of its independent obligations under

Section 7 to determine whether the record demonstrates that a pipeline is needed or will serve a public benefit.

Relying on the affiliate precedent agreement alone, FERC did not articulate any *domestic benefits* related to the construction and operation of the Pipeline. With nearly half of our nation's gas production approved for export, regulators must conduct a thorough analysis of each project.[2] Yet FERC approved this massive export project with only a cursory examination of the record. FERC did not address whether any supposed *international benefits* could satisfy the public convenience and necessity standard of Section 7, nor whether any global effects would inure to the benefit of the American public. Scrutiny was especially important here because export pipelines generally do not provide any of the benefits contemplated by Section 7 of the Natural Gas Act—namely benefits to domestic consumers—including protecting consumers from corporate abuse, and encouraging the orderly development of gas infrastructure at

[2] *See* Exhibit 3, Dep't of Energy, *The Temporary Pause on Review of Pending Applications to Export Liquefied Natural Gas* (Feb. 2024) ("48 billion cubic feet per day (Bcf/d) of U.S. natural gas–an amount equal to over 45% of current domestic production.") (Filed with FERC as Ex. 28 to Rehearing Request, Accession No. 20240729-5111).

reasonable prices. *See* Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227, 61, 744 (Sept. 15, 1999) (enumerating domestic benefits); *see also City of Clarksville, Tenn. v. FERC,* 888 F.3d 477, 479 (D.C. Cir. 2018) ("Congress enacted the Natural Gas Act . . . with the principal aim of encouraging the orderly development of plentiful supplies of natural gas at reasonable prices and protecting consumers against exploitation at the hands of natural gas companies." (cleaned up)).

If FERC had looked beyond the precedent agreement and properly considered the record, FERC would have located no evidence that the Project is needed and overwhelming evidence that it is not. Among other things, the record establishes that: (1) the Pipeline will serve no domestic market and will instead facilitate gas exports to foreign markets, where demand for LNG is declining; (2) the Pipeline will not address any domestic load growth; and (3) the Project is likely to increase costs for American consumers while harming the domestic manufacturing sector. Rehearing Request at 56–62. By failing to engage with the record and reprising its "ostrich-like" reliance on an affiliate precedent agreement,

FERC produced an arbitrary and capricious finding of market need and public benefit. *Spire*, 2 F.4th at 975.

Manifest Adverse Impacts. Even if FERC had articulated any legitimate market need or public benefit supporting the Project (it did not), FERC independently failed to consider the serious and well-documented harms on the other side of the scale.

First, contrary to FERC's glib assertion that impacts on recreational and commercial fishing would be "localized and less than significant" with temporary and minor cumulative impacts on commercial fisheries, Authorization Order P113, the record established that the Project could spell the end of the local commercial fishing industry, as dissenting Commissioner Clements recognized, *id.* at Comm'r Clements Dissent P18. FERC failed to confront this reality. Commissioner Clements also highlighted other key deficiencies in the Authorization Order, including FERC's failure to address how an increase of marine traffic will impact crucial fishing areas, and its inconsistent and contradictory predictions regarding marine traffic's effects on commercial fishing operations. Authorization Order, Comm'r Clements Dissent at PP19–20. Because FERC inaccurately minimized

the impact of marine traffic on commercial fishing vessels, FERC's rosy predictions are unreliable.

Second, FERC failed to account for adverse impacts to landowners, asserting that the Pipeline "is not expected to have more than negligible effects on property values." Authorization Order P41. But FERC supported this conclusion with flawed analyses and failed to consider relevant, peer-reviewed studies.[3] FERC additionally failed to account for safety concerns, increased insurance costs for landowners living near natural gas infrastructure, and financial damages to local businesses.[4]

Third, the Authorization Order demonstrated a blatant disregard for the Project's adverse impacts on environmental justice communities.

---

[3] Exhibit 4, Comments of Travis Dardar, *et al.*, on Draft Environmental Impact Statement for the Venture Global CP2 and Venture Global CP Express Projects 31–32, Accession No. 20230313-5225 (Mar. 13, 2023) ("These studies only examine the effect on property values of compressor stations, not LNG Terminals – and the DEIS states as much."); *id.* 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.").

[4] *Id.* at 5 (discussing harms that would be suffered by a landowner); *see also* Exhibit 5, 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).

While FERC acknowledges some of the harms in its Environmental Impact Statement ("EIS"), it failed to weigh them, as Section 7 requires, or to fully examine the interrelationship of multiple adverse impacts on environmental justice communities. For Petitioners, their members, and other commercial fishermen in the area who reside in environmental justice communities—which FERC acknowledged are a relevant impacted group, *see* Authorization Order, Comm'r Clements Dissent P23—the Project threatens to destroy their livelihoods and their ability to support their families. As Commissioner Clements explained:

> [T]he 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.

Id. (citations omitted).

Finally, because FERC relied on an analysis of the Project's environmental harms that violated NEPA, as discussed below, FERC's balancing of harms and benefits was doomed from the start. *Vecinos para*

el Bienestar de la Comunidad Costera v. FERC, 6 F.4th 1321, 1331 (D.C. Cir. 2021).

In sum, FERC authorized the Project without adequately addressing its supposed market need or the public benefit it would serve, and without meaningfully balancing its manifest harms against its purported benefits. The Authorization Order was arbitrary, capricious, and contrary to law.

B. FERC's NEPA Analysis Repeats Many Flaws Identified in This Court's Recent FERC Decisions.

Petitioners are also likely to prevail on multiple NEPA claims. The EIS and Authorization Order here repeat many of the flaws regarding cumulative air pollution, greenhouse gases, and mitigation that this Court recently has held unlawful.

First, in analyzing the cumulative impacts of the Project's nitrogen dioxide ("NO_2") and fine particulate matter emissions, FERC repeated the error identified in *Healthy Gulf*, 107 F.4th at 1043–44. There, FERC "found the Project's NO_2 emissions' *cumulative* effects insignificant because the Project's *incremental* NO_2 emissions fell below the 1-hour NO_2 [significant impact level] at each NAAQS exceedance location. In

other words, FERC said that because the project's incremental effects were insignificant, its cumulative effects were, too." *Id.* at 1044 (citing 40 C.F.R. § 1508.1(g)). But under this logic, "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," *id.*, eviscerating the purpose of requiring a cumulative effects analysis in the first place.

So too here, for both NO_2 and fine particulate matter. EIS 4-371 to -374 (attached as Exhibit 6), Authorization Order PP186, 194, 197. Because this Court has already found that this method of cumulative effects analysis is unlawful, Petitioners are likely to succeed on this claim.

Second, in evaluating greenhouse gas emissions, FERC failed to either follow its approach in *Northern Natural Gas*, 174 FERC ¶ 61,189 (Mar. 22, 2021), or to explain why FERC could not do so, repeating another error identified in *Healthy Gulf,* 107 F.4th at 1042; *accord N.J. Conservation Found.*, 111 F.4th at 54–56. Here, FERC argued that it lacked criteria for determining whether greenhouse gas emissions were "significant" or "insignificant." Authorization Order PP179–180. The

emissions—8.5 million tons per year during project operation, *id.* P165—are over 85 times higher than FERC's now-withdrawn proposed threshold for significance. *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108, PP79, 93–95 (Feb. 18, 2022). As in *Northern Natural*, even if FERC does not know exactly *where* the line delineating significance is, there is no doubt which side of the line *this* Project's emissions fall.

In another parallel to *Healthy Gulf*, FERC did not dispute that, if FERC *could* determine whether emissions were significant, FERC would be required to do so. *Healthy Gulf,* 107 F.4th at 1040 n.2; Authorization Order PP179–180; *accord N.J. Conservation Found.,* 111 F.4th at 55–56. Regardless, FERC's own regulations require such a determination, 18 C.F.R. § 380.7, and FERC's practice affirms this requirement. In this proceeding, and in every other FERC proceeding Petitioners are aware of, FERC has determined significance for every environmental impact besides greenhouse gas emissions. EIS at 5-1 to 5-24. And this determination matters; FERC's regulations specifically require it to discuss mitigation of "significant" effects, 18 C.F.R. § 380.7(d). *See also Interim GHG Policy*, 178 FERC ¶ 61,108, PP79, 106 (Feb. 18, 2022)

(explaining FERC's obligation to evaluate mitigation for "significant" impacts); *NEPA Guidance on Consideration of Greenhouse Gases,* 88 Fed. Reg. 1196, 1206 (Jan. 9, 2023).

Third, FERC failed to take a hard look at carbon capture and sequestration, including Venture Global's actual proposal and potentially more protective alternatives. Venture Global proposes to capture and sequester roughly 5% of the Project's operating greenhouse gas emissions. Authorization Order PP9, 177. FERC violated NEPA by failing to consider the foreseeable effects of this proposal, which will require a pipeline and sequestration infrastructure outside the terminal fenceline. *City of Port Isabel v. FERC*, 111 F.4th 1198, 1212–13 (D.C. Cir. 2024). The EIS mistakenly claims to have included this infrastructure in its cumulative effects analysis, EIS at 1-14, but the EIS's discussion of "potential cumulative impacts by resource," *id.* 4-523 to 4-561, does not address *any* of the non-climate impacts of carbon capture and sequestration facilities. Moreover, the federal permits for carbon sequestration infrastructure need to be considered as "connected actions," rather than merely through the lens of cumulative effects. *City of Port Isabel*, 111 F.4th at 1213.

Separately, FERC failed to respond to Petitioners' comments requesting analysis of an alternative that would capture a larger share of emissions, as has been proposed for at least one other terminal.[5] The final EIS's response to comments arbitrarily asserted that "the use of [carbon capture and sequestration] beyond that already proposed . . . is beyond the scope of this EIS."[6] The Authorization Order does not address this alternative at all. Authorization Order PP181–182. Agencies may not exclude reasonable alternatives without explanation, and must respond to substantive comments. *See, e.g., Birckhead v. FERC*, 925 F.3d 510, 515 (D.C. Cir. 2019), 40 C.F.R. § 1502.9(c). Here, FERC did not assert that further sequestration would be infeasible or inconsistent with the Project's purpose, or otherwise explain *why* this alternative fell outside NEPA's scope. This unexplained exclusion was arbitrary. *See City of Port Isabel,* 111 F.4th at 1213 (holding that NEPA required FERC to consider alternative implementing carbon capture).

---

[5] Exhibit 7, *For a Better Bayou*, Comment on Draft EIS, Accession No. 20230313-5123, at 19–20 (Mar. 13, 2023).

[6] EIS Appendix N-61 (CO4-22) (citing EIS Appendix N-21 (CO3-7)).

II. PETITIONERS WILL SUFFER IRREPARABLE HARM WITHOUT A STAY

Southwest Louisiana communities, already overburdened by industrial pollution and environmental degradation, will suffer significantly from the increased emissions, environmental destruction, and socioeconomic dislocation resulting from the construction and operation of the Project. Adding another LNG terminal and related facilities to the region will double or triple the burdens this community is already experiencing and threatens to destroy the local commercial fishing industry. *See* Authorization Order, Comm'r Clements Dissent, P18. A stay is necessary to preserve the status quo and ensure such unnecessary destruction does not occur while judicial review is pending.

A. Construction Activities Will Irreparably Injure Commercial Fishermen.

If this Court does not grant a stay, Travis Dardar, Nicole Dardar, Kent Duhon, Anthony Theriot, and Fisherman Involved in Sustaining Our Heritage will be irreparably harmed. They have already noticed a staggering decline in their annual catch—up to 50%—due to the construction and operation of existing facilities. Exhibit 8, Declaration of

Petitioner Anthony Theriot, ¶¶ 22–23.[7] As Commissioner Clements recognized, FERC "ignore[d] the risk that temporary impacts on fisheries might *permanently adversely* affect commercial fishing businesses." Authorization Order, Comm'r Clements Dissent P18 (emphasis added). The threat to fishermen's families and livelihoods from the Project and the massive expansion of the gas export industry is far from theoretical, and even a single season of reduced catch could put fishermen out of business.[8] Additionally, an increase in ship traffic will exacerbate the challenges fishers and shrimpers face by causing increased pollution and churn, reduced catches, and decreased economic output from this sector

[7] *See also* Exhibit 9, Nicholas Cunningham, *Louisiana LNG Could Be "Nail in the Coffin" for Local Fishermen*, Gas Outlook (Feb. 23, 2024) (Ex. 5 to Accession No. 20240614-5192).

[8] *See e.g.*, Exhibit 10, Task Force Letter on Protecting Louisiana's Shrimping Industry and Coastal Families, at 1 (Jan. 17, 2023) (Ex. 45 to Rehearing Request) ("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."); Authorization Order, Comm'r Clements Dissent P18 & n.66 (citing public comment regarding impacts to shrimpers stating that "discontinuity of one season can be the difference between — can bankrupt the family").

of the economy.[9] These harms will commence with construction, which will require "approximately 2,275 marine deliveries [by barge] for the two phases of the Project, with the peak being approximately 32 deliveries per week (earlier on in the construction period)."[10] At bottom, fishers and shrimpers face being forced out of business, their homes, and their way of life. *See* Ex. 8, Theriot Decl., ¶ 19.

B. Construction Activities Will Irreparably Injure Landowners.

If a stay is not granted, petitioner landowners Mary Alice Nash and Jerryd Tassin will be irreparably injured almost immediately after FERC grants Venture Global authorization to begin construction. These harms are all too familiar. Affected landowners in the path of similar projects like the Spire STL Pipeline and the Regional Energy Access Expansion

[9] *See, e.g.*, Exhibit 11, Comments of Fishermen Involved in Sustaining Our Heritage, *et al.*, on the Final Environmental Impact Statement for the CP2 LNG and CP Express Project, Accession No. 20240117-5083, at 7 (Jan. 1, 2024) ("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.").

[10] EIS 4-348; *see also id.* 4-206 (discussing displacement and mortality of shrimp and other benthic species with impacts potentially lasting "a few seasons").

Project demonstrate the risk landowners along this Project's route face: the irreversible destruction of their land for a project that never should have been approved.[11] The harm they will suffer from construction and operation of the Project will begin almost immediately and take many forms, including reduced property values, noise and ground disturbance, financial losses and damage to their local businesses, and increased air pollution. Without a stay, construction alone will inflict long-lasting harms from increased erosion, removal of trees and loss of continuous tree coverage, reduction of wildlife, and the increased risk of spills of hazardous materials. Exhibit 12, Declaration of Petitioner Mary Alice Nash Decl. ¶¶ 14–16. All of these harms as well as the existence of the Pipeline itself will negatively impact property values. *See id.*

Further harm will result from the dredging associated with the project. Dredging for construction of Venture Global's previously-

[11] *See, e.g.*, Order on Remand and Reissuing Certificates, *Spire STL Pipeline LLC*, 181 FERC ¶ 61,232 P6 (2022) (Glick, Chair, concurring) ("[T]hree years after [the pipeline] first 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.").

approved, neighboring Calcasieu Pass LNG project has resulted in sludge deposited on the property of nearby landowner John Allaire, who is a member of multiple Petitioner organizations. Exhibit 13, Declaration of John Allaire ¶ 16. Construction of the Project will entail dredging an additional 6.4 million cubic yards of material, *id.*, aggravating these impacts. Construction of yet another LNG terminal in the area will similarly exacerbate harms already caused by other terminal construction. *Id.* ¶¶ 11–17.

C. Construction Will Irreparably Injure the Environment and Cause Harm to Petitioners.

This Court must grant a stay to ensure the Project does not proceed with construction, which will cause continuing and irreparable environmental harm to individual Petitioners and to organizational Petitioners' members. These individuals will, for example, suffer from the construction's air pollution. Although construction emissions will be temporary, they will also be irreparable because they cannot be "adequately remedied by money damages." *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987). And even temporary air pollution can cause irreparable health impacts "of long duration." *Id.* As the Supreme

Court has explained, 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." *Id.* at 545.

FERC has neither properly disclosed nor addressed these harms, violating NEPA. As the Ninth Circuit has explained "[i]n the NEPA context, irreparable injury flows from the failure to evaluate the environmental impact of major federal action." *High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d 630, 642 (9th Cir. 2004).

III. OTHER PARTIES WILL SUFFER LITTLE TO NO HARM IF RELIEF IS GRANTED.

The balance of hardships favors a stay because any potential harm to FERC and Venture Global pales in comparison to the irreparable injuries that Petitioners and their members will suffer. To start, FERC will not be injured—much less substantially injured—by a stay pending review.

Meanwhile, any potential harm to Venture Global does not tip the scale. Any harm to Venture Global associated with a stay would be temporary and economic, which constitutes irreparable harm only "where

the loss threatens the very existence of the movant's business." *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). Indeed, "temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury," and even the "possibility" of recovery "weighs heavily against a claim of irreparable harm." *Sampson v. Murray*, 415 U.S. 61, 90 (1974).

Moreover, as the Supreme Court has found, "the balance of harms will usually favor the issuance of an injunction to protect the environment." *Gambell*, 480 U.S. at 545. For that reason, the Ninth Circuit has explained that issuing an injunction when balancing potential financial harm against irreparable environmental harm is a "classic, and quite proper, examination of the relative hardships in an environmental case." *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1125 (9th Cir. 2005). Consequently, given the likely permanent adverse impacts to Petitioners and their members, the lack of any impact to FERC, and the negligible impact to Venture Global's bottom line, the balance of harms weights in favor of a stay.

IV. GRANTING THE STAY IS IN THE PUBLIC INTEREST

Finally, the public interest favors a stay or expedited review. Without a stay, the construction and operation of the Project would actively harm the public, forcing the local community and domestic industry to bear the burden of this unneeded and unlawfully approved Project. There "is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (quotation omitted).

On the other hand, constructing the Project during the pendency of judicial review would serve no public interest. First, the Project has no domestic purpose and FERC has identified no domestic benefits. *See supra* pp. 8–10.

Second, there is no immediate need for additional LNG export capacity. In fact, the Department of Energy has not yet even determined under 15 U.S.C. § 717b(a) whether the Project's exports to non-Free Trade Agreement countries would serve the public interest at all—the application remains pending. *See* Dep't of Energy, Office of Fossil Energy and Carbon Mgmt., *Venture Global CP2 LNG, LLC*, FE Docket No. 23-

131-LNG, https://www.energy.gov/fecm/articles/venture-global-cp2-lng-llc-fe-dkt-no-21-131-lng (last visited September 19, 2024).

Construction of the Project will take four years. Authorization Order PP6, 115. But the Department has questioned whether increased exports would benefit "energy security" and "international trade" after 2029. Dep't of Energy, *NFE Altamira FLNG*, Order No. 5156 at 25–26 (August 31, 2024).[12] In its most recent order regarding an application to export LNG, the Department found that "across the globe there is both an unprecedented build-out of carbon-free energy and increased policies to advance clean energy development and implementation by U.S. allies that are expected to slow global natural gas demand in some regions," and that "the use of natural gas for electricity generation in Western Europe is expected to peak in 2030 and decline thereafter." *Id.* at 26 Based on this uncertainty, the Department rejected that applicant's request for an authorization extending through 2050 and instead authorized non-Free Trade Agreement exports only until August 2029. *Id.* at 28. In other words, LNG demand is declining and will have already

[12] *Available at* https://www.energy.gov/sites/default/files/2024–08/ord5156_new.pdf.

peaked by the time the Project could commence operations—even absent a stay.

In the meantime, U.S. export capacity not including the Project is expected to increase by another 9.7 billion cubic feet per day between 2024 and 2028. *See* U.S. Energy Information Administration, *North America's LNG export capacity is on track to more than double by 2028* (Sept. 3, 2024), https://www.eia.gov/todayinenergy/detail.php?id=62984. Thus, even if the Department were to determine an *eventual* need for the Project, no compelling public benefit results from starting construction now rather than at the conclusion of this litigation. On the other hand, starting construction now would harm Petitioners, their members, and the public. On balance, the public interest favors a stay.

CONCLUSION

For the reasons stated above, Petitioners respectfully request that the Court grant this motion to stay, or in the alternative, that the Court expedite this case.

Dated: September 23, 2024

Respectfully submitted,

/s/ Nathan Matthews
Nathan Matthews
Sierra Club
2101 Webster St., Suite 1300
Oakland, CA 94612
415-977-5695
nathan.matthews@sierraclub.org

Rebecca McCreary
Sierra Club
1650 38th Street, Suite 103W
Boulder, CO 80301
(305) 449-5595 ext. 103
rebecca.mccreary@sierraclub.org

Counsel for Louisiana Bucket Brigade, Healthy Gulf, Sierra Club, Texas Campaign for the Environment, and Turtle Island Restoration Network

/s/ Megan C. Gibson
Megan C. Gibson
Southern Environmental Law Center
122 C Street NW, Suite 325
Washington, DC 20001
(202) 849-5953
mgibson@selcdc.org

Spencer Gall
Deirdre Dlugoleski
Southern Environmental Law Center
120 Garrett Street, Suite 400
Charlottesville, Virginia 22902

(434) 977-4090
sgall@selcva.org

Counsel for Travis Dardar, Nicole Dardar, Kent Duhon, Mary Alice Nash, Jerryd Tassin, Anthony Theriot, For a Better Bayou, and Fishermen Involved in Sustaining Our Heritage

/s/ Caroline Reiser
Caroline Reiser
Morgan Johnson
Thomas Zimpleman
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington DC, 20005
(202) 717-8341
creiser@nrdc.org
Counsel for Natural Resources Defense Council