ATTACHMENT Z

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

IN THE MATTER OF	)	
	)	
Corpus Christi Liquefaction, LLC	)	Docket Nos. CP23-129-000
	)	PF22-10-000
	)	

Protest of Sierra Club, et al.

Pursuant to 18 C.F.R. § 385.211(a)(1), Chispa Texas, a program of The League of Conservation Voters, LLC, Healthy Gulf, Ingleside on the Bay Coastal Watch Association, Sierra Club, and Texas Campaign for the Environment submit the following protest. On March 30, 2023, the Federal Energy Regulatory Commission ("FERC") received an application from Corpus Christi Liquefaction, LLC and CCL Midscale 8-9, LLC (collectively "Cheniere") to expand the Cheniere liquefied natural gas ("LNG") facility in Corpus Christi, Texas. What Cheniere calls the Corpus Christi Liquefaction Midscale Trains 8 & 9 Project ("Project") is now the fourth phase of Cheniere's Corpus Christi LNG facility. FERC cannot rubberstamp this project just because it previously approved the first three phases of the facilities. The Project will have its own, profound, environmental impacts, such as its adverse impacts on air quality and the climate, and will combine with the previous phases and other projects in the rapidly industrializing Corpus Christi region to have even greater environmental impacts. Ultimately, enough is enough. FERC cannot allow Cheniere to endlessly expand its Corpus Christi LNG facility. The Project is not in the public interest. FERC should deny this application.

A. FERC Must Rigorously Analyze Impacts From Air Pollution Emissions

Because the Project would be constructed in a rapidly industrializing region with deteriorating air quality, it is crucial that FERC rigorously analyze the Project's impact on air quality and cumulative impacts on air quality. To date, there is insufficient information in the record to determine the Project's impact on air quality or to determine cumulative impacts on air

quality.[1] But even without this information, it is clear that the Project's and cumulative impacts on air quality will be serious and FERC must provide a rigorous analysis.

Consider concentrations of ozone in the project area. The National Ambient Air Quality Standard ("NAAQS") for ozone is 70 parts per billion ("ppb").[2] According to the resource reports the ambient air exceeded this standard as recently as 2021.[3] And for the other years provided, 2022 and 2020, the project area's ambient air is right against the ozone NAAQS.[4] The Project will, of course, emit ozone precursors, further impairing the air quality in the project area.[5]

And the resource reports are underselling how poor the air quality is in the project area. If all approved sources in the project area are factored into the environmental baseline, which they must, the project area may already have exceeded the ozone NAAQS. In recent comments concerning the Phillips-Trafigura Bluewater oil export project, the commenters showed that the project Area's ozone NAAQS has already been exceeded when only some of the approved, but not yet constructed facilities are considered.[6]

Ultimately, FERC must rigorously assess the Project's impacts to air quality and must also rigorously assess cumulative impacts to air quality. In doing so, FERC must include *all* approved sources of air pollution. Projects that further degrade air quality already in violation of the NAAQS or right up against the NAAQS are not in the public interest.

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[1] *See generally* Resource Report 9.

[2] *See id.* at 9-3.

[3] *Id.* at 9-4.

[4] *Id.*

[5] The NAAQS is a standard under the Clean Air Act and FERC must analyze whether the Project will cause or contribute to an exceedance under NAAQS. However, FERC's environmental review must go beyond this analysis. The Project's impacts to air quality can be significant even if the NAAQS would not be exceeded. FERC can determine that the Project is not in the public interest even if the NAAQS are not exceeded.

[6] Earthjustice *et al.*, Comments on Draft Environmental Impact Statement, Bluewater Texas Terminal LLC 53, *available at* https://www.regulations.gov/comment/MARAD-2019-0094-0919 (attached).

B. FERC Must Articulate a Coherent Standard for the Exercise of its NGA Authority

Recently, in issuing its Certificate Order approving the Commonwealth LNG project, then Chairman Glick wrote a concurrence openly admitting to something that has been a longstanding problem: that FERC has no analytical framework for determining whether a proposed LNG export facility is consistent with the public interest, and that, for such projects, FERC does not engage in any meaningful balancing of the benefits and harms to the public interest.[7] While FERC has not yet begun its environmental review of this project, as with any LNG export terminal, there are certainly going to be serious costs associated with the project. FERC must evaluate the project through a framework designed to provide meaningful balancing of costs and benefits. A failure to do so is contrary to the Natural Gas Act and bedrock principles of administrative law.

DOE's potential future approval to export LNG as a commodity does not deprive FERC of the authority to deny an associated infrastructure proposal, in whole or in part. Congress, in drafting the Natural Gas Act, provided separate authority for the approval of exports and for the approval of infrastructure.[8] Nothing in the statute indicates that approval under subsection (a) means that an application under subsection (e) must be granted. And FERC has previously used its section 717b(e) authority to deny an application for an import terminal where FERC concluded that, although "the construction and operation of additional facilities to import LNG is vitally important to help meet energy demands," the particular proposed infrastructure would be unsafe and contrary to the public interest.[9]

FERC cannot limit itself to rejecting export and import infrastructure only when it would violate other statutory requirements or, as in *KeySpan*, another agency's standards. Congress didn't. FERC has more than a clerical responsibility to ensure that proposed projects check the boxes of securing other needed permits.[10] FERC is the *lead* agency with authority over export infrastructure, with the authority and responsibility to decide whether a proposed project is

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[7] Commonwealth Authorization Order, Glick, concurring, at P2, accession 20221117-3091.

[8] 15 U.S.C. §§ 717b(a), (e).

[9] *KeySpan LNG, L.P.*, 112 FERC ¶ 61,028, PP5-6 (July 5, 2005).

[10] Of course, even doing that would in some ways to be a more rigorous level of review than FERC seems to apply to LNG export facilities.

contrary to the public interest, even where it does not violate other prohibitions. As then-Chairman Glick stated, "there must be some degree of adverse impact so great that the public interest requires FERC to reject a section 3 application."[11] And this must be a balancing test, weighing the degree of harm against the magnitude of the benefit. DOE's present or future approval of exports is evidence that infrastructure that would enable those exports provides public benefits, but FERC wrongly treats it as determinative, leaving no room to weigh benefits against harms. FERC routinely fails to articulate a standard for determining whether a project's harms outweigh its benefits. FERC's continued failure to do so renders any such FERC decision arbitrary and deserving of reversal.

We agree that bifurcation of authority between FERC and DOE may make this analysis difficult. But not all the problems with FERC's analysis derive from that bifurcation. And that bifurcation is not, as former Chairman Glick suggested, Congress's fault. DOE, not Congress, bifurcated NGA section 3 authority between itself and FERC. Insofar as this division has proven unworkable or unwise in practice, DOE should rescind or modify its delegation order, and FERC should advocate for such a change. Otherwise, FERC should give adequate consideration to the applications it has been charged with evaluating, including this one. FERC's hands are not tied.

C. FERC Must Issue an Environmental Impact Statement on the Basis of Greenhouse Gas Emissions Alone

In other dockets, FERC has issued Environmental Assessments rather than Environmental Impact Statements while claiming an inability to determine the significance of any projects' greenhouse gas emissions.[12] Because FERC (wrongly) claims it cannot determine the significance of these emissions, FERC seems to conclude that a given project is not a major federal action significantly affecting the environment.[13] As a result, FERC decides not to prepare an Environmental Impact Statement. This is the wrong approach in general and it is the wrong approach here.

At the threshold, there is the question of which greenhouse gas emissions FERC must assess. FERC typically only considers the direct emissions of a given project, *i.e.* the emissions

[11] Authorization Order, Concurrence of Chairman Glick, at P7.

[12] *See, e.g.*, *Corpus Christi Liquefaction Stage III, LLC*, 169 FERC 61,135, P57 (2019).

[13] *See* 42 U.S.C. § 4332(c).

that come from the facilities itself. Of course, FERC must analyze these emissions. But FERC must also analyze upstream and downstream emissions. FERC's rationale for not considering these emissions has generally rested on the D.C. Circuit's decision in *Sierra Club v. FERC*, 827 F.3d 36 (D.C. Cir. 2016) ("*Freeport*"). But that case cannot support a refusal to consider upstream and downstream emissions because it was wrongly decided and, even if it wasn't, still does not allow FERC to ignore these foreseeable impacts.

In *Freeport*, the D.C. Circuit started with the premise that Congress, through the Natural Gas Act, vested all Section 3 authority in the Department of Energy. *Id.* at 40 (citing 15 U.S.C. § 717b and 42 U.S.C. § 7151(b)). *Freeport* explained that it is only due to a delegation from the Department of Energy that FERC exercises Section 3(e) authority over the siting, construction, and operation of LNG export infrastructure. *Id.* (quoting U.S. Dep't of Energy, Delegation Order No. 00-004.00A § 1.21.A (May 16, 2006)). *Freeport* then reasoned that this delegation was "limited," and reserved to the Department of Energy "exclusive[e]" authority over exports themselves. *Id.* at 41, 46. *Freeport* held that the Department of Energy's exclusive authority over exports included authority to consider the effects of removing gas from U.S. markets (including the fact that gas producers would likely increase supply in response to this demand) and of providing gas to overseas customers (including the end use of the exported gas). *Id.* at 48-49.

EPA recently explained that it views *Freeport* as wrongly decided. It explained that:

> EPA does not agree with the court's reasoning that the Department of Energy's authority over export licenses breaks the "causal chain" for NEPA purposes. Given the reasonably close causal relationship between upstream and downstream emissions and the Commission's authorization role under the NGA for section 3 projects, the Commission should explicitly decline to adopt the D.C. Circuit's reasoning.[14]

We agree, and FERC should seek to have *Freeport* clarified or overruled. One, there is no reason to view the Department of Energy's authorization as intervening between FERC's authorization and upstream effects. FERC's authorization of export infrastructure could just as easily be seen as

[14] EPA, Comments in Dkt. PL21-3, at pdf page 6, Accession 20220425-5440.

an intervening cause that separates upstream effects from the Department of Energy's approval.[15]

More importantly, *Freeport* did not justify the premise that the Department of Energy's authority was exclusive. In *Freeport*, the court did not identify any statutory reason why the Department of Energy's authority must be exclusive, such that the delegation had to be limited. Congress, for its part, explicitly granted the Department of Energy broad authority to "assign' Natural Gas Act Section 3 authority to FERC. 42 U.S.C. § 7173(f). Nor did *Freeport* justify its assumption that the Department of Energy actually intended or attempted only a limited delegation that reserved issues to the Department of Energy exclusively. The Department of Energy broadly assigned to FERC the authority to "[i]mplement section 3 of the Natural Gas Act with respect to decisions on cases assigned to the Commission by rule," and, in particular, to "[a]pprove or disapprove" the siting, construction, and operation of Section 3 facilities, and to issue orders necessary or appropriate to implement that delegated authority;[16] *Freeport's* assertions that DOE retained exclusive authority do not cite any text in the delegation order, or anywhere else. And finally, even if DOE had in fact attempted the limited delegation assumed by *Freeport*, such an agency attempt could not circumvent the statutory commands, in NEPA and in the Natural Gas Act, to consider the big picture. In *Department of Transportation v. Public Citizen*, the Supreme Court held that agencies need not consider effects where a *statute* puts the effect beyond the agency's reach. 541 U.S. 752, 766-70 (2004). Other courts have explained that agencies cannot tie their own hands and cabin the scope of NEPA review through regulations. *See, e.g.*, *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1213 (9th Cir. 2008) (quoting *Sierra Club v. Mainella*, 459 F.Supp.2d 76, 105 (D.D.C. 2006)). DOE cannot prevent the required comprehensive review of LNG exports by partitioning authority between it and FERC.

And *Freeport*, by its own admission, did not consider the Natural Gas Act's requirement

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[15] Perhaps even more easily seen as the intervening cause because "[i]t is far easier to influence an initial choice than to change a mind already made up" and once FERC approves an LNG export terminal it is hard to argue that the Department of Energy would seriously consider not approving exports from that terminal. *Com. of Mass. v. Watt*, 716 F.2d 946, 952 (1st Cir. 1983).

[16] DOE, Delegation Order S1-DEL-FERC-2006 (superseding Delegation Order No. 00-004.00A) at 1.14, 1.21, *available at* https://www.directives.doe.gov/delegations-documents/s1-del-ferc-2006 (attached).

that FERC act as lead agency for, *inter alia*, coordination of interagency NEPA review, 15 U.S.C. § 717n(b), or NEPA's requirement that agencies avoid segmentation and consider "connected" actions, *Freeport*, 827 F.3d at 45-46, or NEPA's requirement to inform the public of an action's effects that are not withdrawn from consideration by statute. *Id.* at 45; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-50 (1989). But courts must interpret statutes as a whole, and *Freeport's* refusal to consider these aspects of the Natural Gas Act and NEPA undermined *Freeport's* conclusions regarding FERC's Natural Gas Act authority and NEPA obligations. Indeed, DOE's and FERC's apparent post-*Freeport* confusion and disagreement about where one agency's authority ends and another's begins demonstrates that attempting to draw a sharp line between the agencies' authorities is unworkable.

Thus, we agree with the EPA that *Freeport* and subsequent cases erred in holding that there was not a reasonably close causal chain linking FERC's approval of export infrastructure to the production and use of exported gas, and that FERC, therefore, could omit such lifecycle effects from NEPA review.

Of course, we do not contend that FERC can disregard D.C. Circuit cases that have not been overruled. But even under *Freeport* and its conclusion that FERC "ha[s] no legal authority to prevent" the upstream or downstream consequences of operation of the Project based on a determination that those consequences (on their own or in combination with other adverse effects) outweigh the benefits of the project, *Sabal Trail*, 867 F.3d at 1373, FERC still must conduct a NEPA analysis of those foreseeable indirect effects. Such analysis would be "useful[] … to the decisionmaking process," and thus consistent with the "rule of reason" used in interpreting NEPA for two reasons. *Public Citizen*, 541 U.S. at 767. It would inform FERC's decisionmaking about whether to require additional mitigation or avoidance of direct emissions at the project site pursuant to the Natural Gas Act. 15 U.S.C. § 717b(e)(3)(A). And DOE's evaluation of the Project's exports is a connected action that cannot be segmented from FERC's review of the Project, and FERC, as lead agency, must inform DOE's decisionmaking as well.

First, FERC might conclude that project infrastructure would not directly cause individually significant impacts, but that impacts rise to significance when combined with the indirect effects of the DOE's connected authorization. *Delaware Riverkeeper v. FERC*, 753 F.3d 1304, 1314 (D.C. Cir. 2014). This combined significance may persuade FERC to require

additional mitigation of direct impacts, such as by requiring more efficient terminal design, *etc*. Thus, information about indirect effects informs FERC's decisionmaking notwithstanding FERC's lack of "authority to prevent' those effects. *Freeport*, 827 F.3d at 49.

Second, the agencies and the public would benefit from comprehensive analysis of the impacts of all related projects. Specifically, regarding the connection between FERC and DOE, *Freeport* explicitly declined to consider whether the prohibition on segmentation, or FERC's Natural Gas Act obligation to act as lead agency, required FERC to consider upstream and downstream effects in its NEPA analysis. *Id.* at 45. Nor has the D.C. Circuit addressed these questions in any other case. The reasoning of these cases does not support an exception to the prohibition on segmentation here. *Freeport* rests on *Public Citizen*, which affirmed a "rule of reason" under which an EIS only needs to include information "useful[] … to the decisionmaking process." 541 U.S. at 767. The prohibition on segmentation recognizes the usefulness of a "comprehensive approach," *Delaware Riverkeeper*, 753 F.3d at 1314, rather than dividing analysis of an "integrated project" across multiple documents and processes. *City of Boston Delegation v. FERC*, 897 F.3d 241, 251-52 (D.C. Cir. 2018). Here, comprehensive analysis in a single EIS would inform each agency's decisionmaking regarding matters squarely within its own jurisdiction.

In other proceedings, FERC has argued that segmentation caselaw, connected action regulation, *etc.*, do not apply to actions of multiple agencies. The D.C. Circuit, in one of the cases that developed the segmentation doctrine was later codified in the 1978 NEPA regulations, has explicitly rejected this, holding that "the principles" of the prohibition on segmentation "are entirely applicable … where decision-making is accomplished by three federal agencies … acting seriatim." *Jones v. DC Redevelopment Land Agency*, 499 F.2d 502, 510 (D.C. Cir. 1974); *see also Sierra Club v. U.S. Army Corps of Engineers*, 803 F.3d 31, 49-51 (D.C. Cir. 2015) (assuming that the connected actions regulation applies to actions of multiple agencies).

For these reasons, even if *Freeport* is not overruled, FERC is still required to consider indirect effects, both to inform FERC's own decisionmaking regarding the cumulative impact of matters that FERC *does* have authority to regulate, and to inform DOE's consideration of the connected, interdependent proposal to export the gas liquefied at the terminal.

And even if FERC is correct that it is not *required* to analyze lifecycle emissions in its

NEPA analysis, nothing in *Freeport* or the related D.C. Circuit decisions *prohibits* FERC from doing so.[17] Providing discussion and analysis of what EPA agreed are "these patently foreseeable environmental impacts" in FERC's NEPA analysis will undoubtedly help inform both the public and other agencies of the big picture, and FERC should choose to provide this analysis here.

Accordingly, here, FERC must properly analyze *all* the greenhouse gas emissions associated with the project.

And considering *all* the greenhouse gas emissions associated with this project is of the utmost importance. DOE has estimated that liquefaction accounts for only 6% of the lifecycle greenhouse gas emissions of U.S. LNG exports.[18] Even this 6% figure is too high, because DOE underestimates non-liquefaction emissions.[19] Thus, excluding upstream and downstream emissions from consideration would miss the *vast* majority of greenhouse gas emissions. But analyzing the full extent of a project's greenhouse gas emissions has never been more important.

The United States has adopted nationwide greenhouse gas reduction targets in line with the Paris Climate Accord's goal to limit global warming to 1.5ºC. President Biden recently announced a new target for the United States to achieve a 50-52 percent reduction from 2005 levels in economy-wide net greenhouse gas pollution in 2030.[20] In pathways consistent with a

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[17] EPA observed the same. *See* EPA, Comments in Dkt. PL21-3, at pdf page 6, Accession 20220425-5440.

[18] National Energy Technology Laboratory, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update, at 23 (Sept. 12, 2019), *available at* https://www.energy.gov/sites/prod/files/2019/09/f66/2019%20NETL%20LCA-GHG%20Report.pdf (attached). DOE estimates that 23% of the lifecycle emissions occur upstream of liquefaction. *Id.*

[19] *See* Sierra Club, Comment on Life Cycle Update, at 6-9 (Oct. 21, 2019), *available at* https://fossil.energy.gov/app/DocketIndex/docket/DownloadFile/604 (attached). For example, recent research demonstrates that Permian Basin gas production emits far more methane than assumed in DOE's analysis. *E.g.*, Yuzhong Zhang *et al*., *Quantifying methane emissions from the largest oil-producing basin in the United States from space*, Science Advances (Apr. 22, 2020), DOI:10.1126/sciadv.aaz5120 (estimating methane "leak rate" in the Permian of 3.5 to 3.7%), *available at* https://www.science.org/doi/10.1126/sciadv.aaz5120 (attached).

[20] FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies (Apr. 22, 2021), *available at* https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-

1.5ºC temperature increase, global net anthropogenic CO_2 emissions must reach net zero by around 2050.[21] Continuing to take a business as usual approach "make[s] it likely that warming will exceed 1.5ºC during the 21st century."[22] The only way to achieve the 1.5ºC target is to bring about "deep global GHG reductions this decade."[23] And the consequences of continued greenhouse gas emissions are dire.[24]

Consequently, a lot rests on FERC providing adequate consideration of the Project's greenhouse gas emissions. This includes applying the social cost of carbon protocol to quantify the impacts of the emissions and it includes considering *all* of the emissions. It also includes making the inescapable conclusion that these emissions and their impacts are significant and assessing the project's environmental impacts through the environmental impact statement process. As explained by the IPCC, "[w]ith every additional increment of global warming, changes in extremes continue to become larger."[25] Thus, an Environmental Impact Statement is the correct approach here.[26]

But even if FERC (wrongly) concludes that it lacks the ability to determine the significance of the project's greenhouse gas emissions, FERC must still issue an Environmental

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pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/ (attached to Sierra Club, *et al.*'s Scoping Comments in PF22-10-000).

[21] U.N. IPCC, Global Warming Of 1.5ºC, An IPCC Special Report on the Impacts of Global Warming of 1.5ºC Above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty 2-28, *available at* https://www.ipcc.ch/report/sr15/ (attached to Sierra Club, *et al.*'s Scoping Comments in PF22-10-000).

[22] U.N. IPCC, Synthesis Report of the IPCC Sixth Assessment Report: Summary for Policymakers 11, *available at* https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf (attached).

[23] *Id.*

[24] *See, e.g.*, *id.* at 12-13.

[25] *Id.* at 12.

[26] To be clear, the project's greenhouse gas emissions are not the only potential significant environmental impact associated with this project and FERC must provide the requisite consideration for *all* of the project's legion environmental impacts.

Impact Statement rather than an Environmental Assessment on this basis alone. Not being able to determine significance is, of course, not the same thing as determining that a given effect is insignificant. To properly avoid preparing an Environmental Impact Statement, the agency must affirmatively make a finding of no significant impact and support that finding. 40 C.F.R. § 1501.6(a) ("An agency shall prepare a finding of no significant impact if the agency determines, based on the environmental assessment, not to prepare an environmental impact statement because the proposed action will not have significant effects."). Thus, a failure to determine significance doesn't justify a failure to issue an Environmental Impact Statement, only a properly supported determination that an effect is insignificant can justify a failure to issue an Environmental Impact Statement. FERC cannot continue its practice of refusing to determine the significance of projects' greenhouse gas emissions and use that refusal to justify a decision to issue an environmental assessment rather than an environmental impact statement.

Here, FERC must consider the environmental impacts of the Project through the Environmental Impact Statement process.

D. FERC Must Use The Tools and Methods Available to it To Assess the Significance of the Project's Greenhouse Gas Emissions

The Natural Gas Act and NEPA require FERC to take a hard look at the impact of greenhouse gas emissions, evaluate their significance and impact, and ultimately, to factor these emissions into its public interest determination. *Sierra Club v. FERC*, 867 F.3d 1357, 1376 ("*Sabal Trail*"). FERC has all the tools it needs to satisfy these requirements.

FERC can apply its February 18, 2022, interim policy statement on Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews, 178 FERC ¶ 61,108. That interim, now draft, policy identified 100,000 tons per year as a threshold beyond which greenhouse gas emissions would be significant. *Id.* P79. Even though FERC is taking comments on whether and how to use this proposal in general, that does not mean it cannot be used here.

FERC can also use the social cost of carbon protocol. In recent dockets, FERC has used the social cost of carbon protocol to quantify the impact of projects' greenhouse gas emissions.[27]

[27] This has not always been the case. FERC previously (wrongly) refused to quantify impacts using the social cost of carbon protocol. *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1330 (D.C. Cir. 2021).

But even where FERC quantifies impacts using the social cost of carbon, FERC refuses to determine the significance of those impacts, generally by claiming that the social cost of carbon protocol is not appropriate for project level analysis. This is wrong. As FERC has previously recognized, other agencies routinely use the social cost of carbon protocol for project level analysis.[28] And the Council on Environmental Quality ("CEQ") identifies social cost of carbon as "a harmonized, interagency metric that can give decision makers and the public useful information *for their NEPA review*."[29]

In short, FERC has all the tools and methods it needs to properly assess the Project's greenhouse gas emissions and must rigorously analyze those emissions, including determining whether they are significant.

E. The Project's Greenhouse Gas Emissions Are Contrary to the Public Interest

In addition to the project's greenhouse gas emissions requiring use of the Environmental Impact Statement process rather than the Environmental Assessment, those emissions also require FERC to reject this project as not in the public interest. FERC has the authority and obligation to consider the project's greenhouse gas emissions under both the Natural Gas Act and NEPA. *See, e.g.*, *Sabal Trail*, 867 F.3d at 1372. This includes the responsibility to determine whether greenhouse gas emissions warrant rejecting the application outright, as well as the authority to require mitigation of these emissions for projects that are approved. FERC should reject this application, but if it doesn't, should require mitigation measures to reduce the project's emissions to the fullest extent possible.

As noted above, drastic action is needed to avoid temperatures rising more than 1.5ºC. The world must transition to net-zero emissions by 2050, and reduce global carbon dioxide emissions by 45 percent by 2030—we need "rapid, deep and sustained reductions in global greenhouse emissions."[30] The Intergovernmental Panel on Climate Change has explained that achieving this

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[28] *See Mountain Valley Pipeline, LLC Equitrans, L.P.*, 163 FERC ¶ 61,197, P281 n.772 (2018) (recognizing that BOEM, OSM, DOE, and numerous state agencies have used social cost of carbon in environmental review individual projects).

[29] https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa_final_ghg_guidance.pdf at 33 n.86.

[30] U.N. Framework Convention on Climate Change Secretariat, Glasgow Climate Pact at ¶17, *available at* https://unfccc.int/sites/default/files/resource/cop26_auv_2f_cover_decision.pdf

requires eliminating or reducing fossil fuel use and moving to renewable energy as extensively and as quickly as possible.[31] Global LNG volumes, specifically, must *decline* below present levels in just the next few years: as the International Energy Agency recently affirmed, further expansion of LNG export facilities, beyond those already in operation or under construction, cannot be part of the path to net-zero emissions.[32] Accordingly, Executive Order 14,008 instructs federal agencies to discourage "high carbon investments" or "intensive fossil fuel-based energy."[33]

Even if the applicant added carbon capture and sequestration, the analysis does not change. As explained above, direct emissions from the facility are only a fraction of the LNG lifecycle. And as the Intergovernmental Panel on Climate Change and others have recognized, use of fossil fuels must decline even with carbon capture.[34] Plainly, this proposed project will do nothing to reduce the reliance on fossil fuels for energy production. This proposed project, with or without CCS, will not be climate-beneficial. Obviously, combusting additional fossil fuels will do nothing to further decarbonization efforts. Because the project will hamper, rather than further, climate goals, the project is not in the public interest.

Conclusion

The undersigned oppose the proposed Corpus Christi Liquefaction Midscale Trains 8 & 9 Project. It is contrary to the public interest because it will have profound environmental impacts without providing countervailing benefits. Accordingly, FERC should deny the application. Insofar as the application proceeds, FERC must provide robust environmental review, with adequate opportunities for public participation, and FERC must require that impacts are mitigated to the fullest extent possible.

(attached).

[31] Global Warming of 1.5ºC, *supra* note 21, at 15.

[32] International Energy Agency, Net Zero by 2050, at 102 (May 2021), *available at* https://www.iea.org/reports/net-zero-by-2050 (attached).

[33] Executive Order 14,008, 86 Fed. Reg. 7619, at § 102(f), (h) (Jan. 27, 2021).

[34] Global Warming of 1.5ºC, *supra* note 21, at 15.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at San Antonio, TX on May 4, 2023.

/s/ Thomas Gosselin

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