

Appendix N

Responses to Comments on the Draft Environmental Impact Statement

Document Accession #: 20230215-0022 Filed Date: 02/15/2023



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February 6, 2023

FEDERAL ENERGY
REGULATORY COMMISSION

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
12225 Wilkins Avenue
Rockville, Maryland 20852

Dear Secretary Bose:

Please find written comments submitted by the "Teamsters National Pipeline Labor Management Cooperation Trust" on the FERC's "Draft Environmental Impact Statement for the Venture Global LNG and Venture Global CP Express Projects" (**Docket Nos. CP22-21-000 and CP22-22-000**).

If you have any questions I can be reached at (703) 508-8690.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard Stern", written in a cursive style.

Richard Stern, Administrator
Teamsters National Pipeline Labor
Management Cooperation Trust

Enclosures

Document Accession #: 20230215-0022 Filed Date: 02/15/2023

This submission is for the FERC Draft EIS (Docket Numbers CP22-21-000 and CP22-22-000) for the Venture Global LNG and Venture Global CP Express Projects, herein referred to as "Projects".

On behalf of the Teamsters National Pipeline Labor Management Cooperation Trust (LMCT) representing the Teamsters whose union members living in Louisiana will work on the project and the Pipe Line Contractors Association (PLCA) we support the construction of the "Projects".

CO1-1: Comment noted.

CO1-1

We have contractors who specialize in pipeline work that involve rivers, wetlands and waterways as noted in the next paragraph.

The PLCA has approximately 200 member companies engaged in the construction and maintenance of mainline oil and gas pipelines throughout the U.S. as well as service providers and suppliers that support such work; many of these businesses are located in Louisiana.

Our trained Teamster workforce operates this specialized equipment in a skilled and environmentally friendly manner.

Our Teamster Pipeliners who reside in Louisiana where the Projects would be constructed also fish and hunt in the state.

Therefore, they value protecting the environment while doing the construction and restoring the land associated with the projects so they can continue to participate in these recreational activities.

Document Accession #: 20230215-0022 Filed Date: 02/15/2023

Our collective bargaining agreement has a formal “Drug and Alcohol” Policy. A drug and alcohol free work force is less likely to have accidents or damage the environment since they will not work under the influence of drugs or alcohol that can negatively impact their judgment and quality of the work. (Exhibit A)

According to our collective bargaining agreement our workers must be qualified. The contractors demand strict adherence to this language. (Exhibit B)

This ensures a more skilled and trained workforce so it is less likely there will be any environmental issue.

We have certified Training Instructors and a training program specific to the pipeline construction industry stressing quality of work and environmental awareness.

Training not only includes Defensive Driving techniques but often-formal classroom instruction in addition to specific equipment training. (Exhibit C)

Some of our Trainers have been cited by outside Safety Organizations for their expertise and training skills. (Exhibit D)

Many Teamster workers on the “Projects” will be Louisiana Veterans coming out of Veteran Programs we participate in to recruit our former military men and women. (Exhibit E)

These Teamster Veterans are disciplined and taught about being aware of their natural surroundings both while serving in the military and undergoing our training programs.

Document Accession #: 20230215-0022 Filed Date: 02/15/2023

Our training program, veterans program, high wages and employer paid health insurance and pensions only enhance our Union Contractors ESG score. (Exhibit F)

While pipelines, in general, are inherently one of the safest and most cost-effective ways to transport natural gas and oil, newly built pipelines are especially safe and reliable.

Also, technological developments in pipeline design and increased safety regulations have made pipelines built today safer than older lines. Modern pipelines, in particular, offer valuable safety features including improved pipe coating that protects against corrosion, more secure welding techniques, and mechanical devices that travel through the pipelines to identify safety risks.

Additionally, our collective bargaining agreement as noted earlier provide trained workers, which ensures the U.S. pipeline infrastructure is built and maintained according to the most up-to-date, safe, and efficient standards----at a significant benefit to the public at large.

Based upon the above comments it should help to mitigate and address the FERC's concerns on environmental issues and quality of work



February 15, 2023

Federal Energy Regulatory Commission

RE: CP2 LNG (CP22-21-000) and CP Express (CP22-22-000) Comment Sessions

To whom it may concern:

On January 26, 2023, the Federal Energy Regulatory Commission (FERC) issued notice of public comment sessions regarding CP2 LNG and the CP Express project (hereafter “CP2 Projects”) for March 1 and March 2, 2023 in Vinton, Louisiana and Cameron, Louisiana respectively. On January 27, 2023, the Louisiana Department of Natural Resources (LDNR) issued a public notice informing the public that the Office of Coastal Management will be conducting a public hearing regarding the Commonwealth LNG, LLC Coastal Use Permit No. P20190900 for March 1, 2023.¹ I write to respectfully request that FERC move the date of their public comment session to allow for the maximum amount of public participation, as LDNR has already indicated that they will not be moving their public hearing.²

As previously stated in *Sierra Club et al.*’s scoping comments, FERC has identified approximately five environmental justice communities that may be impacted by the CP2 Projects. If FERC allows both hearings to occur on the same date, there will be inadequate public participation. Public participation is crucial to incorporating environmental justice considerations, “both to enhance the quality of the analyses and to ensure that potentially affected parties are not overlooked and excluded from the process.”³ Additionally, the CP2 Projects and Commonwealth LNG are extremely close in proximity, meaning that the same group of people will likely have concerns regarding both projects. FERC should therefore move the date of their public comment session to allow the maximum amount of public participation.

Should you have any questions or concerns regarding this request, please do not hesitate to contact me.

¹ See Attachment 1.

² See Attachment 2.

³ See EPA, Final Guidance For Incorporating Environmental Justice Concerns in EPA’s NEPA Compliance Analyses at pdf-46 (1998).

910 Julia Street, New Orleans, LA 70113

CO2-1

CO2-1: We note that draft Environmental Impact Statement (EIS) comment meetings were held on two nights (March 1 and March 2, 2023). In addition, the draft EIS comment period was open for 45 days and as stated in the *Notice of Availability*, provides multiple methods to submit comments. The Federal Energy Regulatory Commission (FERC or Commission) provides equal consideration to all comments received, whether filed in written form or provided orally at a comment session.

CO2 – Sierra Club

Document Accession #: 20230216-5029

Filed Date: 02/16/2023

Sincerely,

/s/ Lisa M. Diaz

Lisa M. Diaz, La. Bar No. 39418
lisa.diaz@sierraclub.org
(305)336-2258 (tel)
Attorney for Sierra Club

Document Accession #: 20230224-5121 Filed Date: 02/24/2023 Patrick Fontenot, Lake Charles, LA. We are all familiar with Hurricane Laura's impact on SWLA. Barbe High School was severely damaged and is currently in the process of rebuilding. Beginning stages of rebuilding. I was contacted last year by Mr. Walker of Venture Global who informed me that Venture Global was interested in making funds available to Barbe HS for needs to be determined by the school. This is not an everyday occurrence in my 25+ years of working in public education. I am not sure how often this occurs but it is a great opportunity for us to be able to enhance future school repair plans with unbudgeted funding. With the donation from Venture Global we are able to purchase items and support on campus groups in ways that will further educational opportunities and allow students to have a more positive experience. We are currently in the process of needed upgrades to our facilities that may not have been possible without Venture Global. Barbe High School would like to make it know that we are forever grateful for Venture Global and its commitment to our school and community.	IND1-1
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IND1-1: Comment noted.

Document Accession #: 20230302-5005	Filed Date: 03/02/2023
Mary Allemond, Lake Charles, LA. Cathedral Land Solutions contacted me as a landowner to sign the pipeline easement. I signed the easement and was very pleased with the experience. They were very helpful in explaining the process and the needs of the landowners. My experience with Cathedral, as well as Venture Global has been informative, I don't have any concerns presently and look forward to the progress.	
IND2-1	

IND2-1: Comment noted.

Document Accession #: 20230303-5108	Filed Date: 03/03/2023
Senator Jeremy Stine, Lake Charles, LA. I write today in support of Venture Global's CP2 LNG project, which will be the largest liquefied natural gas (LNG) export facility in the United States. The overall Venture Global provision to create a long-term hub of reliable North American energy supplies for US natural gas producers will be beneficial for our region and the United States. Venture Global has been a partner bringing jobs to our community and being a good neighbor. For instance, in my district, Venture Global has been a partner in the development of the Calcasieu Police Jury and other local stakeholders to develop a 58-acre waterfront park, named Lighthouse Bend. The new recreational development will create a unique destination for families, sportsmen, adventurers, and workers as well as an economic boost to the area. Beyond that, they have worked with local schools to provide internships and job training opportunities for students. I am proud to support this project and the jobs it will create for the residents of Calcasieu. -- Louisiana State Senator Jeremy Stine	IND3-1

IND3-1: Comment noted.

Document Accession #: 20230303-5002 Filed Date: 03/03/2023 Patty Boudreaux, Cameron, LA. I am in support of the IMO activity. I believe the corporation takes all the necessary steps to ensure the safety of the surrounding communities and the surrounding communities. I believe this process is important for our energy independence which is a national security threat. This corporation is very involved in co-existing in an eco-friendly way with the surrounding communities.	IND4-I
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IND4-I: Comment noted.

Document Recreations #1: 20230305-4000

CLAY HIGGINS

Small Government, Louisiana

Filed Date: 03/06/2023

COMMITTEE

HOME LAND SECURITY

OVERSIGHT AND REFORM

Congress of the United States

House of Representatives

Washington, DC 20515-1803

March 3, 2023

The Honorable Richard Glick

Chairman

Federal Energy Regulatory Commission

888 First Street, NE

Washington, DC 20426

Chairman Glick and Members of the Federal Energy Regulatory Commission,

I am writing to express my support for the approval of the Venture Global CP2 LNG, LLC and Venture Global CP Express, LLC permit applications. The construction and operation of the proposed CP2 LNG Project and the CP Express natural gas pipeline will benefit our region and play a crucial role in increasing America's energy dominance and improving our nation's at global allies' security.

The proposed pipeline will be built starting in Jasper County, Texas, and ending in Cameron Parish, Louisiana, supplying the proposed LNG facility. The CP2 LNG Project will create good-paying jobs and boost local economies. It will also provide a reliable source of clean energy. Furthermore, the CP Express natural gas pipeline will be essential in transporting the natural gas required for the facility's operations in a safe and efficient manner.

As we have seen in recent years, America's energy dominance is of critical importance to our national security. By reducing our dependence on foreign energy sources and becoming a net exporter of natural gas, we strengthen our position in the global energy market and reduce the leverage foreign entities have over our economy and foreign policy decisions.

Additionally, Venture Global has demonstrated its commitment to environmental stewardship and community engagement. They have worked closely with local stakeholders and regulatory agencies to ensure the project meets all relevant environmental and safety standards.

I strongly support the approval of Venture Global's permit application. I believe this project will bring significant benefits to our region, contribute to America's energy dominance, and improve our national security. Thank you for your attention to this matter.

Respectfully,



Clay Higgins

Member of Congress

872 Cannonwood Drive, Suite 200
Baton Rouge, LA 70806
(504) 383-0031

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Baton Rouge, LA 70806
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IND5-1: Comment noted.

IND5-1

N-11

Susan E Bourdeau, Creole, LA.
Project code: number CP22-21 AND CP22-22
Venture Global Calcasieu Pass to-date has been an outstanding industrial business development, partner, and neighbor in our community. They have been ouravior providing permanent and temporary construction jobs to Southwest Louisiana and our neighborly hospitality has been a decline from the oil and Gas Unfortunatly, our neighborly hospitality has been a decline from the oil and Gas and Commercial Fishing Industries for the last 25 years that provided multitude of jobs in the past. Then to top it off Mother Nature has stricken us four times in the last 18 years with hurricanes. So we have seen a decline in our population along with business employment. With that being said we welcome Venture Global and its expansion of CP2 and CII express. We are excited to have CP2 and CII express will be committed to numerous government agencies. CP2 and CII Express will be committed to protecting the environment and will work to minimize impacts during all phases of the project. The Calcasieu Pass project had issues that had been noted from the locals. Those issues were all resolved from Gravity Drainage to traffic issues including replacing a boat launch and a campground. We are excited to have CP2 and CII Express will be committed to numerous government agency that will eventually receive tax dollars from the project. Our family has property that could be utilized in the CP2 and CII Express.

project.
Susan Boudreaux
175 Barro Road
Creole, LA 70632

IND6-1

IND6-1: Comment noted.

Document Accession #: 20230309-5050

Filed Date: 03/09/2023

JOHN BEL EDWARDS
GOVERNOR



JACK MONTOUCKET
SECRETARY

PO BOX 98000 | BATON ROUGE LA | 70898

March 8, 2023

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First St., N.E., Room 1A
Washington, DC 20426

RE: Docket Number: CP22-21-000 CP22-22-000
Applicant: Venture Global CP2 LNG, LLC/Venture Global CP Express, LLC
Notice Date: January 19, 2023

Dear Ms. Bose:

The professional staff of the Louisiana Department of Wildlife and Fisheries (LDWF) has reviewed the above referenced Environmental Impact Statement. CP2 LNG and CP Express propose to construct, install, own, operate, and maintain certain liquefied natural gas (LNG) facilities in Cameron Parish, Louisiana and certain pipeline facilities in Cameron and Calcasieu Parishes. Based upon this review, the following has been determined:

SA1-1

Ecological Studies
In an effort to prevent the erosion of interior marsh, the applicant shall place bankline stabilization material at the interface of marsh and open water for all pipelines installed via the open trench method.

SA1-2

Should the dredging and removal of water bottom material be necessary during construction activities, LDWF recommends that that dredged material be used beneficially to create/restore emergent marsh in the vicinity of the project. The spoil material could be placed unconfined or confined in shallow open water at an elevation conducive to marsh establishment. Also, the spoil material could be placed on top of existing emergent marsh in order to nourish this degrading resource. Marsh nourishment would entail the placement of thin layers of spoil (i.e., less than 6 inches in elevation) on top of existing marsh.

SA1-3

In an effort to reduce impacts, LDWF recommends that temporary pipeline right-of-ways (ROW) not exceed 75-feet in width and that permanent pipeline ROWs not exceed 30-feet in width within wetlands. Justification shall be provided for pipeline ROWs that exceed these dimensions within wetlands.

SA1-4

In an effort to reduce wetland impacts and avoid habitat fragmentation, LDWF recommends that all pipelines proposed under this project be located in open water or along existing ROWs to the greatest

2000 GUAL DRIVE

BATON ROUGE LA 70806

225-765-2800

WILF LOUISIANA.GOV

SA1-1: Refer to sections 4.5.2.2 and 4.5.2.3. Construction right-of-way within wetlands would be 75 feet where feasible; justification has been provided (appendix H) for areas proposed to use 150- or 125-foot-wide construction rights-of-way. During operation and in compliance with its Project-specific *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures), Venture Global CP Express, LLC (CP Express) would limit routine vegetation maintenance to the mowing of a 10-foot-wide corridor centered on the pipeline in wetlands. Additionally, CP Express would selectively clear trees within 15 feet of the centerline in palustrine forested and palustrine scrub-shrub wetlands that could damage the pipeline during operation. As the remainder of the permanent right-of-way would not be maintained, wetlands would be allowed to return to pre-Project vegetation conditions outside of the 10-foot-wide corridors as applicable.

SA1-2: Refer to section 4.3.3.1.

SA1-3: Refer to sections 4.5.2.2 and 4.5.2.3. Construction right-of-way within wetlands would be 75 feet where feasible; justification has been provided (appendix H) for areas proposed to use 150- or 125-foot-wide construction rights-of-way. During operation and in compliance with its Project-specific Procedures, CP Express would limit routine vegetation maintenance to the mowing of a 10-foot-wide corridor centered on the pipeline in wetlands. Additionally, CP Express would selectively clear trees within 15 feet of the centerline in palustrine forested and palustrine scrub-shrub wetlands that could damage the pipeline during operation. As the remainder of the permanent right-of-way would not be maintained, wetlands would be allowed to return to pre-Project vegetation conditions outside of the 10-foot-wide corridors as applicable.

extent practicable. Additionally, LDWF recommends that the applicant utilize the horizontal directional drill method of installation to the greatest extent practicable when installing pipelines through wetland habitats. LDWF requests installing the proposed pipeline via HDD along stretches of the route that cross fragmented marsh habitat in an effort to reduce wetland impacts and reduce marsh conversion to more open water.

SA1-4

To minimize impacts to forested wetlands associated with HDD installations, the permittee shall be limited to minimal line of sight clearing. No native trees greater than 8 inches in diameter at breast height (DBH) are to be cleared. Emphasis shall be placed on tree pruning, as opposed to tree removal, and the resulting clearing shall not create a travel lane between entry/exit points.

SA1-5

One 24-inch culvert shall be installed approximately every 250 feet when constructing access roads through wetlands. Priority for the placement of those culverts should be given to natural low areas and drainages. Those culverts shall be maintained to ensure that the existing flow of surface water is uncompromised.

SA1-6

The applicant proposes to temporarily impact forested wetland habitat. Such habitats are crucial for the reduction of flood risks in downstream communities through floodwater storage, the improvement of water quality, processing organic wastes, preventing erosion, and reducing sediment runoff. Therefore, LDWF recommends that the applicant replant desirable, native tree species within all temporarily impacted forested habitat. Replanting the forested habitat would help reestablish a large acreage of important habitat, prevent invasive species from gaining a foothold, and may also reduce the applicants mitigation costs. If replanting does occur, periodic eradication of invasive species, such as Chinese tallow, should be part of the restoration plan in those areas and success criteria for reforestation, congruent with mitigation banking standards, should be established.

SA1-7

Severance

The applicant shall adhere to all state statutes (R.S. 56:2011 et seq.) and department regulations (LAC 76:XIII.101 et seq.) concerning dredging of fill sand and fill material from water bottoms of the state of Louisiana and severance royalties.

SA1-8

Threatened and Endangered Species

The database indicates that Black Rail (*Laterallus jamaicensis*) may occur within the project area. This diminutive waterbird is included within a group of birds known as the secretive marsh birds due to the species' exceedingly cryptic behavior. Black Rail is currently considered critically imperiled (S2N, S1B) in Louisiana and is listed as federally threatened under the Endangered Species Act. Because the species is so difficult to study, its distribution and status are difficult to fully ascertain. Based on limited, contemporary, field work in coastal Louisiana, as well as historical literature and museum specimens, the Black Rail can be found in Louisiana throughout the year; the species is likely a very rare breeder and a rare migrant/winter visitor. Black Rails prefer high marsh habitat, possibly associated with Sea Ox-eye Daisy (*Barrichia frutescens*) and Gulf Cordgrass (*Spartina spartinae*). Please minimize disturbance and alteration to high marsh habitats.

SA1-9

The database indicates that the West Indian Manatee (*Trichechus manatus*) may occur in the surrounding waterbodies of the project footprint. Manatees are large mammals that inhabit both fresh and salt water. Although most manatees are year round residents of Florida and Central America, they have been known to migrate to areas along the Atlantic and Gulf coasts during the summer months. The West Indian Manatee is a threatened species protected under the Endangered Species Act of 1973.

SA1-10

SA1-4: As described in sections 2.2.2.1 and 4.6.2.2, CP Express sited over 45 percent of the pipeline adjacent to existing pipeline rights-of-way, powerlines, roadway, railways, and canals. The Alternatives analysis outlined in section 3.5 illustrates that CP Express considered other routes that were not practicable or did not provide a significant environmental advantage. Wetlands and open water were both factored into the alternatives review. In an email dated April 22, 2022 (accession number 20220520-5241), the Louisiana Department of Wildlife and Fisheries expressed concern over major pipeline route Alternatives 2 and 3 due to potential impacts to existing oyster habitat, artificial finfish reefs, and oyster cultch plants within Calcasieu Lake. Based on this and other factors presented in Section 3.5, the alternative routes considered did not offer a significant environmental advantage over the proposed route. CP Express also considered the horizontal directional drill (HDD) method for pipeline construction. Sections 2.5.3.1 and 4.2.4 describe how CP Express determined where HDD crossings were feasible. The HDD method would be used to avoid impacts on 23.2 acres of wetlands. The most feasible crossing method in many instances that would result in the least impacts was determined to be the proposed marsh push method of construction.

SA1-5: As described in section 2.5.3.1 of the EIS, minimal vegetation clearing by hand between HDD entry and exit workspaces would be required to accommodate the installation of guidance wires and facilitate foot traffic. Light vehicle access (via rubber-tired vehicles only) may be necessary to manage any potential drilling mud releases; however, associated ground disturbance would be minimal and vegetation clearing to accommodate light vehicle access would be done by hand. Additionally, during operations, routine right-of-way maintenance, including vegetation mowing and clearing would be prohibited in riparian and wetland areas between HDD entry and exit points, as outlined in CP Express' Project-Specific Procedures (FERC Accession No. 20211202-5105).

SA1-6: As discussed in the revised section 4.5.2.2, Venture Global CP2 LNG, LLC (CP2 LNG) and CP Express have committed to installing culverts across access roads within wetlands to maintain surface water flow, as needed and as authorized by the U.S. Army Corps of Engineers (COE) and Louisiana Department of Natural Resources (LDNR)/Office of Coastal Management (OCM) permits.

SA1-7: As discussed in section 4.5.2.2 and the Project-Specific Specific Procedures, CP Express would allow natural succession of wetland vegetation during restoration. Restoration would be monitored. If remedial restoration methods are needed, CP Express would work with state and Federal agencies to develop the actions necessary for successful restoration. Restoration would only be considered successful when the affected wetlands satisfy the current federal definition, has at least 80 percent vegetative coverage, the plant species composition of the vegetative coverage is consistent with early successional wetland plant communities in the affected ecoregion, and invasive species and noxious weeds are absent or consistent with adjacent areas. During pipeline construction, CP Express would implement its Traffic, Noxious Weed, and Fugitive Dust Control Plans (FERC Accession No. 20220331-5608) to minimize the potential spread of invasive species.

SA1-8: See response to comment SA1-2 above.

SA1-9: See the revised section 4.8.1.1 for Project impacts and mitigation regarding the Eastern Black Rail.

and the Federal Marine Mammal Protection Act of 1972. In Louisiana, take or harassment of a manatee is a violation of state and federal laws. Critical habitat for manatees includes beds of submerged aquatic vegetation (e.g., sea-grass beds). Areas with sea-grass beds should be avoided during project activities.

The database also indicates that a Coastal Live Oak-Hackberry Forest is located within the project area. This community is considered critically imperiled in Louisiana with an S1 state rank. In southeast Louisiana, this forest type can form on ridges of stranded deltaic sediments deposited by the (formerly) constantly shifting Mississippi River. These ridges are composed primarily of sand and shell and are approximately 4 to 5 feet above sea level. This community, also known as a chenier, especially in southwest Louisiana, is an important storm barrier, limits salt water intrusion, and acts as a critical staging and stopover site for Neotropical migratory birds. We advise you to take the necessary measures to avoid any impacts to this ecological community.

Fisheries Habitat

CP2 LNG

LDWF Fisheries has concerns regarding the potential for excessive turbidity and the limiting of fisheries access during the construction and future maintenance dredging of the Monkey Island marine facilities and its associated transfer and utility lines. Given these concerns, the Department recommends that Venture Global be required to adequately address the following concerns:

- It is anticipated that dredging activities associated with the proposed marine facilities will increase turbidity in adjacent waterways. Increased turbidity may negatively impact fish and invertebrate species by lowering dissolved oxygen levels, smothering benthic organisms, and reducing visibility for sight-based aquatic predators. What measures will the applicant be taking to reduce the turbidity associated with dredging the proposed marine facilities?
- Spawning and commercial harvest seasons vary for many fisheries species. Has the applicant considered limiting their proposed dredging activities to times of the year in which impacts to both aquatic species reproduction as well as commercial harvest would be reduced? LDWF Fisheries would be willing to provide further guidance on this matter.
- Does the applicant anticipate the reduction of access to adjacent waterways during the dredging and construction of the proposed marine facilities? If so, the Department suggests that any reduction to access be limited to times of the year that would be least detrimental to commercial fishers.
- Concern has been raised by the public that boat launches accessible to both recreational and commercial boaters have been negatively impacted by the CP LNG facility and may be further reduced by the proposed CP2 LNG facility. Does the applicant propose the enhancement or replacement of any public boat launches in the vicinity of the proposed CP2 LNG facility?
- What restrictions might be associated with the proposed transfer and utility lines running to Monkey Island? Will activities such as dredging or trawling be restricted in the vicinity of those lines? The Department recommends that any such restrictions be made known to the public prior to construction.

CP2 Express

- Any point where the pipeline crosses a canal, ditch, waterbody, or stream the digging or trenching should be completely surrounded by sediment trapping material to eliminate erosion during construction or runoff from rain. This material should be maintained in good working

SA1-10: See section 4.8.1.8 for Project impacts and mitigation regarding the West Indian manatee

SA1-11: See section 4.6.4 for discussion of potential Project impacts on the Coastal Live Oak-Hackberry Forest as well as response to comment CO4-27.

SA1-12: Turbidity resulting from dredging activities associated with the proposed marine facilities, and associated mitigation measures are described in the EIS at section 4.4.3.1 (Marine Facilities – Dredging and Dredged Material Placement).

SA1-13: CP2 LNG states dredging is proposed for 6 days per week for 12 to 18 consecutive months.

Adopting seasonal restrictions on construction dredging would leave the dredged slope and basin exposed to tidal, wind, and wave action over a longer period compared to the proposed schedule, with the potential for exacerbated sedimentation and turbidity. Section 4.7.2.2. discusses Project impacts on aquatic species and section 4.7.3 discusses impacts on essential fish habitat. Additionally, section 4.10.4 has been revised to incorporate additional information based on concerns regarding commercial fisheries and shrimping. Further, CP2 LNG would adhere to all COE and LDNR permit conditions to minimize impacts associated with dredging activities.

SA1-14: See the revised section 4.10.4.1 for impacts on commercial fisheries. Section 4.10.8.1 discusses Project construction impacts on marine transportation.

SA1-15: See section 4.9.3 for discussion of recreation and special interest areas. Venture Global LNG, in collaboration with Cameron Parish, is constructing Lighthouse Bend, which would provide a new marina and public boat launch that would offer Cameron fishermen access to the Gulf of Mexico in mid-2023. Based on the publicly available information from the Lighthouse Bend website, 24 boat slips would be available to accommodate 36-foot-long vessels and fuel would be available for purchase at the Lighthouse Bend marina.

SA1-16: During construction, trenchless (i.e., HDD) construction techniques would be used to install the transfer and utility lines under the Calcasieu River and would be conducted in accordance with the Rivers and Harbors Act of 1899, as amended (RHA) Section 10 Permit for construction and operation of structures in and across federally navigable waters (33 USC 403) under the purview of the COE. CP2 LNG has not finalized the design of the horizontal directional drill (HDD) of the transfer lines. However, the COE would evaluate the proposed depth of the transfer lines beneath the channel to ensure no disruption to dredging would occur.

SA1 – Louisiana Department of Wildlife and Fisheries

Document Accession #: 20230309-5050 Filed Date: 03/09/2023
Page 4

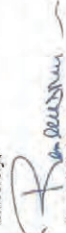
Application Number: CP22-21-000 CP22-22-000
March 8, 2023

order for the entire period of the project or until that site is finished and returned to original condition.

- All disturbance throughout the length of the pipeline (digging, trenching, boring, etc) should be returned to pre-construction elevation and contour. This project runs through areas that include marsh and prairie. Changes in elevation can lead to runoff or ponding and change habitat conditions in these habitats. This applies to areas that are flooded marshes as well.
- These pipeline route crosses known areas of boating access through open water marsh. Marking of the pipeline should be done in accordance with all state and federal laws, but should include night time reflective visual aids and be made of material that would not cause unnecessary damage to boats or occupants traveling through these areas.
- The pipeline route will be crossing area that contain SGCN species that area both terrestrial and aquatic. Construction plans shall take this into consideration and take every reasonable action possible to not cause any take of these species.
- Areas within this route include juvenile and adult habitat for freshwater and marine fish species, mollusks, and other invertebrates. At no time should any tidal connected waterway be completely disconnected or cause undue turbidity as to impact these species. In addition, disturbances that effect dissolved oxygen should be minimized as to not cause fish kills in the surrounding area.

The Louisiana Department of Wildlife and Fisheries appreciates the opportunity to review and provide recommendations to you regarding this proposed activity. Please do not hesitate to contact Permits Coordinator Dave Butler at (504) 286-4173 should you need further assistance.

Sincerely,


Randall S. Myers

Assistant Secretary, Wildlife Division

aw/cm/zc/m

c: EPA Marine & Wetlands Section
USFWS Ecological Services

SA1-17

SA1-18

SA1-19

SA1-20

SA1-21

SA1-17: Section 4.4.3.2 of the EIS has been updated to further discuss use of sediment barriers to minimize impacts on waterbodies during pipeline construction.

SA1-18: The Project-specific Procedures (sections V.C.3 and V.I.C.2) and *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan) requires that pipeline rights-of-way and temporary workspaces are returned to pre-construction contours.

SA1-19: CP Express states that the pipeline would be marked as required by law. Applicable safety requirements are summarized in section 4.13 of the EIS.

SA1-20: Section 4.8 of the EIS addresses impacts on state and federally listed species. CP2 LNG and CP Express addressed impacts on Species of Greatest Conservation Need in their Resource Report 3 (accession number 20211202-5104). Impacts and mitigation measures regarding wildlife resources in general are discussed in section 4.7.1.2, and impacts and mitigation measures regarding aquatic resources are discussed in section 4.7.2.2.

SA1-21: Impact and mitigation measures regarding turbidity and aquatic resources, essential fish habitat, and threatened and endangered species are discussed in the EIS at sections 4.7.2.2, 4.7.3.5, and 4.8, respectively. In accordance with section V.B.3 of the Procedures, CP Express must maintain adequate waterbody flow rates to protect aquatic life and route the pipeline to minimize the number of crossings.

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March 12, 2023

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, D.C. 20426

RESTORE Comments on Docket Number CP22-21-000 and
CP22-22-000
Venture Global CP2 and CP Express Draft Environmental
Impact Statement

Dear Secretary Bosc,

I have reviewed, as well as I could, the 1,246 pages of the EIS and its appendices. That is a lot of material covering many different topics. Expecting someone in the public to spot something critically-missing or incorrect on every one of those topics is not realistic. For that reason the public must trust that your staff can put themselves into our shoes as well as be able to somehow identify themselves as voiceless members of the ecosystem such as birds, fish, marsh grasses, the climate, the sea.

It is more than just obvious that FERC has been able to put itself into the mindsets of commercial members of the ecosystem,

CO3 – RESTORE

Document Accession #: 20230313-5066 Filed Date: 03/13/2023

such as the applicant. Those business interests are fully-appreciated and tended to by FERC. I do see indications that FERC is increasing its attention to other stakeholders, such as landowners and marine mammals. You need to speed up that shift.

On the single most critical issue that RESTORE has been raising with FERC through the years, the possibility of a terrible fire disaster, I am glad to see in this EIS close to a hundred pages of discussion of fire safety issues. The acknowledgment on PDF Page 488 that 143 housing units are within the possible radius of a flammable vapor cloud that could escape from the CP terminal should be on the minds of all the Cameron Parish leaders. FERC's acknowledgement that deadly radiant heat impacts could reach the famous old Courthouse and, in fact, "most of Cameron, LA," ought to be sent in succinct telegrams from FERC to Cameron's State Representative, State Senator, U.S. Congressman, and U.S. Senator to make sure they have no excuse for not realizing the danger, no excuse for later saying "If I had only known..."

The U.S. Coast Guard has fully-wimped-out with its approvals of the Waterway Suitability Analyses provided by the LNG speculators. FERC can realize that and do the right things, such as telling the Coast Guard to revisit the Ship Channel safety issues or, if the Coast Guard still makes excuses for setting the stage for a major maritime disaster, FERC could do the job for them and just deny the LNG applications as not having satisfactorily-considered all hazards.

Another potential disaster, which should be of interest to the

CO3-1

CO3-1: See the response to comment PM1-7, explaining that this is the number of housing units in the potential range of the catastrophic hazard, but not for a single event. In addition, see response to comments PM4-21 and PM1-8 that discusses public education materials recommended to be disseminated for the Emergency Response Plan (ERP). Additionally, state and local representatives are included on the Project mailing list for both the draft and final EIS Notice of Availability.

CO3-2

CO3-2: See section 1.2.3 of the EIS. The U.S. Coast Guard (Coast Guard) is the federal agency responsible for determining the suitability of waterways for liquefied natural gas (LNG) marine traffic.

CO3-3

CO3 – RESTORE

Document Accession #: 20230313-5066	Filed Date: 03/13/2023
CO3-3	Charlie Moss Road neighborhood in Carlyss, is the digging of the Express Pipeline under 14 or 15 other pipelines as is shown On PDF Page 66 in Appendix C, Part 2, Alignment Sheet 44. One puncture of just one of those side-by-side pipes and they will all blaze up furiously.
CO3-4	On several of the LNG projects I have told FERC that it needs to look holistically at what the LNG industry is doing and how you are being manipulated into blessing its negative influences.
CO3-5	By giving more and more permits for fossil-fuel projects FERC is delaying the absolutely necessary transition back to renewable, sustainable energy sources and to a renewable, sustainable economic system, not an economic system that becomes more volatile and precarious every day. A sign of weak economic planning is the lack of confidence by entrepreneurs in today's capitalism, evident by industrial hunger for subsidies such as free dumpsites (rivers and atmosphere) for wastes, tax exemptions that small businesses can not get, ability to take land for a pipeline even if a landowner wants to keep it for himself. Such subsidies are converting what is supposed to be a profitable free enterprise economy into socialism. The biggest socialists on this planet are the giant corporations who cannot make "profits" without exploiting public resources through "permissions."
CO3-6	Burning LNG for fuel forever removes that much methane from its highest and best use, as a molecular building block essential in the Haber-Bosch Process for manufacturing ammonia fertilizer. That is the only process mankind has found to do what nature is not doing, fixing nitrogen from the atmosphere on

CO3-3: Refer to the revised section 4.13.2 for the safety of pipeline facilities.

CO3-4: Cumulative impacts are addressed in section 4.14.

CO3-5: Comment noted.

a scale sufficient to grow crops for all of mankind. Fertilizer prices have skyrocketed in the past year because of speculation that Europe will buy all possible LNG to offset the interruption of methane supplied by Russia before Putin's war.

FERC needs to establish a minimum quota for methane allocation, not to fuel usage, but to fertilizer production. That could be made a condition for each LNG permit. For example, you could require Venture Global CP to notify its customers that, of the 20 million tonnes a year it exports, 1 million tonnes must be allocated downstream for fertilizer manufacturing. If a customer in China does not like that, no shipment. Although it would be hard to verify actual compliance with any promises made by customers, the very airing of the concept worldwide would awaken leaders to the realities: methane is a finite resource and burning it all up means hungry children in the future.

I have previously asked FERC and anyone else to contradict my calculations that for each LNG shipload of methane that leaves Cameron Parish mankind loses 200 million servings of rice. Nobody has challenged that number. Each tankership of LNG would also represent the loss of 4 thousand tons of wheat. That would have fed many hungry people of the future.

The Port of Lake Charles has warehouses containing food ready for shipment out under the PL-480 Food for Peace Program. Something else FERC could consider making a mitigation condition of each LNG permit would be a Beneficial Environmental Project (BEP), a concept already established at the Louisiana Department of Environmental Quality.

CO3-6

CO3 – RESTORE

Document Accession #: 20230313-5066

Filed Date: 03/13/2023

RESTORE has asked LDEQ to require a yearly token shipload of food as mitigation for the incredible hunger that is guaranteed if the finite resource methane is wasted as fuel. If FERC were to require in its permits such yearly shipments millions of people would benefit in a tangible way.

CO3-6

CO3-6: Comment noted. The Purpose and Need of the Project is discussed in section 1.1. Section 4.10.10 also discusses some of the benefits and outreach that Venture Global LNG provides to the community, including sponsoring scholarships and educational initiatives.

FERC does say that a particularly-ludicrous part of the Venture Global CP project is “non-jurisdictional” but other agencies will see FERC’s allowance of the onsite Carbon Capture part of the Carbon Capture and Sequestration scheme as encouragement for them to do the same or even support the rest of the scheme. What you plan to allow is 5.6 % of the carbon dioxide greenhouse gas to be captured (PDF Page 571). You will allow 94.4% to be flushed into the atmosphere. Using numbers from PDF Pages 381-382, Table 4.12.1-10 I calculated that 57.7 tons/hour of greenhouse gas would be captured but 973.6 tons an hour would not be captured.

CO3-7

As has been decided in several petrochemical projects upstream on the Calcasieu Ship Channel, Carbon Capture and Sequestration is, in the words of the Louisiana Department of Environmental Quality, “economically infeasible.” At least that one regulatory agency, despite all its other shortcomings, is not taking part in a charade meant to persuade people that something meaningful is being done.

Although the Sequestration part of the Venture Global CP2 CCS may not be “jurisdictional,” by FERC blessing the company’s sending its token capture 3 miles offshore, Venture Global can use that as an argument to get offshore approvals from other Federal agencies and avoid the State regulators who already see

CO3-7: Comment noted. Other agencies will determine what to consider when issuing an approval under their statutory mandate. As stated in the EIS at section 1.4, the carbon capture and sequestration (CCS) facilities within the Terminal Facilities footprint are described 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 sections 1.4 (non-jurisdictional facilities) and 4.14 (Cumulative Impacts). As stated in section 1.4, the CCS system would be permitted under the U.S. Environmental Protection Agency’s (EPA) Underground Injection Control Class VI program.

CO3 – RESTORE

Document Accession #: 20230313-5066 Filed Date: 03/13/2023	CO3-7 through the public relations reason for a CCS component in its application.
CO3-8 PDF Page 571 in the EIS has an astonishing number for the “social cost” of this one project’s greenhouse gas emissions: \$24,000,362,335! Then FERC says: “Consideration of GHG mitigation to offset the Project’s GHG emissions, including the use of CCS beyond that already proposed to be included as part of this Project, is beyond the scope of this EIS.” When you know that just one adverse impact of the project is over \$24 Billion dollars, how can FERC legitimately figure that the public benefits outweigh the public costs? You MUST start using common sense in your deliberations, not just escape clauses, loopholes, or any other kinds of excuses to avoid the real reason you were created, to properly control energy projects from the perspective of the public’s best interests, not the best interests of financial speculators. Allowing companies to have free dumping grounds for their wastes, such as a \$24 billion air dump subsidy, is not a service for the public.	CO3-8: The Commission will evaluate whether the project satisfies the public interest standard under section 3 of the Natural Gas Act (NGA) in its Order.
CO3-9 According to my summation of the total Cameron Parish greenhouse gas emissions from the existing LNG facilities plus this one, there would be at least 26 million tons released annually making Cameron Parish the world's Number One Hotspot for greenhouse gas pollution!	CO3-9: Comment noted. GHG emissions are summarized in sections 4.12 and 4.14.2.13 of the EIS.
CO3-10 Appendix K reveals that NO ₂ emissions from the CP2 Terminal would exceed the National Ambient Air Quality Standards over 2.5 miles downwind. At the Moss Lake Compressor Station	

CO3 – RESTORE

Document Accession #: 20230313-5066

Filed Date: 03/13/2023

NO₂ standard would be exceeded about a mile downwind, and the Particulate_{2.5} standard would be exceeded a half-mile downwind. Please do not rely on LDEQ to control air problems coming from Venture Global CP2 and VG Express. Neighbors' lives matter. Neighbors' rights matter.

CO3-10

CO3-10: The exceedances of the 1-hour nitrogen dioxide (NO₂) National Ambient Air Quality Standards (NAAQS) shown in the cumulative modeling figure for the LNG Terminal (appendix K) are driven by the impact of off-site emission sources in the region. The Terminal Facilities do not make a significant contribution to any of these cumulative impacts; all contributions from the Terminal Facilities shown are below the significant impact level of 7.5 micrograms per cubic meter (µg/m³). Therefore, the EPA and Louisiana Department of Environmental Quality (LDEQ) do not consider the Terminal Facilities to cause or contribute to these NAAQS exceedances. The same explanation applies for the NO₂ and particulate matter with an aerodynamic diameter less than or equal to 2.5 microns (PM_{2.5}) NAAQS exceedances shown in the impact analysis results for the Moss Lake Compressor Station.

CO3-11

Back in July of 2022 I sent FERC a letter about the proposed placement of the CP2 Express pipeline which would be cutting through an old "Inactive and Abandoned" hazardous waste site known as Carlyss Pit #2. I said: "As you can see from the color aerial photo, the soil is still so poisoned there that grass will not grow on it. Beneath the surface the migration of highly-toxic chemicals even forced the closure of one public water supply well at the parish boat launch/public park next to the Ellender Bridge. Subsurface migration even extended west and southwest under LA Highway 27 killing marshland and leaving open water instead.

Although the dig for this proposed segment of the pipeline will be less than 2,000 feet in length, turning up that much toxic dirt on a peninsula surrounded by water is asking for another pulse of poison input to the estuary where there is already a seafood consumption advisory for the same chemicals that were poured into the old burn pit, seeped down, overflowed, and were a strong contributor to the decline of the ecosystem.

The Louisiana Department of Environmental Quality and EPA should both have files on the Carlyss Pit #2 saga. Please have your staff re-evaluate the proposal."

I continue to be disturbed that such a situation could be

CO3 – RESTORE

Document Accession #: 20230313-5066 Filed Date: 03/13/2023	approved by FERC, especially since I see in the pipeline alignment sheets 1901-100-PL-DWG-7153 and 7154, that the route indeed cuts through the old hazardous waste location. (Appendix C, Part 1, PDF Pages 75 and 76.)	CO3-11	CO3-11: See revised section 4.9.4 of the EIS.
	I do appreciate the extensive attention FERC has paid to one of RESTORE’s earlier concerns, the pile-driving noise disruptions of normal life among aquatic organisms. Although I did not find in this EIS a summation of the total number of hammer strikes across the entire project (marine terminal and shore facility) if I interpret PDF Pages 220-224 correctly there could be over 3,800,000 such sudden sharp noises across the 6 months of work. How would you like to have to adapt to such impacts when you are trying to sleep, eat, or reproduce?	CO3-12	CO3-12: Comment noted. Additionally, a revised discussion of pile driving effects on aquatic species is presented in section 4.7.2.2. Table 4.7.2-2 details the pile sizes, total number of piles to be installed, strikes per minute per pile, number of piles per day, and the pile driving installation method.
	During the Vinton gathering I asked the Venture Global environmental lady if my interpretation of over 3 million hammer strikes was correct. She said she would have to get back to me via email. That did not happen. Despite the noise “mitigation” techniques described I have no doubt that the animals will suffer. That is a shame.		
	Something else I asked the Venture Global environmental people in Vinton was why their company resists electrification at the Moss Lake Compressor station where the 187,000 horsepower compressors are gas-fired, something the Governor’s Climate Initiative Task Force is hoping to phase out. The CP2 Express spokesperson said he would have to get with the engineering group to see why and then send me an email. I have not gotten an email about it.	CO3-13	

CO3-11: See revised section 4.9.4 of the EIS.

CO3-12: Comment noted. Additionally, a revised discussion of pile driving effects on aquatic species is presented in section 4.7.2.2. Table 4.7.2-2 details the pile sizes, total number of piles to be installed, strikes per minute per pile, number of piles per day, and the pile driving installation method.

CO3 – RESTORE

Document Accession #: 20230313-5066	Filed Date: 03/13/2023	The noise for the neighborhood and the air pollutant emissions could be avoided if FERC were to insist upon electrification as a Best Available Control Technology.	CO3-13
		The EIS shows, on PDF Page 366, that the unmitigated greenhouse gas emissions from the Moss Lake Compressor Station would be 726,818 tons a year (83 tons an hour). That is close to ten times the Federal threshold for triggering a PSD (Prevention of Significant Deterioration) review. Yet FERC has a footnote saying “CO2e threshold is only applicable if the major source threshold for another regulated NSR pollutant is exceeded.” Of 5 such regulated NSR pollutants at Moss Lake Compressor Station, 5 show an answer of “Yes” to the column question: “PSD Review triggered?” However, FERC seems content to let the Louisiana Department of Environmental Quality handle the air pollution issues from their very limited perspective.	CO3-14
		LDEQ has recently been criticized by U.S. EPA for inferior performance of the duties EPA assigned to them, giving the Department primacy in air permitting, surveillance, and enforcement. FERC should not rely upon some lag time hoping that the years it might take for LDEQ to attain the ability to do its assigned work somehow relieves FERC of doing now what it can to protect the people and ecosystem from an energy installation’s shortcomings.	CO3-15
		Appendices G and I go into a lot of detail about how many streams and wetlands will be crossed by the Express pipeline. Appendix H attempts to show with diagrams how those temporary crossing activities will be handled. No matter how	
		CO3-13: Section 3.0 has been revised to include a discussion of an electric driven compressor unit alternative at the Moss Lake Compressor Station (see section 3.7.2).	
		CO3-14: As stated in section 4.12.1.2 of the EIS, both the LNG Terminal and the Moss Lake Compressor Station would be Prevention of Significant Deterioration (PSD) sources. LDEQ is delegated by the EPA to implement federal air quality programs and has primary jurisdiction over air emissions.	

CO3-13: Section 3.0 has been revised to include a discussion of an electric driven compressor unit alternative at the Moss Lake Compressor Station (see section 3.7.2).

CO3-14: As stated in section 4.12.1.2 of the EIS, both the LNG Terminal and the Moss Lake Compressor Station would be Prevention of Significant Deterioration (PSD) sources. LDEQ is delegated by the EPA to implement federal air quality programs and has primary jurisdiction over air emissions.

CO3 – RESTORE

Document Accession #: 20230313-5066 Filed Date: 03/13/2023

carefully the pipeliners follow the theoretical procedures, there can be no denying that a 91 mile carve-through of the Texas and Louisiana forests, bayous, ponds, and marshes would create major new disruptions of nature, adding to the already accumulating ruinous impacts from previous fossil fuel speculators' misbehaviors, permitted or not. What good does it do for FERC to acknowledge without prohibiting:

41 waterbody crossings in Texas
277 waterbody crossings in Louisiana
271 wetland crossings in Texas
346 wetland crossings in Louisiana
resulting in around 1,000 acres of wetland disruptions?

I was recently reviewing a proposed wetland mitigation plan for a project near Port O'Conner, Texas. That applicant will likely have to commit to creation/restoration of 8 acres for every acre ruined. The Louisiana wetlands are just as valuable as the ones in Texas therefore Venture Global CP2 and Express should be held to the same mitigation ratio and have to set aside funds adequate to create/restore 8,000 acres of wetland.

Venture Global CP2's proposal to do a small BUDM (Beneficial Use of Dredged Material) project exactly where the Louisiana Coastal Protection and Restoration Authority plans to do the same thing should cause FERC to suspend deliberations on this permit application until the agencies and companies can decide who is going to do what. Commonwealth LNG also plans to shuttle mud from the Turning Basin Dredging Project in the Calcasieu River at Monkey Island to the same place along the south shore of Calcasieu Lake. A few acres of temporary marsh

CO3-15

CO3-15: See sections 1.2.4 and 1.5 of the EIS. Impacts on waterbodies and wetlands (aquatic resources) that are deemed Waters of The United States may be authorized under the Environmental Protection Agency's statutes and regulated by the COE and/or delegated state agencies. Individual states also have specific regulatory statutes governing work in aquatic resources.

Determination of required compensatory mitigation for impacts on aquatic resources is dictated by the EPA's Compensatory Mitigation Rule and state requirements. Such requirements are outside of the jurisdiction of FERC. In addition, CP2 would minimize impacts on wetlands through the implementation of best management practices (BMPs) outlined in the Project-specific Procedures, which are derived from the FERC Procedures. Implementation of these BMPs would effectively mitigate temporary impacts on wetlands.

The EIS is not a decision document, but rather, is meant to disclose impacts associated with the approval and implementation of a project.

See also response to comment CO4-1.

CO3-16

CO3-16: See section 1.4 of the EIS. Review and approval of dredge disposal and the beneficial use of dredged material (BUDM) is under the jurisdiction of the COE and LDNR OCM.

CO3 – RESTORE

Document Accession #: 20230313-5066 Filed Date: 03/13/2023	can in no way compensate for the short-term negative effects of turbidity, noise, and resuspension of toxic sediment nor for the long-term negative effects of an even deeper Ship Channel.	CO3-16
The original river was only 18 feet deep, had meander loops, and a hemispherical sand bar at its mouth, all of which prevented the movement of too much saltwater in from the Gulf. I have asked before and I will ask again for a simple calculation to determine how much extra saltwater intrusion happens for each extra depth of Ship Channel dredging?	A shortsighted, ignorant Congress authorized a maximum depth of 40 feet. FERC is, in this proposal, allowing at least 4 feet beyond that limit. Furthermore, allowing a big notch to be cut into Monkey Island should require modeling to determine what erosional effects will happen as the changes in tidal and current forces develop.	CO3-17
The dredging at that location will undoubtedly be happening during the three major pulses of migratory organisms, as are easy to see on the Migratory Clock I have provided to FERC already. FERC should disallow dredging (and noises like pile driving) during those pulses.	Turbidity interferes dramatically with aquatic organisms' senses of vision, olfaction, and respiration. Noise carries many miles in water, upsetting species such as rare and endangered whales. It is not enough for FERC to spend page after page of considering such things only to let the real-world impacts go on and on.	CO3-18

CO3-17: See revised discussion of impacts of dredging on salinity in sections 4.4.3.1 and 4.7.2.2. Once dredging of the berthing area is complete, CP2 LNG would install rock riprap to stabilize the dredged slope surrounding the new basin and minimize erosion.

CO3-18: See response to comment SA1-13.

CO3 – RESTORE

Document Accession #: 20230313-5066 Filed Date: 03/13/2023 CO3-19 That same reality, addressing a problem theoretically, accepting an applicant's word and permitting the problem to become real, has happened at the existing Venture Global facility with its bird blinding light pollution. A scientist named Horridge many decades ago proved that crabs could navigate on moonless nights using one planet for reference. FERC has allowed Venture Global to oversaturate with its flaring and electric lights the Calcasieu Pass region's nighttime sky entirely. Adding more will spread the problem even farther eastward along the coast.	CO3-20 The concept of accepting an applicant's word is central to the situations that FERC handles. It would be wonderful if every applicant always did what it said it was going to do. Since that does not happen FERC should not be hesitant to require applicants to provide full and complete explanations of what they intend to do and then, if promises are not kept, revoke the permits.	CO3-21 Venture Global has failed in more than just the light pollution situation to keep its word. It dumped a huge amount of mud just west of the Calcasieu Pass jetties creating a persistent fouling of the beaches. Venture Global did not replace the public's marvelous fishing pier, RV park, and pavilion complex it overran. FERC needs to be more than wary of Venture Global's words.	CO3-22 That company has received over 2 billion dollars in tax avoidance from the State of Louisiana under ITEP. That money could have already built a fine bridge over the river to replace the constantly broken-down ferry, the <i>Acadia</i>. How much more socialism will Venture Global and CP2 and Express invoke to
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CO3-19: Refer to section 4.7.1.3 of the EIS.

CO3-20: Our recommendation 1 in section 5.2 would require that CP2 LNG and CP Express follow the construction procedures and mitigation measures described in its application and supplements. CP2 LNG and CP Express would be required to request any modification to these procedures, measures, or conditions in a filing with the Secretary and receive approval from FERC in writing prior to implementing the requested modification.

CO3-21: Comment noted. See also response to comment SA1-15.

CO3-22: FERC has no jurisdiction over state tax programs. As part of our analysis, we assessed Project impacts on the local and regional economy (refer to the EIS at section 4.10.6).

CO3 – RESTORE

Document Accession #: 20230313-5066 Filed Date: 03/13/2023	
sustain their expansions as ersatz capitalists? FERC should consider that kind of economic issue.	CO3-22
FERC needs to look holistically at what it is allowing to happen in Southwest Louisiana. What has already happened and what is proposed and what we may not yet have heard about justifies and even requires a Comprehensive Regional Environmental Impact Study and Statement.	CO3-23
One of the concepts that must be included in that work is serious consideration of a “no build” alternative, long ignored and long overdue.	CO3-24
Something your staff should know about is the great classical work done right where Venture Global CP 2 will be built, an actual historic site not acknowledged in the EIS, the Gulf Biologic Station at Cameron. That work, from the turn of the 19 th into the 20 th Century, before most of the industrial harm was done, gives a good view of historic or “baseline” conditions. It would be shameful to ignore that priceless resource ¹ . <u>Publications of the Gulf Biologic Station At Cameron.</u>	CO3-25
Thank you for the opportunity to submit these comments.	
Sincerely,	
Michael Tritico, Biologist and President of RESTORE Restore Explicit Symmetry To Our Ravaged Earth	

CO3-23: Council on Environmental Quality (CEQ) regulations do not require broad or “programmatically” National Environmental Policy Act (NEPA) reviews. CEQ’s guidance provides that such a review may be appropriate where an agency is: (1) adopting official policy; (2) adopting a formal plan; (3) adopting an agency program; or (4) proceeding with multiple projects that are temporally and spatially connected. The Supreme Court has held that a NEPA review covering an entire region (that is, programmatic review) is required only if there has been a report or recommendation on a proposal for major federal action with respect to the region.¹

CO3-24: The no-action alternative is discussed in the EIS at section 3.2.

CO3-25: Section 4.11.2 has been updated to include a discussion of the Gulf Biological Station at Cameron. The site is not within the proposed Project’s area of potential effects.

N-30

SA2 – Texas Parks & Wildlife Department

Document Accession #: 2023031301000
Docket Number CP22-21000, CP22-22-000
Page 2 of 5
March 12, 2023

should be buried at least six inches and be at least 24 inches high. The exclusion fence should be maintained for the life of the project and only removed after the construction is completed and the disturbed site has been revegetated. Construction personnel should be encouraged to examine the inside of the exclusion area daily to determine if any wildlife species have been trapped inside the area of impact and provide safe egress opportunities prior to initiation of construction activities.

SA2-1

Recommendation: For soil stabilization and/or revegetation of all disturbed areas within the project area, TPWD recommends erosion and seed/mulch stabilization materials that avoid entanglement hazards to wildlife species. Because the mesh found in many erosion control blankets or mats pose an entanglement hazard to wildlife, TPWD recommends the use of no-till drilling, hydromulching and/or hydroseeding rather than erosion control blankets or mats due to a reduced risk to wildlife. If erosion control blankets or mats will be used, the product should contain no netting or contain loosely woven, natural fiber netting in which the mesh design allows the threads to move, therefore allowing expansion of the mesh openings. Plastic mesh matting and hydromulch containing microplastics should be avoided.

Various small vertebrates including snakes, lizards, toads and mice fall into pipeline trenches and become trapped. Wildlife unable to escape from trenches are susceptible to loss from backfilling activities, exposure to elements, starvation, dehydration, and predation by other wildlife.

Recommendation: TPWD recommends that pipeline contractors keep trenching and backfilling crews close together to minimize the amount of trenches left open at any given time during construction.

Recommendation: TPWD recommends any open trenches or excavation areas be covered overnight and/or inspected every morning to ensure no reptiles or other wildlife species have been trapped. If trenches cannot be backfilled the day of initial trenching, then escape ramps should be installed at least every 98 yards. Escape ramps can be short lateral trenches or wooden planks sloping to the surface at an angle of less than 45 degrees (1:1). Trenches left open for more than two daylight hours should be inspected for the presence of trapped reptiles prior to backfilling.

Recommendation: After the proposed pipeline facility has been constructed, TPWD recommends that whenever possible revegetation focus on native plant species and communities that provide wildlife cover, food (e.g., fruit, mast, pollen), and breeding habitat. Colonization by invasive species, particularly invasive grasses and weeds, should be actively prevented.

TPWD recommends referring to Texas Native Seeds (associated with Texas A&M University- Kingsville) or the Lady Bird Johnson Wildflower Center

SA2-2: CP Express would follow its Project-specific Plan by installing erosion and sediment control and restoration measures, including soil stabilization, topsoil segregation, and decompaction. The Project-specific Plan prohibits the use of synthetic monofilament mesh/netted erosion control material in sensitive wildlife habitat unless the product is specifically designed to minimize harm to wildlife.

SA2-3: See section 4.7.1.2 of the EIS. CP Express would minimize the duration of open trenches during construction. Further, CP Express would inspect open trenches daily prior to the start of construction activities for trapped reptiles and other wildlife in Texas.

SA2-4: As outlined in section 4.6.2 and CP Express' Revegetation Plan (appendix 7C of accession number 20211202-5104), CP Express would revegetate disturbed areas with a predominately native seed mix developed in coordination with the Natural Resources Conservation Service. Exotic and invasive species spread would be minimized as described in section 4.6.3.

Document Accession #: TP22-22-000
Docket Number CP22-21000, CP22-22-000
Page 3 of 5
March 12, 2023

Native Plant Database for regionally adapted native species that would be appropriate for revegetation. Texas Native Seeds works directly with seed producers and can often provide recommendations for how to obtain seed materials appropriate to the project location.

SA2-4

TPWD understands and acknowledges that landowner freedom and revegetation requests are of great importance. TPWD recommends the option of revegetation using native plant species is presented as an available choice to landowners and land managers.

Lighting

Light pollution can have negative impacts on wildlife, particularly sky glow and the unnecessary lighting of unpaved areas. Sky glow because of light pollution can have negative impacts on wildlife and ecosystems by disrupting natural diurnal and nocturnal behaviors such as migration, reproduction, nourishment, rest, and cover from predators. Artificial nighttime lighting can attract and disorient night-migrating birds as well as insects. Birds or insects circling the lights' glare can cause exhaustion mortality, or insects may be heavily preyed upon. A single artificial light source can disrupt normal flight activity, long distance migrations, or even attract insects that don't normally move from their habitat. Nighttime lighting can also disrupt the breeding of amphibians.

The International Dark Sky Places (IDSP) Program was founded in 2001 to encourage communities, parks, and protected areas around the world to preserve and protect dark sites through responsible lighting policies and public education. As of January 2022, there are over 195 certified IDSPs in the world with 16 certified IDSPs in Texas. The International Dark-sky Association utilizes a rigorous designation process to designate IDSPs. The IDSP Program offers five types of designations: IDS Communities, IDS Parks, IDS Reserves, IDS Sanctuaries, and Urban Night Sky Places. Sky glow resulting from light pollution can have negative impacts on wildlife and ecosystems by disrupting natural day and night cycles inherent in managing behaviors such as migration, reproduction, nourishment, sleep, and protection from predators. Wildlife impacts from light pollution and potential impacts to IDSPs is of concern to TPWD.

Recommendation: When lighting is added, TPWD recommends minimizing sky glow by focusing light down on the facility, with full cutoff luminaires to avoid light emitting above the horizontal.

Recommendation: As bird protection measures for migrant and resident birds as well as other wildlife, TPWD recommends utilizing the minimum amount of permanent night-time lighting needed for safety and security and encourages the use of dark sky friendly lighting. TPWD recommends minimizing the project's contribution toward skyglow by focusing light downward, with full cutoff luminaires to avoid light emitting above the

SA2-5: See section 4.7.1.2 for impacts from lighting on wildlife habitat and section 4.7.1.3 for impacts from lighting on migratory birds. Further, Section 4.7.2.2 discusses LNG Terminal lighting and the Facility Lighting Plan.

SA2-5

SA2-5

horizontal, and to use dark-sky friendly lighting that is on only when needed, down-shielded, as bright as needed, and minimizes blue light emissions. Appropriate lighting technologies, beneficial management practices, and other dark sky resources can be found at the International Dark-Sky Association and McDonald Observatory websites.

Federal Law: Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) prohibits actions that reduce migratory birds, their eggs, or their nests, by killing or capturing, to human control, except when specifically authorized by the Department of the Interior. This protection applies to most native bird species, including ground nesting species. The U.S. Fish and Wildlife Service (USFWS) Migratory Bird Office can be contacted at (505) 248-7882 for more information on potential impacts to migratory birds.

SA2-6

Recommendation: TPWD recommends any clearing be scheduled outside of the general bird nesting season of March 15th to September 15th; however, if clearing must occur during nesting season, TPWD recommends surveying the area proposed for disturbance to ensure that no nests with eggs or young will be disturbed by construction. Nest surveys should be conducted not more than five days prior to clearing activities to maximize detection of active nests. TPWD generally recommends a 100-foot radius buffer of vegetation remain around active nests until the eggs have hatched and the young have fledged; however, the size of the buffer zone depends on various factors and can be coordinated with the local or regional USFWS office.

Federal Law: Endangered Species Act

Federally listed animal species and their habitat are protected from take on any property by the Endangered Species Act (ESA). Take of a federally listed species can be allowed if it is incidental to an otherwise lawful activity and must be permitted in accordance with Section 7 or 10 of the ESA. Any take of a federally listed species or its habitat without the required take permit (or allowance) from the USFWS is a violation of the ESA.

SA2-7

Recommendation: The USFWS should be contacted for species occurrence data, guidance, permitting, survey protocols, and mitigation for federally listed species.

State Law: Parks and Wildlife Code – Chapter 64, Birds

Texas Parks and Wildlife Code (PWC) section 64.002, regarding protection of nongame birds, provides that no person may catch, kill, injure, pursue, or possess a bird that is not a game bird. PWC section 64.003, regarding destroying nests or eggs, provides that no person may destroy or take the nests, eggs, or young and any wild game bird, wild bird, or wild fowl.

S.A2-6: See section 4.7.1.3 in the EIS and CP2 LNG and CP Express' Migratory Bird Nesting Impact Mitigation Plan (Attachment General I-n of accession number 20220729-5342). CP2 LNG and CP Express stated that support for the Migratory Bird Nesting Impact Mitigation Plan, nest buffers, and pre-construction nest survey schedule would be confirmed during ongoing consultations with the U.S. Fish and Wildlife Service (FWS). CP2 LNG and CP Express would tailor site- and species-specific migratory bird nesting mitigation measures for the Project. Where clearing cannot occur outside of the nesting window, CP Express would conduct a preconstruction pedestrian field survey for active nests in the construction workspace, which would be considered valid for 14 days. Active nest buffers would be set based on species of bird, but would not be less than 25 feet.

SA2-7: See section 4.8 of the EIS. CP Express initiated consultation with the FWS Southwest Region, Texas Coastal Ecological Services Field Office and consultation regarding federally-listed species in Texas is complete.

SA2-8: See section 4.7.1.3 of the EIS and response to SA2-6 above.

Document Accession #: 12030333
Docket Number CP22-21000, CP22-22-000
Page 5 of 5
March 12, 2023

Recommendation: Please review the *Federal Law: Migratory Bird Treaty Act* section above for recommendations as they are also applicable for Chapter 64 of the PWC compliance.

SA2-8

State Law: Aquatic Resources

Texas Parks and Wildlife Code (PWC) section 1.011 grants Texas Parks and Wildlife (TPWD) authority to regulate and conserve aquatic animal life of public waters. Title 31, chapter 57, subchapter B, section 57.157 of the Texas Administrative Code (TAC) regulates take of mussels and clams, and section 12.301 of the PWC identifies liability for wildlife taken in violation of PWC or a regulation adopted under PWC.

Intermittent streams and smaller perennial streams provide important habitat for fish by providing spawning and nursery habitat as well as providing invertebrate, detritus, and other organic matter to downstream food webs. Fish also serve as hosts for mussel larvae and are essential in completing the mussel life cycle. Because the waters of the project area may provide important fish habitat, avoiding impacts to stream habitat, fish, mussels, and other aquatic life during construction is encouraged.

Recommendation: To avoid or minimize potential adverse impacts to aquatic species, TPWD recommends implementing lower-impact methodologies and beneficial management practices (BMP), including constructing stream crossings that do not obstruct flow and ensuring that permanent or temporary fills do not smother freshwater mussels or other aquatic fauna.

Recommendation: To minimize disturbance to streams and to minimize impacts to aquatic life, TPWD recommends allowing personnel and equipment to enter streams only when essential to the work being done. If work would be conducted within riparian areas, only vegetation impeding construction should be removed, equipment should not be driven over vegetation when it is wet, and heavy machinery should not be stored on vegetative cover for long periods of time. Protective mats should be utilized during construction to reduce the amount of soil and root disturbance and aid in the recovery of plants.

Recommendation: TPWD recommends avoiding and minimizing impacts to bottomland/riparian woodlands. Healthy and intact riparian zones are an integral component to stream health. Riparian zones reduce sedimentation by stabilizing sediment. Sediments within the water can reduce the capacity of downstream reservoirs, clog fish gills, bury mussels and their preferred habitats, and reduce instream habitat, creating homogenized flat, sandy topography that benefits few species. Healthy riparian zones also contribute to instream structural habitat by providing woody debris. Tree canopy cover from the riparian zone moderates and cools water temperature, supporting more fish and

SA2-9: Impacts and mitigation of surface waters and aquatic resources related to construction and operation of the Pipeline System in Texas are discussed in sections 4.4.3 and 4.7.2.2, respectively. CP Express would minimize impacts on streams in accordance with the Project-specific Procedures, including limited use of construction equipment needed to construct the crossing, maintain flow rates to protect aquatic life, and use of timber mats to reduce the amount of soil and root disturbance.

March 12, 2023

mussel species than sunny, warm water. Allochthonous nutrient input from riparian plant leaf litter contribute large amounts of energy into stream systems and form the basis of healthy, diverse, and robust food webs and aquatic communities.

SA2-9

Dewatering, maintenance, and construction-related activities in rivers, creeks, streams, lakes, sloughs, reservoirs, bays, estuaries, stilling basins, and other flood control structures may negatively impact fish, shellfish, and other aquatic resources. TPWD is the state agency with primary responsibility for protecting the state's fish and wildlife resources. The PWC authorizes the department to investigate fish kills and any type of pollution that may cause loss of fish or wildlife resources, estimate the monetary value of lost resources, and seek restitution or restoration from the party responsible for the fish kill or pollution through suit in county or district court. The TAC requires the department to actively seek full restitution for and/or restoration of fish wildlife, and habitat loss occurring because of human activities. The restitution value of lost resources can be significant, particularly for species classified as threatened or endangered. Restitution for each individual of a threatened species is at least \$500 and for each individual of an endangered species is at least \$1,000. In addition, the PWC makes it a criminal offense to kill any fish or wildlife resources classified as threatened or endangered.

SA2-10

SA2-10: See response to comment SA2-9. See section 4.8.2; CP Express stated they would report any encounters of protected or rare species identified within the Project area to the Texas Parks and Wildlife Department (TPWD) and would evaluate measures to avoid impacts, where practicable. Additionally, impacts and mitigation on threatened and endangered species as well as the measures that CP2 LNG and CP Express would implement to minimize impacts are presented in sections 4.8.1 and 4.8.2. Appendix G of the EIS identifies waterbodies crossed by the Pipeline System and appendix C provides alignment sheets depicting the locations of each feature crossing. Further, CP Express has committed to coordinating with the TPWD Kills and Spills Team to develop and submit an Aquatic Resources Relocation Plan to control and limit the impacts of construction, operation, and/or maintenance from the Project on aquatic resources, as applicable.

SA2-11

SA2-11: See response to comment SA2-9 and SA2-10. CP2 LNG and CP Express have not committed to the use of double silt fence or doubling soil stabilization measures at waterbody crossings. CP Express would implement the BMPs outlined in their Project-specific Procedures, which would minimize the potential for sediment to enter waterbodies.

Document Accession #: TP22-22-000 Docket Number CP22-21000, CP22-22-000 Page 7 of 5 March 12, 2023	
SA2-11	avoid increasing the turbidity of the creek. If dewatering activities and other project-related activities cause mortality to fish and wildlife species, then the responsible party would be subject to investigation by the TPWD KAST and will be liable for the value of the lost resources under the authority of PWC sections 12.0011(b)(1) and 12.301. <i>State Law: Sand and Gravel Permit</i> Sand and Gravel Program – Under PWC chapter 86 and 31 TAC chapter 69, TPWD also regulates the disturbance or take of sedimentary material within state-designated navigable streams, state-owned streams, and certain other perennial streams. Activities potentially requiring a permit within jurisdictional streams include mining, dam construction, bank or channel alteration, stream stabilization or restoration (including mitigation activities), or any other disturbance of the bed or banks. Information regarding this permit can be obtained on the TPWD website. Recommendations: The project proponent should determine whether the Sand and Gravel Program permit is required. Tom Heger (512-389-4583 or Tom.Heger@tpwd.texas.gov) should be contacted regarding this permit. <i>State Law: Parks and Wildlife Code, Section 68.015</i> PWC regulates state-listed threatened and endangered animal species. The capture, trap, take, or killing of state-listed threatened and endangered animal species is unlawful unless expressly authorized under a permit issued by USFWS or TPWD. A copy of TPWD Protection of State Listed Species Guidelines, which includes a list of penalties for take of species, can be found online at the TPWD Wildlife Habitat Assessment Program: Laws and Regulations Applicable to TPWD Review webpage. For purposes of relocation, surveys, monitoring, and research, state listed species may only be handled by persons with the appropriate authorization obtained through the TPWD Wildlife Permits Program. For more information on this authorization, please contact the Wildlife Permits Office at (512) 389-4647. TPWD provides online access to state listed species information through the TPWD Rare, Threatened, and Endangered Species of Texas by County (RTEST) application. This application provides county-level information regarding occurrence of protected species (federal- or state-listed threatened or endangered) and may be utilized to inform development project planning. Additionally, records of occurrence for these protected species are tracked within the Texas Natural Diversity Database (TXNDD) and are publicly available by request. Please request the most current and accurate information at TexasNaturalDiversityDatabase@tpwd.texas.gov. State listed species which are more likely to be impacted by this project are: • blue sucker (<i>Cycoreptus elongatus</i>, threatened)
SA2-12	SA2-12: As shown in table 1.5-1 of the EIS, CP Express anticipates receipt of the Sand and Gravel permit through TPWD in the fourth quarter of 2023.
SA2-13	SA2-13: CP Express would continue to coordinate with the TPWD prior to construction. Additionally, see sections 4.7.2.2 and 4.8 for potential impacts and mitigation for aquatic species and threatened, endangered, and special status species, respectively.

- Fishes

SA2-13

Mussels

Freshwater mussels are one of the most imported groups of animals in the U.S. Texas hosts more than 50 species of native freshwater mussels; fifteen freshwater mussel species are listed as threatened in Texas. Populations of these invertebrates have declined precipitously across North America. Because scientists have only recently become aware of the severe decline in mussel populations, some species may have become extinct before their decline was even documented. Most species are very sensitive to disturbance due to their sedentary lifestyle and dependence

Recommendations: TPWD recommends use of BMP to minimize impacts on mussels and fish species which may serve as the mussels' larval host. For soil disturbance adjacent to waterways, water quality BMP such as silt fences and soil stabilization measures should be implemented along the creek banks to avoid increasing the turbidity of the water. If mussel populations are present within the limits of the proposed project area, those populations should be protected from sedimentation and disturbance to the greatest extent possible. Relocation may be necessary, depending on the level of disturbance required by project work. Please refer to the *State Law: Aquatic Resources* section, above.

The state threatened AST could be negatively impacted by the project. This species, in addition to being listed as state threatened in Texas, has been proposed for listing as threatened under the Endangered Species Act. The AST is the largest freshwater turtle in North America and inhabits both lentic and lotic systems within the southeastern United States. Premial water is required by the alligator snapping turtle and this species is most often found within the deep-water portions of rivers, canals, oxbows, and swamps. This species prefers muddy substrates with sufficient vegetation. Individual turtles are known to make movements of several river-miles. Nesting occurs in the spring, when female turtles will lay a single clutch of eggs on dry land not far from a water source. Nest sites typically include river berms, high banks, and artificial spoil mounds. Hatching turtles emerge in the late summer.

While AST can coexist with some degree of channel modification, negative effects of these activities include the removal of important habitat features (e.g., large woody debris), alteration of hydrology, and/or disruption of nesting sites.

Construction activities and heavy machinery may adversely affect smaller, low-mobility species, particularly amphibians, reptiles, and small mammals. Of the state listed species which may occur in the project area, the AST is more at risk for being impacted by construction activities than other state listed terrestrial species due to their limited mobility and the occurrence of suitable habitat within the project area. The limited mobility of this species affects their ability to escape from the path of machinery.

Comment: TPWD appreciates the project proponent's proactive approach in managing risks and negative impacts to AST. TPWD believes that the practices described below and within the attached email correspondence will greatly minimize the potential for negative impacts to AST.

SA2-14: Section 4.8.1.5 of the EIS discusses the alligator snapping turtle. Based on the TPWD Natural Diversity Database, no documented occurrences of rare species/habitats were identified within 1 mile of the Pipeline System in Texas. Additionally, in response to our recommendation in the draft EIS, CP Express developed additional BMPs in coordination with the FWS to minimize potential impacts on the alligator snapping turtle (see section 4.1.1.5).

Document Accession #: TP22-22-000
 Docket Number CP22-21000, CP22-22-000
 Page 10 of 5
 March 12, 2023

Recommendation: TPWD recommends the project proponent and its contractors be aware that AST or common snapping turtles, which are of similar appearance, may be encountered near water resources when they go on land to lay eggs. Employees and contractors should be advised to avoid harming this species if encountered.

Recommendation: Avoid impacts to logs, cutbanks, rootballs, or other similar structures as AST use these for shelter. If impacts are unavoidable, TPWD recommends replacing the in-water structure within the waterway to the maximum extent feasible. Replaced structures should be situated in a manner consistent with pre-construction conditions (e.g., diameter of logs, distance from the riverbank).

Recommendation: TPWD recommends paying particular attention to pools and cutbanks in streams around where construction-related disturbance may occur. This type of habitat is thought to be critical for the AST. TPWD recommends avoiding impacts to these habitat features in the project area. If these preferred features (cutbanks, pools, natural bottoms) are destroyed during work, TPWD recommends the reestablishment of these features within the channel when work has been completed.

SA2-14

Recommendation: AST typically nest on sandy banks with largely open canopy cover. Generally, nests are established within approximately 200 feet of the water's edge with many nests established within 12 feet of the water's edge. TPWD recommends avoiding disturbance of banks to avoid disturbing nesting turtles or their nests.

Recommendation: TPWD recommends avoiding work during the peak breeding and nesting season of this species (May 1 through June 30). AST breed in spring and early summer and then the eggs incubate through the spring and summer months. Females may be encountered on land during nesting; TPWD recommends avoiding disturbance to the nesting females as well as any deposited eggs if encountered. TPWD recommends necessary work in areas of appropriate habitat for this species occur in late summer and early fall (July through October). Conducting work during the warmer months will maximize the ability of alligator snapping turtle to escape impacts on their own.

Recommendation: TPWD recommends having a permitted biological monitor or trained sub-permittee onsite during construction who is familiar with the identification of this species. If an AST is incidentally captured (or killed/injured), contact this office (979-732-4213; call or text messaging both acceptable) or the TPWD Houston Wildlife Office (contact: Mr. Kelly Norrid, 281-302-8033) for data collection information and instruction on relocating the AST.

Document Accession #: 20230313-001000
 Docket Number CP22-21000, CP22-22-000
 Page 11 of 5
 March 12, 2023

o If an AST is observed within the work area and no permitted biological monitor or sub-permittee is present, the AST should be allowed to safely leave the site on its own before work begins. If an AST is observed and there is a permitted biological monitor or sub-permittee present, this person may gently encourage the AST to move out of the work area. Under no circumstances should AST or other wildlife be harmed or harassed.

o TPWD recommends that, should alligator snapping turtles be incidentally captured during the project, any turtles observed should be collected and detained until release is possible. Turtles may be detained individually in a large container, such as a large plastic tub, until a point in the workday when relocation to the designated holding site is practical. If project work takes place in the summer, the turtles should be kept in a shaded area to avoid overheating; in especially warm weather, turtle relocation may need to take place at a frequency greater than once per day. TPWD and/or volunteers may be available to assist in turtle relocation.

o For safety and in instances of inclement weather (including temperature extremes) a climate-controlled and secure location is strongly suggested to house any alligator snapping turtles. Please coordinate these details with this agency prior to finalizing the work plan.

o This Standard Operating Procedure (SOP) regarding alligator snapping turtle handling should be included in the environmental awareness training for employees and contractors. Only permitted individuals should handle and transport alligator snapping turtles.

Recommendation: TPWD recommends avoiding disturbance to state-listed species during clearing, construction, operation, and maintenance of the proposed project and associated right of way. TPWD recommends a biological monitor be present during construction to assist in detecting state-listed species in the project area. For purposes of relocation, surveys, monitoring, and research, terrestrial state-listed species may only be handled by persons permitted through the TPWD Wildlife Permits Office.

The TAC requires the department to actively seek full restitution for and/or restoration of fish, wildlife, and habitat loss occurring because of human activities. The restitution value of lost resources can be significant especially for species classified as threatened or endangered. Restitution for each individual of a threatened species is at least \$500 and for each individual of an endangered species is at least \$1,000.

SA2-14

SA2-15

SA2-15: Section 4.8 of the EIS addresses potential impacts on threatened, endangered, and special status species. As stated in section 2.4 of the EIS, CP Express would employ at least one EI per construction spread to observe construction activities. The EI would coordinate the relocation of species, as necessary. In addition, CP2 LNG and CP Express would use biological monitors during construction for the alligator snapping turtle and eastern black rail.

Document Accession #: [The 2023-2024 Kimberly B. Hyde](#) Date: 03/13/2023
Docket Number CP22-21000, CP22-22-000
Page 12 of 5
March 12, 2023
Species of Concern/Special Features

Recommendation: Please review the current TPWPD county list of rare and protected species for Jasper and Newton Counties because species in addition to those discussed in this letter could be present within the project area depending upon habitat availability. The TPWPD county lists underwent a major update in June 2020 and more minor updates are ongoing. The USFWS should be contacted for species occurrence data, guidance, permitting, survey protocols, and mitigation for federally listed species.

Determining the actual presence of a species in an area depends on many variables including daily and seasonal activity cycles, environmental activity cycles, preferred habitat, transience, and population density (both wildlife and human). The absence of a species can be demonstrated only with great difficulty and then only with repeated negative observations, considering all the variable factors contributing to the lack of detectable presence. If encountered during construction, measures should be taken to avoid impacting all wildlife, regardless of listing status.

Recommendation: Implementation of the *General Construction Recommendations*, discussed above, would serve to minimize risk to many SGCN and other species of wildlife.

As mentioned earlier in this letter, TPWD maintains records of occurrence for protected and rare species, or SCGN, within the TXNDD and these data are publicly available by request. The TXNDD is intended to assist users in avoiding harm to rare species or significant ecological features. The TXNDD is updated continuously, and relies partially on information submitted by private parties, such as developers or their consultants. Given the small proportion of public versus private land in Texas, the TXNDD does not include a representative inventory of rare resources in the state.

SA2-17: Section 4.8.2 has been updated to include CP Express' commitment to report any encounters of protected or rare species to the TPWD, if identified.

SA2 – Texas Parks & Wildlife Department

Document Accession #: TPWD0313160 Kimberly B. Hoge Date: 03/13/2023

Docket Number CP22-21000, CP22-22-000

Page 13 of 5

March 12, 2023

Recommendation: To aid in the scientific knowledge of a species' status and current range, TPWD encourages reporting encounters of protected and rare species to the TXNDD according to the data submittal instructions found at the TPWD Texas Natural Diversity Database: Submit Data webpage.

SA2-17

Thank you for considering project impacts to Texas' fish and wildlife resources. If you have any questions, please contact me at Rachel.Lange@tpwd.texas.gov or (979) 732-4213.

Sincerely,



Rachel Lange
Wildlife Habitat Assessment Program
Wildlife Division

RAL: 49920

One Attachment

Document Accession #: 20230313-5123

Filed Date: 03/13/2023

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Venture Global CP2 LNG, LLC

Docket No. CP22-21-000

Venture Global CP Express, LLC

Docket No. CP22-22-000

COMMENTS OF FOR A BETTER BAYOU, HEALTHY GULF, LOUISIANA
BUCKET BRIGADE, SIERRA CLUB, AND THE VESSEL PROJECT OF
LOUISIANA

I. Introduction

For a Better Bayou, Healthy Gulf, Louisiana Bucket Brigade, Sierra Club, and the Vessel Project of Louisiana submit the following comments on the draft environmental impact statement (“DEIS”) for the CP2 and CP Express (“the Developers”) projects (collectively “Project” or “the Project”). The DEIS fails to consider many impacts of the proposed project, makes unjustifiably optimistic assumptions about others, and fails to rigorously explore alternatives that could reduce these impacts. As such, the DEIS does not satisfy FERC’s obligations under the National Environmental Policy Act (“NEPA”). This project will cause adverse impacts—to the environment, surrounding communities, and the nation as a whole—that render it contrary to the public interest. Thus, while we offer the below comments identifying deficiencies in the NEPA analysis, our position is that FERC and the cooperating agencies relying on FERC’s EIS should reject the pending applications.

II. Threshold Issues

a. 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

CO4-1

CO4-2

Comments of For a Better Bayou et al.

1

CO4-1: Comment noted. See section 1.2.1 of the EIS. The Commission will consider the record of the proceeding to determine if the proposed LNG terminal would be consistent with the public interest, as required by section 3 of the NGA. Under section 7(c) of the NGA, the Commission determines whether interstate natural gas transportation facilities are in the public convenience and necessity and, if so, grants a Certificate of Public Convenience and Necessity (Certificate) to construct and operate them. The Commission bases its decisions on economic issues, including need, and environmental impacts. The Commission developed a “Certificate Policy Statement” that established criteria for determining whether there is a need for a proposed project and whether the proposed project would serve the public interest. The Commission decision, in its Order, would review the need for the Project.

CO4-2: Comment noted. The Commission will determine whether the Project meets the public interest standard in section 3(a) of the NGA in its Order.

balancing of the benefits and harms to the public interest.¹ This DEIS indicates that there are serious costs associated with the Project and FERC must evaluate the Project through a framework designed to provide meaningful balancing of the costs and benefits. A failure to do so is contrary to the Natural Gas Act and bedrock principles of administrative law.

DOE's present or 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 NGA, provided separate authority for the approval of exports and for the approval of infrastructure.² 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.³

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.⁴ FERC is the *lead* agency with authority over export infrastructure, with the authority and responsibility to decide whether a proposed project is contrary to the public interest, even where it does not violate other prohibitions. As then-Chairman Klick stated, "there must be some degree of adverse impact so great that the public interest requires FERC to reject a section 3 application."⁵ And this must be a balancing test, weighing the degree of harm against the magnitude of the benefit. Would approve the Project if the environmental harms were the same but would provide only 50%, or only 10%, of the purported benefit? Previous FERC analyses

¹ Commonwealth Authorization Order, Klick, concurring, at P2, accession 20221117-3091. Additionally, as part of determining the benefits of the Project, FERC must consider how those benefits are distributed. In other words, FERC must consider *who* benefits from the Project and *who* bears the costs of the Project.

² 15 U.S.C. §§ 717b(a), (e).

³ *KeySpan LNG, L.P.*, 112 FERC ¶ 61,028, PP5-6 (July 5, 2005).

⁴ Of course, even doing that would in some ways be a more rigorous level of review than FERC seems to apply to LNG export facilities.

⁵ Authorization Order, Concurrence of Chairman Klick, at P7.

provide no guidance. 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 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 makes this analysis difficult, although not all of the problems with FERC's analysis derive from that bifurcation. But 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 advocacy for such a change. Otherwise, FERC should give adequate consideration to the applications it has been charged with evaluating. FERC's hands are not tied.

b. The Purpose and Need for the Project is Too Narrow

FERC uncritically adopted the project purpose and need provided by the Developers.⁶ And the purpose and need provided by the Developers is so narrow that only the Project can satisfy the purpose and need: an LNG export facility with 20 MTPA of nameplate capacity and 28 MTPA of capacity possible in optimal conditions with a pipeline that transports 4 Bcf/d from supply points in east Texas and southwest Louisiana "to the Terminal facilities."⁷ But FERC cannot simply adopt the Developer's purpose and need and must, instead, frame the purpose and need to allow it to assess an adequately broad set of alternatives.

Agencies can "take into account the needs and goals of the parties involved in the application."⁸ But, ultimately, it is to the agency, not the applicant, to determine the purpose and scope of its EIS. In doing so, "an agency must 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."⁹ The most important factor in determining the purpose and

⁶ DEIS at 1-3 ("the project proponent is the source for identifying the purpose for developing, constructing, and operating a project.")

⁷ *Id.*

⁸ *Citizens Against Burlington, Inc. v. Busey*, 923 F.2d 190, 196 (D.C. Cir. 1991).

⁹ *Id.*

Comments of For a Better Bayou et al.

3

CO4-2

CO4-3: See section 1.1 of the EIS. As an independent regulatory commission, the FERC reviews applicant proposals to construct and operate natural gas facilities. As described by the CEQ, if it were not for proposed projects and agency authority to consider the proposals, there would be no permit application and no need for NEPA review. Accordingly, where an agency action is in response to an application for permit or other authorization, the agency should consider the applicant's goals based on the agency's statutory authorization to act in defining the proposed action's purpose and need. The FERC does not plan, design, build, or operate natural gas transmission infrastructure. Accordingly, the project proponent is the source for identifying the purpose for developing, constructing, and operating a project. Lastly, the Commission will evaluate whether the project satisfies the public interest standard in its Order.

CO4-3

need is “the views of Congress, expressed, to the extent that the agency can determine them, in the agency’s statutory authorization to act, as well as in other congressional directives.”¹⁰

Here, FERC has plainly violated this clear, and well-worn legal principle. FERC does not even claim to have crafted its own purpose or need or consider any factors beyond the desires of the Developers. FERC has not considered the views of Congress, which is, as FERC acknowledged, that FERC has to determine whether the Project is in the public interest.¹¹ And, as FERC also acknowledged, determining the public interest requires consideration of environmental impacts.¹² Crafting such a narrow purpose and need taints this entire EIS, which FERC explains will be used to consider environmental impacts.¹³ And, accordingly, by adopting such a narrow purpose and need statement, FERC has necessarily warped any assessment of the true costs of the Project.

Accordingly, FERC must craft a significantly broader purpose and need and assess environmental impacts in light of this broader purpose and need.

c. The Project is an Overbuild

The proposed export project has a nameplate capacity of 20 MTPA with 28 MTPA of capacity under optimal conditions.¹⁴ The pipeline system is designed to deliver 4 Bcf/d to the export facility.¹⁵ But 4 Bcf/d pipeline capacity is the approximate equivalent of 30 MTPA, significantly more than the capacity of the export terminal operating at “optimal conditions.” Clearly, the pipeline system does not need to be designed to provide so much natural gas to the facility, a much smaller pipeline system, with less compression, *etc.* would be appropriate.

Similarly, the terminal site itself is an overbuild. It is unclear how often “optimal conditions” would occur, if ever, and, thus, the Developers and FERC have not justified building a facility capable of exporting 28 MTPA of LNG. It is also unclear why and how there is such a large delta between the nameplate capacity (20 MTPA) and the peak capacity (28 MTPA). FERC must explain.

¹⁰ *Id.*

¹¹ DEIS at 1-4 – 1-5.

¹² *Id.* at 1-5.

¹³ *Id.*

¹⁴ *Id.* at 1-3.

¹⁵ *Id.*

Comments of For a Better Bayou et al.

4

CO4-3

CO4-4: CP Express proposes a pipeline capacity of 4.4 billion cubic feet per day (bcf/d) but states that 4.2 bcf/d would provide a liquefaction capacity of 28 million tonnes per annum (MTPA). CP Express states that that pipeline’s capacity to deliver 5 percent more volume than is necessary for liquefaction is necessary to ensure sufficient gas supply.

CO4-5: As stated in section 1, 20 MTPA of LNG would be the production capacity of the Terminal when operating under design conditions; the maximum production capacity of the Terminal when operating under optimal conditions is not anticipated to exceed 28 MTPA. Peak LNG production occurs when there is low ambient air temperature, a rich gas composition, and all equipment is running at peak/optimal performance. In warm climates such as the southeast U.S., peak LNG production is generally rare

Additionally, the proposed terminal facility, with 20 MTPA of nameplate capacity, would impact far more acres of land than necessary for a project of its size. The Developers propose building the LNG export facility on a 775.9 acre site, with the facility itself taking up 668.5 acres.¹⁶ Meanwhile, the Rio Grande project, a 28 MTPA nameplate capacity project, would occupy about 750 acres of land.¹⁷ That means that the Project has an approximately 38.8 MTPA/acre ratio while the Rio Grande facility has an approximately 26.8 MTPA/acre ratio.¹⁸

Neither the Developers nor FERC has even attempted to justify such an inefficient project design. Reducing the terminal footprint would, of course, substantially reduce environmental impacts to, *inter alia*, wetland and vegetation. Of course, the goal cannot be to cram as much of an LNG export facility in the smallest possible footprint as that can lead to other deleterious environmental effects.¹⁹ But FERC must seek a balance, and impacting wide swaths of land when less could be impacted is obviously environmentally preferable.

Ultimately, FERC's failure to consider whether the Project is an overbuild, in several respects, means that FERC has not given a hard look to the environmental impacts of the Project.

d. FERC Wrongly Failed to Assess the Environmental Impacts of "Non-Jurisdictional" Facilities

FERC identifies the following as non-jurisdictional facilities: (1) temporary electric utility lines; (2) a permanent sanitary waste utility connection; (3) permanent utility facilities for the pipeline system; and (4) the vast majority of the

¹⁶ *Id.* at 4-55.

¹⁷ Rio Grande FEIS at ES-2, available at https://elibrary.ferc.gov/Library/Files?accession_number=20190426-3020&optimized=false.

¹⁸ The DEIS also entirely fails to justify the size of the proposed power plant. FERC must demonstrate that the power plant is not an overbuild by, *inter alia*, clarifying the electrical demand of the Project and demonstrating that the power plant is correctly sized to satisfy that demand. To the extent that the power plant capacity exceeds the Project's electricity demand, FERC must consider an alternative with a smaller power plant and consider whether reducing the size of the power plant would avoid additional environmental impacts, such as impacts to wetlands and essential fish habitat.

¹⁹ See Environmental Organizations' Request for Rehearing of Authorization Order in Docket No. 19-502 at 10, accession 20221219-5261.

CO4-6

CO4-6: The EIS for the Rio Grande Project states that the project would result in 819.1 acres for operations, while the CP2 LNG project would result in 681.6 acres for operations. The projects would result in a similar acreage of disturbance per production capacity.

CO4-7

CO4-7: See response to comment CO3-7.

carbon capture and sequestration (“CCS”) system associated with the LNG export terminal.²⁰ FERC did not assess the environmental impacts of these facilities, but must under NEPA and the Natural Gas Act.

NEPA requires FERC to consider indirect effects.²¹ Those effects include impacts that are caused by a given project and are reasonably foreseeable.²² And a failure to adequately consider the indirect effects of a proposed action violates NEPA.²³ The Natural Gas Act requires FERC to be “the lead agency” for NEPA review.²⁴ And, thus, FERC is responsible for ensuring that environmental review of the Project is not segmented.²⁵

FERC has violated NEPA and acted arbitrarily in excluding these so-called “extra-jurisdictional” facilities from NEPA review. None of these facilities would be constructed if not for the Project. Indeed, these facilities are a part of the Project. These facilities are also necessarily reasonably foreseeable as they are identified in the DEIS. FERC’s reasoning for not evaluating these projects makes no sense. Consider, for example, FERC’s reasoning for not assessing the environmental impacts on the proposed carbon capture and storage project. Per FERC, “[t]he proposed CCS system would be permitted separately under EPA’s Underground Injection Class VI program. As such, for purposes of the NEPA analysis, we evaluate the portion of the CCS system within the LNG terminal footprint.”²⁶ But, as FERC knows, just because another agency has permitting responsibility over an element of a project, does not mean that FERC can ignore that part of the Project in assessing the environmental impacts of the Project. For example, just because the Army Corps regulates impacts to wetlands through its Section 404 permitting

²⁰ *Id.* at 1-11 – 1-12.

²¹ 40 C.F.R. § 1508.1(g).

²² *Center for Biological Diversity v. Bernhardt*, 982 F.3d 723, 737 (9th Cir. 2020).

²³ *Id.* (citing *Sierra Club v. Federal Energy Regulatory Commission*, 867 F.3d 1357 (D.C. Cir. 2017)).

²⁴ 15 U.S.C. § 717n(b)(1).

²⁵ *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1314 (D.C. Cir. 2014) (“The justification for the rule against segmentation is obvious: it ‘prevent[s] agencies from dividing one project into multiple actions each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.’”) (quoting *NRDC v. Hodel*, 865 F.2d 288, 297 (D.C. Cir. 1988)).

²⁶ DEIS at 1-12 – 1-13.

program, does not mean the Corps can refuse to evaluate the Project's impacts to wetlands.

Thus, FERC's failure to evaluate *all* the impacts of the Project violates NEPA and is arbitrary.

CO4-7

e. FERC's Failure to Evaluate Mitigation Measures Violates NEPA

Throughout the DEIS, FERC concludes that environmental impacts will not be significant because of mitigation measures proposed by the Developers. But FERC never assesses whether any of these mitigation measures will be successful or whether any of these mitigation measures will actually reduce impacts to less-than-significant. Nor does FERC indicate whether these proposed mitigation measures will be enforceable and, if so, how and to what extent.²⁷ Instead, time and again, FERC assumes that the mitigation measures will work as intended. But this approach violates NEPA and is arbitrary.

NEPA requires consideration of mitigation measures.²⁸ When considering mitigation measures, agencies must include "a serious and thorough evaluation of environmental mitigation options for [a] Project to allow its analysis to fulfill" NEPA.²⁹ Where an agency relies on mitigation to determine that an environmental impact is less than significant, the agency must "articulate how the mitigation measures will render the adverse effects insignificant."³⁰

Here, FERC fails to provide the necessary discussion of the proposed mitigation measures and fails to articulate how any given mitigation measure would reduce any given impact to a less-than-significant level. For example, FERC determines that construction and operation of the Project will not have significant noise impacts because of mitigation measures recommended by FERC.³¹ But FERC does not assess whether these mitigation measures will be effective or articulate how they will ensure that noise impacts will be below the significance threshold.

²⁷ FERC must provide clarification on this point and FERC should make all proposed mitigation measures entirely enforceable.

²⁸ See 40 C.F.R. §§ 1502.14(e), 1502.16(a)(9).

²⁹ *O'Reilly v. U.S. Army Corps of Engineers*, 477 F.3d 225, 232 (5th Cir. 2007) (quoting *Miss. River Basin Alliance v. Westphal*, 230 F.3d 170, 176-77 (5th Cir. 2000)).

³⁰ *Id.* at 277; accord *Nat'l Audubon Soc. v. Hoffman*, 132 F.3d 7, 16-17 (2d Cir. 1997).

³¹ DEIS at 4-284.

CO4-8: Throughout the EIS, the application of mitigation measures, as described in CP2 LNG's and CP Express' application and supplements, and as clarified and further developed on-the-record in our numerous data requests, are evaluated on a case-by-case basis for each resource when analyzing the various impacts of the Project. In addition, our recommendation 1 (see section 5.2) requires that CP2 LNG and CP Express would construct and operate the Project consistent with all information presented to the FERC. FERC staff also would perform periodic inspections to confirm adherence with the commitments they made as well as applicable regulations.

See also response to CO3-20.

With regards to noise, the design of specific noise mitigation is the responsibility of CP2 LNG and CP Express' contractor firm hired to construct the facility. CP2 LNG's acoustical engineering consultant developed typical conceptual noise mitigation, which achieves compliance. The contracting firm would then develop detailed engineering controls to meet the FERC limits. FERC would ensure the post-construction noise survey meets our noise requirements during project operation.

FERC could not do either because all the recommended measures are speculative. One measure requires CP Express to file a noise survey for the Moss Lake Compressor Station 60 days *after placing the situation into service* and if operation of the compressor station exceeds a noise threshold, CP Express “should” install additional, unspecified noise controls.³² Another measure is a nearly identical suggestion to CP2 with respect to the terminal facilities.³³ Far from ensuring that noise impacts will not exceed the significance threshold, FERC has given the Developers a choice on whether or not to exceed that threshold because it makes the remedial measure, installing sound controls, optional. This alone renders the analysis arbitrary. So too does the fact that FERC cannot determine that an effect is insignificant before it even knows the relevant baseline data or the potential mitigation measures.

But the even broader problem with FERC’s analysis, a problem that is repeated throughout the DEIS, is that FERC entirely failed to analyze mitigation measures, explain how they would reduce the impacts to below the significance threshold, or assess whether any mitigation measures would be successful.³⁴ Such an approach to mitigation does not come close to satisfying NEPA. Where FERC determines that an effect is not significant at least, in part, because of mitigation, FERC must analyze that mitigation and explain how the mitigation will reduce the impact. FERC must also make the mitigation mandatory because if mitigation is not mandatory, FERC cannot then claim that the mitigation renders an effect insignificant.

In sum, for numerous analyzed environmental impacts, the DEIS claims that effects are not significant because of proposed mitigation measures. But FERC does not analyze these mitigation measures or explain how they will reduce impacts to below the significance level. As a result, FERC has not taken the requisite hard look under NEPA and reaches arbitrary conclusions.

f. FERC Must Analyze an Uprate and Potential Expansion as they are Reasonably Foreseeable

As explained above, reasonably foreseeable impacts must be examined by the DEIS. One of the reasonably foreseeable impacts not analyzed in the DEIS is the

³² *Id.* 4-282.

³³ *Id.* at 4-280 – 4-281.

³⁴ FERC needs to provide such an analysis even where the mitigation measure in question is a not a project-specific plan, e.g. the Vessel Strike Avoidance Measures.

Comments of For a Better Bayou et al.

8

CO4-8

CO4-9

CO4-9: See section 2.7 of the EIS. CP2 LNG and CP Express have not identified any plans for future expansion. If an expansion is proposed in the future, CP2 LNG and/or CP Express would be required to obtain approval from the Commission. Cumulative impacts are discussed in section 4.14. See also response to CO4-4.

Developers' reasonably foreseeable increase in capacity at the site. Such "uprates" are remarkably common for LNG export facilities.³⁵ Thus, such a future increase in export capacity is likely and reasonably foreseeable and FERC must assess the impacts from such an increase.

Similarly, FERC must also analyze a potential expansion of terminal and pipeline facilities. As explained *infra*, there is seemingly extra space within the Project footprint and as explained *supra* the pipeline system is seemingly providing more gas than needed for the Project's 20 MTPA nameplate capacity. Thus, it is reasonably foreseeable that the Developers will seek to expand the Project to include additional liquefaction train blocks and, perhaps, storage infrastructure. FERC must consider this possibility and its environmental impacts.

g. FERC's Cumulative Impacts Analysis is Facially Flawed

FERC is required to take a hard look at cumulative effects, "which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time."³⁶ But, here, FERC's analysis of cumulative effects is fundamentally flawed.

Of course, among the most important considerations when analyzing cumulative effects is determining the relevant past, present, and reasonably foreseeable actions. A failure to determine the baseline of the other actions in the Project area necessarily causes systemic problems with analysis of cumulative effects. The DEIS does not properly determine the relevant past, present, and reasonably foreseeable actions.

The DEIS identifies 19 total actions, not including the Project: (1) 10 FERC jurisdictional LNG and pipeline projects; four industrial projects; two transmission line projects; two carbon capture and sequestration projects; and one transportation project.³⁷ But in performing the NEPA review for the nearby Commonwealth project, FERC identified 44 relevant actions.³⁸ The Commonwealth project is only .5 miles from the Project and, thus, there is no basis for considering so many fewer

³⁵ See, e.g. DOE/FE Order No. 4487, at 4-5 (Jan. 15, 2020) (attached).

³⁶ 40 C.F.R. § 1508.1(g)(3).

³⁷ DEIS at 4-392.

³⁸ Commonwealth DEIS at 4-315, accession 20220331-3014.

Comments of For a Better Bayou et al.

9

CO4-9

CO4-10

CO4-10: See the revised section 4.14, including the addition of three projects not previously identified as within the geographic scope. Additionally, as discussed in section 4.14.1, the EIS considered a different temporal and geographic scope than that presented in the Commonwealth EIS. The temporal and geographic scope for cumulative impacts considered for the Project are based on the Project-specific impacts and schedule. The cumulative impacts analysis considers reasonably foreseeable projects. Therefore, projects "not yet identified or considered" were not included in the cumulative impacts analysis.

actions here.³⁹ But even the long list identified in the Commonwealth DEIS is not sufficient for this analysis. The Commonwealth DEIS identified additional past, present, and reasonably foreseeable future industrial and LNG/pipeline projects in close proximity to the Project that also need to be assessed in the environmental baseline.⁴⁰ In addition to these projects, there could be additional projects not yet identified or considered, including other dredging and maintenance dredging projects, construction projects, and projects subject to nationwide permits issued by the U.S. Army Corps of Engineers.

To take a hard look at cumulative impacts, FERC must identify *all* the relevant projects in the Project area and incorporate effects from all of the projects in the cumulative impacts analysis. FERC has failed to do that here and, as a result, FERC's analyses and conclusions concerning cumulative impacts are arbitrary.

h. Facility Output

The DEIS states that the Project will "export a nameplate 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."⁴¹ As FERC knows, the Developers have requested that the Department of Energy ("DOE") authorize this higher volume of exports.

FERC must clarify and/or more clearly demonstrate that the DEIS is assessing impacts in light of the higher (28 MTPA) export capacity. The DEIS explains it has calculated annual operational emissions from the terminal facilities using "estimated emission rates [that] represent operation of the Terminal Facilities at the peak liquefaction capacity of 28 million tons (or tonnes) per annum."⁴² But other than this one instance, it is unclear if FERC is using the higher export capacity figures to assess the environmental impacts of the Project. Of course, the export capacity impacts more than just the operational emissions from the terminal facility. It affects the analysis for, *e.g.* greenhouse gas emissions impacts, pipeline system emissions, vessel emissions, *etc.* To the extent that FERC is not already performing its analyses with a 28 MTPA capacity assumption, in the past FERC has assumed that increasing liquefaction volumes will not increase

³⁹ DEIS at 4-395.

⁴⁰ Commonwealth DEIS at 4-316.

⁴¹ DEIS at 1-3.

⁴² *Id.* at 4-251.

CO4-10

CO4-11

CO4-11: Section 4.12.1.4 confirms that the operation emissions presented are based on the 28 MTPA capacity. As stated in section 2.1.1.3, CP2 LNG estimates that its nameplate production volumes would be able to accommodate approximately three to four LNG carrier calls per week at the Marine Facilities after the Phase 1 facilities are placed in service and approximately seven to eight LNG carrier calls per week after the Phase 2 facilities are placed in service (a maximum of 200 carrier calls per year following completion of Phase 1 and a maximum of 400 carrier calls per year following completion of Phase 2). The number of carrier calls per year is a conservative estimate of LNG carrier/mobile source emissions from LNG carriers that would have a range of LNG capacity between 120,000 to 210,000 cubic meters.

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Filed Date: 03/13/2023

CO4-11

emissions because such an increase occurs when liquefaction units operate more efficiently, by producing more LNG for the same intensity of operations and emissions. It is unclear if FERC has made a similar assumption here—i.e., whether the DEIS is assuming that emissions and impacts would be the same if 20 MTPA or 28 MTPA of LNG are produced. Such an assumption would be inappropriate. 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 removed, regardless of how efficiently the liquefaction equipment runs. Similarly, as noted, more liquefaction production means more vessels calls. FERC should clarify whether its assumption of “412 carrier calls per year” is based on the 20 MTPA or 28 MTPA production figure (or some other figure).⁴³ FERC should also provide additional detail about the size and characteristics of the carriers used in estimating carrier emissions.

Without more information, the public is unable to comment on many of the DEIS’ analyses.

III. Greenhouse Gas Emissions

As courts have repeatedly held, FERC must take a hard look at the Project’s greenhouse gas (GHG) emissions, including reasonably foreseeable indirect effects. As with other LNG projects, here, FERC continues to take an unlawfully narrow view of the scope of greenhouse gas emissions FERC must consider, refusing to provide any discussion or analysis of the impact of producing, transporting, or using the gas that would be exported by the Project. But even for those emissions that FERC admits are within its scope, FERC unlawfully refused to provide the public or decisionmakers with the required analysis of the significance, severity, or impact of those emissions. FERC also fails to consider alternatives that would further reduce direct emissions using carbon capture and sequestration or actions that would reduce indirect emissions through FERC’s broad authority to place conditions on authorizations under the Natural Gas Act. And finally, FERC’s analysis of direct emissions is further flawed by FERC’s continued reliance on outdated estimates of the impact of methane and other greenhouse gases other than carbon dioxide.

⁴³ DEIS at 4-253.

Comments of For a Better Bayou et al.

11

CO4-12

a. Indirect GHG Emissions

The Department of Energy has estimated that liquefaction accounts for only 6% of the lifecycle greenhouse gas (GHG) emissions of U.S. LNG exports.⁴⁴ Even this 6% number is too high, because DOE underestimates non-liquefaction emissions.⁴⁵ But while indirect, upstream and downstream greenhouse gas emissions constitute the vast majority of emissions caused by the Project if it enters operation, the DEIS refused to analyze these emissions.⁴⁶ Instead, the DEIS states that “[t]he courts have explained that because the authority to authorize LNG exports rests with DOE, NEPA does not require the Commission to consider the upstream or downstream GHG emissions that may be indirect effects of the export itself when determining whether the related LNG export facility satisfies section 3 of the NGA.”⁴⁷ We join the position taken by EPA, in its recent comments on FERC’s draft greenhouse gas policy, that *Freeport* was simply wrongly decided.⁴⁸ But even so long as *Freeport* remains binding law, FERC is *still* required to consider indirect emissions, because this analysis informs FERC’s decisionmaking regarding emissions that *are* within FERC’s control. FERC is required to disclose all of the environmental impacts of the Project under NEPA, and NEPA and the Natural Gas Act do not permit FERC to segment its action from DOE’s—issues not addressed by *Freeport*. And, as EPA recognizes, even if FERC was not *required* to do so, nothing in *Freeport* would *prohibit* FERC from including this information in the NEPA

⁴⁴ 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/2019/09/16/2019%20NETL%20LCA-GHG%20Report.pdf> (attached). DOE estimates that 23% of the lifecycle emissions occur upstream of liquefaction. *Id.*

⁴⁵ 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> (attachment). 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 a methane “leak rate” in the Permian of 3.5 to 3.7%), available at <https://www.science.org/doi/10.1126/sciadv.aaz5120> (attached).

⁴⁶ DEIS at 4-439.

⁴⁷ *Id.* (citing *Sierra Club v. FERC*, 827 F.3d 36 (D.C. Cir. 2016) (“*Freeport*”).

⁴⁸ EPA, Comments in Dkt. PL21-3, at pdf page 6, Accession 20220425-5440 (attached).

Comments of For a Better Bayou et al.

12

CO4-13

CO4-13: Comment noted. The Commission must act in accordance with judicial precedent. The D.C. Circuit recently affirmed its decision in *Freeport*, finding that the Commission has no NEPA-obligations stemming from the effects of exported gas. *Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1185 (D.C. Cir. 2023) (Alaska LNG) (“FERC properly recognized the limits of its delegated statutory authority and cabined its NEPA analysis accordingly.”).

analysis. FERC should do so to provide important information to the public and to cooperating agency decisionmakers.

i. *Freeport Was Wrongly Decided*

In *Freeport*, the D.C. Circuit started with the premise that Congress, through the Natural Gas Act vested all section 3 authority in DOE.⁴⁹ *Freeport* explained that it is only due to a delegation from DOE that FERC exercises section 3(e) authority over the siting, construction, and operation of LNG export infrastructure.⁵⁰ *Freeport* then reasoned that this delegation was “limited,” and reserved to DOE “exclusiv[e]” authority over exports themselves.⁵¹ *Freeport* held that DOE’s exclusive authority over exports included authority to consider the effects of removing as 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).⁵²

EPA recently explained that it views *Freeport* as wrongly decided. EPA 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.⁵³

We agree, and FERC should seek to have *Freeport* clarified or overruled. One, there is no reason to view DOE’s authorization as an intervening between FERC’s authorization and upstream effects. FERC’s authorization of export infrastructure

⁴⁹ *Freeport*, 827 F.3d at 40 (citing 15 U.S.C. § 717b and 42 U.S.C. § 7151(b)).

⁵⁰ *Id.* (quoting U.S. Department of Energy, Delegation Order No. 00-004.00A, § 1.21.A (May 16, 2006)).

⁵¹ *Id.* at 41, 46.

⁵² *Id.* at 48-49.

⁵³ EPA, Comments in Dkt. PI21-3, at pdf page 6, Accession 20220425-5440.

Comments of For a Better Bayou et al.

CO4-13

CO4-14

CO4-14: Comment noted. See response to comment CO4-13.

could just as easily be seen as an intervening cause that separates upstream effects from DOE's approval.⁵⁴ Indeed, DOE recently suggested this opposite view of the sequence of the causal chain, when DOE proposed its now-final rule to categorically exclude DOE's export approvals from NEPA review. There, DOE indicated that DOE's approvals were not reasonably closely connected to anything happening at the terminal or upstream thereof.⁵⁵

More importantly, *Freeport* did not justify the premise that DOE's authority was exclusive. In *Freeport*, the court did not identify any statutory reason why DOE's authority must be exclusive, such that DOE's delegation to FERC had to be limited. Congress, for its part, explicitly granted DOE broad authority to "assign" Natural Gas Act section 3 authority to FERC.⁵⁶ Nor did *Freeport* justify its assumption that DOE actually intended or attempted only a limited delegation that reserved issues to DOE exclusively. DOE broadly assigned to FERC authority to "Implement 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.⁵⁷ *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. *Public Citizen* held that agencies need not consider effects where *statute* puts the effect beyond the agency's reach. Other courts have explained that agencies cannot tie their own hands and cabin the scope of NEPA

CO4-14

⁵⁴ 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 DOE's mind hasn't already been made up. *Com. of Mass. v. Watt*, 716 F.2d 946, 952 (1st Cir. 1983).

⁵⁵ DOE, Proposed Rule, 85 Fed. Reg. at 25,341 (claiming that DOE has "no authority to prevent" "impacts resulting from actions occurring [before] the point of export."); *accord* Final Rule, 85 Fed. Reg. 78,197, 78,198.

⁵⁶ 42 U.S.C. § 7173(f).

⁵⁷ 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).

review through regulations.⁵⁸ 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 that FERC act as lead agency for, *inter alia*, coordination of interagency NEPA review,⁵⁹ or NEPA's requirement that agencies avoid segmentation and consider "connected" actions⁶⁰ or NEPA's requirement to inform the public of an action's effects that are not withdrawn from consideration by statute.⁶¹ 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 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.

- ii. *Even under Freeport, FERC Must Consider Lifecycle Impacts to Inform both FERC's Analysis of Impacts Within FERC's Jurisdiction and DOE's Connected Decisionmaking*

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 this pipeline based on a determination that those consequences (on their own or in combination with other adverse effects) outweigh the benefits of the project,⁶² FERC still must conduct a NEPA analysis of those foreseeable indirect effects. Such analysis would be "useful[] ... to the decisionmaking process," and thus

⁵⁸ *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)).

⁵⁹ 15 U.S.C. § 717n(b).

⁶⁰ 827 F.3d at 45-46.

⁶¹ *Freeport*, 827 F.3d at 45; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-50 (1989).

⁶² *Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (*Sabal Trail*).

CO4-14

CO4-15: Comment noted. See response to comment CO4-13.

CO4-15

consistent with the “rule of reason” used in interpreting NEPA for two reasons.⁶³ It would inform FERC’s decisionmaking about whether to require additional mitigation or avoidance of direct effects at the terminal site, pursuant to the Natural Gas Act.⁶⁴ In addition, DOE’s evaluation of the Project’s exports is a connected action that cannot be segmented from FERC’s review of the terminal 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.⁶⁵ This combined significance may persuade FERC to require additional mitigation of direct impacts, such as by requiring more efficient terminal design or carbon capture and sequestration. Thus, information about indirect effects informs FERC’s decisionmaking, notwithstanding FERC’s lack of “authority to prevent” those effects.⁶⁶

Second, the agencies and 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 NEPA analysis.⁶⁷ 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 *Department of Transportation v. Public Citizen*, which affirmed a “rule of reason” under which an EIS only needs to include information “useful[] ... to the decisionmaking process.”⁶⁸ The prohibition on segmentation recognizes the usefulness of a “comprehensive approach,”⁶⁹ rather than dividing analysis of an “integrated project” across multiple documents and processes.⁷⁰ Here,

⁶³ *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004).

⁶⁴ 15 U.S.C. § 717b(e)(3)(A).

⁶⁵ *Delaware Riverkeeper v. FERC*, 753 F.3d 1304, 1314 (D.C. Cir. 2014).

⁶⁶ *Freeport*, 827 F.3d at 49.

⁶⁷ 827 F.3d at 45.

⁶⁸ 541 U.S. 15 767.

⁶⁹ *Del. Riverkeeper*, 753 F.3d at 1314.

⁷⁰ *City of Boston Delegation v. FERC*, 897 F.3d 241, 251-52 (D.C. Cir. 2018) (*City of Boston*).

CO4-15

CO4-16: Comment noted. See response to comment CO4-13.

CO4-16

CO4-17

CO4-17: Refer to the EIS at section 1.3.1; cumulative impacts are addressed in section 4.14. In Alaska LNG, the D.C. Circuit rejected petitioner’s argument that the Commission had impermissibly segmented the environmental analysis of its authorization of the project under section 3 of the NGA and the DOE’s decision whether to approve exports, stating that doing so would “require the Commission to consider the indirect effects of actions beyond its delegated authority.” 67 F.4th at 1185.

Document Accession #: 20230313-5123 Filed Date: 03/13/2023	
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." ⁷¹ For these reasons, even if <i>Freeport</i> 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 finally, even if FERC is correct that it is not required to analyze lifecycle emissions in its NEPA analysis, nothing in <i>Freeport</i> or the related D.C. Circuit decisions prohibits FERC from doing so, as EPA observes. ⁷² 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. <i>b. Direct GHG Emissions</i> The DEIS estimates that, even within the unlawfully narrow scope of emissions that FERC admits it must consider, ⁷³ operation of the Project will result in more than 9 million tons per year of carbon dioxide equivalent (CO ₂ e) emissions. ⁷⁴ The DEIS's refusal to provide any analysis or express any judgment	CO4-17
	CO4-18: Comment noted.
	CO4-19: See climate change discussion in section 4.14.2.13 and also see response to comment CO4-21.
	CO4-19
⁷¹ <i>Jones v. D.C. Redevelopment Land Agency</i> , 499 F.2d 502, 510 (D.C. Cir. 1974); see also <i>Sierra Club v. U.S. Army Corps of Engineers</i> , 803 F.3d 31, 49-51 (D.C. Cir. 2015) (assuming that the connected actions regulation applies to actions of multiple agencies). ⁷² EPA, Comments in Dkt. PL21-3, at pdf page 6, Accession 20220425-5440. ⁷³ DEIS at 4-439 ("NEPA requires that the Commission consider the direct GHG emissions associated with a proposed LNG export facility"). ⁷⁴ DEIS at 4-439. Construction and commissioning of the Project will result in over 2.1 tons per year of carbon dioxide equivalent emissions. <i>Id.</i>	
<i>Comments of For a Better Bayou et al.</i>	
17	

regarding the severity or significance of those impacts is arbitrary.⁷⁵ FERC also failed to take a hard look at reducing these emissions. And FERC once again relies on long-ago superseded estimates of the global warming potential of many greenhouse gases.

i. *The DEIS Fails to Evaluate the Severity, Significance, or Impact of GHG Emissions*

NEPA and the Natural Gas Act requires that FERC take a hard look at the impact of greenhouse gas emissions, evaluate their significance and impact, and ultimately, to factor these emissions into FERC's public interest determination.⁷⁶ But here, FERC explicitly refuses to provide these analyses, citing "a generic proceeding to determine whether and how the Commission would conduct significance determinations going forward."⁷⁷ While this generic proceeding may eventually bear fruit, it does not abrogate FERC's statutory obligation to evaluate the significance and impact of the Project's GHG emissions. An aspiration to comply with the law when reviewing unrelated future projects is not an excuse for failing to comply with the law now.

Moreover, FERC's comparison of direct project emissions of the United States and Louisiana is not, and does not purport to be, an analysis of significance or of the impact of emissions on the public interest.⁷⁸ Observing that emissions here are a small portion of regional or national totals does not illustrate their impact.⁷⁹ Even a "very small portion" of a "gargantuan source of ... pollution" may "constitute[] a gargantuan source of ... pollution on its own terms."⁸⁰ Furthermore, the DEIS's analysis of GHG emissions emphasizes the significance of the Project's contribution to Louisiana's projected GHG emissions levels and its net-zero GHG emissions by

⁷⁵ The DEIS did provide cursory estimate of the social cost of the direct GHG emissions based on the methods and values in the recent Federal Interagency Working Group on the Social Cost of Greenhouse Gases, DEIS at 4-440. We, of course, applaud FERC calculating the social cost of carbon. However, FERC did not analyze or determine the significance or severity of the GHG emissions. DEIS at 4-439.

⁷⁶ *Sabal Trail*, 867 F.3d at 1376.

⁷⁷ DEIS at 4-439.

⁷⁸ *Id.* at 4-440.

⁷⁹ *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008).

⁸⁰ *Soc. Elec. Power Co. v. EPA*, 920 F.3d 999, 1032 (5th Cir. 2019).

CO4-20

CO4-20: See section 4.12.1 of the EIS. Construction, commissioning, and operational greenhouse gas (GHG) emissions were calculated as carbon dioxide equivalent (CO₂e). The CO₂e takes into account the global warming potential (GWP) of each GHG. CO₂ has a GWP of 1, methane has a GWP of 25, and nitrous oxide has a GWP of 298. These GWPs are based on a 100-year time period. We have selected their use over other published GWPs for other timeframes because these are the GWPs the EPA has established for reporting of GHG emissions and air permitting requirements. This allows for a consistent comparison with these regulatory requirements. See Title 40 Code of Federal Regulations (CFR), part 98, subpart A, Table A-1 to Subpart A of Part 98 - Global Warming Potentials.

CO4-21

CO4-21: As stated in section 4.14.2.13, to date, FERC staff have not identified a methodology to attribute discrete, quantifiable, physical effects on the environment resulting from the Project's incremental contribution to GHGs. Without the ability to determine discrete resource impacts, FERC staff are unable to assess the Project's contribution to climate change through any objective analysis of physical impact attributable to the Project. Additionally, FERC staff have not been able to find an established threshold for determining the Project's significance when compared to established GHG reduction targets at the state or federal level. Ultimately, the EIS is not characterizing the Project's GHG emissions as significant or insignificant.

the 2050 target.⁸¹ Direct emissions from the operation of the Project would represent 7.1 percent of Louisiana's 2030 CO₂e emissions level goal. Given the lifespan of the project, its contributions to state GHG emissions would only grow over the remaining years.

FERC has the information it needs to determine the significance of the operational GHG emissions. FERC previously did not determine the significance of project GHG emissions because it claimed to have lacked the tools to assess impacts of a project's GHG emissions.⁸² But now, by applying the methods and values from the Federal Interagency Working Group on the Social Cost of Greenhouse Gases, FERC estimates the total social cost of the direct emissions from the Project as \$24,000,362,235 (in 2020 dollars).⁸³ FERC must now take the next step and determine the significance of these GHG emissions and factor these emissions into FERC's public interest determination.⁸⁴

ii. Carbon Capture and Sequestration

NEPA requires FERC to take a hard look at opportunities to mitigate impacts, including greenhouse gas emissions. The Natural Gas Act similarly requires FERC to determine whether modifications to the proposed project would better serve the public interest. Here, one way to mitigate emissions (which can be used in addition to or instead of design alternatives) is a robust carbon capture and sequestration ("CCS") system.⁸⁵ While LNG export terminals, with or without CCS

⁸¹ *Ctr. for Biological Diversity*, 538 F.3d at 1217 (9th Cir. 2008).

⁸² *E.g.*, *Evangeline Pass Expansion Project*, 178 FERC ¶ 61,199, P92 (March 25, 2022).

⁸³ DEIS at 4-441.

⁸⁴ See *Sabal Trail*, 867 F.3d at 1376. While not stated in this DEIS, FERC has previously argued that "it has not determined which, if any, modifications are needed to render [social cost of greenhouse gases] useful for project-level analysis." *Evangeline Pass Expansion Project*, 178 FERC ¶ 61,199, P92 n.141 (Mar. 25, 2022). To the extent that FERC intends to make the same argument in support of its refusal to use its social cost figure to determine significance, that argument is misguided. As evidenced by FERC's ability to utilize social cost of carbon tools to determine the social cost of these emissions at the project level, FERC can use this figure to determine the significance of these greenhouse gas emissions at the project level.

⁸⁵ Here, the applicant only proposes to capture 5.6% of its operational emissions and FERC does not consider alternatives where more could be captured. Because, as explained above, operational emissions are a very small fraction of all the emissions

CO4-21

CO4-22

CO4-22: See response to comment CO3-7.

are not part of the climate solution and there are serious questions about the appropriateness of CCS, the DEIS fails to grapple with fundamental questions, and falls far short of NEPA's requirements. FERC must consider all potential measures to mitigate the Project's greenhouse gas emissions and it has not here.

To be clear on one threshold issue: FERC has the authority to require project modifications that would reduce greenhouse gas emissions, including CCS and other potential modifications. And to inform FERC's decisionmaking regarding whether, and if so to what extent, to exercise that authority and to require such mitigation measures, NEPA requires that FERC rigorously explore alternatives that would incorporate these measures, including CCS. Here, FERC fails to provide the requisite consideration of *any* potential mitigation measures.

The DEIS does mention that the applicant has proposed CCS but entirely fails to analyze its environmental impacts.⁸⁶ And the DEIS entirely fails to analyze alternatives to the CCS proposal, including alternative mitigation measures that would reduce greenhouse gas emissions or different kinds of CCS.⁸⁷ FERC does not explain why it thinks it cannot assess the Developers' proposals environmental impacts,⁸⁸ But as explained above, NEPA requires that FERC analyze the environmental impacts of CCS. And FERC must consider mitigation measures for the Project's GHG emissions beyond the Developers' meager proposal.

iii. *The DEIS Uses Outdated Global Warming Potentials That Understate the Impact of GHG Emissions*

The figures provided in the DEIS underestimate emissions by using outdated estimates of the potency of greenhouse gases (GHGs) other than carbon dioxide. The DEIS addresses these other GHGs by converting them to CO_{2e}.⁸⁹ However, the conversion factor (global warming potential or GWP) used for methane, the predominant non-carbon-dioxide greenhouse gas at issue here, is sorely outdated, and fails to account for short- and medium-term impacts. The DEIS uses a GWP value of 25 for methane (CH₄).⁹⁰ Although the DEIS provides no explanation for

associated with the Project, 5.6% of operational emissions is a small fraction of a fraction.

⁸⁶ DEIS at 4-441.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *E.g.*, *id.* at 4-252.

⁹⁰ *Id.*

Comments of For a Better Bayou et al.

20

CO4-22

CO4-23

CO4-23: See response to comment CO4-20 and sections 4.12.1 and 4.14.2.13 of the EIS.

either the source of this number or FERC's reason for choosing it, the figure corresponds with the value presented by the Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report in 2007 to reflect the impact of methane on a hundred-year timescale. In August 2021, almost two years prior to this DEIS, IPCC released its Sixth Assessment Report, which includes superseding and significantly higher estimates for the GWP of methane, as well as provides a distinction between CH₄ from fossil fuels and CH₄ from other sources.⁹¹ This report also explained that on a 20-year timeframe, methane's impact is even more severe, causing 82.5 times the warming of an equivalent mass of carbon dioxide (also accounting for the effects of oxidation).⁹² The 20-year GWP for methane is particularly relevant because it corresponds much more closely to the average time that methane actually remains in the atmosphere before decaying into CO₂, which is 11.8 years.⁹³ There is no dispute that the Sixth Assessment Report values represent a more accurate estimate of the impact of each ton of methane emissions.⁹⁴

More broadly, courts have consistently recognized that the IPCC summaries represent the scientific consensus.⁹⁵ Here, the DEIS violates NEPA's obligation to

⁹¹ IPCC, Climate Change 2021, The Physical Science Basis, Chapter 7, 1017 (Aug. 2021), available at https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Chapter07.pdf (attached).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See Department of Energy, Order 335-7C, FE Docket 11-161-LNG, at 30 (Dec. 4, 2015), available at <https://www.energy.gov/sites/prod/files/2013/11/15/FE%20DOCKET%20NO%2011-161-LNG%20ORDER%20NO.%203357.pdf> (attached); EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1-10 (Apr. 14, 2022), available at <https://www.epa.gov/system/files/documents/2022-04/us-ghg-inventory-2022-main-text.pdf> (attached).

⁹⁵ *Massachusetts v. EPA*, 549 U.S. 497, 508-12 (2007) (The IPCC is recognized as "a multinational scientific body ... [d]rawing on expert opinions from across the globe); *Coal. for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 119 (D.C. Cir 2012), *aff'd on other grounds in part sub nom. Util. Air Regulatory Grp. v. EPA*, 134 S.Ct. 2427 (2014), and amended sub nom. *Coal for Responsible Regulation, Inc. v. Envtl. Prot. Agency*, 606 F. App'x 6 (D.C. Cir. 2015) (IPCC's "peer-reviewed assessments synthesized thousands of individual studies on various aspects of greenhouse gases

use “high quality information,”⁹⁶ and provide “full and fair discussion of significant environmental impacts,” by relying on an estimate of methane’s impacts that was known to be outdated and an understatement of the true potency of this pollutant, by failing to disclose that the analysis it provided only considered long-term (100-year) impacts, and by failing to use available tools, such as the estimate of methane’s 20-year GWP, to address more near-term impacts.⁹⁷ Each of these failures violates NEPA.⁹⁸

CO4-23

c. *The DEIS Fails to Adequately Analyze Climate Change Impacts on the Project*

The DEIS 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, including failures from flying or floating debris.”⁹⁹ But the analysis of these potential impacts entirely fails to address how climate change will make hurricanes, etc., more severe and more frequent as a result of climate change.¹⁰⁰ Instead, the Developers “evaluated such events historically.”¹⁰¹

Such an analysis wrongly ignores that climate change has fundamentally altered how often or how severe such events are. As the most recent IPCC report notes, “[w]idespread, pervasive impacts to ecosystems, people, settlements, and infrastructure have resulted from observed increases in the frequency and intensity and weather extremes.”¹⁰² As such, whether infrastructure can stand up to the

and climate change and drew ‘overarching conclusions’ about the state of the science in this field.”).

⁹⁶ 40 C.F.R. § 1500.1(b).

⁹⁷ 40 C.F.R. § 1502.1.

⁹⁸ See *W. Org. of Res. Councils v. U.S. Bureau of Land Mgmt.*, No. CV 16-21-GF-BMM, 2018 WL 1475470, at *16 (D. Mont. Mar. 26, 2018) (holding that agency violated NEPA by estimating emissions solely on the basis of methane GWP of 25).

⁹⁹ DEIS at 4-333.

¹⁰⁰ See *id.*

¹⁰¹ *Id.*

¹⁰² IPCC, Climate Change 2022: Impacts, Adaptation and Vulnerability Summary for Policymakers, at 11, available at https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf (attached), full report available at

Comments of For a Better Bayou et al.

22

CO4-24: See section 4.14.2.13 of the EIS, which discusses both historical and predicated impacts due to climate change in the Project region. See also response to comment PM6-6. As stated in section 4.13.1.15 of the EIS, CP2 LNG states the project site would be designed with a 183 mph 3-second gust wind speed at 33 feet (10 meters) above ground for Exposure C category, and adequate floodwall elevations to withstand Category 4 Hurricanes and 500 years flood events.

CO4-24

Document Accession #: 20230313-5123

Filed Date: 03/13/2023

historical baseline of extreme weather events, is no longer the question that FERC needs to investigate as it determines whether a proposed project is adequately safe. Instead, FERC needs to investigate and determine whether the Project can stand up to this new, and changing baseline.

FERC has not done such an investigation or made such a determination here. As a result, FERC has not given these impacts a hard look as required by NEPA. FERC must do so and must analyze such impacts by reference to high quality information, including the most recent IPCC climate change reports.

IV. Other Air Pollution

In addition to emissions of the GHGs, the Project will emit major volumes of criteria and hazardous air pollutants. The DEIS estimates the following operational emissions for the terminal facilities in tons per year:¹⁰³

NO _x	SO ₂	CO	PM ₁₀	PM _{2.5}	VOC	HAP
908.2	254.5	1,428.7	368.9	368.9	175.5	39.7

The DEIS estimates the following operational emissions for marine vessels calling on the LNG terminal in tons per year:¹⁰⁴

NO _x	SO ₂	CO	PM ₁₀	PM _{2.5}	VOC
57	.2	31.3	5.5	5.4	6.1

And the DEIS estimates the following operational emissions for the Pipeline System, including the Moss Lake Compressor Station in tons per year:¹⁰⁵

NO _x	SO ₂	CO	PM ₁₀	PM _{2.5}	VOC	HAP
323.5	3.8	482.1	100.3	100.3	169.3	10.7

https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf.

¹⁰³ DEIS at 4-252.

¹⁰⁴ *Id.* at 4-254 – 4-255.

¹⁰⁵ *Id.* at 4-256.

Comments of For a Better Bayou et al.

23

CO4-25: As disclosed in section 4.12.1 of the EIS, construction and operation of the Project would result in air quality impacts. However, as stated in section 4.12.1, the Project would not cause or contribute to an exceedance of the NAAQS. Although the NAAQS are designated to protect sensitive populations, we acknowledge that NAAQS attainment alone may not assure there is no localized harm to such populations due to project emissions of volatile organic compounds, hazardous air pollutants (HAP), as well as 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.

Additionally, we note that section 4.12.1.4 has been revised to include the results of a human health risk assessment completed for the Project due to operation of the LNG Terminal and mobile sources.

The terminal's emissions will occur approximately .4 miles south of the town center of Cameron, Louisiana.¹⁰⁶ Communities surrounding Cameron, including Cameron itself, are already disproportionately exposed to significant air and water pollution from nearby facilities.

In discussing the amount and impact of air pollution, the DEIS appears to rely on analysis conducted to support Commonwealth's proposed Part 70 Air Operating Permit and Prevention of Significant Deterioration (PSD) Permit.¹⁰⁷ Indeed, FERC concludes that "the Project would not result in significant impacts on air quality" because the Project "would not cause or contribute to an exceedance of the NAAQS."¹⁰⁸ But FERC cannot make its significance conclusion solely based on compliance with the NAAQS. Air pollution that does not exceed the individual NAAQS can cause harmful health impacts. Particulate matter, nitrogen-dioxide, and ozone are recognized as pollutants for which no threshold of exposure fully protects human health.¹⁰⁹ 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 billion¹¹⁰ adversely impact short- and long-term respiratory mortality, and significantly impact morbidity.¹¹¹ Even if FERC is able to demonstrate that the individual and cumulative impact of air pollution are not likely to exceed the NAAQS, this does not demonstrate that the cumulative effect of air pollution impacts on human health will be significant. And, here, FERC makes the same mistake with respect to its cumulative impacts analysis, determining that

CO4-25

¹⁰⁶ *Id.* at 2-33.

¹⁰⁷ See, e.g., *id.* at 4-235. "To minimize duplicate efforts" FERC encourages applicants to "file a copy of analyses performed under the PSD Permitting Program." FERC, *Guidance Manual for Environmental Report Preparation*, at 4-121 n.36.

¹⁰⁸ DEIS at 4-264.

¹⁰⁹ *Am. Trucking Ass'n, Inc. v. EPA*, 283 F.3d 355, 359-60 (D.C. Cir. 2002); EPA, NAAQS for Nitrogen Dioxide, 75 Fed. Reg. 6,474, 6,500 (Feb. 9, 2010).

¹¹⁰ Modeling shows that the terminal facility's estimated impact on ambient ozone levels is to raise the concentration to 65.2 parts per billion. DEIS at 4-262.

¹¹¹ EPA, Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone, at 5-78 (2014), available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1001A01H2.txt> (attached).

cumulative impacts to air quality would not be significant because the Project would not “cause or contribute to a NAAQS exceedance.”¹¹²

FERC’s significance analysis is undermined by its admission that it needs more information on the Project’s emissions of hazardous air pollutants (“HAPS”), “to confirm [FERC’s] analysis” that impacts to air quality will not be significant. FERC cannot determine that an effect is not significant when it admits that it doesn’t have all the relevant information. And FERC’s slip-up that it wants more information to “confirm” its premature conclusion gives the game away. FERC is not performing the required rigorous analysis to determine whether air impacts will be significant. FERC is looking for data to confirm the conclusion that it seemingly wants to reach. That is not how NEPA works. The Project is a major source of HAP emissions. FERC’s decision that impacts to air quality are insignificant despite not having sufficient information to determine the effects of the Project’s HAPs emissions is arbitrary.

There are more significant issues with FERC’s consideration of impacts to air quality. First, FERC seems to undercount the Project’s 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.”¹¹³ This is the correct approach. However, FERC does not contain similar disclaimers when it quantifies the remaining operational emissions associated with the Project, *e.g.*, from the marine facilities, vessels calling on the Project, and the compressor station. Thus, it is unclear whether FERC is quantifying *all* emissions based on the peak liquefaction capacity. FERC must clarify if this is the case and if FERC is not determining all operational emissions based on peak capacity, it must. Second, FERC entirely failed to consider the cumulative impacts of HAP emissions.¹¹⁴ This is arbitrary. And, third, FERC’s entire analysis of impacts to air quality is tainted by reliance on significant impact levels (“SILs”). The analysis of whether the Project will cause or contribute to a NAAQS violation is entirely based on whether the emissions from the Project crosses the relevant SIL for each pollutant.¹¹⁵ But using SILs to determine whether a Project would cause or contribute to a NAAQS violation is improper. The Clean Air Act unambiguously prohibits the use of SILs to

¹¹² DEIS at 4-434.

¹¹³ *Id.* at 4-251.

¹¹⁴ *Id.* at 4-434.

¹¹⁵ *Id.* at 4-259.

CO4-26: See revised section 4.12.1.4. As confirmed in Response 30 of CP2 LNG and CP Express’ responses (Accession No. 20220304-5046) to FERC’s Environmental Information Request (EIR) of February 11, 2022, the operational emissions for the Terminal Facilities provided in Resource Report 9 represent the peak liquefaction capacity of 28 MTPA.

For the Moss Lake Compressor Station, emissions were calculated assuming full-year operation (8,760 hours) of the primary emission sources – the combustion turbines. Also, the NAAQS impact assessment for Moss Lake Compressor Station was based on the maximum short-term emission rates for the turbines.

CO4-26

demonstrate to demonstrate that a project would not cause or contribute to a NAAQS exceedance.¹¹⁶ Thus, while it is improper to use compliance with NAAQS requirements as a proxy for FERC's NEPA significance determination, even if it weren't compliance with SILs cannot be used to determine compliance with the NAAQS. Nor can SILs be used to determine significance under NEPA independent of the NAAQS context.

Using the SILs has several consequences for FERC's NEPA analysis. For example, the DEIS explains that an air quality impacts analysis was only performed for a small handful of criteria pollutants.¹¹⁷ This alone violates NEPA's hard look requirement. But while the use of SILs taints the entire analysis of air quality impacts, perhaps the most egregious example is using SILs to excuse NAAQS exceedances demonstrated by the Developers' modeling. Modeling for the terminal facilities shows an exceedance of the 1-hour NO₂ NAAQS.¹¹⁸ And modeling for the Moss Lake Compressor Station showed exceedances for the 1-hour NO₂ standard and the 24-hour PM_{2.5} standard.¹¹⁹ But because the Developers' analysis shows that the Project's emissions don't exceed the relevant SILs, the DEIS claims

CO4-26

¹¹⁶ See *Alabama Power Co. v. Costle*, 636 F.3d 323, 362 (D.C. Cir. 1979) (Congress specifically used the terms "cause" and "contribute" together to ensure that the Prevention of Significant Deterioration program would prevent increments and the NAAQS from being exceeded by considering all possible violations or contributions to violations); *Bluewater Network v. EPA*, 370 F.3d 1, 13 (D.C. Cir. 2004) (interpreting nearly identical language in the Clean Air Act to mean that the term "contribute" "has not inherent connotation as to magnitude or importance of the relevant 'share' in the effect; certainly it does not incorporate any 'significance' requirement."); *Sierra Club v. EPA*, 705 F.3d 448, 465-66 (D.C. Cir. 2013) (vacating EPA's PM 2.5 SILs regulation because EPA lacks "authority to exempt sources from the requirements of the" Clean Air Act and the regulation "simply states that the demonstration required under [section] 165(a)(3) is deemed to have been made if a proposed source or modification's air quality impact is below the SIL."); *Sierra Club v. EPA*, 955 F.3d 56, 63-64 (D.C. Cir. 2020) (Affirming that the Court lacks jurisdiction to vacate a non-binding policy document as part of a facial challenge but explaining that "[t]he SILs Guidance is not sufficient to support a permitting decision—simply quoting the SILs Guidance is not enough to justify a permitting decision without more evidence in the record, including technical and legal documents.”).

¹¹⁷ DEIS at 4-261.

¹¹⁸ *Id.* at 4-262.

¹¹⁹ *Id.* at 4-263.

that the Project's contribution to the exceedance is not "significant."¹²⁰ This is just wrong. Again, SILs cannot be used to determine whether a project's contribution to a violation of the NAAQs is significant.

Perhaps because of the erroneous use of SILs, FERC's analysis of cumulative impacts to air quality also violates NEPA. In the cumulative impacts analysis, FERC focuses exclusively on whether the Project is responsible for the NAAQS exceedances in the Project area: "[i]n conclusion, the NAAQS cumulative impact assessments demonstrate that the proposed Project (CP2 LNG Terminal Facilities and Moss Lake Compressor Station) would not cause or contribute to a potential NAAQS exceedance and would only contribute a minor amount to cumulative air impacts within the geographic scope of this analysis."¹²¹ But in analyzing cumulative impacts FERC has clearly asked the wrong question. The question FERC must address is not whether the Project is the cause of a NAAQS exceedance. Rather, the point of cumulative effects analysis is to assess "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 (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time."¹²² The DEIS does not analyze these effects with respect to impacts to air quality. Rather than wrongly exculpating the Developers for contributing the NAAQS exceedances, FERC is required to explain the effects of this increased air pollution in the Project area, who it will impact, and what those impacts will be. It is entirely irrelevant to cumulative impacts analysis whether the Project's contributions are "minor."¹²³ What FERC has to take a hard look at is there is a collectively significant impact to air quality in the Project area. FERC has failed to take that hard look and has violated NEPA.

In sum, FERC's analysis of air impacts, both in terms of the impacts of the Project and the cumulative effects in the geographic scope is arbitrary.

¹²⁰ *Id.* at 4-262 – 4-263.

¹²¹ *Id.* at 4-434.

¹²² 40 C.F.R. § 1508.1(g)(3).

¹²³ *Id.*

V. Wetlands

a. *The DEIS Fails to Take a Hard Look at Wetland and Chenier Impacts*

The DEIS estimates that terminal would impact 366.5 acres of wetlands, with 342 acres of permanent impacts.¹²⁴ And the DEIS estimates that the pipeline system would affect approximately 1,040 acres of wetlands, with 101.6 acres of permanent impacts.¹²⁵ The DEIS fails to take a hard look at the consequences of these impacts.

The DEIS fails to accurately identify and evaluate wetland impacts from the Project to allow the public to appreciate the true impacts of the Project and provide meaningful comment on the DEIS. Accurate identification and evaluation of wetland impacts is critical as these are regionally vital coastal wetlands.

FERC identifies that one of the principle purposes in preparing the EIS is to “identify and assess the potential direct, indirect, and cumulative impacts on the natural and human environment that would result from construction and operation of the Project[.]”¹²⁶ However, the DEIS wetland impacts discussion suffers many of the same deficiencies as the Developers’ application materials and preliminary planning documents. Commenters raised myriad concerns about the identification and evaluation of wetland impacts in comments to the Coastal Use Permit for the Project, including unsupported information on wetland impacts, inadequate consideration of chenier plans and habitat, and unreasonable reliance on preliminary draft mitigation plans.¹²⁷ These comments are attached and are fully incorporated herein. These comments are relevant here.

The DEIS similarly fails to accurately represent wetland impacts to allow for reasonable assessment and consideration of mitigation requirements. For example, the DEIS identifies 4 levels of impact: temporary (during construction and immediate return to preconstruction conditions); short-term (impacts may continue 2-5 years following construction); long-term (require more than 5 years to recover); and permanent (will not return to preconstruction conditions during the life of the

¹²⁴ DEIS at 4-47.

¹²⁵ *Id.* at 4-48.

¹²⁶ *Id.* at 1-4.

¹²⁷ Comments of Healthy Gulf, et al., Sep. 9, 2022, § 5; Comments of Health Gulf, et al., Dec. 9, 2022, § 5.

Comments of For a Better Bayou et al.

28

CO4-27: Section 4.5 of the EIS discusses wetland impacts and associated mitigation in detail. As discussed in section 4.6.4 of the EIS, chenier plains present in the Project area have been degraded from extensive grazing activity and are not present at the Terminal site. Further, as stated in section 4.7.1.3 of the EIS, CP Express conducted field surveys to verify the existence of cheniers and other features identified on agency databases and did not identify cheniers crossed by the Project.

CO4-28: See section 4.5 of the EIS. FERC’s Wetland and Waterbody Construction and Mitigation Procedures (Procedures) outline wetland restoration requirements. CP Express developed a Project-specific Wetland and Waterbody Construction and Mitigation Procedures that incorporate FERC’s Procedures. A wetland mitigation plan would be developed in coordination with appropriate state and federal agencies. Monitoring is required for at least 3 years. If wetland vegetation has not successfully re-established at the end of 3 years, CP Express would develop a remedial action plan, in coordination with a wetland ecologist, to actively re-vegetate the impacted wetlands. In 2004, FERC biologists published Research of Wetland Construction & Mitigation Activities for Certificated Section 7(c) Pipeline Projects. The research project presented in the publication was used to analyze the effectiveness of FERC’s 1994 Procedures as they related to wetland restoration along pipeline rights-of-way. Biologists used the data to identify problem areas that prevented wetlands from meeting FERC’s definition of restored. The problem areas were addressed in subsequent versions of the Procedures. Further, the Procedures require post-construction inspections to ensure that wetlands are restored following construction.

Project).¹²⁸ The DEIS recognizes that most wetland impacts associated with the Terminal would be permanent and would require compensatory mitigation, but claims that most impacts on wetlands associated with the Pipeline System would be “short-term,” until revegetation is successful.¹²⁹

FERC’s determination that many of these impacts are less-than-permanent is entirely unsupported and is arbitrary. At the threshold, FERC’s determination assumes that these wetlands will revegetate. But FERC never determines how long revegetation will take or how likely revegetation efforts are to be successful.¹³⁰ Without these predicate determinations, FERC cannot conclude that these impacts will be less-than-permanent. Additionally, the DEIS indicates that impacts to Palustrine Forested wetlands (PFO) will be “long-term, because woody vegetation would take several years to regenerate.”¹³¹ However, Table 4.5.1-2 identifies, for example, that 235.6 acres of PFO wetlands would be impacted by construction of the Pipeline System, but only 62.5 acres of those are considered permanent operation impacts for which the Developers have proposed mitigation.¹³² But FERC’s own reasoning means that impacts to PFO wetlands are long-term and require mitigation even under FERC’s too narrow view of which impacts require mitigation. This example illustrates how short the DEIS falls in its analysis of impacts to wetlands. The analysis neither provides necessary basic information (e.g., how long impacts will last) nor is it internally logical.

FERC must scrutinize the quantification and qualification of impacts on wetlands from the Project and consider the effect of temporal losses on the capacity of these coastal wetlands to properly function. Similarly, FERC must assess 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

¹²⁸ DEIS at 4-1.

¹²⁹ *Id.* at 4-49.

¹³⁰ FERC even acknowledges that revegetation may not be successful, but even where revegetation is not successful after three years, the DEIS indicates that additional compensatory mitigation will not be required. *See id.* This violates even the flawed understanding of mitigation for wetlands impacts represented in the DEIS.

¹³¹ *Id.*

¹³² *Id.* at 4-45, Table 4.5.1-2, *Summary of Wetlands Affected by the CP2 LNG and CP Express Project (acres)*.

CO4-29: See responses to SA1-7, CO4-28, and CO3-15. Additionally, section 4.6.2.2 of the EIS describes the long-term impacts on scrub-shrub vegetation may take 3-5 years to re-establish their woody composition. The overall succession of wetlands from scrub-shrub to forested would vary based on species composition, growing conditions, and external interference. CP Express would be responsible for ensuring that all temporary workspace would be restored as described in the response to CO4-28. Operational impacts are only those impacts where continuous vegetative maintenance is required to meet safety regulations or impacts that permanently alter the function of the wetland (i.e., permanent conversion of wetlands at aboveground facilities).

CO4-30: As discussed in section 4.5.2 of the EIS, impacts on adjacent wetlands may occur. CP2 LNG and CP Express would implement the Project-Specific Plan and Procedures and Spill Prevention, Control and Countermeasure Plan to reduce direct and indirect impacts on adjacent wetlands. Cumulative impacts are discussed in section 4.14 of the EIS. See Response to CO3-15 regarding mitigation.

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.”¹³³

At a minimum, FERC must consider additional mitigation for wetland impacts and must justify the ultimate amount of mitigation chosen.¹³⁴ FERC must also provide an opportunity for the public to comment on wetland issues in the NEPA context as the information provided here is to sparse to allow for meaningful public involvement. And, finally, if FERC ultimately authorizes the Project, FERC must use its authority to condition authorizations to place conditions on the Certificate Order to ensure that the Project’s impacts to wetlands are sufficiently minimized and mitigated.¹³⁵

Perhaps most importantly, the DEIS fails to adequately consider the cumulative impact of wetland loss in Louisiana. Wetlands are integral to Louisiana in a way unlike any other state: Louisiana has 40 percent of the country’s wetlands, and wetlands account for 11 percent of the state’s landmass.¹³⁶ But Louisiana is losing wetlands at an exceptional rate: over 90 percent of the coastal marsh loss in the continental United States occurs in Louisiana,¹³⁷ and at the current rate of loss, Louisiana’s wetlands would entirely disappear in approximately 200 years.¹³⁸ The

¹³³ 33 C.F.R. § 320.4(b)(3).

¹³⁴ The proposed mitigation ratios here have not been justified and must be justified. See 40 C.F.R. § 230.93(f)(2).

¹³⁵ FERC must ensure compliance with the “federal government[s] ... longstanding national goal of ‘no net loss’ of wetland acreage and function.” EPA and Corps, Compensatory Mitigation for Losses of Aquatic Resources, Final Rule, 73 Fed. Reg. 19594-01 (Apr. 10, 2008).

¹³⁶ Blake, Donewar, *Saving Louisiana’s Wetlands: Solving Longstanding Environmental Crisis Through Contractual Liability*, Loyola Law Review (May 20, 2020), <http://www.loyno-lawreview.com/2020/05/20/savinglouisianas-wetlands-solving-the-longstanding-environmental-crisis-through-contractual-liability/>.

¹³⁷ *Louisiana’s disappearing WETLANDS*, Southeastern Louisiana University, <https://www2.southeastern.edu/orgs/oilspill/wetlands.html#:~:text=While%20Louisiana%20has%2040%25%20of,the%20turn%20of%20the%20century.>

¹³⁸ Blake Donewar, *Saving Louisiana’s Wetlands: Solving the Longstanding Environmental Crisis Through Contractual Liability*, Loyola Law Review (May 20, 2020), <http://www.loyno-lawreview.com/2020/05/20/savinglouisianas-wetlands-solving-the-longstanding-environmental-crisis-through-contractual-liability/>.

CO4-30

CO4-31: See response to CO3-15 regarding statutes governing mitigation. See also response to CO2-1 regarding public comment and CO4-27 regarding wetland impacts and mitigation. As shown in sections 1.5 and 4.5.2.4 of the EIS, CP2 LNG and CP Express have a pending application with both the LDNR/OCM and the COE. Public notice of the project is forthcoming and would provide the public an opportunity to comment on the Beneficial Use of Dredge Material and Mitigation plans. CP2 LNG and CP Express would not be permitted to begin construction until all federal authorizations are received.

CO4-31

CO4-32

CO4-32: Cumulative impacts are discussed in section 4.14 of the EIS. See the response to CO3-15 regarding mitigation.

DEIS concludes that impacts to wetlands here can be mitigated to insignificance,¹³⁹ but this claim has been made for many other projects as well, and wetland loss persists nonetheless. Nor does the DEIS 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,¹⁴⁰ or provide habitat.¹⁴¹

CO4-32

In addition to being yet another project contributing to cumulative wetland loss, the Project would be particularly harmful because of its impacts on cheniers. The Project will be constructed in the West Gulf Coastal Plain's Louisiana Cheniere Plain ("Louisiana Cheniere Plain").¹⁴² The Louisiana Cheniere Plain includes marsh/swamp vegetation interspersed with sandy beach ridges, known as cheniers. Chenier ridges are critically important to the environment in southwest Louisiana,¹⁴³ and are globally recognized as an Important Bird Area.¹⁴⁴ The Project will destroy a remarkable amount of cheniers; the terminal facility alone is nearly entirely underlain by cheniers.¹⁴⁵ Meanwhile, the DEIS indicates that the pipeline will cut through Chenier Plain Important Bird Area between mile posts 45.5 and 85.4.¹⁴⁶ But despite the fact that Project will plainly impact significant acres of this crucial habitat, the EIS entirely fails to analyze these impacts. The EIS does not even quantify the acreage of destroyed chenier habitat. But as several groups explained in comments to the Louisiana Department of Natural Resources, the Project will entail approximately 7.95 miles of pipeline cutting through cheniers and nearly the entire terminal facility.¹⁴⁷ The DEIS fails to consider other impacts to

CO4-33: See response to CO4-27.

CO4-33

¹³⁹ DEIS at 4-53.

¹⁴⁰ *Louisiana Coastal Wetland Functions and Values*, <https://lacost.gov/reports/rtr/1997/4.htm>.

¹⁴¹ *Id.*

¹⁴² DEIS at 4-5.

¹⁴³ Donald E. Owen, *Geology of the Chenier Plain of Cameron Parish, southwestern Louisiana*, Geological Society of America Field Guide 14 2008 Joint Annual meeting, Houston, Texas, 5-9 October 2008 (attached).

¹⁴⁴ National Audubon Society, *Important Bird Areas Program*, <https://www.audubon.org/important-bird-areas/state/louisiana>.

¹⁴⁵ DEIS at 4-5.

¹⁴⁶ *Id.* at 4-80.

¹⁴⁷ Comments of Healthy Gulf, *et al.* at 17 (attached).

Comments of For a Better Bayou et al.

CO4-33

cheniers as well. For example, the DEIS is silent on the adverse impacts of noise, light, and other impacts.

In addition to FERC's responsibility to analyze impacts to wetlands through the NEPA process and to factor wetlands impacts into its public interest determinations, wetlands are protected under Section 404 of the Clean Water Act. To date, the Army Corps has not provided for public comment for the Project.

Moreover, the Final Dredged Material Plan, which the DEIS suggests would be included in an application for a Section 404 permit, is not publicly available.¹⁴⁸ The provisional, draft Compensatory Mitigation and Beneficial Use of Dredged material Plan that is available for review is incomplete, concedes the need for further study, and lacks the specificity needed to meet state and Federal requirements.¹⁴⁹

Again, the Corps has not issued a notice for public comment on the Section 10/404 permits for the Project.¹⁵⁰ FERC represents that the EIS serves to "encourage and facilitate involvement by the public and interested agencies in the environmental review process,"¹⁵¹ but it falls short of this goal. It presents no specific information to allow for public assessment of proposed mitigation or the likelihood of mitigation success. Despite being the primary agency responsible for review of the Project, FERC looks to punt this responsibility to the Corps and Louisiana's Coastal Use Permit proceedings. The agencies must coordinate review more effectively to afford the public the opportunity to meaningfully participate in the review process for wetland impacts and mitigation. Here, FERC has failed.

Ultimately, the DEIS's analysis of wetland impacts is conclusory and fails to explain the agency's reasoning behind its various blanket statements. The DEIS unreasonably—and prematurely—finds that impacts to wetlands due to the Project would not be significant.¹⁵² But this finding is entirely speculative as it relies on forthcoming permitting proceedings and not-yet-final mitigation.¹⁵³ And the finding is wrong because it relies on misidentified wetland impacts.

¹⁴⁸ DEIS at 4-21.

¹⁴⁹ See Health Gulf et al. Dec. 9, 2022 LDNR CUP Comments at Section V.B-C.

¹⁵⁰ The comment period for the state-issued Coastal Use Permit has passed.

¹⁵¹ DEIS at 1-4.

¹⁵² DEIS at 4-47, 4-51.

¹⁵³ *Id.* at 4-47.

Comments of For a Better Bayou et al.

32

CO4-34: See response to CO4-31.

CO4-35: Comment noted. The Commission may rely on another agency that has jurisdiction over the area in question to implement appropriate mitigation. As stated in section 4.5.2.4 of the EIS, section 404 of the Clean Water Act requires that unavoidable wetland impacts be offset by the creation, restoration, enhancement, or preservation of an appropriate amount of wetlands. However, the Corps of Engineers cannot complete its section 404 permitting process until the completion of NEPA. Therefore, the "final mitigation" cannot be complete before the issuance of the final NEPA document.

- b. *FERC Must Address Consistency with Louisiana's Comprehensive master Plan for a Sustainable Coast, and FERC Cannot Simply State that Louisiana Will Address This Issue in the Future*

NEPA requires FERC to take a hard look at a proposed project's "effects that would violate Federal, State, Tribal, or local law protecting the environment."¹⁵⁴ One such law, which is particularly important for wetlands, is Louisiana's Coastal master Plan, adopted pursuant to the Coastal Zone Management Act. But the DEIS entirely fails to address this issue. Rather than analysis, FERC simply writes that the Developer's Coastal Use Permit application is "still under review"¹⁵⁵ and that Project would be "built in compliance with" the conditions in a future Coastal Use Permit.¹⁵⁶ The DEIS, therefore, entirely omits the required analysis of whether the project's effects would violate laws protecting the environment. Stating that these issues will be addressed in the future—potentially after FERC issues a certificate order¹⁵⁷ conditioned on future findings by other agencies—fails to provide the opportunity for informed, meaningful public participation that NEPA requires.

Avoiding these issues is especially inappropriate here, where evidence indicates that the Project would, in fact, violate the coastal master plan. On September 9, 2022 and December 9, 2022, Healthy Gulf and other organizations submitted comments to the Louisiana Department of Natural Resources to that end. These comments are incorporated by reference here.¹⁵⁸ The comments stress this Project's inconsistency with the Coastal Master Plan¹⁵⁹ because of, *inter alia*, destruction of wetlands, which the Coastal Master Plan clearly states must be preserved.¹⁶⁰ The comments also address the removal of a significant chunk of land

¹⁵⁴ 40 C.F.R. § 1501.3(b)(2)(iv).

¹⁵⁵ DEIS at 4-167.

¹⁵⁶ DEIS at 4-166.

¹⁵⁷ FERC simply asks that the Developers file a consistency determination with the Coastal Zone Management Plan before construction. *See id.* at 4-167.

¹⁵⁸ *See* Healthy Gulf's Comments re: CUP #P20211132 (CP Express Application), CUP #P20211131 (CP2 Application) (attached) ("Healthy Gulf CUP Comments").

¹⁵⁹ *See Louisiana's Comprehensive Master Plan for a Sustainable Coast*, Coastal Protection and Restoration Authority of Louisiana, available at <http://coastal.la.gov/wp-content/uploads/2017/01/DRAFT-2017-Coastal-Master-Plan.pdf> (attached).

¹⁶⁰ *See* Healthy Gulf CUP Comments.

Comments of For a Better Bayou et al.

CO4-36

CO4-36: The Coastal Zone Management Act is administered by the National Oceanic and Atmospheric Administration and carried out by participating states. As discussed in section 4.9.6 of the EIS, CP2 LNG and CP Express are required to design the project consistent with Louisiana's Coastal Resources Program where the Project overlaps the state's delineated coastal zone (see FERC staff recommendation number 21). This means that CP2 LNG and CP Express must apply for and receive appropriate permits from the LDNR/OCM and provide them to FERC prior to requesting a notice to proceed with construction from FERC. CP2 LNG and CP Express must also provide proof of Consistency with applicable Coastal Zone Management Plans prior to receiving COE approval. Opportunities for public comment will be provided through the COE Public Notice.

on Monkey Island and the failure to fully weigh the costs and benefits of the Project as required by Louisiana's Constitution.¹⁶¹ Moreover, the comments discuss the adverse impacts the Project will have on cumulative wetland loss, coastal erosion, and other impacts occasioned by the various other LNG export facilities FERC has approved and which are proposed¹⁶² for the Calcasieu Pass and the Calcasieu River area and the Louisiana Coastal Zone.¹⁶³ These comments also addressed to the alternatives analysis regarding the siting of the Project. The apply to this DEIS because any finding by FERC in this DEIS that the Project is consistent with the Master Plan, or reliance on such a finding by other state or federal agencies is incorrect.

FERC cannot simply punt the wetlands portion of their environmental review over to other agencies, state and federal.¹⁶⁴ Here, Healthy Gulf and others have raised several inconsistencies between the proposed Project and the Coastal Master Plan which FERC must consider under NEPA to ensure compliance with state laws. FERC cannot conditionally issue a certificate when FERC has reason to believe that the Coastal Use Permit may never or should never be issued by the reviewing agencies due to inconsistencies with state laws.

¹⁶¹ *Id.*

¹⁶² *North American LNG Export Terminals – Existing, Approved no Yet Built, and Proposed*, FERC, available at <https://cms.ferc.gov/media/north-american-lng-export-terminals-existing-approved-not-yet-built-and-proposed-8> (Feb. 22, 2023) (attached).

¹⁶³ We urge FERC to conduct a programmatic EIS for all of these facilities.

¹⁶⁴ See *Appalachian Voices*, 2019 WL 847199, at 1 (rejecting arguments that FERC violated the natural Gas Act by “issuing the certificate subject to conditions precedent” because 15 U.S.C. § 717(f) “expressly provides that FERC ‘shall have the power to attach to the issuance of the certificate and to the exercise of rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.’”); *Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 399 (D.C. Cir. 2017) (upholding FERC’s approval of a natural gas project conditioned on securing state certification under Section 401 of the Clean Water Act); *Myersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1320-21 (D.C. Cir. 2015) (upholding FERC’s conditional approval of a natural gas facility where FERC conditioned its approval on an applicant securing a required Clean Air Act permit from the state); *Pub. Utils. Comm’n of Cal. v. FERC*, 900 F.2d 269, 282 (D.C. Cir. 1990) (FERC did not violate NEPA by issuing a certificate conditioned upon the completion of the environmental analysis).

Lastly, it appears that FERC has not considered the 2022 NOAA report on sea level rise of one foot being expected by 2050,¹⁶⁵ or the 2022 Sixth IPCC report.¹⁶⁶ Both show changes in the baseline and new information on climate change impacts that would impact the site itself since it is near or below sea level and located in the Gulf coast in the hurricane zone. The NOAA report discusses sea level rise which is a factor in analyzing the intensity and extent of impacts (e.g., height of waves and storm surge) and the need for mitigation (i.e., the height of docks, levees, etc.). This also bears on the increasing number and severity of storms, which bears on the project design and the need to preserve wetlands as storm buffers and for flood control, which are critical wetlands functions the DEIS fails to address when analyzing the loss of wetlands that would be caused by the Project.¹⁶⁷

CO4-37

CO4-37: Anticipated sea level rise and Project mitigation are discussed in detail in the EIS at sections 4.2.3.4 and 4.13.1.5. See also response to comment CO4-24.

- c. *The DEIS Fails to Provide Any Details Regarding Proposed Wetland Mitigation Banking, and Thereby Fails to Provide for Meaningful Public Participation*

CO4-38

The DEIS asserts that impacts would be “adequately minimized and sufficiently mitigated for.”¹⁶⁸ This mitigation purportedly consists of purchasing

¹⁶⁵ See *U.S. coastline to see up to a foot of sea level rise by 2050*, NOAA, available at <https://www.noaa.gov/news-releases/us-coastline-to-see-up-to-foot-of-sea-level-rise-by-2050> (attached); NOAA, *Global and Regional Sea Level Rise Scenarios for the United States* (Feb. 2022), available at <https://aamrpublibhcoceanservice.blob.core.windows.net/oceanserviceprod/hazards/sea-level-rise/noaa-nos-technrpt01-global-regional-slr-scenarios-US.pdf> (attached).

¹⁶⁶ See [ipcc.ch/report/ar6/wg2/](https://www.ipcc.ch/report/ar6/wg2/).

¹⁶⁷ The DEIS fails to consider the value and function of wetlands in protection from storm surges and flooding and whether and how the mitigation in this case would address the loss of this at the Project site. This failure renders the impacts analysis insufficient as these functions are well established. See, e.g., *Louisiana's Comprehensive Master Plan for a Sustainable coast*, Coastal Protection and Restoration Authority of Louisiana, available at <http://coastal.la.gov/wp-content/uploads/2017/01/DRAFT-2017-Coastal-Master-Plan.pdf> (last visited March 4, 2023); see also *Wetlands: Protecting Life and Property from Flooding*, EPA, available at <https://www.epa.gov/sites/default/files/2016-02/documents/flooding.pdf> (attached); see also, Shepard et al., *The Protective role of Coastal Marshes: A Systemic Review and Meta-analysis*, PLOS ONE, available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0027374> (attached) (discussing three ecosystem services associated with coastal wetlands: (1) wave attenuation, shoreline stabilization, and floodwater attenuation).

¹⁶⁸ DEIS at 4-53.

Comments of For a Better Bayou et al.

35

"mitigation bank credits."¹⁶⁹ But the DEIS provides few details on this proposed mitigation and does not assess whether the proposed mitigation would be sufficient to compensate for the relevant losses of wetlands and wetland functions. This complete lack of specific information prevents the public from meaningfully commenting on the project or the adequacy of mitigation.

Moreover, even from the little information provided, it is clear that no mitigation has been provided for the vast majority of impacts from the Pipeline System.¹⁷⁰ This violates the Clean Water Act and must be rectified. The Clean Water Act Section 404 implementing regulations require compensatory mitigation for all impacts to wetlands that remain after avoidance and minimization measures with no distinction between so-called "temporary impacts" and permanent impacts.¹⁷¹ Here, CP Express seemingly plans to not provide mitigation for any of the "temporary impacts" caused by the pipeline. But that plainly is inconsistent with the relevant law.

Again, this is not an issue that FERC can punt to another agency. The DEIS states that "[t]he COE and LDNR OCM would approve the final plans during permit application review and processing," which was not complete by the time of writing the DEIS.¹⁷² That other agencies are purportedly reviewing the information is no reason to withhold more detailed information from the DEIS. To the contrary, one of the purposes of NEPA analysis is to inform that very review: the entire premise of NEPA is that proposed, non-final actions will be presented to the public for comment. The DEIS fails to provide sufficient information for the public to provide that comment here and offers no justification for this failure. The Corps' decision is itself a major federal action subject to NEPA, and FERC has a statutory obligation to act as lead agency for the NEPA process and to inform the Corps' decisionmaking.¹⁷³

VI. Environmental Justice

NEPA requires an environmental impact statement to examine all potential impacts of a project, including "ecological ... aesthetic, historic, cultural, economic,

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ 33 C.F.R. § 332.1(c)(3).

¹⁷² *Id.*

¹⁷³ 15 U.S.C. § 717n.

CO4-38

CO4-38: See responses to CO3-15, CO4-27, and CO4-34.

CO4-39

social, or health, whether direct, indirect, or cumulative.”¹⁷⁴ Agencies must consider the environmental justice impacts of their actions on low-income and minority communities in accordance with Executive Order 12898.¹⁷⁵

Almost a year ago, FERC published its draft updated Certificate Policy Statement.¹⁷⁶ With the new policy statement, FERC explained that “[t]he Commission’s public interest responsibility demands that we seriously evaluate [environmental justice] considerations” and that FERC’s obligation to consider impacts to environmental justice communities extends to both Section 3 and Section 7 approvals.¹⁷⁷ The Council on Environmental Quality (CEQ) has also issued guidance on incorporating environmental justice (EJ) considerations in the NEPA process.¹⁷⁸ The guidance reads in part:

In preparing an EIS or an EA, agencies must consider both impacts on the natural or physical environment and related social, cultural, and economic impacts. Environmental justice concerns may arise from impacts on the natural and physical environment, such as human health or ecological impacts on minority populations, low-income populations, and Indian tribes, or from related social or economic impacts.

Toxic pollution from industrial facilities disproportionately impacts low-income neighborhoods and communities of color along the Gulf Coast. Specifically, Cameron Parish and neighboring communities are already overburdened with industry and polluting facilities and are at the forefront of climate change impacts. For example, as the EIS grimly points out, “[d]ue to recent hurricanes in the Project

¹⁷⁴ 40 C.F.R. § 1508.8.

¹⁷⁵ *Coliseum Square, Inc. v. Jackson*, 465 F.3d 215, 232 (5th Cir. 2006).

¹⁷⁶ *Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Updated Policy Statement) (In February 2022, the Commission issued an update to its 1999 Certificate Policy Statement, although it has not yet made that update final).

¹⁷⁷ *Id.* at ¶¶86, 86 n. 204.

¹⁷⁸ 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) [hereinafter “CEQ EJ Guidance”].

CO4-39

CO4-39: Comment noted. Climate change is discussed in section 4.14.2.13 and environmental justice is discussed in section 4.10.10 of the EIS.

area, many residences became uninhabitable.”¹⁷⁹ These impacts would be exacerbated by the Project. Communities within Cameron Parish are inundated with quickly rising seas and storms of increasing frequency and intensity and more flooding events. Meanwhile, Cameron Parish and the neighboring Calcasieu Parish have four existing or under construction LNG terminals, four proposed or already permitting LNG terminals, and at least two expansions of existing LNG terminals.

CO4-39

a. *The Project Will Have Adverse Impacts on Low-Income and Minority Communities*

Here, FERC uses the 50 percent and the meaningfully greater analysis methods to identify minority populations.¹⁸⁰ Using this methodology, minority populations are defined in this EIS where either: (a) the aggregate minority population of the block groups in the affected area exceeds 50 percent; or (b) the aggregate minority population in the block group affected is 10 percent higher than the aggregate minority population percentage in the parish.¹⁸¹ CEQ’s guidance directs that low-income populations are to be identified based on the annual statistical poverty thresholds from the U.S. Census Bureau.¹⁸² Using *Promising Practices’* low-income threshold criteria method, low-income populations are identified as census block groups where the percent low-income populations are identified as census block groups where the percent low-income population in the identified block group is equal to or greater than that of the parish.¹⁸³

CO4-40

CO4-40: As discussed in section 4.10.10.1 of the EIS, FERC follows the recommendations set forth in EPA’s Federal Interagency Working Group on Environmental Justice and NEPA Committee’s publication, *Promising Practices for Environmental Justice Methodologies in NEPA Reviews* (Promising Practices (Promising Practices), which provides methodologies for conducting environmental justice analyses throughout the NEPA process.

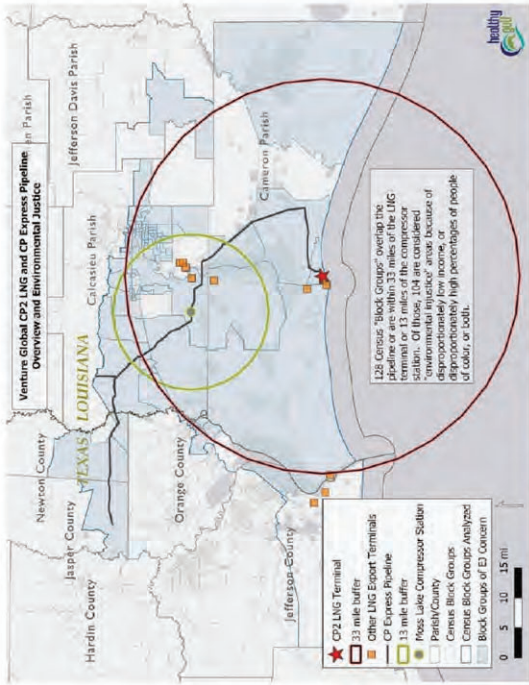
¹⁷⁹ DEIS at 4-156.

¹⁸⁰ *Id.* at 4-201.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*



CO4-40

Figure 1. Environmental injustice analysis for CP2 LNG export terminal and CP Express pipeline, using the threshold method for identifying Census Block Groups of environmental justice concern. Census data is from the 2016 ACS.

While we commend FERC for completing an EJ analysis, the methods used are lacking. FERC should employ the “threshold” method, as it does for low-income populations,¹⁸⁴ to identify minority populations.¹⁸⁵ Using this method, FERC would analyze non-white, Black, indigenous, and Hispanic population percent for the block group as compared to the Parish.¹⁸⁶ Where any of these categories is larger than the Parish percentage, the block group should be flagged as an environmental justice concern.

¹⁸⁴ *Id.* at 4-201 – 4-202.

¹⁸⁵ *Cf. id.* at 4-201.

¹⁸⁶ *Id.* at 4-201 – 4-202.

Comments of For a Better Bayou et al.

FERC's analysis is further flawed because FERC failed to justify the radius used for the analysis.¹⁸⁷ The DEIS used a 15-mile radius to measure environmental justice impacts from the terminal facilities.¹⁸⁸ And within that radius, there are eight census block groups.¹⁸⁹ The DEIS used a 1-mile radius to measure environmental justice impacts from the above-ground pipeline facilities, including the Moss Lake Compressor Station.¹⁹⁰ But in other FERC EJ analyses, a 33-mile radius¹⁹¹ from LNG export terminal and a 6-mile radius¹⁹² from a compressor station was used to measure impacts to environmental justice communities. Those numbers should be seen as a minimum here. The radius used is crucial and must be tied to the impacts of the Project.¹⁹³ The radius of impacts associated with LNG export projects is large. For example, the DEIS acknowledges that LNG export projects have serious explosion risks. Another worst-case scenario, a methane vapor cloud from a loss of containment of LNG, could form over a span of miles and then ignite over a populated area. These are all severe environmental justice concerns, as are impacts like air pollution, *etc.* These concerns must be taken into account when determining the radius for environmental justice impacts analysis.¹⁹⁴ While the DEIS does take into account air quality impacts, as explained in more detail below, it wrongly uses significant impact levels to curtail the scope of the environmental justice analysis.¹⁹⁵

CO4-41

CO4-41: The radius of analysis for environmental justice will vary depending on the project and related impacts. FERC staff determines the furthest potential direct project impact, which is related to air quality for the Project. Accordingly, FERC staff determined that a 15-mile radius around the approved CP2 LNG site and a 1-mile radius around the Moss Lake Compressor Station is the appropriate geographic area of analysis for identification of project impacts on environmental justice communities. Additionally, FERC staff's determination that impacts are disproportionately high and adverse, but not significant was not made "simply on the basis that those groups will experience conditions no worse than the surrounding [area]."

¹⁸⁷ See *Vécinios para el Bienestar de la Comunidad Costera v. Federal Energy Regulation Commission*, 6 F.4th 1321, 1330-31 (D.C. Cir. 2021).

¹⁸⁸ DEIS at 4-201 – 4-202.

¹⁸⁹ *Id.* at 4-204.

¹⁹⁰ *Id.* at 4-202.

¹⁹¹ Commonwealth DEIS at 4-191.

¹⁹² FERC, Venice Extension Project Final Environmental Impact Statement, at 71 (Feb. 2023), available at https://elibrary.ferc.gov/elibrary/filist?accession_number=20230217-3003&optimized=false.

¹⁹³ *Vécinios*, 6 F.4th at 1330-31.

¹⁹⁴ Relevant here, the DEIS is wrong about the distance of the Project to the nearest residence. The DEIS calculates that distance as 1.6 miles from the terminal. But this is wrong. Even from the southeasternmost corner of the facility, the nearest house is about a mile away. 1.6 miles from the center of the facility includes several neighborhoods and the town of Cameron. FERC must correct this calculation.

¹⁹⁵ DEIS at 4-202 n.69.

Here, despite FERC's flawed methodology, a majority of the block groups within the geographic scope for environmental justice impacts, as defined by the DEIS, are environmental justice communities.¹⁹⁶ Within the 15-mile radius from the terminal, there are eight census block groups.¹⁹⁷ And of those eight census block groups, six are environmental justice communities.¹⁹⁸ Within the 1-mile radius from pipeline facilities, there are 30 census block groups.¹⁹⁹ Of those, 14 are environmental justice communities.²⁰⁰ For comparison, our cursory analysis showed 128 census block groups within 33 miles of the export terminal and within 6 miles of the compressor station.²⁰¹ Of those, 104, or 81%, demonstrated environmental injustice.²⁰²

A disproportionately high and adverse effect on an environmental justice community means the adverse effect is predominantly borne by an environmental justice population.²⁰³ The DEIS identified that there would be project-related impacts on flooding, surface water resources, wetlands, visual resources, socioeconomic factors, recreational and commercial fishing, traffic, air quality, and noise.²⁰⁴ The DEIS concludes that construction and operation of both the terminal facilities and the pipeline system "would have a disproportionately high and adverse impact on environmental justice communities because the impacts are predominantly borne by those communities, but those impacts would be less than significant."²⁰⁵ The significance determinations are based on FERC's determination

¹⁹⁶ *Id.* at 4-202.

¹⁹⁷ *Id.* at 4-204.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 4-202 – 4-203.

²⁰⁰ *Id.*

²⁰¹ See Fig. 1. Figure 1 features a 13-mile radius from the compressor station.

However, this has no impact on the analysis because it intersects no additional census blocks.

²⁰² *Id.* To be clear, this is a cursory analysis. In addition to analyses within radii from the compressor station and terminal facilities, FERC must still perform an environmental justice analysis concerning the pipeline system as a whole. And it must justify the radius it uses for that analysis as well.

²⁰³ DEIS at 4-214.

²⁰⁴ *Id.* at 4-214 – 4-215.

²⁰⁵ *Id.* at 4-223.

that the relevant effects, e.g. noise impacts, are not significant in general.²⁰⁶ But environmental justice impacts cannot be ignored “simply on the basis that those groups will experience conditions no worse than the surrounding [area]—particularly when the surrounding [area] presents any of the same concerns that underlie the CEQ’s and EPA’s environmental justice guidance.”²⁰⁷

- b. *The DEIS Fails to Consider Whether Unique Factors Within Impacted Environmental Justice Communities Will Result in Significant Disproportionate Impacts from the Project*

The DEIS fails to consider that environmental justice communities may be more susceptible to environmental impacts than other populations. As EPA has explained in its guidance on evaluating environmental justice impacts in NEPA reviews:

Focusing the analysis [on the relevant environmental justice context] may show that potential impacts, which are not significant in the NEPA context, are particularly disproportionate or particularly severe on minority and/or low-income communities. As mentioned previously, disproportionately high and adverse effects should trigger the serious consideration of alternatives and mitigation actions in coordination with extensive community outreach efforts.²⁰⁸

Thus, the direct, indirect, and cumulative effects of a project may have a disproportionately severe or adverse impact on an environmental justice community even if an EIS determines that the general impacts are not significant. A finding of insignificance must be demonstrated and supported by evidence. The DEIS does not

²⁰⁶ See *id.* at 4-214 – 4-221.

²⁰⁷ *Rio Grande LNG, LLC and Rio Bravo Pipeline*, 169 FERC ¶ 61,131 (Nov. 22, 2019) (Glick, Comm’r dissenting at P9).

²⁰⁸ EPA, *Final Guidance for Incorporating Environmental Justice Concerns in EPA’s NEPA Compliance Analysis* § 3.2.2 (Apr. 1998), available at https://www.epa.gov/sites/default/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf (attached) [hereinafter “EPA EJ Guidance”].

Comments of For a Better Bayou et al.

42

CO4-41

CO4-42

CO4-42: As described in section 1.2.1, the FERC has prepared the EIS in compliance with the requirements of NEPA, the CEQ regulations implementing procedural provisions of NEPA in 40 CFR 1500-1508, the FERC’s regulations implementing NEPA in 18 CFR 380, and Promising Practices. As described in section 4.10.10, FERC collected the block group level data and conducted an impacts analysis for the identified environmental justice communities and evaluated health and environmental hazards; the natural physical environment; and associated social, economic, and cultural factors to determine whether impacts would be disproportionately high and adverse on environmental justice communities and also whether those impacts would be significant within the meaning of NEPA. FERC assessed whether those impacts on an environmental justice community are disproportionately high and adverse, consistent with EPA’s recommendations in Promising Practices. FERC found that temporary and permanent adverse impacts on environmental justice communities associated with water resources, wetlands, socioeconomic, recreational and commercial fishing, traffic, air quality, noise, and visual resources would be disproportionately high and adverse because the impacts are predominantly borne by those communities. Additionally, FERC completed a human health risk assessment, which is discussed in section 4.12.1.4 of the EIS.

demonstrate or prove the lack of significant impact on environmental justice communities or population.²⁰⁹ But even if an effect will not have a significant impact on the general population, it does not mean that the effect will not have a significant impact on environmental justice communities within that population.²¹⁰

Here, FERC failed to consider the significance of environmental impacts beyond the significance to the general population. One instance of such a failing is assessment of air quality impacts on environmental justice communities. The DEIS simply concludes that because air pollutants will be minimized or within the NAAQS, their impacts will not be significant.²¹¹ The DEIS conducts no further analysis as to whether declining air quality from the Project's air emissions will have a significant effect on environmental justice communities notwithstanding its determination that effects will not be significant on the general population.²¹² FERC's failure to perform this necessary, additional analysis is especially galling because 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."²¹³ But by failing to perform this additional analysis, FERC fails to take a hard look at the impacts of declining air quality on environmental justice populations. FERC failed to analyze, *inter alia*, three factors that could result in disproportionate impacts on EJ communities from exposure to increased air emission levels: (1) levels of existing asthma or respiratory disease by income; (2) age disparities; and (3) lack of access to health care.

CO4-42

²⁰⁹ The DEIS only acknowledged that one impact would be significant on environmental justice communities.

²¹⁰ Federal Interagency Working Group on Environmental Justice & NEPA Committee, *Promising Practices for EJ Methodologies in NEPA Reviews*, 32-36 (Feb. 2016), available at https://www.epa.gov/sites/default/files/2016-08/documents/hepa_promising_practices_document_2016.pdf (attached) [hereinafter "IWG Guidance"]. Alternatively, as explained throughout these comments, the DEIS failed to adequately assess significance with respect to the general population and as a result, the significance determinations with respect to environmental justice communities are invalid as well.

²¹¹ DEIS at 4-264.

²¹² *Id.* at 4-220.

²¹³ *Id.*

Notwithstanding FERC's terse acknowledgement, FERC's conclusion is plainly based on the erroneous premise that air pollution is of no (or less than significant) concern, so long as there is not a National Ambient Air Quality Standards (NAAQS) violation. Air pollution that does not exceed the individual NAAQS can cause harmful health impacts. Particulate matter, nitrogen-dioxide, and ozone are recognized as pollutants for which no threshold of exposure fully protects human health.²¹⁴ 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 billion²¹⁵ adversely impact short- and long-term respiratory mortality, and significantly impact morbidity.²¹⁶ Even if FERC is able to demonstrate that the individual and cumulative impact of air pollution are not likely to exceed the NAAQS, this does not demonstrate that the cumulative effect of air pollution impacts on human health will be significant on the general population or to environmental justice populations. FERC makes the same fundamental error on the other impacts analyzed in the environmental justice context.

In particular, FERC failed to consider environmental justice communities' susceptibility to air pollution even at levels below the NAAQS. Agencies cannot conclude that proposed actions will not have significant effects on environmental justice communities without "focusing the analysis on aspects of context and intensity most relevant to the impacted community."²¹⁷ Thus, a finding that project impacts would be insignificant in general does not mean that those effects will not have significant effects on environmental justice communities.²¹⁸ For example, environmental justice communities may be exposed to multiple pollutants. Thus, in a situation wherein no individual pollutant exceeds some threshold of significance, but where the cumulative effect of exposure to multiple pollutants causes

²¹⁴ *Am. Trucking Ass'n, Inc. v. EPA*, 283 F.3d 355, 359-60 (D.C. Cir. 2002); EPA, NAAQS for Nitrogen Dioxide, 75 Fed. Reg. 6,474, 6,500 (Feb. 9, 2010).

²¹⁵ Modeling shows that the terminal facility's estimated impact on ambient ozone levels is to raise the concentration to 65.2 parts per billion. DEIS at 4-262.

²¹⁶ EPA, Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone, at 5-78 (2014), *available at* <https://nepis.epa.gov/Exec/QueryPDF.cgi?Dockey=P100L6HZ.txt> (attached).

²¹⁷ IWG Guidance at 33.

²¹⁸ *Id.* at 33.

concerning health impacts, those impacts could be significant.²¹⁹ The risk of multiple exposures may not be captured by, e.g., the NAAQS. EPA sets the NAAQS in a context assessing “acceptable” risk, not eliminating all risk.²²⁰ However, risks tolerated by EPA when setting one-size-fits-all nationwide regulations may be amplified in the context of EJ communities.²²¹

Additionally, as explained in more detail *supra*, FERC’s analysis of air quality impacts on environmental justice communities, fails to consider cumulative air pollution impacts on environmental justice communities. The DEIS’ analyses indicate that there will be numerous exceedances of the NAAQS in the Project area, but wrongly explains that away based on a flawed analysis. The effect of these cumulative impacts must be assessed on environmental justice communities.

Because FERC failed to consider the significance of the project impacts specific to environmental justice communities and, instead, relied on its determinations that impacts to the general population are insignificant, FERC failed to take a hard look at impacts to environmental justice communities.

c. *FERC Failed to Provide Adequate Public Participation Measure to Ensure Adequate Consideration of Environmental Justice Concerns*

The DEIS asserts that “there have been many opportunities for public involvement during the Commission’s environmental review process.”²²² And the DEIS lists numerous such events:²²³

- Through the pre-filing process, documents were placed in the public record prior to an application being submitted;
- FERC and the Developers had three virtual open houses in April 2021;
- FERC held three virtual scoping sessions;
- FERC established the office of public participation;

²¹⁹ CEQ EJ Guidance at 9 (“Agencies should consider ... multiple or cumulative exposures to human health or environmental hazards in the affected population”).
²²⁰ *Murray Energy Corp. v. EPA*, 936 F.3d 597, 609 (D.C. Cir. 2019).

²²¹ 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 EJ analysis incomplete when it failed to consider “the potential degree of injury to the local population independent of NAAQS”).

²²² DEIS at 4-199.

²²³ *Id.* at 4-198 – 4-201.

Comments of For a Better Bayou et al.

45

CO4-42

CO4-43: The EIS at section 1.3 addresses Public Review and Comment. CP2 LNG and CP Express’ outreach efforts have included: Project mailings; hosting multiple open houses throughout the Project area; meetings with community leaders, elected officials, landowners and other stakeholders; sponsoring scholarships and other educational initiatives for the local community; funding a wide variety of cultural and community events; and engaging in an intensive door-to-door home visit campaign within areas identified as environmental justice communities. CP2 LNG and CP Express state they conducted door knocking efforts within 12 identified environmental justice block groups from June through October 2022. Members of the Project team went door-to-door in the environmental justice block groups to introduce themselves, provide information on the Project, and asked for feedback or concerns. CP Express also state they provided a twelve-page informational Project brochure to all houses.

CO4-43

- FERC and the Developers provided hard copies of notices and a hard copy of the application to various persons and institutions;
- The Developers instituted a public and stakeholders outreach program;
- The Developers performed "targeted outreach" in environmental justice census block groups;
- The Developers are "communicating frequently" with a "Project-specific Community Action Group;" and
- The Developers have performed meetings with various stakeholders.

Part of assessing environmental justice impacts are adequately considered is to ensure the meaningful participation of minority and low-income populations that may be impacted by a given project.²²⁴ This entails both disseminating the necessary information about projects among these communities and receiving information from those communities.²²⁵ Meaningful participation also entails ensuring that the public's engagement "can influence the regulatory agency's decision."²²⁶

Here, the DEIS focuses on sheer numbers rather than substance. FERC identifies numerous events, but never assesses whether those events were successful at disseminating information to members of environmental justice communities or eliciting information from those communities. Instead, the DEIS describes public participation as paper tiger and as an end in itself rather than a useful tool for ensuring adequate consideration of the concerns of impacted communities.

Whatever participation that did occur seemingly has not had any influence on the analysis performed by FERC. As explained *supra*, FERC entirely failed to consider any unique factors that would render impacted environmental justice communities particularly susceptible to the effects of the Project. This, of course, suggests that FERC, despite the identified events meant to solicit public participation, never discovered what those unique factors are. Do the environmental justice communities impacted by the Project lack access to adequate health care? Do they experience elevated levels of a particular kind of illness? Do they already experience elevated levels of air pollution such that the emissions of this Project will

²²⁴ IWG Guidance at 8.

²²⁵ *Id.*

²²⁶ EPA, Learn About Environmental Justice, *available at* <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (attached).

CO4-43

CO4-44

impact communities in different ways than the general public.²²⁷ FERC does not address these factors, but has a duty to find out.

FERC's failure to ensure meaningful participation is further highlighted by FERC's proposed mitigation for environmental justice impacts. FERC acknowledges that none of the mitigation measures are crafted to mitigate the impacts to environmental justice communities.²²⁷ Instead, they are general mitigation measures that would be "implemented across the Project area."²²⁸ It's unclear why FERC failed to even attempt to come up with mitigation measures that are specific to the impacted environmental justice communities. Perhaps it's because FERC failed to ensure that it received enough information throughout the public participation process. Whatever the reason, FERC does not analyze whether any of these measures will successfully mitigate for impacts to environmental justice communities. FERC, instead, treats impacts throughout the Project area as equal. But, the nature of considering environmental justice impacts belie this wrong assumption. And, as a result, FERC failed to adequately consider mitigation measures for impacts to environmental justice communities.

Perhaps these shortcomings are the result of how opportunities for participation by members of environmental justice communities were structured. For example, in recent public hearings concerning the DEIS in Vinton and Cameron community members were shuttled out of the main room to make comments in isolated booths rather than being able to make oral comments with the entire group in the main room where FERC also would have, purportedly, taken comment. This has a significant impact on the structure of public participation because individuals could not hear the concerns of other community members and could not interact with those concerns. FERC must hold townhall style public hearings. Additionally, FERC did not offer the opportunity to any groups or individuals that oppose the Project to participate in the information sharing room by tabling and/or leafletting. Instead, such individuals and groups had to request to set up a table. As a result, groups or individuals that did not know that they could participate in this manner were excluded, and their viewpoints were not heard.

The entire point of environmental justice analysis is that a given project may have general effects on entire populations but that certain communities within the general population are impacted by those effects differently than the general population because of those communities' unique vulnerabilities and

²²⁷ DEIS at 4-222.

²²⁸ *Id.*

CO4-44: Sections revised sections 4.10.10.3 and 4.10.10.4 discuss the impacts and mitigation measures regarding environmental justice communities identified within the geographic scope of the Project. Based on review of EIScreen, the environmental justice community in which the Terminal Facilities are located (Census Tract 9702.02, Block Group 2) are within the 64th percentile for cancer. Sections 4.10.10.3 and 4.12.1.4 have been updated to incorporate the Human Health Risk Assessment prepared for the Project, which estimates chronic (long-term) cancer risk and non-cancer hazard, as well as acute (short-term) non-cancer hazard via inhalation of HAP compounds emitted from sources at the Terminal Facilities (including mobile sources). Based on the results of the Human Health Risk Assessment, the estimated cancer and non-cancer risks for the environmental justice communities surrounding the CP2 LNG Terminal Facilities would be below EPA's risk management objectives. In addition, CP2 LNG committed to develop a Project Ambient Air Quality Mitigation and Monitoring Plan to measure ambient concentrations of inhalable particulate matter (PM_{2.5} and PM₁₀), and NO₂ emissions during construction and commissioning of the CP2 LNG Terminal. Implementation of this plan would result in the identification and reporting of periods of elevated concentrations. These measurements, in combination with other information about conditions (e.g., weather) and specific activities at the site, would help to pinpoint the reasons for the elevated concentrations, allowing for the implementation of effective mitigation measures to minimize the potential for future NAAQS exceedances (see section 4.12.1.3 of the EIS for additional detail).

CO4-45

susceptibilities. The corollary is that because environmental justice communities have unique vulnerabilities and susceptibilities, FERC must consider and ultimately, require mitigation measures that are tailored to the environmental justice communities, rather than general mitigation measures. The DEIS indicates that FERC have not even so much as considered any such mitigation measures and, as a result, FERC has violated NEPA and has acted arbitrarily. FERC must also assess whether the mitigation measures it considers will be effective. In the environmental justice context, that means determining whether mitigation measures will actually mitigate for the unique impacts experienced by environmental justice communities. FERC also hasn't attempted that analysis here and, again, as a result, FERC has failed to satisfy its obligations under NEPA.

VII. Species

- a. *The DEIS Fails to Adequately Assess Impacts on Endangered and Threatened Species*

The DEIS, and supporting information, is insufficient to fully determine the extent of adverse effects on listed species, or to determine whether any proposed mitigation measures are sufficient to eliminate, avoid, or minimize adverse effects on those species.

- i. *The DEIS's Discussion of the Impacts to the Eastern Black Rail Violates NEPA*
 - a. *The Absence of a Biological Opinion or the Conclusion of ESA Consultation Does not Excuse an Insufficient NEPA Analysis*

NEPA requires agencies to take a "hard look at the environmental consequences before undertaking a major action."²²⁹ And NEPA requires agencies to disseminate the information about those environmental consequences to the public.²³⁰ With respect to impacts to listed species, FERC's obligations are the same as those with respect to other environmental impacts to, *inter alia*, take a hard look at those impacts and determine their significance.²³¹ FERC's obligation under NEPA is distinct from its obligation under the Endangered Species Act ("ESA") on listed species.²³² FERC can rely on information from other agencies, e.g. a biological

²²⁹ *Baltimore Gas & Electric v. NRD*, 462 U.S. 87, 97 (1983).

²³⁰ *Robertson*, 490 U.S. at 349-50.

²³¹ See *Environmental Protection Information Center v. U.S. Forest Service*, 451 F.3d 1005, 1010-11 (9th Cir. 2006).

²³² *Id.*

CO4-45: FERC's revised meeting format was developed primarily to ensure more people would have the opportunity to provide comments without some of the time constraints associated with the previous meeting format. FERC considers and weighs all comments equally regardless of the format in which they are presented (orally, electronically, posted mail, etc.). Additionally, people can provide comments anonymously via the eLibrary comment feature. Lastly, the project proponent can host public meetings on their own accord and has conducted numerous outreach efforts as outlined in sections 1.3 and 4.10.10.1.

Section 4.10.10 describes engagement, impact identification, and mitigation for environmental justice communities affected by the Project.

CO4-46: Section 4.8 of the EIS presents information regarding impacts on listed species in accordance with Section 7 of the Endangered Species Act and NEPA.

CO7-47: See the revised section 4.8.1.1 of the EIS, which includes a discussion of direct and indirect impacts on the eastern black rail (EBR). CP2 LNG and CP Express have committed to additional measures to minimize impacts on the EBR. Cumulative impacts on EBR are presented in section 4.14.2.6. Section 7 consultation is still ongoing with FWS.

opinion, in performing its NEPA analysis.²³³ But an absence of information from other agencies does not excuse FERC's failure to provide requisite hard look.²³⁴

Here, despite determining "that the Project would likely affect" the threatened Eastern Black Rail, FERC did not determine the significance of the Project's impacts on the Eastern Black Rail.²³⁵ Nor did FERC perform basic analysis or provide basic discussion of the Project's impacts on the Eastern Black Rail.²³⁶ FERC does not explain why it has plainly not satisfied its NEPA obligations with respect to impacts to the Eastern Black Rail. Perhaps it is because consultation under the Endangered Species Act is ongoing.²³⁷

Whatever the reason, FERC's failure to assess and discuss the Project's impacts on the Eastern Black Rail and ultimately determine those impacts' significance violates NEPA. Ultimately, FERC must consider all the Project's direct, indirect, and cumulative effects and mitigation measures concerning the Eastern Black Rail.

b. The DEIS Fails to Adequately Assess Cumulative Impacts on the Eastern Black Rail

Despite not determining whether this Project will have significant impacts on the Eastern Black Rail, FERC erroneously determines that "cumulative impacts on [Eastern Black Rails] would not be significant."²³⁸ FERC wrongly based this conclusion on the fact that "the other projects in the geographic scope would be required to follow the ESA Section 7 process (and applicants would have to follow the terms and conditions of any Biological Opinion)."²³⁹

²³³ *Id.* However, FERC "may not rely on incorrect assumptions or data in an EIS." *Lands Council v. Cottrell*, 731 F.Supp.2d 1074, 1090 (D. Idaho 2010) (quoting *Native Ecosystems Council v. USFS*, 418 F.3d 953, 964 (9th Cir. 2005)); *see also* 40 C.F.R. § 1500.1(b) (FERC's evaluation of environmental impacts must be based on scientific information that is both "accurate" and "high quality").

²³⁴ *See Environmental Protection Information Center*, 451 F.3d at 1012 (noting that agency's environmental review was based on several sources of information, not just a biological opinion from the relevant consultant agency).

²³⁵ DEIS at 4-129.

²³⁶ *Id.* at 4-128 – 4-129.

²³⁷ *See id.* at 4-124.

²³⁸ DEIS at 4-415.

²³⁹ *Id.*

Comments of For a Better Bayou et al.

49

CO4-47

CO4-48

CO4-48: See response to comment CO4-47.

The Endangered Species Act and NEPA are different statutes with different definitions for cumulative effects.²⁴⁰ As explained above, compliance with one does not equal compliance of the other.²⁴¹ While the Endangered Species Act does not include federal activities in the definition for “cumulative effects,”²⁴² NEPA defines cumulative effects more broadly. NEPA requires the agency to consider cumulative effects, “which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions *regardless of what agency (Federal or non-Federal) or person undertakes such other actions*. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.”²⁴³

CO4-48

Accordingly, FERC cannot rely on other projects’ compliance with Endangered Species Act obligations to satisfy its obligation to consider cumulative effects on the Eastern Black Rail. Discrete compliance with biological opinion conditions do not ensure a lack of cumulative effects, especially because those biological opinions will not consider cumulative effects from other federal actions.²⁴⁴ The entire point of considering cumulative effects is that it ensures that consideration of effects that may be “individually minor but collectively significant.”²⁴⁵ Thus, even if each of the considered projects’ impacts on the Eastern Black Rail were not individually significant, a hypothetical situation not conceded here, FERC has to consider whether impacts on the Eastern Black Rail would be

²⁴⁰ See *Fund for Animals v. Hall*, 448 F.Supp.2d 127 (D.D.C. 2006).

²⁴¹ See *id.* at 134-36.

²⁴² 50 C.F.R. § 402.02.

²⁴³ 40 C.F.R. § 1508.1 (emphasis added).

²⁴⁴ Most of the relevant nearby Federal projects are currently undergoing the Endangered Species Act consultation process. See DEIS at 4-415. As explained in comments in the relevant docket, the Biological Opinion issued for Commonwealth LNG “is replete with inadequacies and infirmities from an improperly defined agency action, action area, and environmental baseline, to an incomplete analysis of the project’s direct, indirect, and cumulative effects, to the Service’s reliance on speculative mitigation measures.” See Accession No. 20220523-5151 in FERC Dkts. CP19-502-000, CP19-502-001 at 42. As such, it is inappropriate to rely on the Commonwealth LNG Biological Opinion in determining that are no significant cumulative effects here. And it underscores the degree to which relying on biological opinions at all for this determination is meritless.

²⁴⁵ 40 C.F.R. § 1508.1(g)(3).

significant with all those impacts combined. FERC, by its own admission, did not do that here.

More fundamentally, as explained *supra*, just because a given project will comply with Endangered Species Act obligations, does not mean that the project's effects will not be significant under NEPA. As a result, FERC cannot fail to analyze these cumulative impacts on the mere basis that the projects will comply with other statutory obligations.

Finally, FERC's cumulative impacts analysis only considered the impacts of LNG export and pipeline projects near the Project.²⁴⁶ It appears that FERC limited its cumulative impacts analysis to FERC-jurisdictional projects. But NEPA cumulative impacts analysis is plainly not limited to analysis of projects within the jurisdiction of the reviewing agency. And the DEIS acknowledges that the Project area is home to "16 chemical plants, 3 industrial natural gas processing plants, 2 oil refineries, and 1 LNG export facility (with another under construction)."²⁴⁷ FERC needs to consider the cumulative impacts of these, and all other relevant, facilities too. It cannot limit the scope of its cumulative impacts analysis as it did here.

c. *The NEPA Analysis and the Biological Opinion Will Have to Analyze the Entire Agency Action*

Impacts of the entire agency action, both construction and operation of the Project, must be analyzed as part of FERC's consideration of impacts on the Eastern Black Rail.²⁴⁸ And any forthcoming biological opinion must consider all impacts of the entire agency action as well. Of course, construction will impact the Eastern Black Rail by impacting Eastern Black Rail habitat.²⁴⁹ But so to will operation of the Project because of impacts associated with increased human activity, *e.g.*, noise, light, waste, the introduction of industrial contaminants, and increased vehicle and vessel traffic. As the 2018 Species Status assessment for the Eastern Black Rail explains, human activities have been shown to disturb breeding and nesting birds, leading to nest abandonment, increased predation, and decreased reproductive

²⁴⁶ DEIS at 4-415.

²⁴⁷ *Id.* at 4-171. And as explained *infra* there are even more relevant actions and projects in the Project area.

²⁴⁸ See *Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 521 (9th Cir. 2010); *Connor v. Burford*, 848 F.2d 1441, 1453 (9th Cir. 1988).

²⁴⁹ DEIS at 4-129.

CO4-48

CO4-49: See response to comment CO4-47.

CO4-49

success.²⁵⁰ Singing activity of breeding male birds have also been observed to decline in sites that experience human intrusion and disturbance may also result in behavioral changes in non-breeding birds.²⁵¹ The increased availability of food wastes can support an increased number of predators and introduce new predator species.²⁵² Environmental contaminants further pose a risk to birds and “have well documented direct effects on individual health, reproduction, and the viability of their young.”²⁵³ Indirect effects may include changes to forage abundance and diversity.²⁵⁴

One of the reasons all of these impacts are so crucial is because they have the potential to interfere with any potential future mitigation plans. These future, longer term impacts could negate any potential benefit provided by any mitigation efforts. Birds that could otherwise return to the project area years from now may not remain if these operational activities interfere with their ability to feed, reproduce, and raise their young.

FERC’s analysis must be coextensive with the agency action, and the agency’s failure to perform an analysis of all impacts associated with the Project would be arbitrary and capricious,²⁵⁵ as it would “entirely fail[] to consider an important aspect of the problem.”²⁵⁶ Limiting the scope of analysis to anything less than the entire agency action is contrary to law and would allow listed species to “be gradually destroyed, so long as each step of the path to destruction is sufficiently modest.”²⁵⁷

CO4-49

²⁵⁰ U.S. Fish & Wildlife Serv., Species Status Assessment Report for the Eastern Black Rail (*Laterallus jamaicensis*) Version 1.2, 60 (Jun. 2018), available at <https://ecos.fws.gov/ServiceCat/DownloadFile/54242> (attached).

²⁵¹ *Id.*

²⁵² *Id.* at 69.

²⁵³ *Id.* at 66.

²⁵⁴ *Id.*

²⁵⁵ See *Conner v. Burford*, 848 F.2d 1441, 1457-58 (9th Cir. 1988); *Greenpeace v. Nat’l Marine Fisheries Serv.*, 80 F.Supp.2d 1137, 1150 (W.D. Wash. 2000).

²⁵⁶ *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (*en banc*), *abrogated in part on other grounds*, *Winter v. Nat. Res. Def. Council*, 129 S.Ct. 365, 375 (2008).

²⁵⁷ *Nat’l Wildlife Fed’n v. National Marine Fisheries Serv.*, 524 F.3d 917, 930 (9th Cir. 2008); *American Rivers v. U.S. Army Corps of Engineers*, 271 F.Supp.2d 230, 255 (D.D.C. 2003).

Document Accession #: 20230313-5123 Filed Date: 03/13/2023	<i>d. The "Action Area" of the Proposed Action Must be Properly Defined</i> When the Biological Opinion is eventually issued, it must properly define the "Action Area" for the project to ensure, again, that the full scope of impacts are assessed. The way the "Action Area" is defined form the foundation on which the effects of the proposed action and the cumulative effects are analyzed in each consultation. The Endangered Species Act's implementing regulations define "action area" as "all areas to be affected <i>directly or indirectly</i> by the Federal action and <i>not merely the immediate area involved in the action.</i>"²⁵⁸ While the Biological Opinion has not yet issued here, the DEIS limits discussion of Eastern Black Rail habitat to the Project footprint.²⁵⁹ This is inadequate and it would render the Biological Opinion inadequate if it made the same error. Both the NEPA and Endangered Species Act regulations require consideration of direct <i>and</i> indirect effects. There is no reason to think that birds outside the Project footprint would not be affected by the Project. For example, birds that forage, breed, and raise their young adjacent to the Project footprint could move onto the Project site. Additionally, there must be analysis of the Project would impact future occupancy of sites outside the Project footprint as birds compete for even less available habitat at remaining sites. The DEIS completely fails to discuss this as it assumes that birds will simply disperse without any consideration of whether individuals will become increasingly territorial as they vie for limited habitat. FERC and the Biological Opinion must perform this analysis.	CO4-50: Section 4.8.1 of the EIS has been updated to incorporate additional measures that CP2 LNG and CP Express would implement to minimize impacts on federally listed species. Pursuant to Section 7 of the Endangered Species Act, consultations with FWS are still ongoing.
CO4-51	There also needs to be analysis of how construction of armoring features like the perimeter berm and the 31.5-foot-high floodwall around the terminal site could impact remaining habitat available to the Eastern Black Rail.²⁶⁰ The DEIS completely ignores these potential impacts, but they must be assessed and they must be included in the forthcoming biological opinion. How would changes to storm surge patterns, increased risks of scouring, vegetation loss, and weakening of the organic layer impact the Eastern Black Rail? Same with the potential impacts of the planned dredging and the dredging from other nearby, potentially overlapping projects. Approximately 6.4 million cubic yards of material would be removed	CO4-51: See response to comment CO4-47.

²⁵⁸ 50 C.F.R. § 402.02 (emphasis added).

²⁵⁹ DEIS at 4-129.

²⁶⁰ DEIS at 4-163.

during construction of the Project²⁶¹ and about 152,000 cubic yards of dredged material would be removed every two years during maintenance dredging operations.²⁶² The final rule listing the species under the Endangered Species Act explains that hydrological alterations can affect the habitat's composition and structure.²⁶³ These changes can lead to instability in the duration and intensity of hydroperiods, affect associated vegetation communities, and impact the ability of marsh habitats to adapt to changing conditions.²⁶⁴ This situation affects the ability of the habitat to support populations of Eastern Black Rails by exposing them to unsuitable water regimes or converted habitats.²⁶⁵ The DEIS contains no discussion of whether these dredging activities (and conversion of coastal wetlands) could have these types of impacts and contribute to a reduction in the prey base, subsistence, sediment and nutrient transport, and erosion.²⁶⁶ Nor is there any discussion of what additional stressors and impacts the Eastern Black Rail face on neighboring properties and the additive effects other activities could have on the species.²⁶⁷ It must and so too must the forthcoming biological opinion. These other activities should be included in the environmental baseline, discussed *infra*.

In short, the DEIS fails to discuss how the Project could indirectly affect the Eastern Black Rail including individuals outside the Project footprint. This falls short of FERC's NEPA obligations and must be rectified. Additionally, the forthcoming biological opinion must take care to not repeat the same error as the DEIS.

e. The Environmental Baseline Must be Accurate

To properly analyze impacts and to determine whether the Project will likely jeopardize the continued existence of a listed species, FERC (and the Fish and Wildlife Service) must determine whether the effects of this action, when added to

²⁶¹ *Id.* at 4-21.

²⁶² *Id.* at 2-25.

²⁶³ U.S. Fish & Wildlife Serv., Endangered and Threatened Wildlife and Plants; Threatened Status for Eastern Black Rail with a Section 4(d) Rule, Final Rule 85 Fed. Reg. 63,764, 63,769 (Oct. 8, 2020) (attached).

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ DEIS at 4-128 – 4-129.

²⁶⁷ *Id.*

Comments of For a Better Bayou et al.

54

CO4-52: See response to comment CO4-10. As described in the EIS at section 4.14, and consistent with CEQ guidelines, to understand the contribution of past actions to the cumulative effects of the proposed action, we relied on current environmental conditions as a proxy for the effects of past actions. However, our analysis does consider as applicable, the present effects of past actions. Cumulative impacts on threatened and endangered species are described in the EIS at section 4.14.2.6.

CO4-52

the “environmental baseline,” will appreciably reduce both the survival and recovery of the species. The environmental baseline includes:

the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with consultation in process. The consequences to listed species or designated critical habitat from ongoing agency facilities that are not within the agency’s discretion to modify are part of the environmental baseline.²⁶⁸

CO4-52

A properly defined environmental baseline is essential because it directly informs the analysis that FERC and the Service must perform in assessing the action’s direct, indirect, and cumulative “effects.” As the Endangered Species Act regulations state, the effects of the action that the agency must evaluate include the “direct and indirect effects of an action ... together with effects of other activities that are interrelated or interdependent with that action, *that will be added to the environmental baseline*.”²⁶⁹ “Cumulative effects” include “future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area.”²⁷⁰

As the court in *Defenders of Wildlife v. Babbitt* explained, “[t]he impact of authorized incidental take [caused by the action considered in a given biological opinion] cannot be determined or analyzed in a vacuum, but must necessarily be addressed in the context of other incidental take authorized by [the Service].”²⁷¹ Thus, FERC and the Service must determine whether the effects of past actions within the action area [and their cumulative incidental take] when added to the

²⁶⁸ 50 C.F.R. § 402.02.

²⁶⁹ *Id.* (emphasis added).

²⁷⁰ *Id.*

²⁷¹ *Defenders of Wildlife v. Babbitt*, 130 F.Supp.2d 121, 127 (D.D.C. 2001).

effects of this project and its anticipated level of incidental take, will jeopardize the species.

Other than acknowledging that other projects are in the Project area exist and that some LNG related projects have either undergone or are undergoing consultation under the Endangered Species Act, there is absolutely no discussion in the DEIS of the past and present impacts of all Federal, State, or private actions and other nearby activities, the anticipated impacts of projects that have already undergone consultation, and the impact of non-federal actions which are contemporaneous with the consultation in process. Much more is required to satisfy NEPA and the Endangered Species Act.

Actions that may be part of the environmental baseline for this project include the actions identified in the cumulative impacts section of the DEIS.²⁷² These projects include other LNG and pipeline projects and industrial projects.²⁷³ But this list is not sufficient. First the DEIS only identifies 19 such actions whereas the Commonwealth LNG DEIS identified 44 relevant actions.²⁷⁴ The Commonwealth project is only .5 miles from the Project and, thus, there is no basis for considering so many fewer actions here.²⁷⁵ But even the long list identified in the Commonwealth DEIS is not sufficient for this analysis. The Commonwealth DEIS identified additional past, present, and reasonably foreseeable future industrial and LNG/pipeline projects in close proximity to the Project that also need to be assessed in the environmental baseline.²⁷⁶ In addition to these projects, there could be additional projects not yet identified or considered, including other dredging and maintenance dredging projects, construction projects, and projects subject to nationwide permits issued by the U.S. Army Corps of Engineers. The agencies must consider whether these actions independently and collectively have the potential to adversely affect the species at issue here.²⁷⁷ Without an accurate

²⁷² DEIS at 4-392.

²⁷³ *Id.*

²⁷⁴ Commonwealth DEIS at 4-315, accession 20220331-3014.

²⁷⁵ DEIS at 4-395.

²⁷⁶ Commonwealth DEIS at 4-316.

²⁷⁷ As the court in *Nat'l Wildlife Fed'n. v. NMFS*, 481 F.3d 1224, 1235 (9th Cir. 2005) explained, an agency cannot compare the discrete risk posed by an agency action to all risks to the species, rather than adding the effects of the agency action to a properly defined baseline. "Under this approach, a listed species could be gradually destroyed, so long as each step on the path to destruction is sufficiently

Document Accession #: 20230313-5123 Filed Date: 03/13/2023	CO4-52 environmental baseline, neither FERC nor the Fish and Wildlife Service can perform the necessary comprehensive assessment of the Project's effects much less ensure that this action will not jeopardize the continued existence of federally listed species or adversely modify their critical habitat. f. <i>Ultimately, the Project's Direct, Indirect, and Cumulative Effects Must Be Adequately Analyzed</i> Without a properly defined "agency action," "action area," and "environmental baseline," any analysis or biological opinion would be grossly inadequate to the task of determining the Project's potential direct, indirect, and cumulative effects of the project on a variety of listed species, including the Eastern Black Rail. As explained <i>infra</i>, these effects include the direct, operational impacts to birds that remain or return following the initial clearing and construction of the site, the indirect and secondary impacts to birds outside the Project footprint, and the cumulative effects of other nearby projects. And, as explained <i>infra</i>, the DEIS does not sufficiently analyze these effects, FERC must rectify this failure, and the forthcoming biological opinion must not include the same errors. There is also no discussion of the potential air impacts to the Eastern Black Rail from the construction and operation of the Project, despite the DEIS acknowledging that the Project is a major PSD emission source and would contribute to cumulative impacts to air quality within the geographic scope of the analysis.²⁷⁸ Birds can be adversely impacted from being exposed to air pollutants, including carbon monoxide, ozone, sulfur dioxide, smoke, heavy metals, and mixtures of urban and industrial emissions.²⁷⁹ Avian responses may include respiratory distress and illness, increased detoxification effort, elevated stress levels, immunosuppression, behavioral changes, and impaired reproductive success.²⁸⁰ Exposure to air pollution may reduce population density, species diversity, and species richness in bird communities.²⁸¹ These impacts must be CO4-53 modest. This type of slow slide into oblivion is one of the very ills the ESA seeks to prevent." <i>Id.</i> ²⁷⁸ DEIS at 4-434. ²⁷⁹ Sanderfoot, O.V. and Holloway, T. 2017. <i>Air pollution impacts on avian species via inhalation exposure and associated outcomes</i>. Environ. Res. Lett. 12 083002 (summarizing findings published since 1950 regarding avian responses to air pollution) (attached). ²⁸⁰ <i>Id.</i> ²⁸¹ <i>Id.</i>
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CO4-53: The geographic scope for cumulative impacts is presented in section 4.14. Cumulative impacts on the EBR are presented in section 4.14.2.6. Additionally, see response to comments CO4-47 and CO4-52.

considered to comply with FERC's NEPA responsibilities and FERC's and the Service's obligations under the Endangered Species Act.

For its part, just like the current absence of a biological opinion does not absolve FERC for not adequately analyzing impacts to the Eastern Black Rail under NEPA, FERC's inadequate analysis would not forgive error's in the future biological opinion. For example, the Service would not be able to rest on the assumption that there are no cumulative effects on the Eastern Black Rail just because FERC failed to assess or identify such impacts.²⁸²

g. The DEIS Fails to Discuss Any Mitigation Measures for Impacts to the Eastern Black Rail

The eventual biological opinion must adequately consider and require mitigation measures to protect the Eastern Black Rail.

The Endangered Species Act requires that any mitigation measures purported to offset the take of a listed species and to justify a no-jeopardy finding, must be mandatory and enforceable.²⁸³ Mitigation must be "reasonably specific, certain to occur, and capable of implementation; they must be subject to deadline or otherwise-enforceable obligations; and most importantly, they must address the threats to the species in a way that satisfies the jeopardy and adverse modification standards."²⁸⁴

²⁸² If the biological opinion inadequately analyzes impacts to the Eastern Black Rail, re-initiation of consultation may be appropriate. Federal agencies must re-initiate consultation: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) *If 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*; (3) 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 written concurrence; (4) If a new species is listed or critical habitat designated that may be affected by the identified action. 50 C.F.R. § 402.16 (emphasis added). "The duty to reinitiate consultation lies with both the action agency and the consulting agency." *Hoopa Valley Tribe v. Nat'l Marine Fisheries Serv.*, 230 F.Supp.3d 1108, 1122 (N.D. Cal. 2017).

²⁸³ See *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 807 F.3d 1031, 1046, n. 12 (9th Cir. 2015); see also Endangered Species Consultation Handbook at 4-19 (1998) ("Since conservation measures are part of the proposed action, their implementation is required under the terms of the consultation.").

²⁸⁴ *Ctr. for Biological Diversity v. Rumsfeld*, 198 F.Supp.2d 1139, 1152 (D. Ariz. 2002) (citing *Sierra Club v. Marsh*, 816 F.2d 1376 (9th Cir. 1987)); see also, *NWF v.*

CO4-54: See response to comment CO4-47.

CO4-54

The DEIS does not provide any mitigation measures for impacts to the Eastern Black Rail and, again, no biological opinion has issued yet. Adequate mitigation measures must be made public and the public must be given an opportunity to comment on those measures. Absent such mitigation measures, the Endangered Species Act will be violated.

Under NEPA, FERC must also assess these mitigation measures, study their efficacy, and consider alternatives should the mitigation measures fail.²⁸⁵ “The discussion of steps that can be taken to mitigate adverse environmental consequences plays an important role in the environmental analysis under NEPA.”²⁸⁶ There must be a “reasonably complete discussion of possible mitigation measures.”²⁸⁷

Because the DEIS entirely fails to discuss mitigation for impacts to the Eastern Black Rail, FERC has not fulfilled its statutory duty under NEPA. FERC must provide a robust discussion of any proposed mitigation measures, their efficacy, and the degree to which they will offset any impacts.

h. FERC Must Ensure that the Project Will Not Jeopardize the Eastern Black Rail under the Endangered Species Act

The Endangered Species Act, by way of its “language, history, and structure ... indicates beyond doubt that Congress intended endangered species to be afforded

NMFS, 481 F.3d 1224, 1240-41 (9th Cir. 2007) (NMFS can’t rely on future mitigation “without more solid guarantees that they will actually occur”; they need “specific and binding plans” rather than a “general commitment”); *See. Ctr. for Biological Diversity v. Bartel*, 470 F.Supp.2d 1118, 1141, 1144-46 (S.D. Cal. 2006) (assurances in HCP that violate ESA because “they lock in ineffective, unstudied, and inadequate mitigation.”); *NRDC v. Kemphorne*, 506 F.Supp.2d 322, 355 (E.D. Cal. 2007) (“a mitigation strategy must have some form of measurable goals, action measures, and a certain implementation schedule; *i.e.* ... mitigation measures must incorporate some definite and certain requirements that ensure needed mitigation measures will be implemented”) (emphasis in original); *Nw. Env. Advocates v. EPA*, 268 F.Supp.2d 1255, 1273 (D. Or. 2003) (finding a biological opinion arbitrary and capricious due to its reliance on “largely speculative and unenforceable” mitigation measures).

²⁸⁵ *See generally, National Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722 (9th Cir. 2001).

²⁸⁶ *Robertson*, 490 U.S. at 351 (1989); *see also* 40 C.F.R. § 1502.16(h) (stating that an EIS must contain “means to mitigate adverse environmental impacts”).

²⁸⁷ *Robertson*, 490 U.S. at 352.

Comments of For a Better Bayou et al.

59

CO4-54

CO4-55

CO4-55: See responses to comments CO4-47 and CO4-50.

the highest of priorities” for protection under the law.²⁸⁸ The purpose of the Endangered Species Act is in part “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for conservation of such endangered and threatened species.”²⁸⁹ The secretaries of Interior and Commerce administer the ESA through the U.S. Fish and Wildlife Service (“the Service”) and the National Marine Fisheries Service (“NMFS”). The Service has jurisdiction over terrestrial species, non-marine aquatic species, and certain marine species while on land. NMFS has jurisdiction over marine species and most anadromous fish.

To fulfil the substantive purpose of the ESA, federal agencies are required to “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 result in the adverse modification of [the critical] habitat of such species.”²⁹⁰ An action will cause “jeopardy” if it “reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.”²⁹¹

The first step in the Section 7 process is for the agency authorizing the project to determine if the proposed action “may affect” an endangered species.²⁹² If the agency determines the action will not affect a listed species, and the relevant resources agency concurs, no further action is required. If, on the other hand, the action agency has determined that the proposed action “may affect” a listed species or critical habitat, it may initiate “informal consultation” with the relevant service agency.²⁹³ If during this process it is revealed that the action is “likely to adversely affect” a listed species or critical habitat, formal consultation is required.²⁹⁴

The formal consultation process requires a written statement, known as a “biological opinion,” setting forth the Secretary’s opinion detailing how the agency

²⁸⁸ *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 174 (1978).

²⁸⁹ 16 U.S.C. § 1531(b).

²⁹⁰ *Id.* § 1536(a)(2).

²⁹¹ 50 C.F.R. § 402.02.

²⁹² *Id.*

²⁹³ *Id.* § 402.13.

²⁹⁴ *Id.* § 402.12(f).

action affects the species or its critical habitat.²⁹⁵ After the Service analyzes the direct, indirect, and cumulative effects of the proposed action, it makes a finding as to whether the action “is likely to jeopardize the continued existence of the species.”²⁹⁶ If it is determined that the action will jeopardize a species or adversely modify the species’ critical habitat, the biological opinion must list any “reasonable and prudent alternatives” to the proposed action that would not result in jeopardy to the species.²⁹⁷

Independent of the Services’ biological opinion and analysis, the ultimate duty to ensure that the action will not jeopardize a listed species is with the action agency (here, FERC).²⁹⁸ Thus, agencies cannot rely on inadequate, non-existent, incomplete, or flawed biological opinion to satisfy its duty to avoid jeopardy.²⁹⁹

Here, FERC has determined that that Project will “likely adversely affect” the Eastern Black Rail and has indicated that “consultation with FWS is ongoing.”³⁰⁰ However, elsewhere in the DEIS, FERC suggests that the consultation with the Service is “informal” rather than “formal.”³⁰¹ Informal consultation is inappropriate here as FERC has made a likely to adversely affect finding which mandates formal consultation. Thus, there must be formal consultation here and the Service must issue an adequate biological opinion.

The Project will jeopardize the continued existence of the Eastern Black Rail. In 2018, the Service estimated that the entire state of Louisiana has 10 or fewer breeding pairs, the Southeast Coastal Plain population is likely to be extirpated in the next 35-50 years due to extremely low populations threatened by sea level rise and habitat loss, and the species is likely to go extinct by 2068 without

²⁹⁵ 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.02.

²⁹⁶ 16 U.S.C. § 1536(b).

²⁹⁷ *Id.* § 1536(b)(3)(A).

²⁹⁸ 50 C.F.R. § 402.15. See *Pyramid Lake Paiute Tribe of Indians v. United States Dep’t of the Navy*, 898 F.3d 1410, 1415 (9th Cir. 1990).

²⁹⁹ *Id.* See also *Center for Biological Diversity v. Salazar*, 804 F.Supp.2d 987, 1010 (D. Ariz. 2010); *Florida Key Deer v. Brown*, 364 F.Supp.2d 1345, 1358 (S.D. Fla. 2005).

³⁰⁰ DEIS at 4-129.

³⁰¹ *Id.* at 1-16.

implementation of positive land management practices.³⁰² As a result, a jeopardy finding is only sustainable outcome of FERC's and the Service's analysis of impacts to the Eastern Black Rail.

b. The DEIS Fails to Analyze the Project's Impacts to the Rice's Whale and Sperm Whale

The DEIS includes a cursory and incomplete discussion of the direct, indirect, and cumulative effects to the Rice's whale and sperm whale.³⁰³ These species are threatened by vessel strikes, underwater noise within shipping routes, and contaminants from spills and other releases. As explained *infra*, FERC must take a hard look at these impacts. Additionally, the agencies must also initiate formal consultation to comply with the Endangered Species Act.³⁰⁴

i. Overview of the Species

a. Rice's Whale

Rice's whales are one of the most endangered whales in the world.³⁰⁵ The species was listed as endangered under the Endangered Species Act on April 15, 2019³⁰⁶ and is currently listed as a Critically Endangered subpopulation on the IUCN Red List.³⁰⁷ NMFS recognizes that "Recovery of the species depends upon the protection of each remaining whale."³⁰⁸ Based on surveys conducted from 2017-2018, there are an estimated 50 individual whales in the northeastern Gulf of

³⁰² See Commonwealth LNG Project Biological Opinion (Sept. 2021), FWS Log #04EL1000-2021-F-1554, Accession 20210920-5077.

³⁰³ See DEIS at 4-134. While this section will focus on impacts to the Rice's whale and sperm whale, the DEIS provides an identically flawed analysis of impacts to the fin whale and sei whale. *Id.*

³⁰⁴ FERC determined that the Project "may affect, but is not likely to adversely affect" these species but does not indicate the current status of consultation with NMFS. Because FERC does not indicate that formal consultation is occurring, we assume that it is not.

³⁰⁵ NOAA Fisheries, Rice's Whale at <https://www.fisheries.noaa.gov/species/rices-whale>, ("NOAA Fisheries, Rice's Whale") (attached).

³⁰⁶ 84 Fed. Reg. at 15,466 (Apr. 15, 2019).

³⁰⁷ Corkeron, P., Reeves, R., and Rosel, P.E., "Balaenoptera edeni (Gulf of Mexico subpopulation)," The IUCN Red List of Threatened Species, e.T117636167A117636174 (2017) (attached).

³⁰⁸ NOAA Fisheries, Rice's Whale.

CO4-55

CO4-56

CO4-56: Impacts on Rice's Whale and the Sperm Whale associated with the increased ship traffic is discussed in section 4.8.1. We have determined that the project may affect, but is not likely to adversely affect these species. As presented in section 4.8, the EIS serves to initiate consultation with National Marine Fisheries Service (NMFS) and FWS under Section 7 of the Endangered Species Act. Section 5.2 includes a recommendation that all consultations under section 7 of the Endangered Species Act must be complete prior to construction.

Mexico.³⁰⁹ However, since then the population of the eastern Gulf of Mexico has been estimated to be as low as 33 individuals.³¹⁰ The Rice's whale prefers warmer, tropical waters and remains in the Gulf of Mexico year round.³¹¹

NMFS acknowledges that the Rice's whale's very small population size and limited distribution makes it particularly vulnerable to threats like energy exploration and development, oil spills and spill response,³¹² vessel strikes, and ocean noise.³¹³ Because the population is so small, "the death of a single whale due to any of these stressors could have *devastating consequences* for the population's recovery."³¹⁴ The species can only afford to lose one individual every 15 years as a result of human impacts if it is to recover.³¹⁵ Comparatively, NMFS has previously stated that the loss of a single North Atlantic right whale, with a population that numbers in the low hundreds, could contribute to species extinction. NMFS then enacted a vessel-speed regulation for the right whale on that basis.³¹⁶ Rice's whales are especially vulnerable to ship strikes because the northern Gulf experiences a high amount of vessel traffic where several commercial shipping lanes cross through their habitat.³¹⁷ Because Rice's whales spend most of their time within 50 feet of the water's surface, "the risk of vessel strikes is significant given the location

³⁰⁹ *Id.*

³¹⁰ Commonwealth DEIS at 4-135.

³¹¹ NOAA Fisheries, Rice's Whale.

³¹² It is estimated that the population decreased by 22% from the Deepwater Horizon oil spill. *Id.*

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ Natural Resources Defense Council, Healthy Gulf, Center for Biological Diversity, Defenders of Wildlife, Earthjustice, and New England Aquarium, Petition to Establish a Mandatory 10-Knot Speed Limit and Other Vessel-Related Mitigation Measures for Vessel Traffic Within the Core Habitat of the Gulf of Mexico Whale (*Balaenoptera Ricei*) 2 (May 11, 2021) (attached) [hereinafter "NRDC 10 Knot Limit"].

³¹⁶ NRDC, A petition to list the Gulf of Mexico Bryde's whale (*Balaenoptera edeni*) as endangered under the Endangered Species Act, 11 (Sep. 18, 2014) (attached) (citing 69 Fed. Reg. 30,857, 30,858 (June 1, 2004); 73 Fed. Reg. 60,173, 60,172 (Oct. 10, 2008); 72 Fed. Reg. 34,632, 34,632 (June 25, 2007); 66 Fed. Reg. 50,390, 50,392 (Oct. 3, 2021)).

³¹⁷ *Id.*

of commercial shipping lanes and other transiting vessel traffic and the whale's swimming behavior."³¹⁸ In 2009, a female Rice's whale was found dead in Tampa Bay and a necropsy determined that it was the result of being struck by a vessel.³¹⁹ The whale was nursing a calf and it is likely that the calf died as it was still dependent on its mother.³²⁰ Most recently in 2019, a free-swimming whale was observed in the northeastern Gulf of Mexico with a severely deformed spine posterior to the dorsal fin consistent with a vessel strike.³²¹

The number of reported vessel collisions with Rice's whales in the Gulf are likely underestimated because they are an offshore species and have low carcass detection and recovery rates compared to other coastal species.³²² In the southern hemisphere, they are the third most commonly reported species struck by ships.³²³ In listing the species, NMFS stated "[g]iven the location of commercial shipping lanes, the difficult of sighting a whale at the surface at night, and the low ability of large ships to change course quickly enough to avoid a whale, the [status review team's] scoring indicates that ship strikes pose a "high" severity threat to the GOMx Bryde's whale with "high certainty."³²⁴

³¹⁸ *Id.* The DEIS does not specifically assess the Rice's whale's risk of experiencing a vessel strike but, nevertheless, suggests that Rice's whale's behavior does not put them at risk of vessel strikes. DEIS at 4-134. This is wrong.

³¹⁹ NRDC Petition at 11.

³²⁰ NOAA, Endangered and Threatened Wildlife and Plants; Endangered Status of the Gulf of Mexico's Bryde's Whale, Final Rule, 84 Fed. Reg. 15446, 15479 (Apr. 15, 2019).

³²¹ NRDC 10 Knot Limit, at 11 (citing Rose, P.E., Wilcox, L.A., Yamada, T.K. and Mullin, K.D., "A new species of baleen whale (*Balaenoptera*) from the Gulf of Mexico, with a review of its geographic distribution." *Marine Mammal Science*. (Published Online: Jan. 10, 2021)).

³²² The 2009 incident was readily documented because the animal was struck, pinned across the ship's bow, and transported on the bow for tens or possibly hundreds of miles before it was detected in Tampa Bay. NOAA, Endangered Status of the Gulf of Mexico Bryde's Whale, Final Rule, 84 Fed. Reg. 15446, 15479 (Apr. 15, 2019).

³²³ *Id.*

³²⁴ *Id.* at 15480. The DEIS wrongly and baselessly stated that the potential for collisions is low. DEIS at 4-134.

Further, underwater noise from shipping traffic creates low frequency noise that overlaps with the hearing range of these whales.³²⁵ Whales rely on their hearing for communication, navigation, finding a mate, locating prey, and to avoid predators. Increased noise levels can cause adverse physical and behavioral effects.³²⁶ Over the past 50 years, there has been an estimated 32-fold increase in the low frequency noise presence along major shipping routes.³²⁷

b. Sperm Whale

Sperm whales are the largest of the toothed whales and have been listed as endangered under the Endangered Species Act since 1970.³²⁸ Sperm whales, like Rice's whales, commonly occur in the Gulf of Mexico.³²⁹ They are present in the northern Gulf of Mexico year-round but are more common during the summer months.³³⁰ The species is listed as endangered and the best abundance estimate for the northern Gulf of Mexico sperm whale is 1,180.³³¹

Sperm whales make vocalizations called "codas" that have distinct patterns.³³² Recordings from mixed groups in the Gulf of Mexico compared to other groups in the Atlantic indicated that Gulf sperm whales constitute a distinct acoustic clan that is rarely encountered outside the Gulf.³³³

Sperm whales hunt for food during deep dives that can reach depths of 2,000 feet and after long, deep dives they come to the surface to breathe and recover for

³²⁵ NOAA Fisheries, Rice's Whale.

³²⁶ *Id.*

³²⁷ NRDC 10 Knot Limit (citing Duarte, C.M., Chaupis, L., Collin, S.P., Coasta, D.P., Devassy, R.P., Eguluz, V.M., Erbe, C., Gordon, T.A., Halpern, B.S., Harding, H.R. and Havlik, M.N., "The soundscape of the Anthropocene ocean," Science, vol. 371, art. Eaba4658 (2021), and citations therein).

³²⁸ See NOAA Fisheries, Sperm Whale, *available at* <https://www.fisheries.noaa.gov/species/sperm-whale#conservation-management> (attached).

³²⁹ DEIS at 4-134.

³³⁰ NOAA Fisheries, Sperm Whale.

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

several minutes before initiating their next dive.³³⁴ Vessel strikes can injure or kill sperm whales and while few vessel strikes have been documented, vessel traffic is increasing worldwide, which increases risk of collisions.³³⁵

ii. *The DEIS Does Not Adequately Examine the Risk of Vessel Strikes*

FERC has previously recognized that increased LNG carrier in the Project area could increase the potential for vessel strikes on whales.³³⁶ This Project would only further increase that risk as it would increase vessel traffic.³³⁷ But the DEIS discounts these impacts because LNG carriers “use established, well-traveled shipping lanes.”³³⁸

FERC’s analysis is deficient because because FERC has not established that established, well-traveled shipping lanes reduce or eliminate the potential for vessel strikes and, even if FERC supported such an assertion, FERC entirely fails to consider impacts to whales outside those shipping lanes. FERC recognizes that “LNG carriers would travel through the Gulf of Mexico to the Terminal Facilities during Project operation, raising the potential for collisions between LNG carriers and whales.”³³⁹ But the discussion ends there, with no follow up analysis of increased vessel traffic in these areas could impact whales in these areas.³⁴⁰

The lack of analysis is concerning because Rice’s whales frequently travel, feed, and rest in areas in the Project area. The DEIS acknowledges that the Rice’s whale occurs “in the coastal waters of Louisiana.”³⁴¹ This is supported by the recent understanding the Rice’s whale. There have been contemporary sightings well west of what was previously understood as the biologically important area for the

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ Commonwealth DEIS at 4-342.

³³⁷ DEIS at 4-146.

³³⁸ *Id.* at 4-134.

³³⁹ *Id.*

³⁴⁰ The DEIS references a prior NMFS analysis which assessed a low probability of a vessel striking a sperm whale. But the DEIS fails to assess whether any relevant changes have occurred since that prior analysis and, ultimately, a conclusory reference to another analysis is not a substitute for an adequate analysis here.

³⁴¹ DEIS at 4-145.

CO4-57

CO4-57: Impacts on Rice’s whales associated with vessel strikes are presented in section 4.8.1 and minimization measures are outlined to support our determination of not likely to adversely affect. Cumulative impacts on Rice’s whale are presented in section 4.14.2.6 of the EIS. See response to comment CO4-56.

species, all the way near the southern coast of Texas.³⁴² Historical records further document the occurrence of Rice's whales throughout the Gulf.³⁴³ Plainly, the Rice's whale is present in the Project area.³⁴⁴

The DEIS fails to even attempt an analysis of impacts to the Rice's whale.³⁴⁵ The DEIS fails to assess any science on the Rice's whale and fails to provide any information to support the DEIS' conclusion that the Project is not likely adversely affect the Rice's whale. The DEIS does not even make any findings specific to the Rice's whale, instead lumping it in with the rest of the listed whales that may be affected by the Project. Nor does the DEIS perform an analysis of cumulative effects on the Rice's whale. And, finally, there is no indication that the NMFS has concurred with FERC's finding. Ultimately, the determination that the Project is "not likely to adversely affect" the Rice's whale is arbitrary and capricious. And FERC's NEPA analysis is inadequate.

With respect to the Sperm whale, the DEIS is similarly insufficient. Rather than providing any analysis, FERC merely states that NMFS determined that a vessel strike was unlikely as part of the Calcasieu Pass LNG proceedings.³⁴⁶ But that project was approved in 2019.³⁴⁷ And FERC made no effort to determine whether any findings concerning vessel strikes and Sperm whales are still valid or are even valid to this Project's potential impacts.³⁴⁸ Shipping in the Gulf has increased significantly in recent years. FERC also doesn't attempt a cumulative impacts analysis in light of this increased shipping traffic. This analysis too is arbitrary and capricious.

³⁴² Natural Resources Defense Council. A report on designating critical habitat for the Gulf of Mexico's Bryde's whale (*Balaenoptera edeni*) under the Endangered Species Act (Apr. 6, 2020) (attached) [hereinafter "NRDC ESA Bryde's Whale ESA Report"].

³⁴³ *Id.*

³⁴⁴ See generally *id.* See also NOAA Fisheries, Rice's Whale Core Distribution Area Map & GIS Data, at <https://www.fisheries.noaa.gov/species/sperm-whale/conservation-management> (attached).

³⁴⁵ DEIS at 4-134.

³⁴⁶ *Id.*

³⁴⁷ Accession No. 20190221-3104

³⁴⁸ While the Calcasieu Pass project is near this project it is a significantly smaller. See *id.* P7.

Comments of For a Better Bayou et al.

CO4-58: Impacts on sperm whales associated with vessel strikes are presented in section 4.8.1 and minimization measures are outlined to support our determination of not likely to adversely affect. Cumulative impacts on sperm whales are presented in section 4.14.2.6, including increased shipping traffic and potential for vessel strikes.

Simply put, the DEIS provides grossly insufficient support for FERC's conclusion on vessel strike impacts to the Rice's whale and the Sperm whale.

FERC's discussion of the impacts of vessel strikes is further deficient because it relies on voluntary measures to minimize the potential for vessel strikes. There is no requirement for mariners to follow these measures even if LNG carrier captains adhered to the measures outlined in the *Vessel Strike Avoidance Measures*.³⁴⁹ Additionally, these measures were put into place more than a decade before the Rice's whale was listed and do not adequately address the risks posed to this highly endangered species. Most notably, there is no requirement that mariners maintain a speed of less than 10 knots, which is one of the best measures for reducing the risk of vessel strikes.³⁵⁰ Instead, it merely provides that mariners *should* "reduce vessel speed to 10 knots or less when mother/calf pairs, groups, or large assemblages of cetaceans are observed near an underway vessel, when safety permits."³⁵¹ Recommending mariners reduce their speeds only when more than one whale is observed, provides little protection to the species when the take of a single individual could have significant, deleterious impacts on the recovery of the species. Moreover, there are no restrictions on operating at night, when Rice's whales are closest to the surface and visibility is limited.

In the case of the sperm whale, they often spend long periods (typically up to 10 minutes) "rafting" at the surface between deep dives, making them vulnerable to vessel strikes.³⁵² Further, many voluntary slow speed programs and whale advisories have not had the desired result. For example, mariner compliance with voluntary slow speed programs in Dynamic Management Areas has been limited with only a small percentage of vessels modifying their speed to less than ten knots within active DMAs.³⁵³ Further, NOAA Fisheries advisories regarding the presence

³⁴⁹ See DEIS at 4-134.

³⁵⁰ See NRDC 10 Knot Limit, at 15-16.

³⁵¹ NOAA, Vessel Strike Avoidance Measures and Reporting for Mariners NOAA Fisheries Service, Southeast Region, at https://media.fisheries.noaa.gov/dam-migration/vessel_strike_avoidance_february_2008.pdf (attached) [hereinafter "NOAA Vessel Strike Avoidance"].

³⁵² NOAA Fisheries, Sperm Whale, at <https://www.fisheries.noaa.gov/species/sperm-whale>.

³⁵³ NRDC 10 Knot Limit, at 15-16 (May 11, 2021) (citing NMFS, "North Atlantic Right Whale (*Eubalaena glacialis*) Vessel Speed Rule Assessment," National

Comments of For a Better Bayou et al.

CO4-59

CO4-59: Project impacts from vessel strikes are discussed in sections 4.7.2.2 and 4.8, which include discussions for all marine and aquatic species.

of blue whales in the Santa Barbara Channel in California and requests for voluntary ship speed reductions were entirely unheeded.³⁵⁴ Therefore, the agencies' should not rely on these voluntary programs to minimize the risk to the species. Rather, the agencies must initiate formal consultation under the Endangered Species Act and develop reasonable and prudent alternatives or measures with mandatory terms and conditions that ensure this action will not jeopardize the species.

CO4-59

iii. *The DEIS Does Not Examine Noise Impacts from Increased Vessel Traffic*

In addition to not adequately examining the impacts of vessel strikes, the DEIS does not adequately examine the Project's noise impacts on the species. FERC makes no conclusions on and performs no analysis of how noise associated with the Project will impact these species.³⁵⁵ Instead, FERC simply ignores noise impacts from both construction and operation of the facility on the Rice's whale and the sperm whale.

This is a glaring oversight as noise from large ships can have significant impacts on the species. Whales can experience temporary and permanent hearing loss when exposed to high sound levels.³⁵⁶ Shipping noise can mask the calls of baleen whales and has been associated with chronic stress in these species.³⁵⁷ Rice's whale vocalizations overlap strongly with commercial shipping and seismic air gun noise, leaving the species very vulnerable to masking and other deleterious effects.³⁵⁸ With respect to the sperm whale, NOAA has stated that disturbance by anthropogenic noise may prove to be an important habitat issue in some areas of the population's range, notably in areas of oil and gas activities and/or where

CO4-60

CO4-60: Section 4.7.2.2 has been updated to include additional information regarding the impacts of underwater vessel noise on aquatic resources, including marine mammals.

Marine Fisheries Service, Office of Protected Resources, Silver Spring, MD (Jun. 2020)).

³⁵⁴ *Id.* at 16.

³⁵⁵ *See* 4-134.

³⁵⁶ NRDC Bryde's Whale ESA Report.

³⁵⁷ *Id.*

³⁵⁸ *Id.*

shipping activities is high.³⁵⁶ Simulations have suggested that frequent and severe disruptions could lead to terminal starvation.³⁶⁰

The Gulf of Mexico is one of the world's noisiest seas at low frequencies due to oil and gas energy exploration and shipping.³⁶¹ Outside the De Soto Canyon, deep-water sites in the Gulf have high sound-pressure spectrum levels caused by seismic exploration, shipping, fishing, and other activities.³⁶² A Federal moratorium on new lease sales in the Gulf somewhat recently expired, which could result in a further increase in noise from additional oil and gas activities.³⁶³

FERC must consider these indirect and cumulative noise effects across the species' range and examine the risk increased vessel traffic poses to these whales.

iv. *FERC Must Engage in Formal Consultation with NMFS under the Endangered Species Act*

The threshold for triggering formal consultation under the Endangered Species Act is "very low" and "any possible effect ... triggers formal consultation requirements."³⁶⁴ This includes effects that are beneficial, benign, adverse, or of an undetermined character.³⁶⁵ The threshold for formal consultation *must be set sufficiently low* to allow Federal agencies to satisfy their *duty* to 'insure' under Section 7(a)(2).³⁶⁶

The DEIS states that the Project would contribute to a cumulative increase in risk to these whales because it would cause an increase in vessel traffic.³⁶⁷ This alone is enough to trigger formal consultation. Further, the documented occurrence of Rice's whales in the Project area and in areas that overlap the shipping routes,

³⁵⁹ NOAA, Sperm Whale (*Physeter macrocephalus*), Northern Gulf of Mexico Stock, 153 (Apr. 2021).

³⁶⁰ *Id.*

³⁶¹ Natural Resources Defense Council, A report on designating critical habitat for the Gulf of Mexico Bryde's whale (*Balaenoptera adeni*) under the Endangered Species Act (Apr. 6, 2020) (citing Rosel et al. 2016).

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ 51 Fed. Reg. 19,926, 19,949 (June 3, 1986).

³⁶⁵ *Fla. Key Deer v. Stickney*, 864 F.Supp. 1222 (S.D. Fl. 1994).

³⁶⁶ *Id.* (quoting 51 Fed. Reg. at 19,949-50 and supplying emphasis).

³⁶⁷ DEIS at 4-417.

Comments of For a Better Bayou et al.

70

CO4-60

CO4-61

CO4-61: See section 4.8 of the EIS. FERC requested to initiate formal consultation with NMFS in accordance with Section 7 of the Endangered Species Act for the Project on March 7, 2023 (accession number 20230307-3043). NMFS responded on March 28, 2023 and indicated based on CP2 LNG's proposed mitigation measures the Project is not likely to adversely affect listed marine species under their jurisdiction (accession number 20230328-5189). Consultation with NFMS is still ongoing.

Document Accession #: 20230313-5123

Filed Date: 03/13/2023

further supports a determination that the Project will have negative effects on the species.

Therefore, it is improper for FERC to conclude that the Project is not likely to adversely affect these species. The agencies need to engage in formal consultation and NMFS must prepare a biological opinion.

c. *The EIS Fails to Account for All Forms of Take Prohibited by the Marine Mammal Protection Act and the Developers Should Obtain Pre-Construction Incidental Take Authorization from NMFS for All Forms of MMPA Take that May Occur, Including Level B Harassment*

The DEIS states that “CP2 LNG should consult with the NMFS Marine Mammal Branch to confirm that an Incidental Take Authorization is not required for the Project.”³⁶⁸ FERC should require that the Developers obtain the IHA, or else an express determination from NMFS that no form of MMPA take is likely to occur³⁶⁹ prior to the commencement of any marine activities, particularly for dolphin stocks. And FERC should ensure that the MMPA process includes adequate consideration of Level B harassment.

i. *The MMPA Prohibits All Forms of Take of Marine Mammals, Including Level B Harassment, Absent Authorization from the Services*

“The MMPA was enacted to protect marine mammal species and population stocks in the wild that are or may be ‘in danger of extinction or depletion as a result of man’s activities.’”³⁷⁰ The stated purposes of the MMPA are:

- (a) to prevent marine mammals species and population stocks from “diminish[ing] beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, [and] below their optimum sustainable population,” and
- (b) to protect and encourage development of the species and stocks “to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to

³⁶⁸ DEIS at 4-146 – 4-147.

³⁶⁹ See 50 C.F.R. § 216.104(a).

³⁷⁰ *Georgia Aquarium, Inc. v. Pritzker*, 135 F.Supp.3d 1280, 1291-92 (N.D. Ga. 2015) (quoting 16 U.S.C. § 1361(i)).

Comments of For a Better Bayou et al.

71

CO4-62: Section 4.8.3 includes a recommendation for CP2 LNG to consult with NMFS prior to construction to determine if an Incidental Take Authorization is necessary. In addition, CP2 LNG and CP Express would not be permitted to start construction until all necessary federal authorizations are received.

CO4-63: See response to comment CO4-62.

maintain the health and stability of the marine ecosystem” with “to goal to obtain an optimum sustainable population....”³⁷¹

“The primary purpose of the MMPA is to protect marine mammals; the Act was not intended as a ‘balancing act’ between the interests of [] industry and the animals. The interests of the marine mammals come first under the statutory scheme, and the interests of the industry, important as they are, must be served only after protection of the animals is assured.”³⁷²

The MMPA imposes a moratorium on the take of protected marine mammal species³⁷³ but provides for the incidental take of such species to be authorized under limited circumstances. For example, for a “specified activity ... within a specific geographical region,” the MMPA authorizes the Secretary to allow the incidental taking by harassment of small numbers of a marine mammal stock for periods of not more than 1 year if the Secretary makes certain findings.³⁷⁴ Aside from ensuring that the harassment will affect only a “small number,” the Secretary must find that the harassment during the period will have (I) only a “negligible impact on such species or stock,” and (II) “will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses.”³⁷⁵

For the Service to authorize take, “[t]he MMPA requires examination of the impact of the activities in issue not only on affected species, but also on affected stocks of marine mammals. A ‘stock’ refers to a group of marine mammals within a species[.]”³⁷⁶ “The term ‘population stock’ or ‘stock’ means a group of marine mammals of the same species or smaller taxa in a common spatial arrangement,

³⁷¹ 16 U.S.C. §§ 1361(2) & (6).

³⁷² *Georgia Aquarium, Inc. v. Pritzker*, 135 F.Supp.3d 1280, 1292 (N.D. Ga. 2015) (quoting *Fed’n of Japan Salmon Fisheries Co-op. Ass’n v. Baldrige*, 679 F.Supp.2d 37, 46 (D.D.C. 1987) *aff’d and remanded sub nom. Kokechik Fishermen’s Ass’n v. Sec’y of Commerce*, 839 F.2d 796 (D.C. Cir. 1988); *Comm. For Humane Legislation, Inc. v. Richardson*, 414 F.Supp. 297, 306 (D.D.C.) *aff’d*, 549 F.2d 1141, 1148 (D.C. Cir. 1976)).

³⁷³ 16 U.S.C. § 1371(a).

³⁷⁴ 16 U.S.C. § 1371(a)(5)(D)(i).

³⁷⁵ *Id.* §§ 1371(a)(5)(D)(i)-(II).

³⁷⁶ *Conservation Council for Hawaii v. Nat’l Marine Fisheries Serv.*, 97 F.Supp.3d 1210, 1222 (D. Haw. 2015) (citing 16 U.S.C. § 1362(1)).

Comments of For a Better Bayou et al.

72

CO4-63

that interbreed when mature.”³⁷⁷ Thus, to authorize take of members of a stock, the required findings must be made with regard to that particular stock, not just the species.³⁷⁸

To authorize the harassment, the Secretary must prescribe the “permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses.”³⁷⁹ Further, the Secretary must prescribe “the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses.”³⁸⁰

Absent such express authorization, take is prohibited.³⁸¹ “The term ‘take’ means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.”³⁸² Under the MMPA, the term “harassment” means “any act of pursuit, torment, or annoyance which —(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or shelter.”³⁸³ Harassment that “has the potential to injure a marine mammal or marine mammal stock in the wild” is “Level A harassment.”³⁸⁴ Harassment that “has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including,

CO4-63

³⁷⁷ 16 U.S.C. § 1362(11).

³⁷⁸ See, e.g., *Conservation Council for Hawaii*, 97 F.Supp. at 1222 (NMFS could not lawfully authorize take of members of a stock if it lacked data to set stock specific take levels or show that impact on stock would be negligible).

³⁷⁹ 16 U.S.C. § 1371(a)(5)(D)(ii)(I).

³⁸⁰ *Id.* § 1371(a)(5)(D)(ii)(II).

³⁸¹ *Id.* § 1372(a).

³⁸² *Id.* § 1362(13).

³⁸³ *Id.* § 1362(18)(A).

³⁸⁴ *Id.* § 1362(18)(C).

but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering,” but does not have the potential to cause injury, is “Level B harassment.”³⁸⁵

For marine mammal species within the jurisdiction of the Secretary of Commerce, NMFS is tasked with evaluating authorizations under the MMPA. For NMFS to consider authorizing the taking by U.S. citizens of small numbers of marine mammals incidental to a specified activity (other than commercial fishing), or to make a finding that an incidental take is unlikely to occur, a written request must be submitted to the Assistant Administrator.³⁸⁶

Unless the best available scientific evidence affirmatively supports NMFS making the required findings, the Service cannot authorize take from the activity.³⁸⁷

³⁸⁵ *Id.* § 1362(18)(D).

³⁸⁶ 50 C.F.R. § 216.104(a).

³⁸⁷ *Conservation Council for Hawaii v. Nat’l Marine Fisheries Serv.*, 97 F.Supp.3d 1210, 1225 (D. Haw. 2015) (“The court understands that NMFS may not have readily available data for each stock. Even if, as NMFS argues it has no duty to create such data, it can hardly justify concluding that the Navy’s activities will have only a ‘negligible impact’ on every stock, much less justify setting stock-specific authorized take levels, if it has no information on which to base such a conclusion or authorized take level.”); *Cf. Nat. Res. Def. Council, Inc. v. Pritzker*, 828 F.3d 1125, 1140 (9th Cir. 2016) (NMFS violated MMPA requirement to ensure least practicable impact by treating absence of evidence as if it were evidence that habitat lacked biological importance); *Georgia Aquarium, Inc. v. Pritzker*, 135 F.Supp.3d 1280, 1295, 1339 (N.D. Ga. 2015) (upholding NMFS’ refusal to permit take where there was “uncertainty associated with the available information regarding the abundance and stability of [the] ... population” such that evidence did not show take “would ‘not work to the disadvantage’ of the ... stock.”); see also *Kokechik Fishermen’s Ass’n v. Sec’y of Commerce*, 839 F.2d 795, 801 (D.C. Cir. 1988) (discussing inability of Secretary to make findings to authorize incidental take in light of information gaps and disputes regarding baseline status of population); *Nat. Res. Def. Council, Inc. v. Evans*, 232 F.Supp.2d 1003, 1027 (N.D. Cal. 2002) (“small numbers” restriction on issuance of incidental take regulation under section 1371(a)(5)(A) must be interpreted against the background that “[t]he intent of Congress is that the taking of even a single marine mammal is to be avoided.”).

- ii. *The EIS Should Clearly Identify the Radius of Impact for All Forms of MMPA Take, Including Level B Harassment*
- a. *Calcasieu Lake Stock Bottlenose Dolphins are Likely to Occur in the Project Area Affected by Pile Driving*

The DEIS concedes that bottlenose dolphins are likely to occur in the Project area.³⁸⁸ Indeed, there is ample evidence that at least one pod of bottlenose dolphins frequents the narrow Calcasieu Ship Channel, which connects Lake Calcasieu to the Gulf, and which is the area that would be ensnared above the thresholds for Level B harassment by pile driving activities for the marine construction associated with the Project. Information from recent news reports indicates that there is at least one pod of dolphins, including two extremely rare pink dolphins, inhabiting the Calcasieu Lake and Calcasieu Shipping Channel area. The dolphins in the Calcasieu Shipping Channel are part of the Calcasieu Lake stock of bottlenose dolphins; the stock area includes Calcasieu Lake and the Calcasieu Shipping Channel, which connects the lake to the Gulf.³⁸⁹ The stock area encompasses 256 square kilometers.³⁹⁰ Although recent NMFS stock assessments from 2015 through 2020 state that the estimated abundance of the Calcasieu Lake stock is zero based on surveys last conducted in 1992,³⁹¹ NMFS stock assessments note that the prior

³⁸⁸ See DEIS at 4-145. The DEIS also concedes that the West Indian manatee also occurs within the Project area. *Id.*

³⁸⁹ See Rosel, PE, KD Mullin, L Garrison, L Schwacke, J Adams, B Balmer, P Conn, MJ Conroy, T Eguchi, A Gorgone, A Hohn, M Mazzoli, C Schwartz, C Sinclair, T Speakman, K Urian, N Vollmer, P Wade, R Wells and E Zolman. 2011. Photo-identification Capture-Mark-Recapture Techniques for Estimating Abundance of Bay, Sound and Estuary Populations of Bottlenose Dolphins along the U.S. East Coast and Gulf of Mexico: A Workshop Report. NOAA Technical Memorandum NMFS-SEFSC-621, at 3, Figure 1, *available at* <https://repository.library.noaa.gov/view/noaa/4014> (attached). The Calcasieu Lake stock area is shown as area 8 on Figure 1.

³⁹⁰ *Id.* at 21, App'x 1.

³⁹¹ See May 2015 NOAA Assessment for COMMON BOTTLENOSE DOLPHIN (*Tursiops truncatus truncatus*): Northern Gulf of Mexico Bay, Sound, and Estuary Stocks, at 231-32 (showing abundance estimates of 0); see also Hayes et al., US Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2020, NOAA Technical Memorandum NMFS-NE-27, July 2021, at 6, *available at* <https://media.fisheries.noaa.gov/2021-07/Atlantic%202020%20SARs%20Final.pdf?null%09> (attached).

Comments of For a Better Bayou et al.

75

CO4-64

CO4-64: See response to comment CO4-62.

estimated abundance of the stock was 0-6 based on a 1989 study.³⁹² Furthermore, news reports from as recently as 2019 have documented sightings of multiple bottlenose dolphins in the Calcasieu Lake and Channel—notably including an extremely rare pink dolphin and her pink calf, sometimes observed with a pod of other bottlenose dolphins.³⁹³ In short, bottlenose dolphins are “frequently” observed in the Calcasieu Ship Channel.³⁹⁴

CO4-64

- b. *Even with Mitigation Level B Harassment of Bottlenose Dolphins is not Precluded*

The width of the area to ensniffed by pile driving is unclear from the DEIS. But the DEIS does concede that “without mitigation the proposed Project may result in short-term impacts [to] marine mammals occurring in the Project vicinity

CO4-65

CO4-65: See response to comment CO4-62.

³⁹² See NOAA Bottlenose Dolphin Stock, at 231-232 (noting that: During earlier surveys (Scott et al. 1989), the range of seasonal abundances was as follows ... B58 [Calcasieu Lake stock], 0-6 [CV=] (0.34”).

³⁹³ See, e.g., Lopez, Kenny, WGNO News, May 7, 2019, ‘Pinky’ the rare Louisiana dolphin is said to be mom to a pink baby dolphin! (“WGNO Pink Dolphin”), available at [https://wgno.com/news/pinky-the-rare-louisiana-dolphin-is-said-to-be-mom-to-a-pink-baby-dolphin/#~:text=Pinky%20the%20rare%20Louisiana%20dolphin%20is%20said%20to%20be%20mom,to%20a%20pink%20baby%20dolphin! \(“Captain Erik Rue of Calcasieu Charter Service first spotted the mysterious pink dolphin they affectionately call ‘Pinky’ back in 2007 while out on his boat. Rue said, years ago the baby pink dolphin would always swim near her mother. Now, a decade later, ‘Pinky’ swims on her own and sometimes with a pod of other dolphins. ... Now ABC affiliate KATC is reporting that Pinky the Dolphin has been seen swimming with another pink dolphin in the Calcasieu ship channel. Spectators believe that this could be Pinky’s calf.”\) \(emphasis added\) \(attached\); KATC News, Apr. 6, 2019, Another Pinky the Dolphin sighting, available at \[https://www.katc.com/news/around-acadiana/calcasieu-parish/2019/04/06/another-pinky-the-dolphin-sighting/ \\(“...Pinky and a dolphin companion swam alongside the Randolph John in the Calcasieu Ship Channel in Cameron at 1:30 p.m. today.”\\) \\(“KATC Pink Dolphin”\\) \\(attached\\); Landry, Sophia, KPLC News, Aug. 21, 2018, Two ‘pink’ dolphins spotted in Calcasieu Ship Channel, \\(“KPLC Pink Dolphin”\\), available at \\[https://www.kpletv.com/story/3893685/two-pink-dolphins-spotted-in-calcasieu-ship-channel/ \\\(“Pinky the dolphin is back in the Calcasieu Ship Channel, this time with a look-alike....The two dolphins were spotted by Thomas Adams with Fishing ‘Tom’s Guide Service on Aug. 21.”\\\) \\\(attached\\\).\\]\\(https://www.kpletv.com/story/3893685/two-pink-dolphins-spotted-in-calcasieu-ship-channel/\\)\]\(https://www.katc.com/news/around-acadiana/calcasieu-parish/2019/04/06/another-pinky-the-dolphin-sighting/\)](https://wgno.com/news/pinky-the-rare-louisiana-dolphin-is-said-to-be-mom-to-a-pink-baby-dolphin/#~:text=Pinky%20the%20rare%20Louisiana%20dolphin%20is%20said%20to%20be%20mom,to%20a%20pink%20baby%20dolphin!)

³⁹⁴ DEIS at 4-145.

during the in-water construction period.³⁸⁵ The DEIS does not assess what noise levels nearby bottlenose dolphins will experience as a result of Project operation or specifically assess whether impacts to these dolphins constitute MMPA Level B harassment, which does not require the potential for injury, but rather turns on potential disturbance. Additionally, the DEIS contradicts this statement by also explaining that “the proposed Project would adversely affect marine species occurring in the Project vicinity during the in-water construction period” even with mitigation.³⁸⁶

For mid-frequency cetaceans such as bottlenose dolphins, NMFS considers 120 dB rms to be the threshold for Level B harassment from a continuous noise source like vibratory pile driving and 160 dB rms to be the threshold from an intermittent noise source like impact pile driving.³⁸⁷

The DEIS does not contain an estimate for the relevant radius of underwater noise impacts.³⁸⁸ However, the NMFS determined that pile driving activities for the

³⁸⁵ *Id.* at 4-146.

³⁸⁶ *Id.* at 4-94.

³⁸⁷ *See, e.g.*, 85 Fed. Reg. at 27380 (“Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB [rms] for continuous (*e.g.*, vibratory pile-driving, drilling) and above 160 dB [rms] for intermittent (*e.g.*, impact pile driving) source.”).

³⁸⁸ CP2 transmitted calculation to NMFS on February 25, 2022 to initiate consultation that likely underestimated the extent of impacts from pile driving activities. CP2 used data for 96-inch piles in calculations of the radii affected by impact driving 120-inch and 144-inch piles, and used data for 72-inch piles to calculate the radii affected by vibratory driving of 120-inch and 144-inch piles. *See* Letter from Peter G. Bell (Venture Global) to David Bernhart (NMFS) Re: Request for Initiation of Expedited Information Consultation under Section 7(a)(2) of the Endangered Species Act for the Venture Global CP2 LNG and CP Express Project, Feb. 25, 2022 (“CP2 request for consultation”), at 3A-2, 3A-4, and 3A-7 (attached). The spreadsheets appear to indicate that CP2 simply used the values for smaller piles, because those were the largest sizes for which data was available in the Caltrans compendium, and do not state that CP2 made any attempt to account for the reality that the piles they are using are much, much larger than the top size in the Caltrans data set (*e.g.*, by extrapolating values based on trends in the Caltrans data set related to pile size). If CP2 is simply using the sound data for the much

Commonwealth project will ensnify the entire width of the Calcasieu ship channel (1440 feet in that Project area) to 160 dB rms even with mitigation measures like cushion blocks and bubble curtains.³⁹⁸ The same would be true here.

Rather than performing the requisite analysis, the DEIS claims that “CP2 LNG anticipates that the implementation of such noise attenuation measures would avoid harassment of marine mammals during pile driving activities.”⁴⁰⁰ But this is both incorrect, as explained above, and not an analysis. CP2 will purportedly use “ramp-up procedures,”⁴⁰¹ and a buffer zone technique whereby a person “would scan the channel waters for marine mammals for 20 minutes prior to the onset of and continuously during pile driving activities.”⁴⁰² But, plainly, these measures would do nothing to mitigate pile-driving noise and FERC does not analyze whether the buffer zones would be adequately large to ensure that dolphins outside the buffer zone wouldn’t be impacted by noise. The DEIS then says that CP2 “may” implement⁴⁰³ other mitigation measures, but these are not binding and FERC wrongly fails to assess whether the other potential mitigation measures would adequately minimize the impacts below the relevant thresholds.⁴⁰³

As a result, the DEIS’ ultimate conclusion that the Project would not have a significant impact on marine mammals is baseless. That conclusion is based on the mitigation measures, but, again, those mitigation measures do nothing to ensure that dolphins will not be impacted by noise, let alone whether those impacts constitute Level B harassment.

Ultimately, because the DEIS does not even attempt to analyze whether Level B harassment will occur, the DEIS has failed to provide the data necessary to evaluate whether Level B harassment will occur or whether noise impacts will be

smaller piles without any adjustment to account for its use of much larger pile seizures, then CP2 may be underestimating the area of impacts that would constitute MMPA harassment.

³⁹⁹ See NMFS Commonwealth Concurrence Letter, at 13-14, Table 5 (stating that radius of behavioral effects threshold area was “based on 10-15 dB noise reduction resulting from use of cushion blocks and bubble curtains.”) (attached).

⁴⁰⁰ DEIS at 4-146.

⁴⁰¹ *Id.*

⁴⁰² *Id.*

⁴⁰³ *Id.*

significant on dolphins. As such, FERC's analysis is arbitrary and capricious, and constitutes a failure to take a hard look at the impacts.

c. *The DEIS Fails to Take a Hard Look at the Cumulative Impacts of Harassment on Bottlenose Dolphins*

The DEIS does not attempt to assess any cumulative impacts on bottlenose dolphins. But FERC previously determined that the Commonwealth and this Project could have cumulative noise impacts due to their in-water pile driving activities.⁴⁰⁴ As the NMFS Commonwealth concurrence letter indicates, even with mitigation that project will ensnify the entire width of the of the shipping channel to Level B harassment levels.⁴⁰⁵ That project, combined with this Project will create a situation where dolphins could be caught between two large areas of Level B harassment causing "behavioral blockage" of the channel, preventing them from either moving north toward Lake Calcasieu or southward to return to the Gulf. FERC must evaluate the need to impose restrictions on the pile-driving activities for these projects to prevent noise impacts that would create a behavioral blockage in two portions of the channel at the same time. This evaluation should be based on calculations of what the radii for the Level B harassment thresholds are for both projects with the proposed mitigation.

In sum, the EIS should contain an evaluation, based on noise calculations approved by NMFS, of the potential for all forms of MMPA take, including Level B harassment of Calcasieu Lake stock bottlenose dolphins, and the associated area extent of such impacts, to evaluate the cumulative impacts of concurrent pile-driving activities from this Project and the Commonwealth project. This evaluation should include an assessment of whether concurrent pile-driving activities from the two projects could create behavioral blockages at two points in the shipping channel, thereby leaving marine species caught between two areas of Level B harassment, or subject to an extensive area of Level B harassment in the shipping channel.

⁴⁰⁴ Commonwealth DEIS at 4-336.

⁴⁰⁵ NMFS Commonwealth Concurrence Letter at 13-14.

CO4-65

CO4-66

CO4-66: See response to comment CO4-62. Additionally, cumulative impacts on aquatic resources are presented in section 4.14.2.3.

VIII. The DEIS Does Not Adequately Consider the Adverse Impacts to the Commercial Shrimping Industry, Including Impacts to Aquatic Species and Essential Fish Habitat, and Does Not Proposed Meaningful Mitigation for these Impacts

The DEIS fails to provide adequate information regarding impacts to essential fish habitat. FERC concludes that the Project will impact over 400 acres of essential fish habitat.⁴⁰⁶ The Project area contains Essential Fish Habitat for several species: brown shrimp, white shrimp, red snapper, gray snapper, lane snapper, red drum, king mackerel, cobia, Spanish mackerel, and *etc.*⁴⁰⁷

The DEIS recognizes that there will be impacts to essential fish habitat. Some impacts are recognized as permanent, including 5.3 acres to estuarine wetlands at the terminal site, 14.2 acres to estuarine wetlands as part of construction of the marine facilities, and .5 acres of waterbody essential fish habitat from construction at the marine facilities.⁴⁰⁸ Other impacts are classified as temporary,⁴⁰⁹ including 361.6 acres of palustrine and estuarine essential habitat and 17.7 acres of open water essential fish habitat from the pipeline system.⁴¹⁰ The DEIS also recognizes additional “temporary” impacts to essential fish habitat from hydrostatic testing, HDD pipeline construction methods, turbidity, vessel traffic, and pile driving-related underwater noise.⁴¹¹ And yet more impacts are currently known, “[t]he disposal of dredged material could have permanent impacts on EFH at the disposal sites, depending on the location.”⁴¹² FERC ultimately determines that “[c]onstruction of the [p]roject would result in permanent, minor impacts on EFH and the species and life stages that use EFH through the alteration of habitat and the mortality or displacement of individuals. Impacts would be adequately

⁴⁰⁶ DEIS at 5-14 – 5-15. The figure could actually be much higher as the DEIS acknowledges that dredged material could have additional impacts on essential fish habitat but does not determine how many acres of impacts that would be. *Id.* at 5-15.

⁴⁰⁷ *Id.* at 4-108 – 4-111.

⁴⁰⁸ *Id.* at 5-14.

⁴⁰⁹ This classification is improper because the DEIS never explains how long these impacts will actually last and, as a result, FERC has not justified its conclusion that they will be temporary.

⁴¹⁰ DEIS at 5-14.

⁴¹¹ *Id.* at 5-15.

⁴¹² *Id.*

CO4-67

CO4-67: Project impacts on essential fish habitat and shrimping are presented in sections 4.7.3 and 4.10.4.1, respectively. See also response to CO3-15.

minimized by implementation of mitigation measures proposed by CP2 LNG and CP Express.”⁴¹³

However, the DEIS does not provide an opportunity for meaningful review of FERC’s required essential fish habitat assessment because it is only in its initial stage. The DEIS indicates that “[a]s part of the consultation under the MSFCMA, [FERC is] requesting that NMFS consider this EIS as initiation of EFH consultation, and NMFS may provide recommendations to FERC regarding further measures that can be taken to conserve EFH. [FERC] would respond to any such recommendations per the requirements of the MSFCMA.”⁴¹⁴ The next crucial step in the EFH process—the EFH Conservation Recommendations by NMFS and FERC’s response—have not occurred yet, and, thus, will not be available during the public comment period for the public to review and provide feedback. FERC’s conclusion seemingly relies on this forthcoming consultation process. But the public will not have an opportunity to weigh in on these future recommendations to preserve essential fish habitat. This alone violates NEPA and undermines FERC’s conclusion that impacts to essential fish habitat are not significant.

CO4-67

But even this initial step FERC has not adequately considered impacts or potential mitigation measures for essential fish habitat. Several National Oceanic and Atmospheric Administration (“NOAA”) documents demonstrate the high level of concern about the impacts of LNG facilities on fisheries in the Gulf of Mexico, but none of those impacts were considered as part of FERC’s DEIS. First, in a 2017 Report from the National Essential Fish Habitat Summit, LNG was identified as one of three “emerging issues” in the Southwest Region:⁴¹⁵

In many Gulf of Mexico LNG facilities, seawater is used to reheat liquid natural gas and then discharged back into the ocean at about 20°C cooler than the ambient temperature. There was a time lag between development of LNG facilities and the assessment of the potential effects of the discharge of cooled waters on fish stocks, but studies now show

⁴¹³ *Id.*

⁴¹⁴ *Id.*

⁴¹⁵ NOAA Technical Memorandum NMFS-OHC-3, August 2017 (“NOAA Technical Memorandum”), available at <https://spo.nmfs.noaa.gov/sites/default/files/TM-OHC3.pdf> (attached).

that about five billion fish eggs and larvae are killed per facility due to this cooled discharged water.

In addition, the Gulf of Mexico Fishery Management Council concluded in 2005:⁴¹⁶

Facilities that require substantial intake and discharge of water, are generally not suited for construction and operation in estuarine and near-shore marine environments.... There is also concern over the potential impacts of proposed Liquid Natural Gas flowthrough processing facilities in waters of the Gulf of Mexico. These facilities take in large volumes of water to warm LNG. For example, the Port Pelican Liquid Natural Gas (LNG) processing facility is proposed for coastal Louisiana in 25 m (83 ft) of water. During Phase II of its operation, it is projected to take in 176.4 million of seawater per day or 64.4 billion gallons per year. The water will be used to warm the LNG and will undergo a temperature decrease of 11°C (20°C). The intake rate will be around 15 cm/sec (0.5 ft/sec), allowing most larger organisms to avoid impingement at the intake structures, but water passing through the facility will undergo mechanical, pressure, temperature, and chemical (NaOCl) shock. Some entrained eggs and larvae may survive any one of these adverse conditions (Cada et al. 1981, Muessig et al. 1988), but the combination of these stresses will be lethal to almost all organisms passing through the facility. There is a special concern regarding the siting of flow-through facilities in or near estuarine passes. Most fishery organisms in the Gulf of Mexico use estuaries as nursery grounds, and eggs and larvae recruit into these areas through tidal passes. Locating facilities in or near these

CO4-67

⁴¹⁶ Gulf of Mexico Fishery Management Council, NOAA, "Generic Amendment Number 3 for Addressing Essential Fish Habitat Requirements, Habitat Areas of Particular Concern, and Adverse Effects of Fishing in the following Fishery Management Plans of the Gulf of Mexico," ("NOAA Gulf of Mexico Fishery Management Council") March 2005, available at https://gulfcouncil.org/wp-content/uploads/FISHERY%20MANAGEMENT/GENERIC/FINAL3_EFH_Amendment.pdf (attached).

Comments of For a Better Bayou et al.

82

tidal passes will be especially damaging to fishery resources, since eggs and larvae of fishery species are often concentrated in these areas. Locating LNG facilities in shallow water also increases the proportional area of impact. Based on an assessment of LNG facilities, the NOAA Fisheries Southeast Fisheries Science Center recommended that flow-through LNG systems should be avoided in favor of closed-loop systems. The negative impacts to fishery species and living marine resources in the Gulf from a single-flow-through facility could be potentially severe, and cumulative impacts from multiple facilities were considered a threat to fishery resources.

The DEIS claims that currently unclear mitigation will be provided pursuant to the Developers' wetlands mitigation plan (which is not analyzed in the DEIS) and the DEIS mentions that certain measures will be in place that may lessen impacts to essential fish habitat. But this is not adequate. Additional mitigation should be included to minimize impacts to fisheries and any current measures must be analyzed to determine whether they will be effective.

a. Impacts on Fishing and Recreational Vessel Travel in the Ship Channel

During operations, security zones for LNG carriers in transit would impact recreational and commercial fishing vessels within the Calcasieu Ship Channel because they would be required to exit the security zone while the LNG carrier passes.⁴¹⁷ FERC concludes that "additional LNG carrier traffic could result in short-term impacts on recreational boaters up to eight times per week after Phase 2 facilities are placed into service."⁴¹⁸ However, when analyzing vessel traffic for the Commonwealth project, FERC determined that the moving security zone around LNG carriers has the potential to close the channel to traffic and recreation, and that, if all LNG export terminals proposed for Calcasieu Pass and Lake Calcasieu are constructed, this could occur more frequently.⁴¹⁹ This possibility is not considered here. But according to the Calcasieu Ship Traffic Study referenced in the DEIS, traffic in the channel is projected to increase to around 2,514 vessel calls in

⁴¹⁷ DEIS at 4-161.

⁴¹⁸ *Id.*

⁴¹⁹ Commonwealth DEIS at 4-345.

CO4-67

CO4-68: Project impacts on recreation and special interest areas are presented in section 4.9.3. A revised discussion of Project impacts on commercial fisheries is presented in section 4.10.4. Impacts on commercial fisheries would occur during dredging activities and while LNG carriers are in transit to the LNG terminal. CP2 LNG and CP Express prepared an Engagement Plan for Local Commercial Shrimp Fishery (Engagement Plan) with the objective of facilitating communication, addressing concerns, providing updates, and encouraging collaboration with local shrimp fisherman. CP2 LNG committed to continue to develop the Engagement Plan and incorporate feedback received through coordination with local commercial shrimpers throughout construction and would provide updates regarding continued coordination and outreach in the construction status reports.

CO4-68

2026.⁴²⁰ Because of the Project's location, near the mouth of the shipping channel and in Calcasteu Pass, FERC must assess whether the moving security zones around the LNG carriers calling on the Project will impact access to and from Calcasteu Pass and the Gulf of Mexico.

The increased vessel traffic to and from the export terminal, in tandem with the destruction of essential fish habitats, would further interfere with commercial fishing operations. This is one of the primary effects expected to result from similar LNG projects.⁴²¹ For instance, experts commenting on Oregon's Jordan Cove Energy Project said the project would have undermined "decades of work to protect fishing opportunities" off the coast of Oregon, which risks undoing the advances that came about after "billions of dollars" were invested to restore salmon habitat in the region.⁴²²

The DEIS also fails to consider the interplay between the tourism and commercial fishing and shrimping industries. Damage to the commercial shrimping industry could also lead to a decrease in the number of tourists, which in turn could decrease the number of customers available to local shrimpers. Not to mention, tourists may be dissuaded from buying locally-caught shrimp in an area dominated by the petrochemical industry. While studies about this form of "seafood tourism" are not readily available about Louisiana, LNG-friendly coastal areas such as New South Wales in Australia find that domestic tourists expect to each local seafood when traveling to the coast.⁴²³ The impacts from dredging associated with other nearby LNG export terminals has already had an impact on the shrimpers in Calcasteu Pass.⁴²⁴

⁴²⁰ DEIS at 4-425.

⁴²¹ A Briefing Paper from the Guide to Commercial Frameworks for LNG in North America, (November 7, 2006) (attached).

⁴²² "Science Shows Vital Fish Habitat Threatened by Proposed Oregon LNG Terminal," Columbia Riverkeeper (Feb. 5, 2015) ("Fish Habitat Threatened by LNG") ("attached"); see also Eric de Place and Paelina DeStephano, "Jordan Cove Energy Project, LNG Facility May Harm Water Quality, Salmon Runs," Sightline Institute (Aug. 1, 2018) ("LNG May Harm Salmon Runs") (attached).

⁴²³ Kate Barclay and Michelle Voyer, *Social and Economic Evaluation of NSW Coastal Professional Wild-Catch Fisheries: Valuing Coastal Fisheries*, University of Technology Sydney ("Valuing Coastal Fisheries"), Oct. 2016 (attached).

⁴²⁴ Theresa Schmidt, *Cameron shrimpers complain LNG dredging ruining prime shrimping spot*, KPLC News (Nov. 25, 2019) ("LNG Ruining Shrimping") (attached).

Not accounting for the effects of the Project's impact on the commercial shrimp industry sufficiently, given the economic importance of these fisheries and the adverse effects created by similar LNG projects elsewhere, violates NEPA and is arbitrary.

CO4-68

IX. Alternatives

FERC is required to "evaluate reasonable alternatives to the proposed action."⁴²⁵ This analysis is considered the "heart" of the NEPA process.⁴²⁶ The goal of the analysis is to evaluate "alternative means to accomplish the general goal of an action."⁴²⁷ Agencies do not need to consider alternatives that do not satisfy the general goal. "[b]ut agencies may not 'define the objectives of a proposed action so narrowly as to preclude a reasonable consideration of alternatives.'"⁴²⁸

Additionally, because of the natural of LNG infrastructure permitting, FERC's alternatives analysis plays an important role in other agencies' permitting processes. Relevant here, FERC's alternatives analyses generally will form the basis of the U.S. Army Corps of Engineer's analysis to determine the Least Environmentally Damaging Practicable Alternative ("LEDPA").⁴²⁹ "The Corps may not issue a [Section 404] dredge and fill permit 'if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.'"⁴³⁰ Thus, it is crucial that in assessing alternatives for LNG infrastructure that impacts wetlands, that FERC pay special attention to how the various alternatives impact wetlands and to include sufficient information

⁴²⁵ 40 C.F.R. § 1502.14(a).

⁴²⁶ CEQ, A Citizen's Guide to NEPA, at 16 (attached).

⁴²⁷ *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997) (quoting *Van Abbema v. Fornell*, 807 F.2d 633, 638 (7th Cir. 1986)).

⁴²⁸ *High Country Conservation Advocates v. United States Forest Service*, 951 F.3d 1217, 1223 (10th Cir. 2020).

⁴²⁹ See *Holy Cross Wilderness Fund v. Madigan*, 960 F.2d 1515, 1526 n.17 (10th Cir. 1992). Of course, if FERC's NEPA analysis is inadequate for the Corps to perform its LEDPA analysis, the Corps must supplement the NEPA documents with additional information. 40 C.F.R. § 230.10(a).

⁴³⁰ *City of Shoreacres v. Waterworth*, 420 F.3d 440, 447-48 (5th Cir. 2005) (quoting 40 C.F.R. § 230.10(a)); see also 33 C.F.R. § 320.4(a)(2)(ii) (Corps' public interest review consider "the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work").

so that the public and the Corps can compare alternatives based on their wetlands impacts.

a. The DEIS' Analysis of Alternative Sites is Facially Flawed
i. Terminal Sites

With respect to analyzing potential alternative sites for the LNG export terminal, FERC has not come close to satisfying NEPA or providing the Corps enough information to perform a LEDPA analysis. FERC purports to consider three potential alternative terminal sites, but includes the disclaimer that none of those sites are actually large enough to accommodate the Project.⁴³¹ According to FERC, this is a result of only analyzing alternatives that the Developers "selected for conceptual comparison purposes as a theoretical minimum early on in [the] project design process."⁴³² Perhaps because FERC treated this as a theoretical exercise, rather than providing the requisite hard look, FERC barely provided any analysis of these potential alternatives. Thus, FERC has violated NEPA.

There are other fundamental errors with FERC's analysis as well. First, FERC understates the amount of impacts the Project would have on wetlands at the proposed terminal site. FERC claims that the Project would "impact approximately 65.9 acres of NWI mapped wetlands."⁴³³ But the Project will impact approximately 406.1 acres of wetlands at the terminal site, more than all but one of the identified terminal sites.⁴³⁴ Second, FERC fails to provide sufficient analysis necessary to compare the alternatives. The Calcasieu Ship Channel Alternative Site 1 would impact less wetlands than the preferred alternative, but FERC says that "acquisition of Alternative Site 1 would not likely be feasible" because it is a federal dredged material placement area.⁴³⁵ But FERC provides no support for this claim and must at least investigate the feasibility of acquiring this site. FERC also mentions that construction at this alternative would "take an additional 3 to 6 months" because of the need for some improvements at the site.⁴³⁶ Surely, the need for, at most, an additional 6 months of construction does not *per se* mean that the alternative is less preferable. More information is needed, *e.g.* what are the

⁴³¹ DEIS at 3-49 – 3-50.

⁴³² *Id.* at 3-42.

⁴³³ *Id.* at 3-42.

⁴³⁴ *Id.* at 3-49 – 3-50.

⁴³⁵ *Id.* at 3-49.

⁴³⁶ *Id.*

Comments of For a Better Bayou et al.

86

CO4-69: See the revised EIS at section 3.4.1 and table 3.4.1-2, which includes a detailed analysis of six alternative terminal sites.

CO4-70: As stated in section 3.1 of the EIS, to ensure a consistent environmental comparison and to normalize comparison factors, we generally use desktop sources of information to complete our alternatives analysis unless comparable site-specific data exists for an alternative. Because site-specific wetland delineation has not been completed at the alternative sites, and to facilitate a consistent comparison, we include desktop (National Wetlands Inventory [NWI]) wetlands mapping as part of our alternatives analysis.

CO4-71: As stated in section 3.1 of the EIS, our alternatives analysis is based on environmental comparison and application of our professional judgment. In recognition of the competing interests and the different nature of impacts that sometimes exist (i.e., impacts on the natural environment versus impacts on the human environment), we also consider other factors that are relevant to a particular alternative and discount or eliminate factors that are not relevant or may have less weight or significance.

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environmental impacts of the additional construction, to make such a conclusion. Evaluation of Calcasieu Ship Channel Alternative Site 6 is similarly sparse. This alternative would impact even fewer wetlands (280.9 acres).⁴³⁷ According to FERC the northwest portion of the site contains what might be “remnant coastal prairie habitat.”⁴³⁸ But it is unclear from the DEIS whether that area does, indeed, contain the habitat of special concern and, if so, whether that area can be avoided. FERC identifies a few other potential concerns, but fails to perform the analysis that would allow it, or the public, to “evaluate their comparative merits.”⁴³⁹	CO4-71
Entirely missing from the discussion of alternative terminal sites is a detailed discussion about how choosing one of these alternative sites would impact impacts from the corresponding pipeline system. FERC indicates that each alternative site would require a significantly shorter pipeline than the proposed terminal site.⁴⁴⁰ Presumably this means fewer wetlands and other impacts associated with the pipeline. But these impacts, arbitrarily, go entirely un-analyzed.	CO4-72
Ultimately, FERC has failed to perform an adequate alternatives analysis. To the extent that none of the analyzed alternatives are feasible, FERC has necessarily violated NEPA because it <i>has</i> to assess alternative to the proposed action and FERC must now perform an investigation to identify such feasible alternatives. If FERC cannot identify such alternatives, it is because, as explained earlier, FERC has defined the purpose too narrowly and FERC must reassess. The purpose must be broad enough for FERC to be able to evaluate a sufficient range of alternatives. If the identified alternative sites are feasible, FERC must perform a significantly more detailed analysis than the one provided. Additionally, FERC must provide additional information on the impacts to wetlands of the various alternatives, including impacts to wetlands caused shortened pipelines due to different locations of the potential alternative sites. FERC’s analysis here is arbitrary.	CO4-73
ii. <i>Pipeline Routes</i> FERC’s analysis of alternative pipeline routes further underscores the need for a broader project purpose. FERC evaluated three potential alternative sites in addition to the Developers’ preferred alternative.⁴⁴¹ Seemingly none of them are	CO4-74
⁴³⁷ <i>Id.</i> at 3-49 – 3-50. ⁴³⁸ <i>Id.</i> at 3-49. ⁴³⁹ 40 C.F.R. § 1502.14(b). ⁴⁴⁰ DEIS at 3-49 – 3-50. ⁴⁴¹ DEIS at 3-53.	
<i>Comments of For a Better Bayou et al.</i>	87

CO4-72: See response to comment CO4-69.

CO4-73: The FERC does not plan, design, build, or operate natural gas transmission infrastructure. Accordingly, the project proponent is the source for identifying the purpose for developing, constructing, and operating a project. See revised section 3.5 for analysis of additional alternative pipeline routes. See also response to comment CO4-69.

CO4-74: See response to comment CO4-73.

feasible alternatives. Alternatives 1 and 2 cross the Sabine National Wildlife Refuge, which is "generally not permitted."⁴⁴² Alternative 3 does not cross the Sabine National Wildlife Refuge but would cross Calcasieu Lake, which the Louisiana Department of Wildlife and Fisheries does not support because Alternative 3 would "impact existing oyster habitat, artificial finfish reefs, and oyster clutch plants within the lake, as well as marsh restoration projects south of the lake."⁴⁴³ To be clear, we do not think that the preferred alternative is an acceptable option either because of its profound environmental impacts. This analysis, instead, indicates that FERC needs to broaden the purpose of the Project because it has performed this analysis as if the Developers' preferred options are a foregone conclusion. NEPA requires more. FERC must broaden its purpose and search for a broader array of alternatives that are actually feasible.

b. FERC Failed to Analyze Any Alternative Terminal Site Layouts

FERC also didn't analyze any potential alternative site layouts. FERC claims that CP2 analyzed one additional site layout, but the details of that layout are unclear as are the environmental benefits or whether slight adjustments could be made to avoid the purported noise and thermal exclusion zone issues.⁴⁴⁴ But regardless of CP2's purported consideration, FERC's analysis here is conclusory and does not indicate that FERC took a hard look at alternative site layouts.

At the threshold, as explained earlier, CP2's proposed facility footprint is too large for the amount of LNG the Developers plan. FERC must assess whether the facility footprint can be optimized and whether shrinking the facility would be able to meet the project goal (exporting 20 MMTPA) while reducing the size of the facility. If so, FERC must assess whether the smaller footprint could be used to avoid environmental impacts, *e.g.* avoiding impacting wetlands at the terminal site.

But even if the terminal site stayed the same size, it could be re-arranged to avoid impacting wetlands. LNG export terminals can be arranged in a nearly infinite array of configurations.⁴⁴⁵ Here, both the liquefaction trains and the power plant are constructed in what appear to be the most wetland-heavy locations at

⁴⁴² DEIS at 3-54.

⁴⁴³ *Id.*

⁴⁴⁴ For example, could CP2 acquire the property so that the thermal exclusion zones no longer extend on non-CP2 property?

⁴⁴⁵ Compare DEIS at 2-3, *with* FERC, Driftwood LNG Project Final Environmental Impact Statement 1-14.

CO4-74

CO4-75

CO4-75: Terminal Site layout alternatives were provided by the applicant and are addressed in section 3.4.2. See the revised section 3.4.2 of the EIS and response to comment CO4-69.

terminal footprint.⁴⁴⁶ North of the powerplant, towards the west of the terminal site, there is an empty area there is a strip of empty space that features less wetlands than in the north and south ends of the terminal site. The wetlands there seem to be non-contiguous.⁴⁴⁷ FERC must consider alternatives that would avoid impacts to wetlands by using this empty space at the site. First, FERC must consider whether the power plant and storage tanks could be moved North, avoiding the bottom range of wetlands currently being impacted by the power plant. FERC must determine whether this would reduce impacts to wetlands. And even if this alternative layout would not reduce acreage impacts, FERC must determine whether this alternative would be impacting wetlands that provide less function or are of lower quality. Second, FERC must consider whether either two or four of the liquefaction train blocks can be moved from the north part of the site, as currently proposed, to the west end of the site.⁴⁴⁸ Again, FERC must consider whether this would avoid impacts to the northside wetlands. And, even if this alternative would not impact fewer acres of wetlands, FERC must assess whether the alternative would be impacting lower value or wetlands of lower quality.

CO4-75

Ultimately, FERC cannot simply sit on its hands and refuse to take a hard look at alternative terminal site layout options. But that is exactly what FERC did here. FERC seems to attempt to justify this decision by explaining that the proposed terminal site satisfies basic safety, noise, *etc.* criteria.⁴⁴⁹ But nothing in the record indicates that these alternatives would not also satisfy those criteria or be otherwise infeasible or unworkable. Accordingly, FERC has violated NEPA.

c. *System Alternatives* i. *Terminal*

NEPA requires FERC to rigorously explore all feasible alternatives. Here, the DEIS fails to demonstrate that it would be infeasible to use capacity at existing or already approved export facilities in lieu of construction of the proposed terminal. The DEIS's conclusion that no such terminal has additional capacity is arbitrary. So too is the DEIS' conclusion that expansion of any such facilities would necessarily have similar environmental impacts to the Project.

⁴⁴⁶ Compare DEIS at 4-46, with DEIS at 2-3.

⁴⁴⁷ See DEIS at 4-46.

⁴⁴⁸ And, to the extent necessary, whether the storage tanks can be rearranged to accommodate this shift.

⁴⁴⁹ DEIS at 3-51.

Comments of For a Better Bayou et al.

89

CO4-76: Comment noted. System alternatives for the Terminal are discussed in section 3.3.1.

CO4-76

One type of alternative identified in FERC's Guidance manual for Environmental Report Preparation are "system alternatives,"⁴⁵⁰ As the manual explains:

System alternatives are those that would meet the objectives of the project, but would use a different (and often existing) natural gas facility/pipeline system or a different configuration of facilities that would eliminate the need to construct all or part of the project. If modifications or additions to the existing facilities/systems would be required to meet the project objectives, you should quantify the environmental impact of these modification for comparison with those of the proposed project. ...

System alternatives should include alternative configurations both on your own system and on one or more other companies' facilities. ...

Examples of ... alternatives using other companies' facilities[] should include an examination of current capacities of existing systems, to the extent this information is available, and an assessment of these systems' ability to individually or in combination meet the objectives of the proposed project. If the existing systems are inadequate, you should examine whether any recently proposed facilities are able to individually or in combination meet the objectives of the proposed project. If these recently proposed facilities are also inadequate, you should examine what new facilities one or more companies would likely need to construct to achieve the objectives of the proposed project.⁴⁵¹

Implicit in the requirement to evaluate system alternatives is the understanding that the public and the environment benefit when infrastructure is fully utilized, and that it is better to build one fully-used project than two partially used ones.

⁴⁵⁰ FERC, Guidance Manual for Environmental Report Preparation, at 4-136 (Feb. 2017), available at <https://www.ferc.gov/sites/default/files/2021-04/guidance-manual-volume-1.pdf>.

⁴⁵¹ *Id.*

Here, the DEIS identifies 24 potential system alternatives.⁴⁵² These include 19 approved, proposed, and/or planned expansions and 13 projects that have not yet started construction.⁴⁵³ It is our understanding that many of these projects, including all of the projects that have not started construction, are not fully subscribed and have uncontracted-for capacity. Thus, if the Developers were to secure customers, those customers' needs could instead be met by one or more of these system alternatives, alone or in combination.⁴⁵⁴

However, rather than investigate reasonably foreseeable utilization or availability of these system alternatives (including a discussion of actual contracts), FERC categorically assumes that there is not any capacity on any of them, based solely on the fact that each has applied for or received DOE authorization to export to Free Trade Agreement (FTA) countries.⁴⁵⁵ Under this approach, FERC will *never* conclude that there is a feasible system alternative for any proposed LNG export terminal, because *all* such projects *always* seek FTA authorization for their full capacity. This effectively renders the manual's instruction to consider system alternatives a nullity for LNG export facilities. And it is arbitrary for FERC to assume that an alternative is infeasible solely because that alternative has applied for or received a separate FTA export authorization. At most, the Natural Gas Act's requirement that DOE automatically approve exports to FTA countries indicates that, *where such exports actually occur*, those exports provide benefits that are in the public interest. But nothing in the Natural Gas Act or NEPA requires or even permits FERC to assume that all approved FTA exports will in fact occur. And in other contexts, both FERC and DOE have candidly acknowledged that many of these projects do not have, and may not ever otherwise develop, agreements for their full capacity. We are not asking FERC to "speculate" about the availability of capacity at potential system alternatives.⁴⁵⁶ We are instead calling on FERC to

CO4-76

⁴⁵² DEIS at 3-39 – 3-40.

⁴⁵³ *See id.*

⁴⁵⁴ The DEIS wrongly seems to assume that a system alternative is only feasible if it would provide the entire desired capacity at a single additional terminal because it only assesses an expansion the size of the Project at other facility sites. *See id.* at 3-40. As the manual explicitly states, a viable system alternative may consist of using other facilities "in combination" to meet the proposed project's objectives. FERC, *Guidance Manual for Environmental Report Preparation*, at 4-136.

⁴⁵⁵ DEIS at 3-40.

⁴⁵⁶ *Id.*

engage in a reasonable investigation and forecasting, based on concrete information such as the presence or absence of contracts for these other facilities—exactly the type of inquiry FERC purports to require for pipeline proposals.

It is also arbitrary for FERC assume that expansions at other facilities would have the same or similar environmental impacts as construction of the Project.⁴⁵⁷ This is baseless. Each project plainly has its own unique impacts depending on the facility site, whether the project is greenfield or brownfield, the liquefaction technology used, the community setting, *etc.* Could multiple additional sites be expanded in a way that reduces impacts to wetlands? Essential Fish Habitat? Air emissions? Impacts to environmental justice communities? As above, FERC need not (and should not) speculate. FERC must perform a reasonable investigation into whether expansion at other facilities, including a combination of expansions at multiple facilities, would have fewer adverse environmental impacts than the Project as proposed.

It is arbitrary for the DEIS to conclude that the existence of FTA applications or authorizations for these other terminals renders system alternatives that would use already-approved projects unavailable or infeasible. It is also arbitrary to conclude that expansions at other facilities would have similar or identical environmental impacts as the Project. Accordingly, the DEIS fails to rigorously explore potential system alternatives.

ii. *Pipeline System*

FERC similarly fails to adequately analyze system alternatives for the Pipeline System. FERC identifies two potential system alternatives, the TransCameron Pipeline and the Creole Trail Pipeline.⁴⁵⁸ But FERC fails to adequately assess whether either system alternative could provide part of the capacity for the Project, enabling the proposed pipeline system to be reduced in size, thereby reducing environmental impacts, including impacts to wetlands.

The TransCameron pipeline is a 42-inch diameter pipeline that transports approximately 2.1 bcf/d to the Calcasieu Pass LNG export terminal.⁴⁵⁹ FERC acknowledges that the pipeline is “in close proximity to the Terminal Site.”⁴⁶⁰ FERC claims that the pipeline is fully subscribed and, therefore “it would not have any

⁴⁵⁷ See *id.*

⁴⁵⁸ DEIS at 3-41.

⁴⁵⁹ *Venture Global Calcasieu Pass, LLC*, 166 FERC ¶ 61,144, P2 (Feb. 21, 2019).

⁴⁶⁰ DEIS at 3-41.

CO4-76

CO4-77

CO4-77: Comment noted. System alternatives for the Pipeline System are discussed in section 3.3.2. As stated in section 3.3.2.2 of the EIS, the Creole Trail Pipeline is operating at or near capacity and would require significant expansion to transport the 4.4 bcf/d necessary for the Project, which would result in impacts similar to the proposed Project. See also response to CO4-4.

capacity to transport and supply natural gas to CP2 LNG.”⁴⁶¹ FERC then explains that constructing a new 48-inch pipeline that is collocated with the TransCameron Pipeline and expanding the pipelines that interconnect with the TransCameron pipeline would “likely be equal to or greater than those of the CP Express Pipeline.”⁴⁶² But there are at least two issues with FERC’s analysis of the TransCameron alternative. First, FERC’s conclusion that collocating a 48-inch pipeline with the TransCameron pipeline would have equal to or greater impacts than the proposed Pipeline System is entirely unsupported. Second, FERC entirely fails to analyze whether the TransCameron pipeline’s capacity could be increased to supply part of CP2’s capacity which would allow a smaller CP Express pipeline to be built, reducing environmental impacts, including impacts to wetlands. A 42-inch pipeline can provide more natural gas than the 2.1 bcf/d currently provided by the TransCameron Pipeline.⁴⁶³ Thus, FERC must consider whether part of the proposed 4 bcf/d supply from the CP Express Pipeline can be supplied by the TransCameron Pipeline and whether that would allow reduced environmental impacts from the Pipeline System. Such reduced environmental impacts can come from reduced impacts to wetlands by being able to reduce the size of the pipeline from a 48-inch pipe to a 42-inch (or smaller) pipe or from reducing other impacts like reducing impacts from the Moss Lake Compressor Station or other factors still, *e.g.* reduced impacts to essential fish habitat.

FERC’s analysis of the Creole Trail Pipeline alternative is also inadequate. Creole Trail is also a 42-inch pipeline and currently only transports 1.5 bcf/d. The Creole Trail Pipeline passes within 3.5 miles of the Project to the north. As explained above, a 42-inch pipeline can supply more than 1.5 bcf/d to an export terminal. Again, FERC fails to assess whether the Creole Trail Pipeline can supply part of the supply to CP2. Here, FERC’s analysis amounts to the single conclusory statement that the Creole Trail Pipeline “is operating at or near capacity and would require significant expansion to transport the 4 bcf/d required by the Project.”⁴⁶⁴ But FERC never explains what the expansion would entail and it entirely fails to support its claim that impacts would be “similar to or greater than those of the CP Express Pipeline.” FERC is required to support claims like this and, here, FERC

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ See, e.g., *Alaska Gasline Development Corp.*, 171 FERC ¶ 61,134, P4 (2020) (42-inch pipeline to transport 3.9 bcf/d).

⁴⁶⁴ DEIS at 3-41.

does not even attempt to do so. FERC's claim here seems especially specious because it appears that the only in ground work that would have to occur would be constructing a 3.5-mile pipe extension to the Project. As above, FERC must consider whether *part* of the proposed 4 bcf/d supply from the CP Express Pipeline can be supplied by the Creole Trail Pipeline and whether that would allow reduced impacts from the Pipeline System. Again, such reduced impacts can come from reduced impacts to wetlands by being able to reduce the size of the pipeline from a 48-inch pipe to a 42-inch (or smaller) pipe or from reducing other impacts like reducing impacts from the Moss Lake Compressor Station or, again, more factors.

CO4-77

FERC also must consider whether CP Express needs to be constructed at all. FERC must consider whether capacity can be increased at both the Creole Trail Pipeline and the TransCameron pipeline to provide the needed capacity at the CP2 export terminal. FERC entirely fails to consider this alternative and fails to explain why it failed to consider this alternative. But FERC is required to consider whether system alternatives "in combination" can provide the needs of the proposed project. And FERC must analyze the environmental impacts of such an alternative.

In sum, FERC precedent indicates that a 42-inch pipeline can provide at least 3.9 bcf/d of natural gas.⁴⁶⁵ And there are two 42-inch pipelines in the Project area that are currently delivering far less than this. FERC failed to assess whether either could provide part of the needed feedgas for the terminal export facility with a smaller version of the CP Express Pipeline providing the remainder of the needed gas and failed to assess whether such an alternative would have less environmental impacts, including reducing impacts to wetlands. FERC also failed to assess whether both existing pipelines could be expanded, providing all of the needed feedgas to the export terminal and FERC failed to address whether such an alternative would reduce environmental impacts, including reducing impacts to wetlands. There is nothing in the DEIS to suggest that any of these alternatives would be infeasible and FERC fails to substantiate its conclusory claims that expanding the existing pipelines would have unspecified environmental harms similar to the proposed pipeline.

FERC has plainly failed to take a hard look at pipeline system alternatives in violation at NEPA. And because FERC failed to adequately assess these alternatives, FERC has also not provided enough information to assess whether the proposed pipeline is the least environmentally damaging practicable alternative for

⁴⁶⁵ *Alaska Gasline Development Corp.*, 171 FERC ¶ 61,134, P4 (2020).

CO4-78: See response to comment CO4-77 above.

CO4-78

Document Accession #: 20230313-5123 Filed Date: 03/13/2023

Clean Water Act permitting because the system alternatives here would avoid impacts to wetlands.

X. Conclusion

For the reasons stated above, the draft EIS fails to provide the hard look that NEPA requires. Moreover, the deficiencies are significant enough that once FERC provides the missing information, the public must be presented with an opportunity to comment thereon—on many issues, the current draft EIS fails to enable meaningful public participation.

Respectfully submitted March 13, 2023.

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Comments of For a Better Bayou et al.

95

Document Accession #: 20230513-5225		Filed Date: 03/13/2023	
UNITED STATES OF AMERICA BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION			
Venture Global CP2 LNG, LLC	)	Docket Nos.	CP22-21
Venture Global CP Express, LLC	)		CP22-22
Niskanen Center, Jerryd Jassin, Travis Dardar, Nicole Dardar, Georgia Webb, Bernard Webb, Anthony Theriot, Kent Duhon, and Mary Alice Nash Comments on Draft Environmental Impact Statement ("DEIS") for the Venture Global CP2 and Venture Global CP Express Projects			
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I. INTRODUCTION

The Federal Energy Regulatory Commission's (FERC) CP2 LNG and CP Express Project Draft Environmental Impact Statement ("DEIS")² is an opportunity for the Commission to truly assess the potential effects and impacts of the construction of Venture Global's proposed CP2 LNG ("CP2 LNG") and CP Express Pipeline ("CP Express") (together, the "Project"). Here, FERC has failed to provide a meaningful analysis of: (1) the Project's alleged purpose and need; (2) alternatives thereto; and (3) the Project's adverse impacts on landowners, local businesses, and the surrounding human and ecological community. What the DEIS does make clear, however, is that FERC lacks any clarity about its National Environmental Policy ("NEPA") obligations for assessing LNG-related infrastructure. And this makes sense. NEPA assessments are supposed to be undertaken against the backdrop of and informed by the relevant statutory scheme:³ the Natural Gas Act.⁴ Yet the Gas Act provides no intelligible legal standard under which FERC must evaluate whether to approve or deny the siting of LNG terminal facilities –

CO5-1

CO5-1: Comment noted.

simply that it has the authority to do so.⁵ Thus the DEIS, which should provide a robust factual record upon which the Commission can assess adverse impacts from Project approval in its Gas

² *Venture Global CP2 LNG, LLC and Venture Global CP Express, LLC*, FERC Docket Nos. CP22-21 and CP22-22, Accession No. 20230119-3072 (Jan. 19, 2023).

³ National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23453-01, 23453, 23458 ("NEPA requires Federal agencies to interpret and administer Federal policies, regulations, and laws in accordance with NEPA's policies and to give appropriate consideration to environmental values in their decision making. ... Agencies have long considered myriad factors in developing a purpose and need statement. These include the agency's mission and the specifics of the agency decision, including statutory and regulatory requirements."); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348, 109 S. Ct. 1835, 1844-45, 104 L. Ed. 2d 351 (1989) (to ensure the nation's commitment to protecting and promoting environmental quality is "infused into the ongoing programs and actions of the Federal Government, [NEPA] establishes some important 'action-forcing' procedures.") (citing 115 Cong. Rec. 40416 (remarks of Sen. Jackson)) (cleaned up).

⁴ 15 U.S.C. § 717b.

⁵ More on this below, in Parts II and III, which explain how the statutory rudderlessness infects FERC's NEPA purpose and need and alternatives assessments for LNG-related infrastructure.

Act determination, has no effective statutory grounding and therefore passes through NEPA's predicate steps (purpose and need, alternatives) without a rudder.

It is therefore unsurprising that the DEIS offers little or no insight as to how the Project assesses the *significance* of adverse impacts that will impact sensitive resources, air, climate and viewsheds, and may completely destroy landowners' ability to remain in their homes and on their land, and fishermen's ability to sustain their way of life. The whole human and ecological community will be adversely impacted, with many resulting irreversible harms. 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. 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.

These are not theoretical harms. Jerryd Tassin,⁶ Bernard and Georgia Webb,⁷ Mary Alice Nash,⁸ and Travis and Nicole Dardar⁹ (and their children) will suffer the very real, irreversible impacts of this Project if constructed; as FERC regulations anticipate by including such parties as impacted landowners¹⁰ (the "Impacted Landowners"), Travis Dardar,¹¹ Anthony Theriot,¹² and Kent Duhan ("Impacted Fishermen") have collectively fished the waters near the terminal for 99

⁶ See Jerryd Tassin Property Details, attached as Exhibit 1.

⁷ See Bernard and Georgia Webb Property Details, attached as Exhibit 2.

⁸ See Mary Alice Nash Property Details, attached as Exhibit 3. Ms. Nash inherited the property from her father, June Guidry, whose name is still listed in the property records.

⁹ See Travis and Nicole Dardar Property Details, attached as Exhibit 4.

¹⁰ All Impacted Landowners are "affected landowners" as defined by FERC's regulation 18 C.F.R. 157.6(d)(2).

¹¹ Unfortunately for him and his family, Mr. Dardar is an impacted landowner as well as a fisherman.

¹² Unfortunately for Mr. Theriot, he also lives very close to the proposed LNG facility. See attached property details, attached as Exhibit 5.

CO5-2

CO5-2: Section 4.0 of the EIS describes how FERC staff assess the significance of adverse impacts.

years, and their way of life (and that of many unnamed others in their community) will essentially be destroyed if this Project is built.¹³ The DEIS fails to sufficiently address and analyze the significant, adverse impacts on Impacted Landowners and Fishermen, and offers little to no insight on how the Project plans to address serious issues that may completely destroy landowners' ability to remain in their homes and on their land, and the Fishermen's very way of life.

CO5-3

A. Impacted Landowners

Impacted Landowners and other residents would be doubly or triply¹⁴ burdened by adding yet another LNG Terminal¹⁵ and related facilities in their community, which is already overburdened with other kinds of industrial pollution. Travis—also an impacted Fishermen, as

CO5-4

CO5-5

¹³ The Niskanen Center and all of the Impacted Landowners and Fishermen have moved for intervention in the FERC process. See Motion to Intervene of the Niskanen Center, *Venture Global CP2 LNG, LLC and Venture Global CP Express, LLC*, FERC Docket Nos. CP22-21 and CP22-22, Accession No. 20230216-5187 (Feb. 16, 2023); Motion to Intervene of Bernard Webb, et al., *Venture Global CP2 LNG, LLC and Venture Global CP Express, LLC*, FERC Docket Nos. CP22-21 and CP22-22, Accession No. 20220610-5071 (June 10, 2022); Motion to Intervene Out-of-Time of Mary Alice Nash, *Venture Global CP2 LNG, LLC and Venture Global CP Express, LLC*, FERC Docket Nos. CP22-21 and CP22-22, Accession No. 20220913-5085 (Sept. 13, 2022); Motion to Intervene of Fishermen Anthony Theriot and Kent Duhot, *Venture Global CP2 LNG, LLC and Venture Global CP Express, LLC*, FERC Docket Nos. CP22-21 and CP22-22, Accession No. 20230313-5005 (Mar. 13, 2023).

¹⁴ The existing enormous Calcasieu Pass LNG facility immediately west of the proposed CP2 Terminal and related infrastructure (DEIS at 2-3, Table 1.5.9-1.), was approved by FERC and DOE in 2019 with construction beginning that year. See Venture Global Website, attached as Exhibit 6. This community has also been repeatedly battered by storms and flooding from worsening impacts from climate change. See, e.g. Kevin Sack and John Schwartz, "Left to Louisiana's Tides, a Village Fights for Time, New York Times" (Feb. 24, 2018), (describing a coastal Louisiana town that is a victim of the rising sea level), attached as Exhibit 7; DEIS ES-4 (describing extreme coastal land loss that will occur, with protections in this proposed project for the Terminal, and none such protections for the surrounding community).

¹⁵ For purposes of this comment, "Terminal" is defined under 18 C.F.R. 153.2(d) to include all related facilities "located onshore or in static waters that are used to receive, unload, store, transport, gasify, liquefy, or process natural gas that . . . exported to a foreign country from the United States, or transported in interstate commerce by a waterborne vessel," only excluding any related Section 7 pipeline and its attendant facilities. Thus where the DEIS separately specifies Marine Terminal and Facilities and LNG Carrier Loading, etc., those are subsumed within our defined term, "LNG Terminal," or "CP2 LNG Terminal."

CO5-3: Section 4.10 of the EIS describes Project impacts and mitigation for landowners and commercial and recreational fisheries. Specifically, section 4.10.4 has been revised to include additional information regarding impacts on commercial fisheries (see response to comment CO4-68) and section 4.10.9 has been revised to further evaluate impacts on property values. Further, eminent domain power conferred under the NGA is discussed in section 4.10.10.1.

CO5-4: Comment noted. See response to comment CO5-2. Cumulative impacts are addressed in section 4.14 of the EIS.

CO5-5: Comment noted. A revised discussion of Project impacts on commercial fisheries, air quality, and noise are presented in sections 4.10.4, 4.12.1, and 4.12.2, respectively.

outlined below—and Nicole Dardar live with their two children in Cameron Parish, Louisiana. The Dardars live approximately 700 feet from the proposed CP2 LNG Terminal site.¹⁶ They and their two children already endure noise and air pollution as well as visual and land use impacts from the existing gas infrastructure in their community. The CP2 LNG Terminal would exacerbate the noise and air pollution they already endure, and make it intolerable to continue living there considering CP2 LNG's incredibly close proximity to their home.¹⁷

CO5-5

CP Express' right-of-way would cross through or abut most of the Impacted Landowners'

properties.¹⁸ Consequently, they all face the potential forced taking of their property via eminent domain (or by easement signed under threat of eminent domain) by the Project, overall diminution of their property value, and harms from construction activities and the permanent placement of a 42-inch gas pipeline on their land and a monstrosity of the CP2 LNG Terminal in their community. Construction and placement of the CP Express would also disrupt these

CO5-6

landowners' way of life. For example, Jerryd Tassin runs a hunting and fishing guide service, 'Fowl Language Guide Service,' on his impacted property in Lake Charles, Louisiana. Mr.

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. 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. 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

CO5-7

¹⁶ See Dardars Property Details, attached as Exhibit 4.

¹⁷ See DEIS at 2-18 (stating that construction of the project will take four years, including at night).

¹⁸ All with the exception of Mr. Dardar, whose property and home are not impacted by the proposed pipeline but unfortunately is right next to the proposed CP2 LNG Terminal.

CO5-6: Comment noted. A revised discussion of Project impacts on landowner property values is presented in section 4.10.9. Eminent domain power conferred under the NGA is discussed in section 4.10.10.1. Potential impacts resulting from construction activities and the installation of permanent facilities, as well as the proposed mitigation, is discussed throughout the EIS in the respective resource sections.

CO5-7: Section 4.10.5.2 has been revised to address impacts on hunting and recreational fishing businesses. Section 4.7.2.1 has been revised to include open water waterbodies, such as ponds or lakes in the discussion of existing aquatic resources in the Project area. Impacts and mitigation associated with open water habitat and aquatic resources are discussed in section 4.7.2.2. Impacts and mitigation associated with increased noise during construction in regards to wildlife are discussed in section 4.7.1.2.

pond, the entire ecosystem of the pond would be disturbed, even if the pipeline only ran under part of the pond. Without wildlife in the pond, fishing and hunting on the property would be difficult if not impossible. As Fowl Language is Mr. Tassin's primary source of income, the placement of the pipeline on or near his property threatens his livelihood.

Mr. Tassin is not the only landowner whose land use would be harmed by this Project.

CO5-7

Construction would disrupt the livestock that the Webbs¹⁹ have on their property, potentially permanently decreasing and adversely impacting their grazing area. Jerryd Tassin and Bernard and Georgia Webb have ponds on their properties that they fish from. 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. As noted above, for Jerryd Tassin, the inability to fish on his property would interfere with his business; on the Webbs' property, recreational fishing would be disrupted or even precluded.

B. Impacted Fishermen

Travis Dardar, Anthony Theriot, and Kent Duhon ("the Fishermen") make their living catching shrimp, oysters, and crabs in Calcasieu Pass in Cameron Parish, Louisiana, where the CP2 LNG Terminal is proposed. Fishing is their primary source of income and their way of life, which would be irreversibly damaged or destroyed by construction of the Project. Mr. Theriot has fished in Cameron Parish for the past 28 years, and he may be taking partial ownership of a shrimp shop called K&T Seafood in Cameron, Louisiana. Mr. Duhon has fished in Cameron Parish for the past 35 years, and Mr. Dardar for 8 years.

Noise and light pollution will disrupt the wildlife and the Fishermen's harvest. Since 2016, the Fishermen have witnessed a drastic increase in LNG ship traffic in the Calcasieu Ship

¹⁹ The Webbs already have two pipelines on their property, and they do not want more. Burdening single landowner with living through the construction of and bearing the restrictions of multiple pipelines is the very essence of a cumulative landowner impact.

CO5-8: See response to comment CO5-7 regarding impacts and mitigation associated with open water habitat and aquatic resources. Impacts and mitigation associated with increased noise and light in regards to wildlife are discussed in section 4.7.1.2. See section 4.10.4 for a revised discussion of impacts and mitigation on commercial fisheries.

CO5-8

Channel and have noticed its adverse impacts on their livelihoods. 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. The CP2 LNG Terminal will increase the ship traffic in the already crowded Calcasieu Ship Channel, which will make it more difficult—if not impossible—for the Fishermen to fish and shrimp in the already crowded channel. CP2 LNG would also impede or preclude the Fishermen's use of the few remaining docks along Calcasieu Pass, which would reduce catches and make it more difficult to fish and shrimp. 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.

CO5-8

II. RENDERING ITS ENTIRE NEPA ANALYSIS FATALLY FLAWED, FERC'S DEIS ESCHEWS MEANINGFUL ASSESSMENT OF PROJECT PURPOSE AND NEED FOR CP2 LNG (AND CP EXPRESS BY EXTENSION).

As introduced above, FERC appears to have no clear idea of what its role in LNG terminal approval is or should be, tainting its NEPA analysis throughout. For good reason – Gas Act Section 3 contains a statutory grant of power for the Commission to approve or deny applications for LNG terminals siting, construction, and operation, *but 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.

CO5-9

CO5-9: Comment noted. The Commission will determine whether the Project meets the public interest standard in section 3(a) of the NGA in its Order.

(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.²⁰

And while this is not the Commission's fault, it is certainly its problem. Former Chair Click clearly delineated this quagmire, writing separately on Commonwealth LNG, LLC to state, "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."²¹ Because the goal of the Commission's NEPA analysis is to: (1) identify project purpose and need; (2) use that identification to inform a scope of project alternatives; and (3) assess the adverse impacts from the Project and any reasonable alternatives, its NEPA analysis confusion is inextricably intertwined with its confusion about its Gas Act decision making obligations.²²

Even accepting as correct the Commission's reading of relevant jurisprudence to indicate that the Commission should conflate the statute's not inconsistent with the public interest

CO5-9

²⁰ 15 U.S.C. § 717b(e).

²¹ Order Granting Authorization Under Section 3 of the Natural Gas Act, *Commonwealth LNG, LLC*, 181 FERC ¶ 61,143, Click, Chair, concurring, P 2 (2022) ("Commonwealth Order").

²² See DEIS at 1-3 - 1-5. In particular, the Commission recites that, "the Commission will consider as part of its decision to authorize natural gas facilities, *all factors bearing on the public interest including a project's purpose and need*. Specifically, regarding whether to authorize import or export natural gas facilities, the FERC shall authorize the proposal unless it finds that the proposed facilities would not be consistent with the public interest." DEIS at 1-3, n. 14 (emphasis added). With this statement, the circularity is complete: FERC will not review a project's purpose and need in NEPA, which governs consideration of reasonable alternatives, and adverse impacts therefrom – yet it will include project purpose and need in its public interest assessment.

standard by which DOE determines whether to approve the *export of the commodity*²³ with FERC's responsibility to determine whether to approve the *siting, construction and operation of LNG terminals and related facilities*, this still leaves the Commission in a quandary because it has not articulated any policy respecting how it will implement that standard. And, as former Chair 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."²⁴ As this DEIS demonstrates, FERC's NEPA inquiry is tailored to ensure that there is never a record upon which the Commission reaches that conclusion.²⁵ And, as set out below, it all starts with the Commission's definition of project purpose and need.

CO5-9

- A. The DEIS parrots CP2 LNG's and CP Express's purpose and need in one fell swoop, as the latter is wholly dependent on the former for its *raison d'être*.

The Commission notes that, in accordance with Council on Environmental Quality

CO5-10

("CEQ") regulations, it should "briefly address the underlying purpose and need for a project."²⁶ This note clearly downplays the importance of that inquiry, because "a statement of the purpose and need is a vital early step in the NEPA process that is foundational to other elements of an

²³ This standard governs only exports to non-FTA countries. DOE has no determination to make with respect to FTA country–destined exports, as the statute deems such exports to be consistent with the public interest and such "exportation shall be granted without modification or delay." *Compare* 15 U.S.C. § 717b(c) *with* 15 U.S.C. § 717b(d).

²⁴ Commonwealth Order, Glick, Chair, concurring, at P 7.

²⁵ In FERC's own words, it "will consider the findings in this EIS during its review of CP2 LNG and CP Express' application. *The identification of environmental impacts related to Project construction and operation and the mitigation of those impacts, as disclosed in this EIS, will be components of the Commission's decision-making process, which will be described in its Order.* If the Project is approved, the Order would specify that the Terminal Facilities can be constructed and operated under the authority of Section 3 of the NGA." DEIS at 1-5 (emphasis added).

²⁶ DEIS at 1-3 (citing 40 C.F.R. 1502.13).

CO5-10: See our response to comment CO4-3.

EIS.”²⁷ Fulfilling the letter but certainly not the important essence of that requirement, the Commission recites that:

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. CP2 LNG also states that conversion of natural gas to LNG would promote a global natural gas trade and greater diversification of global supplies. CP Express states that the purpose of the Pipeline System is to create the firm transportation capacity needed to transport 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. . . . the project proponent is the source for identifying the purpose for developing, constructing, and operating a project. CP2 LNG’s and CP Express’ purpose and objective in proposing the Project were defined in its application with the Commission. The Commission’s purpose for reviewing the Project is based on its obligations under Section 3(a) and Section 7(c) of the NGA, which are described further in section 1.2.1 below.²⁸

CO5-10

Hoping to find further enlightenment in the Commissions’ treatment of purpose and need under NEPA in DEIS Section 1.2.1 proved fruitless. The section concludes with a review of FERC’s and DOE’s respective jurisdictions under Gas Act Section 3, noting that DOE has approved the FTA export authorization (as it must), and that its non-FTA export authorization is pending.²⁹ Presumably DOE will rely on the adverse impacts the Commission sets out in its DEIS for the latter regulatory record of approval, and thus the DEIS’s defects and limitations will render that authorization defective as well, absent additional assessments or analyses. And while CP Express’ purpose and need should trigger an adverse impacts inquiry independently subject to an

²⁷ National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23453, at 23457.

²⁸ DEIS at 1-3 (emphasis added).

²⁹ DEIS at 1-5.

actual legal standard under Section 7,³⁰ 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. NEPA requires more. A purpose and need statement "will fail if it unreasonably narrows the agency's consideration of alternatives so that the outcome is preordained."³¹ That is the case here.

CO5-10

III. FERC'S FAILURE TO MEANINGFULLY EXAMINE ALTERNATIVES FOR CP2 LNG AND CP EXPRESS RENDERS ITS DEIS DEFICIENT UNDER NEPA.

FERC's alternatives analysis is supposed to be the heart of its NEPA inquiry.³² Under NEPA, FERC must "to the fullest extent possible . . . consider alternatives to its actions which would reduce environmental damage."³³ FERC is supposed to include an evaluation of

"reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated

³⁰ See 15 U.S.C. 717(f)(c) (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.

³¹ *Protect Our Corps. Found. v. Jewell*, 825 F.3d 571, 579 (9th Cir. 2016) (quoting *Alaska Survival v. Surface Transp. Bd.*, 705 F.3d 1073, 1084 (9th Cir. 2013)); *Nat'l Parks & Conservation Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1072 (9th Cir. 2010) (invalidating a purpose and need statement where the agency "adopted [the applicant's] interests as its own to craft a purpose and need statement so narrowly drawn as to foreordain approval"); *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 669 (7th Cir. 1997) (rejecting an EIS that was based on "wholesale acceptance of [the project applicant's] definition of purpose"); *Nat'l Wildlife Refuge Ass'n v. Rural Utilities Serv.*, 580 F. Supp. 3d 588, 609 (W.D. Wis. 2022) ("While statements of purpose are meant to narrow reasonably the alternatives analyzed in the EIS to some manageable number, one obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing reasonable alternatives out of consideration.") (internal citations omitted) (cleaned up).

³² Congressional Research Service, *Judicial Review and the National Environmental Policy Act of 1969* (August 4, 2022), attached as Exhibit 23.

³³ <https://rsreports.congress.gov/product/pdf/R/47205> ("Courts and CEQ often refer to this requirement as the 'heart' of the environmental review.");

³⁴ *Calvert Cliffs' Coordinating Comm., Inc. v. U. S. Atomic Energy Comm'n*, 449 F.2d 1109, 1128 (D.C. Cir. 1971).

CO5-11: The EIS describes the applicant's stated purpose and need. The need for the Project will be addressed by the Commission in the Order and is outside the scope of this document.

from detailed study, briefly discuss the reasons for their elimination,” a discussion of “each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits,” and any “appropriate mitigation measures not already included in the proposed action or alternatives.”³⁴ A simple way for FERC to violate these requirements is to narrowly tailor and define the purpose and need of the proposed project so far as to make any truly viable alternative dead on arrival. Here, FERC did exactly that. Because FERC’s assessment of the Project’s reasonable alternatives and its disclosure and discussion of potential adverse impacts from each of those alternatives was insufficient under NEPA, it also fails to provide an adequate basis on which FERC could make a rational decision when engaging in its Gas Act inquiries (the major federal action that this NEPA inquiry is designed to inform).³⁵

CO5-11

As its first alternative screening mechanism, FERC’s DEIS ruled out any alternatives based on the “ability of the alternative to meet the stated purpose of the Project.”³⁶ One need look no further than this statement to understand how the flaws set out in Part II above render FERC’s alternatives analysis legally deficient under NEPA. FERC’s adoption of Venture Global’s stated purpose and need for the Project is to construct an LNG Terminal of 20 mtpa of nameplate capacity³⁷ at this particular site (and a pipeline to feed it) precludes all alternatives other than the proposed project. This is FERC’s quintessential and well-tread NEPA-defying analysis – one which will never adequately touch the heart of a legally defensible NEPA inquiry.

³⁴ 40 C.F.R. 1502.14.

³⁵ *Kleppe v. Sierra Club*, 427 U.S. 390, 409 (1976) (“Section 102 [of NEPA] is one of the action-forcing provisions intended as a directive to all agencies to assure consideration of the environmental impact of their actions in decisionmaking.”) (citing Conference Report on NEPA, 115 Cong. Rec. 40416 (1969)) (cleaned up).

³⁶ DEIS at 3-36.

³⁷ CP2 LNG notes that there is approximately 28.0 mtpa capacity possible under optimal conditions. DEIS at 1-3.

A. The No-Action Alternative

FERC's entire No-Action alternative analysis is one-half of a page. It states, in stunning circular fashion:

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. We have prepared this EIS to inform the Commission and stakeholders about the expected impacts that would occur if the Project were constructed and operated. The Commission will determine the Project need and could choose the no-action alternative.³⁸

This is precisely the kind of no-action statement that CEQ has prohibited.³⁹ In fact, CEQ's applicable Interim NEPA guidance reminds all federal decision makers that they "should not 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."⁴⁰ The same guidance is logically applicable to all other genres of adverse impacts.⁴¹

³⁸ DEIS at 3-37.

³⁹ National Environmental Policy Act ("NEPA") Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, Docket CEQ-2022-0005, 88 FR 1196 (Jan. 9, 2023) ("CEQ Guidance").

⁴⁰ CEQ Guidance at 1205.

⁴¹ As set out in Part IV below, by refusing to consider alternative sites for exportation, the Commission's DEIS fails to provide an adequate basis upon which to consider cumulative impacts of authorizing yet another LNG Terminal on Louisiana's beleaguered coast.

CO5-12

CO5-12: The no-action alternative is discussed in the EIS at section 3.2 and LNG System Alternatives are discussed in section 3.3.1.

Rather than centering that principle in any DEIS for the proposed Project, FERC chose to continue its pattern and practice of misinterpreting NEPA. By failing to consider no action alternatives meaningfully under the erroneous presumption that, in the absence of approving the fossil fuel project before it, some other equivalent emitting action will occur, FERC's alternatives analysis runs afoul of NEPA. Particularly given FERC's record of LNG terminal approval (near 100%) versus the demonstrated market need for those projects (as evidenced by the fact that only roughly 50% have been financed and constructed), this assumption is both counterfactual and legally flawed.⁴² Here, FERC's consideration of a no-action alternative should have accounted for all the approved LNG terminals that are not operating at nameplate capacity, or are still awaiting market support (to be financed and constructed), because if FERC denies the Project's bid for approval, those other export resources are available or can be made available to meet any established unmet market need for LNG export. As set out below, it did not.

CO5-12

B. CP2 LNG System Alternatives

In this DEIS section, FERC plays an interesting game of chicken or the egg. While this, in part, reflects the nature of LNG projects, and how they are subscribed, financed, and ultimately constructed, NEPA does not allow FERC to rest on such conclusory statements as "However, increasing the capacity at existing or approved LNG terminals would result in impacts that are likely comparable to those of the proposed Project. Further, project sponsors would need to propose such a plan to increase capacity, none of which currently have." There are myriad things wrong with this hollow brand of analysis.

CO5-13

CO5-13: Comment noted. As explained in section 3.3.1 of the final EIS, increasing the capacity at existing or approved LNG terminals would likely require the development of similar structures as the proposed Project, and therefore, do not offer a significant environmental advantage over the proposed Project.

⁴² See, e.g., U.S. Energy Information Administration, Detailed information about existing and under-construction large-scale U.S. liquefaction facilities (showing seven commercially operational LNG facilities approved by FERC), attached as Exhibit 8.

First among them is the dismissive note that increasing capacity at other existing or approved facilities would result in impacts comparable to this proposed project—all without the serious analysis and evidentiary record that such a bold assertion would require. There is no evidentiary basis for this assertion provided by the DEIS, nor does it comport with FERC's DEIS indications that building yet another LNG terminal in this particular coastal Louisiana community is the equivalent of giving the community up for dead. Echoes of this resonate throughout the DEIS, e.g., (1) dredging would not further harm the coastal waters and ecosystems because they are already subject to impacts;⁴³ (2) an increase of 200 to 400 LNG carriers per year and the noise associated with the LNG carriers would not appreciably change the character of what this community already bears because it has already been industrialized beyond repair;⁴⁴ (3) an increase in traffic in the Calcasieu Ship Channel from LNG carriers would not greatly impact the watershed because that is already the character of the waterway;⁴⁵ (4) and the permanent visual impacts of the CP2 LNG Terminal for visitors of Lighthouse Bend Park and the Jetty Pier Facility are irrelevant because the adjacent Calcasieu Pass LNG terminal has already altered the area as industrial.⁴⁶ This is not the searching analysis that NEPA requires, and FERC most certainly did not "[d]iscuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits."⁴⁷ Not to mention that FERC's approach here directly contradicts NEPA's commandment to consider cumulative impacts on these communities, resources, and increasing GHG emissions.⁴⁸

CO5-13

⁴³ DEIS at 4-89.

⁴⁴ DEIS at 4-95 and ES-9.

⁴⁵ DEIS at 4-162.

⁴⁶ DEIS at 4-163.

⁴⁷ 40 C.F.R. 1502.14(b).

⁴⁸ 40 C.F.R. 1508.1(g)(3).

Second comes the regulatory shoulder shrug – noting that the project *sponsors* would have to propose a plan to increase capacity. Which federal entity has asked the project sponsor to do so? Which federal entity has asked existing facilities if they are interested in increasing capacity to export to those FTA and non-FTA countries if there is a need for such increased capacity? Allow the undersigned to remove all suspense: the answer is: none. The DEIS simply proffers the following conclusory statement:

The NGA, as amended, *has deemed FTA* exports to be in the public interest; therefore, we would not speculate or conclude that excess capacity is available from the listed proposed projects to accommodate the purpose and need of the Project. Consequently, we must conclude CP2 LNG's proposed export capacity at any other existing or proposed LNG facility would require an expansion or new facilities. Some of the facilities, such as Driftwood LNG, are unlikely to have the available acreage to expand its facilities to accommodate the purpose and need of the Project. For those remaining LNG facilities, there may be available acreage to expand the existing or proposed facilities. However, expansion would require similar structures as the facilities proposed for the Terminal, resulting in environmental impacts similar to the proposed Project. These systems alternatives, therefore, offer no significant environmental advantage over the proposed Project and are not considered to be preferable.⁴⁹

Together with a chart showing huge, collective domestic LNG development of 322.83 mtpa *just along the Gulf Coast*,⁵⁰ this constitutes FERC's *entire analysis of LNG alternatives*. 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

⁴⁹ DEIS at 3-40 (emphasis added).

⁵⁰ Total MTPA taken from Table 3.3.1-1, DEIS at 3-39 - 3-40, reflecting planned, proposed, or approved LNG export terminals and expansions projects. This, in turn, represents only a portion of authorized LNG exports in the domestic U.S. as a whole. The global liquefaction capacity was 472.4 MTPA as of April 2022, with a global utilization rate of approximately 80.4% (from 2021 data). See World LNG Report, International Gas Union, attached as Exhibit 9.

CO5-14

CO5-14: Comment noted. The Commission will evaluate whether the project satisfies the public interest standard under section 3(a) of the NGA in its Order.

substantial record evidence that could support relying on the rebuttable presumption that the siting, construction and operation of this particular Terminal and associated facilities is not inconsistent with the public interest.⁵¹ Here, what percentage of off-take designated as for FTA exports is unknown publicly. Venture Global's application to DOE for approval to export to NAFTA and FTA countries did not designate how much the Project would export to each. The publicly filed documents on the offtake contracts offer no further clue here, as they indicate there are no export destination restrictions other than what is permitted under any DOE authorization and US law (they also indicate that *only approximately 18%* of the optimized or 25% of its nameplate capacity is subject to offtake agreements for the CP2 LNG Terminal).⁵² Moreover, nowhere in FERC's wholesale refusal to consider any existing/authorized LNG facilities – including Venture Global's – is its acknowledgment that this DEIS must also provide a record of adverse impacts to support reliance on the rebuttable presumption of Project need for non-FTA exports for the construction of the CP2 LNG Terminal in this particular location.⁵³ While it is thus unclear whether FERC relies exclusively on the "deemed" to be public interest standard or the "not inconsistent with the public interest" presumption to obviate any real inquiry into system alternatives, what is clear is that FERC wholly avoids exploring alternative LNG sites. Given

CO5-14

⁵¹ As set out in Part II above, FERC holds itself bound to this as a governing legal standard by which it will decide whether to approve an LNG terminal. And also as discussed above, this standard is simply assumed in relevant jurisprudence and found nowhere in the statute itself. See, e.g., *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 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).

⁵² See Public Summaries of Delivery Contracts, as filed with DOE, attached as Exhibit 10.

⁵³ Nor does FERC indicate the attendant impacts of this legendman: it also obviates the DEIS from providing a legally defensible record on which to find CP Express is required by the public convenience and necessity.

that roughly 50% of FERC's recently-approved new LNG facilities have yet to be constructed due to lack of supportive financing or investment decisions, representing an additional 162.8 mtpa in nameplate capacity, it is hard to articulate what public interest this project could serve being sited, constructed, and operated in this already burdened community.⁵⁴

CO5-14

C. CP Express System Alternatives

Having handily disavowed any responsibility for examining record support for CP2 LNG Project need, and thus rejecting no-action and system alternatives out of hand, FERC's CP Express alternatives analysis follows logical suit. If the actual "purpose" of this Project is to "export a nameplate liquefaction capacity of 20 MTPA of liquefied LNG . . . to overseas markets," then the alternatives analysis should have considered any one of the myriad ways this could be accomplished. But the DEIS artificially narrows the purpose of the proposed CP Express pipeline system as providing gas for exporting *only from* the proposed CP2 LNG Terminal. Consequently the alternatives for CP Express, a 85.4 mile 48-inch-diameter natural gas pipeline, *are circumscribed to those that can provide adequate feedstock for this particular Terminal, constructed in this precise location*. Even given this unsupportable and unduly narrow constraint, it found two - the TransCameron Pipeline and the Creole Trail Pipeline - a testament to how overburdened this area is with fossil gas infrastructure.⁵⁵ Yet it then dismisses each without disclosing any data or analyses that could assist the public in understanding the summary

CO5-15

CO5-15: Comment noted. System alternatives for the Pipeline System are discussed in section 3.3.2.

⁵⁴ Kelsey 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."), attached as Exhibit 11; Alexandra 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."), attached as Exhibit 12.

⁵⁵ DEIS at 3-41.

rejection of each alternative.⁵⁶ For example, even though the TransCameron Pipeline is only a 23.4 mile long pipeline, the DEIS summarily concludes that, “[e]nvironmental impacts associated with constructing a new 48-inch-diameter pipeline along the length of the TransCameron Pipeline and expanding the existing interconnecting pipelines would likely be equal to or greater than those of the CP Express Pipeline.”⁵⁷ The Croote Trail Pipeline is offered even less consideration than the one paragraph disposing of TransCameron, bookended by conclusory statements dismissing that as well. FERC does not even proffer a map of each system alternative.

D. CP2 LNG Site Alternatives

The DEIS identifies four site alternatives that could accommodate the specific project criteria.⁵⁸ In doing so, FERC “acknowledges that the Proposed Site is larger than the alternative sites considered. Detailed engineering and design of the LNG terminal necessitated additional land requirements following the alternative site comparison, and additional acreage would likely be necessary at the alternative sites to accommodate minimum federal safety standards.”⁵⁹ Again, this conclusory statement is adopted from Venture Global – as are the site alternatives themselves – and proffered without any discernible way to understand how FERC arrived in agreement with it or tested it.⁶⁰ Here, however, FERC sets out tables comparing varying metrics for the proposed project site and the alternative Project sites.⁶¹ These tables characterize the proposed project site as a “remote, industrial region and is 2,450 feet from the nearest residential neighborhood. The Proposed Site is within an environmental justice community (low-income) and would impact

⁵⁶ DEIS at 3-41.

⁵⁷ DEIS at 3-41.

⁵⁸ See DEIS at 3-41 - 3-51.

⁵⁹ DEIS at 3-41.

⁶⁰ DEIS at 3-42.

⁶¹ DEIS at 3-44 - 3-46.

CO5-15

CO5-16

CO5-16: See response to comment CO4-70 and revised section 3.4.1 for Terminal Site alternatives.

approximately 65.9 acres of NWI mapped wetlands.⁶² Additionally, the transit hours inbound/outbound for carriers in state waters is approximately 3 hours.⁶³

None of the other sites are located within environmental justice (low-income or minority) communities.⁶⁴ The proposed site is closer to a noise-sensitive community than any of the other sites—where construction would occur 24 hours a day for the duration of construction over a period of at least 4 years.⁶⁵ It is the furthest from a gas pipeline interconnect. Yet the DEIS site alternatives conclusion selects specific criteria on which the proposed site has greater impacts, and discards the alternatives on that selective basis. Without understanding how the Commission weighs or ranks these various adverse impacts against each other, it is impossible to discern if this conclusion is rational based on the record.

For example, the DEIS relies on mapped NWI wetlands impacts to find the proposed site least impactful. Yet at DEIS p. 4-47, what was muddy in the site alternatives analysis becomes more clear: “construction of the Terminal Facilities would impact 366.5 acres of wetlands, of which 342.0 acres would be permanent.”⁶⁶ The Marine Facilities would compound this loss, with the additional “permanent loss of 41.0 acres” of wetlands, “the majority of which would be

CO5-16

⁶² It appears that the selection of this particular database tool in the narrative yields a smaller wetlands presence than the other alternatives. *See* DEIS at 3-46 (Table 3.4.1-2 at note g). But the chart reflects a wetlands presence based on USGS National Land Cover Database of greater than the other alternatives.

⁶³ DEIS at 3-49.

⁶⁴ For some of those other sites, the LNG ships could pass by environmental justice communities, but for the Sabine Pass alternative, it would neither be located in nor pass by these overly burdened communities.

⁶⁵ DEIS at 4-220 – 4-221.

⁶⁶ Further, the DEIS acknowledges that, “The loss of wetlands associated with the Terminal Facilities would result in loss of aquatic habitat and could temporarily increase the rates of turbidity and sedimentation in adjacent wetlands during construction. Additionally, wetlands adjacent to the Terminal Site could be contaminated due to spills and leaks of hazardous materials during construction and operation.” DEIS at 4-47. This is essentially a multiplier that admits the estimated impacts to wetlands just from the terminal facility could far exceed the 342 permanent acres.

converted to open water. . . .⁶⁷ None of these figures includes the wetlands lost to the attendant miles of pipeline.⁶⁸ Relying on “fewer” wetlands impacts, therefore, seems suspect at best, and designed to intentionally obfuscate any true comparison between alternatives, at worst.

CO5-16

E. CP Express Route Alternatives

FERC’s DEIS evaluated three major route alternatives for CP Express, the pipeline providing feedstock for CP2 LNG from its specified delivery and receipt points.⁶⁹ Because the sole purpose of this pipeline is to feed the proposed CP2 LNG, which would itself be located in an environmentally sensitive and overburdened community, the choices for getting the especially large diameter pipeline required for this project were accordingly severely constrained.

Additionally, although not reiterated in this narrow section recounting resources that would be crossed, the pipeline diameter does not tell the full story of the adverse impacts (which are scattered throughout the DEIS and do not appear to be factored into the route determination contained in this section). Because this pipeline would cross significant open water and wetlands resources, “In the water-saturated or inundated areas, those sections of pipeline may be coated with an approximately 4-inch-thick layer of concrete or other approved buoyancy measures such as PipeSaks® or screw anchors, providing negative buoyancy to counteract the tendency of the pipeline to rise.”⁷⁰

CO5-17

CO5-17: See revised section 3.5 for analysis of additional alternative pipeline routes.

⁶⁷ DEIS at 4-47.

⁶⁸ See, e.g., DEIS at 4-50 (“Sixteen of the 24 proposed HDD entry and exit sites would be in wetlands based on the limited availability of upland habitat in the Project area . . .”)

⁶⁹ DEIS at 3-51. This examination comprised CP’s proposed route and three alternatives. Our comments do not delve into the minor route alternatives examined therein.

⁷⁰ DEIS at 2-11. And, as more thoroughly discussed below in Part IV.B.iii., the industry standard success rate for HDD installations of pipeline hovers around 50%, with other crossing methods inflicting their own harmful impacts.

All four pipeline routes would cross environmental justice communities,⁷¹ with the proposed route being the longest route, which generally accords with more land disturbance.⁷²

All four routes would cross significant forestlands, waterbodies, marsh habitats, other essential fish habitats, and agricultural lands.⁷³ The adverse impacts disclosure with respect to route alternatives concludes with a determination that:

The major advantages of the proposed pipeline route are that the route avoids crossing the Sabine NWR and public oyster seed grounds in Calcasieu Lake and avoids the Cameron Creole Watershed Levee on the south side of Calcasieu Lake. Based on our review and despite the shorter routes, we find that the Alternatives 1, 2, and 3 would not provide a significant environmental advantage over the proposed pipeline route.⁷⁴

The section then concludes with a note that all the wetlands disturbances will be “largely” short-term.⁷⁵ The primary takeaway from this section appears to be that all the routes will imperil significant ecological resources, and burden environmental justice communities, and the chosen route is the winner among the few bad choices at hand.

CO5-17

⁷¹ DEIS at 3-54.

⁷² DEIS at 3-53.

⁷³ The proposed route would cross more agricultural land than any other alternative. DEIS at 3-54. The DEIS notes that impacts to these lands are temporary or short-term. Impacted landowners along the routes of Spire STL, Midship, Mariner East, and other pipelines can attest otherwise. *See, e.g.* Order on Remand and Reissuing Certificates, Spire STL Pipeline Co., LLC, 181 FERC ¶ 61,232 (2022) (Glick, concurring, P 6) (“Spire Order”) (in the “over three years after [the pipeline] first entered service[,] several landowners’ properties still have not been adequately restored”).

⁷⁴ DEIS at 3-54 - 3-55. Across the nation, attempted wetlands restorations in the wake of pipeline construction show otherwise. These permanent impacts are often treated by FERC as a matter of post-construction enforcement and penalty (and often with state-imposed penalties), but are never then considered as undermining the probative value of FERC’s continued assumption that wetlands impacts are temporary. *See, e.g.*, Pennsylvania Department of Environmental Protection Findings of Environmental Crimes that Occurred During the Mariner East 2 Pipeline Installation, *retrieved from* Pennsylvania’s Attorney General Office website, attached as Exhibit 21a.

⁷⁵ DEIS at 3-55.

IV. FERC'S DEIS ANALYSIS OF NON-CLIMATE CHANGE ADVERSE IMPACTS FROM CP2 LNG AND CP EXPRESS IS LEGALLY DEFICIENT AND UNTETHERED TO ITS CONCLUSION THAT THE PROJECTS WILL NOT INFLICT SIGNIFICANT ADVERSE IMPACTS

As set out in Part II above, FERC continues to operate in a statutory and policy vacuum with respect to its role in authorizing the siting, construction, and operation of LNG facilities. Here, we briefly recount that quagmire, and discuss how FERC's DEIS presentation of adverse impacts from the proposed site fit into the ultimate inquiry FERC must make. Section 3 authority is split by delegation between Department of Energy and FERC, with DOE determining whether the import or export of LNG is consistent with the public interest, and FERC evaluating whether “an application for the siting, construction, expansion, or operation of an LNG terminal” [in a particular location] is itself consistent with the public interest. Pursuant to that authority, the Commission must approve a proposed LNG facility unless the record shows that the facility would be inconsistent with the public interest.”⁷⁶ While DOE is statutorily required to deem FTA exports to be consistent with the public interest without modification or delay,⁷⁷ it is supposed to assemble a substantial record in considering a request to export to Non-FTA countries to assess

CO5-18

CO5-18: Comment noted. The Commission will evaluate whether the project satisfies the public interest standard under section 3(a) of the NGA in its Order.

⁷⁶ Order Granting Authorizations Under Sections 3 and 7 of the Natural Gas Act, 170 FERC ¶ 61,202, *Glick, Comm'r*, dissenting, P 5 (2020) (citing 15 U.S.C. § 717b(e)); *id.* n. 11, explaining that “[i]n 1977, Congress transferred the regulatory functions NGA section 3 to DOE. DOE, however, subsequently delegated to the Commission authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal, while retaining the authority to determine whether the import or export of LNG to non-free trade countries is in the public interest” (citing *EarthReports* at 952-53). *See also* DOE Delegation Order No. 0204-1, 42 Fed. Reg. 55637-55638 (Oct. 18, 1977).

⁷⁷ *See* 15 U.S.C. 717b(c). The Secretary of Energy’s authority was established by the Department of Energy Organization Act, 42 U.S.C. 7172, which transferred jurisdiction over imports and export authorizations from the Federal Power Commission to the Secretary of Energy. And “[b]ecause the Secretary ‘shall issue’ an order authorizing the proposed exportation or importation unless it finds it ‘will not be consistent with the public interest,’ the Secretary must authorize the import or export of gas to a nation with which the United States has a free trade agreement.” *City of Oberlin, Ohio v. FERC*, 39 F.4th 719, 723 (D.C. Cir. 2022) (“*City of Oberlin I*”) (citations omitted).

whether there is evidence overcoming the presumption that non-FTA exports are consistent with the public interest. In such an inquiry, DOE reviews “filings supporting and opposing the Applications, DOE’s economic and environmental study, FERC’s final EIS and Order, and the most recent projections of the U.S. Energy Information Administration,”⁷⁸ among other things.

For DOE’s environmental impacts inquiry on exports to non-FTA countries, as noted above, it relies on FERC’s EIS, which is wholly predicated on (and unduly narrowed by) its assumption that the full Terminal capacity is deemed to be in the public interest. FERC, on the other hand, is simply authorized (without a legal standard in the relevant statutory provision) to approve or deny applications to sitc, construct, and operate a particular LNG terminal that may be built to export authorized amounts of LNG. And FERC is arguably not authorized to approve a dedicated interstate pipeline providing feedstock gas to an export Terminal under Section 7.⁷⁹ Section 7 has a more stringent legal standard, under which the administrative record must show that the pipeline is *required* to be built by public need (the overall benefits outweigh the adverse effects or costs), and that, when considering all factors bearing on the public interest,⁸⁰ the pipeline serves the public interest.⁸¹ The more stringent Section 7 legal standard—which unlike Section 3, curries with it the extraordinary authority of eminent domain—does not permit

CO5-18

⁷⁸ See, e.g. Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, FE Docket Nos. 13-69-LNG, 14-88-LNG, and 15-25-LNG, 84 FR 8700, at p. 4 (Mar. 11, 2019), attached as Exhibit 13.

⁷⁹ This remains an open legal question, as noted by the D.C. Circuit in *City of Oberlin II* at 726, n. 3 (“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.”).

⁸⁰ Under Section 7, FERC “must consider ‘all factors bearing on the public interest.’” *Atl. Ref. Co. v. Pub. Serv. Comm’n of State of N.Y.*, 360 U.S. 378, 391 (1959).

⁸¹ *City of Oberlin II* at 727 (“FERC was clear, however, that a finding that exporting gas was ‘not inconsistent with the public interest’ under Section 3 was not ‘dispositive of the question whether a pipeline proposed to transport that gas ... is required by the public convenience and necessity’ under Section 7. Far from conflating the two standards, this means that an application could be denied a Section 7 certificate despite having export precedent agreements if the overall benefits of the proposed pipeline failed to outweigh the overall costs.”) (internal citations omitted).

FERC's vaguely-defined and rudderless Section 3 presumption of public interest of a proposed LNG Terminal tail to wag the far more stringent Section 7 interstate pipeline dog. FERC proffers this DEIS as aggregating the collection of adverse impacts that will be used to support all of those varying inquiries into all factors bearing on the public interest.

CO5-18

Under NEPA, an agency must take a "hard look" at cumulative impacts of a project, and its environmental analysis must contain "sufficient discussion of the relevant issues" and be "well-considered."⁸² For the purposes of this comment, we examine the Project's adverse impacts through the lens of whether they collectively demonstrate a record of harm to the public interest from building and operating *this* Project in *this* location. The Project DEIS shows that there are significant, adverse impacts from siting, constructing, and operating the Project, many of which are cumulative burdens to the surrounding communities – which have already suffered visual, ecological, and health harms from the massive increase in LNG export-related industry⁸³ and the extraordinarily awful storm-related and sea-level rise impacts from climate change.⁸⁴ FERC will need to grapple with whether siting yet another LNG export facility in this location – of monstrous size and capacity – and building a dedicated 91-mile pipeline to feed it, can pass a straight face public interest test – no matter who bears the burden of proof. At some point, it must be true that continuing to authorize this highly polluting infrastructure is not consistent with the public interest.⁸⁵ With this proposed Project, that point is now.

CO5-19

CO5-19: As noted by Niskanen Center, Project impacts on specific resources and to nearby residents and landowners are discussed throughout section 4 of the EIS. Cumulative impacts are discussed in section 4.14 of the EIS.

⁸² *City of Bos. Delegation v. FERC*, 897 F.3d 241, 253 (D.C. Cir. 2018).

⁸³ See Nicholas Cunningham, "Louisiana LNG Terminals Spread Pollution on Local Districts," and "Gas Terminals Threaten Coastal Communities," POLITICO (Jan. 31, 2023), attached as Exhibit 14.

⁸⁴ See Kevin Sack and John Schwartz, "Left to Louisiana's Tides, a Village Fights for Time, New York Times" (Feb. 24, 2018), (describing a coastal Louisiana town that is a victim of the rising sea level), attached as Exhibit 7.

⁸⁵ Order, *Commonwealth LNG*, Docket Nos. CP19-502-000, CP19-502-001, Accession No. 20221117-3091, Glick, Chair, concurring, P 6 (Nov. 17, 2022).

Part IV.A. below reviews CP2 LNG's adverse impacts, including: (i) increased ship traffic in the Calcasieu Ship Channel, and its resulting impacts on commercial fishing; (ii) loss of dock space due to CP2 LNG on the Calcasieu Ship Channel, and the resulting impacts on commercial fishing; (iii) reduced commercial fishing catches due to loss or displacement of marine species in the Calcasieu Ship Channel as a result of CP2 LNG; (iv) losses of commercial fishing jobs in Calcasieu and Cameron Parishes as a result of CP2 LNG; (v) decreased property values in proximity to the CP2 LNG Terminal; (vi) visual impacts of CP2 LNG; (vii) CP2 LNG's impacts on special status species; and (viii) CP2 LNG's impacts on wetlands. Part IV.B. below reviews CP Express' adverse impacts, including: (i) decreased property values along CP Express' right-of-way; (ii) CP Express' impacts on special status species; (iii) impacts of the potential failure of horizontal directional drills ("HDD") on resources crossed; and (iv) CP Express' impacts on resources crossed.⁸⁰ Because all of these impacts are cumulative and adverse to those *already experienced by the affected community where the proposed Project would be sited*, FERC's DEIS separately violates NEPA's requirements because it fails to grapple with the fact that, "[c]umulative effects can result from individually minor but collectively significant actions taking place over a period of time."⁸⁷

CO5-19

⁸⁰ GHG and climate impacts are discussed in Part V. below. We discuss those separately from the other Project adverse impacts because FERC's role in cataloging and assessing those impacts appears to be particularly unclear to FERC. See Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews, 178 FERC ¶ 61,108 (2022) (changed to draft status by Order on Draft Policy Statements, 178 FERC ¶ 61,197 (2022)). For example, the D.C. Circuit required FERC to quantify and assess the downstream GHG emissions from a project, but on remand FERC determined that it could not determine whether those downstream emissions were significant. See *Sierra Club v. FERC* ("Subal Trail"), 867 F.3d 1357, 1374 (D.C. Cir. 2017); Order Denying Rehearing, *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099, p. 5 (2018).

⁸⁷ 40 C.F.R. 1508.1(g)(3). NEPA regulations emphasize that, "[c]umulative effects . . . are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." *Id.* See *Considering Cumulative Effects Under the National Environmental Policy Act*, Chapter 4, attached as Exhibit 15.

A. CP2 LNG

i. Impact of increased ship traffic due to CP2 LNG on commercial fishing

The DEIS recognizes that the addition of yet another LNG Terminal to Calcasieu Pass will significantly increase ship traffic,⁸⁸ but fails to acknowledge that this 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 industry sector. The DEIS acknowledges that “[m]arine traffic impacts would result from the increase in large vessel movements in the Calcasieu Ship Channel during construction and operation of the Terminal facilities,”⁸⁹ and that the operation of CP2 LNG will add seven to eight carrier visits per week to the Calcasieu Ship Channel.⁹⁰ The DEIS dismisses any potential problems caused by this increase in traffic, noting that while “security zones for LNG carriers in transit and use of exclusion zones could impact vessels of other users within the Calcasieu Ship Channel because they would be required to stay out of the security zone while the LNG carrier passes,” “[a]fter the moving security zone passes, other vessels could return and continue their prior activities.”⁹¹

The DEIS thus completely fails to account for the additive disruption to their business operations that fishers and shrimpers will experience as a result of having to abide by additional and more frequently exercised security zone requirements. In addition, the DEIS does not mention that, contrary to its statement that after a barge passes, other ships can “continue their prior activities,” fishers and shrimpers will return to an area that has been significantly impacted by the passage of a large ship through that area. LNG tankers churn up large amounts of silt and

⁸⁸ CP2 LNG estimates that at nameplate production values, the Terminal would accommodate “a maximum of 200 carrier calls per year following completion of Phase 1 and a maximum of 400 carrier calls per year following completion of Phase 2.” DEIS at 2-8.

⁸⁹ DEIS at 4-187.

⁹⁰ DEIS at 4-193.

⁹¹ DEIS at 4-193.

CO5-20: See our revised section 4.10.4.1 of the EIS; see also our response to comment CO4-68.

CO5-20

mud, scattering the marine wildlife and sometimes burying animals under the mud. When a barge passes through, a fisherman's workday grinds to a halt. Since the buildout of LNG infrastructure in the Calcasieu Ship Channel, commercial fishers and shrimpers now deal with incursions from barges around four times per day. The addition of CP2 LNG to the channel would add disruption from another vessel or two per day.⁹² In addition, the problem is only expected to get worse: "Traffic in the channel is expected to grow significantly over the next 10 years due to the expanded operations of existing terminals and the construction of various proposed facilities."⁹³ Finally, the additional ship traffic will necessitate dredging in the Ship Channel (not only for construction but for maintenance during LNG Terminal operation), which will kill, injure, and/or displace the animals that fishermen catch, thereby creating additional ecological impacts and resulting adverse impacts to local fishermen's jobs.⁹⁴ FERC appears to view these cumulative impacts as inevitable – simply the cost of doing business. For shrimpers and fishers in the Calcasieu Ship Channel, it may cost them their businesses, and thus their very livelihood. NEPA does not permit FERC to rest on a regulatory *c'est la vie*. In fact, the resources in this area are in danger of reaching the point when "a large proportion of a resource is lost, the system nears collapse as the surviving portion is pressed into service to perform more functions."⁹⁵

CO5-20

⁹² DEIS at 4-193 (indicating that after the completion of construction and during the operation of the Terminal, "seven to eight LNG carrier visits are anticipated per week" at the Terminal).

⁹³ DEIS at 4-193, 4-425.

⁹⁴ See Section IV.A.iii. *infra*.

⁹⁵ *Considering Cumulative Effects Under the National Environmental Policy Act*, Chapter 4, attached as Exhibit 15. "The potential for a resource, ecosystem, and human community to sustain its structure and function depends on its resistance to stress and its ability to recover (i.e., its resilience). Determining whether the condition of the resource is within the range of natural variability or is vulnerable to rapid degradation is frequently problematic. Ideally, the analyst can identify a threshold beyond which change in the resource condition is detrimental. More often, the analyst must review the history of that resource and evaluate whether past degradation may place it near such a threshold. For example, the loss of 50% of historical wetlands within a

Document Accession #: 20230313-5225 Filed Date: 03/13/2023	ii. Loss of dock space caused by CP2 LNG The DEIS fails entirely to address the impact that the Projects will have on fishers' and shrimpers' ability to use dock space – a critical requirement for their businesses. Property owners on the Calcasieu Ship Channel waterfront have already leased out a number of their docks to existing LNG facilities in the area.⁶⁶ With the addition of yet another LNG Terminal, even more dock space will likely be lost to LNG-related activity in the Ship Channel. Without access to docks, fishers and shrimpers will not be able to access the waterfront where they make their living. The DEIS fails to account for this impact, let alone factor it into its analysis.⁶⁷ iii. Reduced catches due to loss or displacement of wildlife due to CP2 LNG The Terminal's construction and operation will have numerous impacts on the marine species population in the Ship Channel, including on the shrimp and oysters the Fishermen catch. Dredging the Calcasieu Ship Channel during the construction and operation of the Terminal will directly impact the Fishermen because doing so will harm, kill, or displace the animals that the Fishermen harvest for their livelihood. The DEIS states, "[p]hysical injury or mortality may occur as a result of excavation and dredging, particularly in the case of less mobile marine species,"⁶⁸ such as oysters. The DEIS recognizes that the effects of dredging "may affect the health of fish, shrimp, and other marine fauna through gill blockage caused by increased watershed may indicate that further losses would significantly affect the capacity of the watershed to withstand floods." <i>Id.</i> ⁶⁶ See Nicholas Cunningham, "Louisiana LNG Terminals Spread Pollution on Local Districts," Gas Outlook (Jan. 31, 2023), attached as Exhibit 14 (in which James Hiatt explains that "Venture Global has leased up basically every dock space for putting their boats. There was a fishing pier that I used to fish on when I was growing up. That's all been taken. There's no place to launch a boat."). ⁶⁷ See Comments of Louisiana Department of Wildlife and Fisheries, FERC Docket Nos. CP22-21 and CP22-22, Accession No. 20230309-5050, p. 3 (Mar. 9, 2023) (noting that the public has expressed concern about the loss of boat launches due to the Terminal and questioning whether Venture Global will enhance or replace any public boat launches in the Terminal vicinity). ⁶⁸ DEIS at 4-88.
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CO5-21: See response to comment SA1-15.

CO5-21

CO5-22: See our revised section 4.10.4.1 of the EIS; see response to comment CO4-68.

CO5-22

suspended sediment,” yet concludes that impacts on marine species including shrimp are not expected to be any different from the current dredging activities in the channel.⁹⁹ This follows the DEIS’s statement that the Project will require the dredging of *6.4 million cubic yards* of material from the Ship Channel.¹⁰⁰ It is difficult to conceive of how such a significant change in the marine species’ habitat will somehow have no effect on those species. The DEIS similarly waves off the impacts of the Terminal’s other activities including (1) pile driving, which would increase underwater noise levels and thereby affect the animals’ behavior;¹⁰¹ (2) discharge of ballast water, which would alter water quality and potentially introduce invasive species, “affect[ing] the overall health of an ecosystem” and threatening native species;¹⁰² (3) cooling water discharges, which would likely chase away more mobile species such as shrimp,¹⁰³ and artificial lighting and shading, which are known to change the behavior of marine species.¹⁰⁴ All of these impacts would jeopardize the ability of fishermen to make a living. The Fishermen have already noticed that shrimp are not as likely to go in areas of industrial activity in the Ship Channel, and that the oysters appear to have been suffering ill effects from the increased salinity of the water due to existing infrastructure.

iv. Job losses of fishermen resulting from the above impacts of CP2 LNG

In its employment impacts analysis, the DEIS considers only job opportunities the construction and operation of the Project will potentially create,¹⁰⁵ and none of the jobs the

⁹⁹ DEIS at 4-88 to 4-89.

¹⁰⁰ DEIS at 4-88.

¹⁰¹ DEIS at 4-90.

¹⁰² DEIS at 4-96.

¹⁰³ DEIS at 4-97.

¹⁰⁴ DEIS at 4-98.

¹⁰⁵ Thirty percent of the Terminal’s and fifty percent of the Pipeline’s temporary/construction-related jobs will be hired from the local community. DEIS at 4-176. Nearly half of the Project’s permanent jobs will be hired from the local community. DEIS at 4-174.

CO5-23

CO5-23: See the revised section 4.10.4.1 of the EIS; see also our response to comment CO4-68.

Projects will jeopardize or eliminate. The DEIS indicates the Project will create only 260 permanent jobs in the community, representing a less than 1% increase in the number of employed workers in the DEIS's study area overall.¹⁰⁶ But the DEIS fails to consider employment opportunities for fishers and shrimpers, whose livelihoods will be threatened by increased ship traffic, decreased access to dock space, adverse impacts to shrimp and oyster populations in the Ship Channel, and the resulting decreased catches, as outlined above at IV.A.iii. These issues have already had adverse impacts on the fishing and shrimping industry as a result of existing infrastructure in the area, and likely will have an even greater impact after the construction of the Project.¹⁰⁷ However, the DEIS fails to consider what impact these factors would have on existing jobs, let alone quantify it.

V. CP2 LNG Terminal's impacts on property values

The DEIS' analysis of the LNG Terminal's impacts on property values is woefully inadequate, as it is based solely upon two irrelevant and admittedly biased studies. These studies only examine the effect on property values of *compressor stations*, not LNG Terminals – and the DEIS states as much.¹⁰⁸ As recognized in the DEIS, LNG Terminals are vastly greater in size than compressor stations, meaning they have larger impacts and impact more properties.¹⁰⁹ For example, the Moss Lake Compressor Station will be 37.3 acres,¹¹⁰ whereas the operational CP2 LNG Terminal will be 668.5 acres.¹¹¹ In other words, the acreage impact of the Moss Lake

¹⁰⁶ DEIS at 4-174.

¹⁰⁷ See Nicholas Cunningham, "Louisiana LNG Terminals Spread Pollution on Local Districts" (Jan. 31, 2023), and "Gas Terminals Threaten Coastal Communities," POLITICO (Jan. 9, 2023), ("While packed with toxic industry, the coastline is also rich in wildlife, and has supported a vibrant fishing industry, one that is increasingly under pressure from encroaching fossil fuel facilities. The scramble to build new projects threatens the people and ecosystems on the Gulf Coast, according to residents living in the industry's shadow."), attached as Exhibit 14.

¹⁰⁸ DEIS at 4-195 to 4-196.

¹⁰⁹ DEIS at 4-196.

¹¹⁰ DEIS at 2-13.

¹¹¹ DEIS at 2-12.

CO5-23

CO5-24: See the revised section 4.10.9 for additional discussion of impacts on property values.

CO5-24

Compressor site is approximately 5% of that of the related LNG Terminal. Compared to compressor stations, LNG terminals also obviously have significantly greater visual impacts, air pollution, associated large vessel traffic, lighting, road traffic, and noise. In addition, these two studies were prepared for natural gas pipeline companies, which can hardly be expected to produce scholarly unbiased conclusions. And while the DEIS acknowledges that there are residences within a half mile of the LNG Terminal, *including one residence that is 330 feet from the terminal's property line*, the DEIS concludes that since there are no studies that would provide a more direct comparison, the DEIS may rely on these inapposite studies to “find no conclusive evidence indicating that [either CP2 LNG or CP Express] would have a significant negative impact on property values.”¹¹² However, more comparable studies *are* available, and would provide a significantly more accurate picture of how property values in the area of the Project would be affected. For example, a researcher at the University of California’s Haas School of Business found that in the 1990s and 2000s, homes within two miles of fossil fuel power plants – which are much more analogous to LNG facilities in size, light, pollutant emissions, and noise impacts than compressor stations – decreased in value by 3-5% after the power plants opened.¹¹³ In the Final Environmental Impact Statement, FERC should consider this relevant information bearing on property values in the area of the CP2 LNG Terminal, as well as commonsense—if an LNG facility moves next door to your home, your home’s value will clearly diminish. The DEIS fails to take a hard look at these adverse impacts and therefore makes it impossible for FERC to afford them proper weight in its Gas Act inquiry.

CO5-24

vi. CP2 LNG visual impacts

CO5-25

¹¹² DEIS at 4-196, 4-197.

¹¹³ See Lucas W. Davis, “The Effect of Power Plants on Local Housing Values and Rents,” The Review of Economics and Statistics 93: 4, 1391-1402, p. 22 (Nov. 11, 2011), attached as Exhibit 16.

The DEIS acknowledges “significant impacts on visual resources, including within environmental justice communities, and the Project’s contribution to significant cumulative visual impacts.”¹¹⁴ The buildout of LNG infrastructure in southwestern Louisiana continues to dramatically alter the landscape of an area known for recreational activities. Louisiana is known as “a sportsman’s paradise,”¹¹⁵ but visual impacts and species loss (see section IV.A.iii. *supra* and section IV.A.vii. *infra*) as a result of additional gas infrastructure threatens that designation.¹¹⁶ Visual impacts will result from the Terminal’s four 176-foot-tall and 300-foot-wide LNG storage tanks, and a 197-foot-tall flare stack.¹¹⁷ The Terminal would also require extensive lighting, in part to comply with Federal Aviation Administration requirements.¹¹⁸ The DEIS recommends Venture Global submit plans for visual screening,¹¹⁹ but such measures cannot obscure the looming facilities and light pollution emanating from it.¹²⁰ The DEIS fails to take a hard look at these impacts and therefore provides a legally insufficient basis for FERC to weigh this significant, adverse impact in its Gas Act inquiry.

CO5-25

CO5-25: Visual impacts of the Terminal Site is discussed in section 4.9.5.1.1. In response to our recommendation in the draft EIS, CP2 LNG has committed to install vegetative screening by planting native live oak trees and native groundsel bushes on the northeastern and eastern sides of the Terminal Site.

vii. CP2 LNG’s adverse impacts on special status species

The DEIS recognizes that the project will have adverse impacts on endangered and threatened species, and species of serious concern that are proposed or likely to be listed as endangered or threatened. The DEIS identifies “18 federally listed threatened or endangered species, one candidate species, one species proposed for listing, and one species under review as

¹¹⁴ DEIS at 5-1.

¹¹⁵ See Linda Benedict, “Keeping Louisiana a Sportsman’s Paradise,” Louisiana State University College of Agriculture (May 22, 2012), attached as Exhibit 17.

¹¹⁶ See DEIS at ES-6 (“622.2 acres of vegetated land that would be permanently converted to industrial use associated with the operation of the Terminal Facilities.”)

¹¹⁷ DEIS at 4-162.

¹¹⁸ DEIS at 4-163.

¹¹⁹ DEIS at 4-164.

¹²⁰ This analysis is inapposite for an LNG Terminal and related infrastructure. While one can visually screen a smaller facility, like a compressor station, attempting to dispose of such adverse impacts here with visual screening is an impossible task.

CO5-26: Sections 4.8.1.1, 4.8.1.2, and 4.8.1.5 have been revised to include additional mitigation measures developed in CP2 LNG and CP Express’ consultation with FWS and NMFS, as applicable. As discussed in section 1.4, CP2 LNG and CP Express propose to transport the sediments dredged during construction to a BUDM site at the East Cove Unit of the FWS Cameron Prairie National Wildlife Refuge (NWR) as a beneficial use. The BUDM site, and associated disposal pipeline are non-jurisdictional to the Commission, however, the associated impacts are being considered in consultation with the FWS, COE, and LDNR’s OCM. Project impacts on wildlife resulting from light and noise pollution are discussed in section 4.7.1.2. Noise impacts on the surrounding community resulting from the Project are discussed in section 4.12.2.

CO5-26

Document Accession #: 20230313-5225 Filed Date: 03/13/2023	being potentially present in the Project vicinity,”¹²¹ and acknowledges “that the Project <i>may</i> affect federally listed species.”¹²² Endangered or threatened species including the giant manta ray, eastern black rail, and five species of sea turtle are in the Project’s direct line of fire – and the DEIS acknowledges these species are likely to be adversely affected.¹²³ Locating an LNG Terminal in an area adjacent to the Cameron Prairie National Wildlife Refuge (“NWR”)¹²⁴ – and dumping dredged slurry via a whole other piping system into that same refuge – will on its face have significant, adverse impacts on the existing species using that NWR. The additional light and noise pollution alone will impact not just this beleaguered community, but also the flora and fauna that continue to suffer impacts from ongoing, cumulative industrialization of their habitat from yet another proximate LNG Terminal. FERC failed to fulfill its duty under NEPA to take a hard look at these impacts, and thus has an inadequate basis upon which to make its public interest findings under the NGA. viii. CP2 LNG impacts on wetlands CP2 LNG will permanently impact 342 acres of wetlands,¹²⁵ and 79.7 acres of open water.¹²⁶ Venture Global’s efforts to purchase wetland mitigation credits¹²⁷ would not prevent the damage that the Project would cause to the wetlands in its path. The DEIS claims that the wetlands lost to the Project will be so slight as to be negligible.¹²⁸ But the U.S. Geological Survey has determined that at the current rate of loss, Louisiana’s wetlands will be gone within	CO5-26 CO5-27
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¹²¹ DEIS at 4-124.

¹²² DEIS at 4-123 (emphasis in original).

¹²³ DEIS at ES-10, 4-125 to 4-126.

¹²⁴ DEIS at 1-13.

¹²⁵ DEIS at 4-47.

¹²⁶ DEIS at 4-69, 4-408.

¹²⁷ DEIS at 4-49, 4-53.

¹²⁸ DEIS at 4-53.

CO5-27: Climate change is discussed in section 4.14.2.13 of the EIS. See also responses to CO3-15, CO4-27, and CO4-28 regarding wetland impacts and mitigation.

200 years.¹²⁹ The DEIS acknowledges this, without attaching any significance to it in its wetlands adverse impact conclusion: “[t]he Texas and Louisiana Gulf Coast area is experiencing the highest rates of coastal erosion and wetland loss in the United States. . . . the area between Sine Pass and Rollover Pass experience[s] a shoreline loss rate of -4.7 meters per year shoreline erosion could occur at the Project site and along the opposite shoreline as a result of waves, currents, and vessel wakes.”¹³⁰ That makes this the worst possible location to construct a project that will permanently eradicate 342 acres of wetlands and increase large vessel traffic. Climate change itself also threatens wetlands quality, a fact which FERC noticeably omitted from the DEIS.

Any projected wetlands loss via permanent conversion to open water use will not be mitigated by purchasing wetlands mitigation credits. First, unless those mitigation credits are going to the creation of new wetlands – a dubious undertaking in an area already bearing extreme climate change impacts, a project that increases existing wetlands values (like higher water filtration values) does not ameliorate the sheer acreage loss and impacts from wetlands destruction. One acre of high quality wetlands can only provide so much support for the species that depend on large foraging areas and can only hold so much storm and flood waters. Given the overall net loss in this region of wetlands acres, purchase of mitigation credits will not erase the wetlands destruction from this proposed Project as a significant, adverse impact.

And wetlands restoration projects have historically had low success rates, and with the increasing impacts from climate change, this rate will likely decline farther. In an area plagued

¹²⁹ See Jeffress Williams, “Louisiana Coastal Wetlands: A Resource At Risk,” United States Geological Survey, , attached as Exhibit 18.

¹³⁰ DEIS at 4-336. This entire discussion is presented in the climate resiliency analysis for the Project site, in the context of ensuring that the Project will be able to withstand being sited and operated in the environmentally precarious location. Yet the very real corollary harms to the existing community that will be exacerbated by this Project’s wetlands destruction and conversion are waved away as compensable by purchase of mitigation credits.

by sea level rise, recurrent hurricanes and other flood-inducing storm events, wetlands and adjacent buffer areas serve critical flood water retention functions.

B. CP Express

i. Pipeline impacts on property values

Private landowners with a 48-inch, 1,440 or 2,180 psig natural gas pipeline through their property can be sure the potential resale value will be drastically reduced. The DEIS' analysis of the pipeline's impacts on property values is woefully inadequate, as it is based upon two irrelevant and admittedly biased studies, and one unbiased but unreliable source. The former category of studies is discussed above with respect to the CP2 LNG Terminal's impacts on property values at section IV.A.v. The DEIS mentions only one unbiased study, Diskin et al.¹³¹ Diskin is not a peer-reviewed study, but a twelve-year-old magazine article, the conclusions of which were subsequently called into question in the same publication that originally ran the article.¹³² Specifically, the study's use of a paired-sales analysis assumed that all purchasers of residential properties did so with full knowledge of the natural gas pipeline on, near, or across the property, a fact which the study did not attempt to confirm. For prices to reflect willingness to pay (and therefore true economic value), buyers would need full information about the subject properties, including whether the properties are near a pipeline. And unlike in 2011, when the article was published, consumers now have infinite resources available when doing their due diligence prior to purchasing real estate. Anyone looking to buy a property on or near the right-of-way of a natural gas pipeline would be more likely to discover this fact (as well as the dangers of living near a natural gas pipeline) and bid – or not bid – on that property accordingly.

¹³¹ The DEIS appears to refer to Diskin et al., "The Effect of Natural Gas Pipelines on Residential Value," *Right of Way Magazine* (Jan./Feb. 2011), attached as Exhibit 19.

¹³² See H. Kirby Albright, Letter to the Editor, *Right of Way Magazine* (Mar./Apr. 2011), attached as Exhibit 20.

CO5-27

CO5-28

CO5-28: See the revised section 4.10.9 for additional discussion of impacts on property values.

Document Accession #: 20230313-5225	Filed Date: 03/13/2023
As a result, all three studies upon which the DEIS relies for its property values analysis are irrelevant to the Project and should not form the basis for the DEIS's conclusion regarding the Project's impact on property values. In addition, the DEIS conducts no examination of other effects of the devaluation of landowners' properties, such as a potential buyer's inability or increased difficulty to obtain a mortgage on land that is in close proximity to a pipeline. There also was a complete failure to consider the effect on homeowner's insurance of a high-pressure gas pipeline going through a landowners' property. The DEIS does not take into consideration at all how a home buyer's perception of associated risks could detract from home values, something that happens all the time. FERC fails to take a hard look at adverse impacts on property values, including by relying on irrelevant studies, failing to examine or adopt any relevant or peer-reviewed studies, or take into other factors such as the diminished aesthetic appeal of the area, safety concerns that property owners and buyers will have, and an increase in insurance for landowners in the area. All of the named landowners are concerned about the adverse effect that the Pipeline will have on their property values, and everything else that is tied into such a devaluation, and with good reason. The DEIS fails to address this adverse impact. ii. CP Express impacts on species <i>See discussion of the overall Project's impacts on species at IV.A.vii. supra.</i> iii. The DEIS does not properly address the adverse effects of Horizontal Directional Drills ("HDD") on resources CP Express crosses. The Pipeline proposes to use the HDD method to cross under the Calcasieu Ship Channel.¹³³ As stated in the DEIS, HDD complications can include a "loss of drilling fluids; drill transition between overburden/bedrock, drill hole collapse, existing groundwater and/or soil ¹³³ DEIS at 4-411.	
CO5-28	CO5-29
CO5-30	

37

CO5-29: Comment noted.

CO5-30: Section 4.2.4 of the EIS assesses HDD feasibility. CP2 LNG and CP Express have completed 6 of 13 geotechnical and hydrofracture assessments for the proposed HDDs and will complete the remaining assessments/investigations to confirm feasibility of proposed HDDs and design the drill(s) and drilling fluids program to maximize the potential for successful installation. Implementation of monitoring and mitigation measures in the HDD monitoring and Contingency Plan would minimize the potential for inadvertent returns to occur, as well as minimize the volume of release, should an inadvertent return occur. Therefore, and given the volume of the Calcasieu Ship Channel as a whole, significant impacts on aquatic resources are unlikely to occur.

contamination.¹³⁴ Impacted Fishermen all fish along and near the channel, and the potential effects on their catch and the ecosystem because of the use of HDD have not been adequately examined or addressed in the DEIS.

It is a fact that HDD crossings, even when successful, have impacts in neighboring areas where staging and construction occur. HDD also requires the disposal of materials extracted from the drill hole. Industry recognizes that 50% of all HDD attempts fail, resulting in “frac-outs,” situations in which large amounts of sediment and bentonite clay (used as a drilling lubricant) get released into the water.¹³⁵ And the incidence of borehole collapse increases with diameter—here, the large diameter pipe will also be coated in a significant materials layer, making the necessary borehole even larger through the kinds of soils in which HDD tends to have a higher failure rate.

iv. CP Express’ impacts on resources crossed

See discussion of impacts on wetlands resources from CP2 LNG at Part IV.A.viii. above. Additionally, maintaining the pipeline right of way typically includes use of noxious chemicals such as defoliants, known to have deleterious health impacts. Additional right of way impacts include “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.”¹³⁶ Moreover, as the proposed route is the longest, and crosses more agricultural lands than the other alternative routes proffered, it will have the highest impacts to crop production.

¹³⁴ DEIS at 5-2.

¹³⁵ See Dan Nachman, et al., “Final Report: Horizontal Directional Drilling,” New Jersey Department of Environmental Protection Science Advisory Board (Oct. 2021), attached as Exhibit 21.

¹³⁶ DEIS at 4-58.

CO5-30

CO5-31: The Project Specific Procedures prohibit the use of pesticides and herbicides within 100 feet of any wetland unless permission by local and state authorities is granted. The Project-specific Plan and Procedures that incorporate FERC’s Plan and Procedures, would be implemented to reduce lasting impacts on soils and agricultural lands. Section 4.9.1.2 discusses impacts on agricultural lands which include pastures as well as cultivated crops. A majority of impacts on agricultural lands would be restored to agricultural land use. CP Express would monitor the restoration to ensure it is successful.

CO5-31

V. FERC FAILED TO HEED CEQ'S INTERIM GUIDANCE ON ASSESSING CLIMATE IMPACTS FROM THE PROPOSED PROJECTS

Pursuant to recently-issued NEPA guidance from the Council on Environmental Quality, FERC is required in its environmental reviews to quantify the reasonably foreseeable GHG emissions (including direct and indirect emissions) of the Project, the no action alternative, and any reasonable alternatives.¹³⁷ As set out above in Part III, FERC failed to do this in any meaningful way for the no action alternative, or the “reasonable” alternatives that it did nominally consider. In its Scoping Comment for the DEIS, Impacted Landowners and other parties wrote to FERC to request FERC’s attention to the following provisions of the Council on Environmental Quality’s recently-issued NEPA guidance that apply to the Project’s environmental review process.¹³⁸ Specifically, the parties requested that FERC’s environmental impact statement to:

CO5-32

1. Quantify the reasonably foreseeable GHG emissions (including direct and indirect emissions) of Project, the no action alternative, and any reasonable alternatives, CEQ Guidance at 1200;
2. Disclose and provide context for the GHG emissions and climate impacts associated with the Project and alternatives, including by, as relevant, monetizing climate damages using estimates of the social costs of greenhouse gases (“SC-GHG\$”), placing emissions in the context of relevant climate action goals and commitments, and providing common equivalents, *id.* at 1201;
3. Analyze reasonable alternatives to the Project, including those that would reduce GHG emissions relative to baseline conditions, and identify available mitigation measures to avoid, minimize, or compensate for climate effects, *ibid.*; and
4. Consider increased risks associated with development in floodplains and coastal areas subject to sea level rise, and avoid such development as required by Executive Orders 11988 and 13690, by seriously analyzing no action or reasonable alternatives.

¹³⁷ See CEQ Guidance at 1200.

¹³⁸ CEQ Guidance.

CO5-32: GHG emissions due to Project construction, commissioning, and operation are quantified in section 4.12.1. Climate change is discussed and the social cost of GHG (SC-GHG) is quantified in section 4.14.2.13 of the EIS. See also response to comment CO4-24 regarding engineering design to mitigate flooding and storm impacts.

Regarding incorporation of the CEQ’s January 9, 2023 interim guidance to assist agencies in analyzing GHG and climate change effects under NEPA, we note that the Commission’s NEPA review was already on-going when the CEQ issued this new guidance and as such, we are not formally applying this guidance to this NEPA review. The new CEQ guidance notes that agencies should exercise judgement in applying the guidance to an on-going NEPA process.

Examining the “likelihood of increased temperatures and more frequent or severe storm events over the lifetime of the proposed action, and reasonable alternatives (as well as the no-action alternative)” is a crucial part of any such analysis. *Id.* at 1208.

Here, FERC produced a DEIS that fails to provide a substantial record on which FERC could make a rational decision as to whether building the Project *in this particular location* is consistent with the public interest.¹³⁹ On its face, it is wholly apparent that building the Project *here*, in a delicate coastal region already battered by the ongoing impacts of climate change, will both contribute to the climate change engine fueling such disasters, as well as contribute to this community’s ability to withstand them. Converting wetlands acres to open water in a hurricane and flood prone area is signing a death warrant for the ongoing ability of this area to remain habitable.

Moreover, building a project that must be engineered to withstand ongoing and anticipated hurricane-force winds¹⁴⁰ and attendant storm impacts, requires significantly more impactful infrastructure to ensure its operational integrity.¹⁴¹ The DEIS itself notes that the site grade would have to be entirely raised to prevent issues from existing surface water, and that “erosion is a particularly concerning issue at the marine facility, where wave dynamics and prop washing would create more erosive energy.”¹⁴² The DEIS acknowledges that “there is a very high

CO5-32

¹³⁹ And with respect to CP Express, whether the public interest requires it to be built here, or at all.

¹⁴⁰ DEIS at 4-333 (“Because of its location, the Project site would likely be subject to hurricane force winds during the life of the Project.”) And “[t]he Project site is in the tornado-prone region . . .” *Id.* The Project would also have to “be enclosed for flood protection by construction of storm surge protection walls (floodwalls). DEIS at 4-335. But what protection does the nearby community have from increased flooding from wetlands conversion to open water at this location? None.

¹⁴¹ This DEIS was prepared without the results of such a geotechnical investigation. *See* DEIS at 4-326 - 4-327. Even the “supplemental Geotechnical Study report did not meet the minimum number of boreholes or CPTs for the current LNG storage tank foundation area. . . .” DEIS at 4-326. “CPT” here appears to refer to “cone penetration test.”

¹⁴² DEIS at 4-325.

potential for corrosion of buried steel based on electrical resistivity results,” and “[b]ecause subsidence is a recognized concern in the project area, [the Project would require] deep piled foundations to mitigate potential subsidence.”¹⁴³

CO5-32

As to greenhouse gas emissions (and climate change impacts) *from the proposed Project*, FERC cuts the scope of its inquiry to a sliver – just those direct ones from the Project’s construction and operation – and this is still a huge impact: 9,298,585 tons CO₂e per year, for infrastructure designed to last 50 years,¹⁴⁴ which equals 464,929,250 tons CO₂e for the operational life of the Project.¹⁴⁵ And the DEIS side-steps *any* obligation to characterize GHG emissions from the Project as significant or insignificant by deferring to the Commission’s pending draft guidance document on GHG emissions:

CO5-33

To date, Commission staff have not identified a methodology to attribute discrete, quantifiable, physical effects on the environment resulting from the Project’s incremental contribution to GHGs. Without the ability to determine discrete resource impacts, Commission staff are unable to assess the Project’s contribution to climate change through any objective analysis of physical impact attributable to the Project. Additionally, Commission staff have not been able to find an established threshold for determining the Project’s significance when compared to established GHG reduction targets at the state or federal level. Ultimately, this EIS is not characterizing the Project’s GHG emissions as significant or insignificant because the Commission is conducting a generic

¹⁴³ DEIS at 4-326.

¹⁴⁴ U.S. Securities and Exchange Commission Document (Dec. 31, 2015), attached as Exhibit 22. LNG storage tanks are projected to last 50 years and other elements of an LNG terminal have different projected useful lives; presumably the longest-lived asset would drive replacement of the other shorter-lived assets.

¹⁴⁵ For a twenty-year operational horizon (limiting operations to generic 20 year offtake contracts), this tallies 185,971,700 tons CO₂e, or 168,710,880 metric tons CO₂e. The construction and commissioning emissions are not included in this figure. Moreover, FERC presumes that, because it may not be legally required to grapple with greenhouse gas emissions from exports, that it ought not do so. DEIS at 4-439 (citing *Sierra Club v. FERC*, 827 F.3d 36, 46-47 (D.C. Cir. 2016) (“*Freepart*”). These two propositions are not equivalent. Nevertheless, those are also excluded from this figure.

CO5-33: Comment noted. See also response to comment CO4-21.

proceeding to determine whether and how the Commission would conduct significance determinations going forward.¹⁴⁶

The *absence* of any characterization certainly falls even farther short of the insufficiently supported characterization that courts have found violate NEPA. For example, in *Dine Citizens Against Ruining Our Env't v. Hualand*, 59 F.4th 1016, 1042 (10th Cir. 2023), the court found that while the federal decision maker:

adequately supported its conclusion that the emissions from these wells would be only a small portion of the emissions from all wells anticipated in the RMP, and would add only a small percentage to the annual GHG emissions in the nation and the state. However, this comparative analysis proves only that there are other, larger sources of GHGs. It does not show that this source, which is anticipated to emit more than 31 million metric tons of carbon dioxide equivalents, will not have a significant impact on the environment.

After reciting the national and state emissions increasing percentages from the Project (.16% and 4% respectively), this Project DEIS then notes, again without characterizing such as significant or insignificant, that the social cost of the Project's direct GHG emissions would tally \$24 billion for a generic twenty-year offtake contract.¹⁴⁷ This \$24 billion is *just from the narrow sliver that FERC considers, direct operational emissions, and excludes any emissions from the end use consumption of the exported LNG itself*. It is a staggering social cost by any measure, and certainly compared to the DEIS' presentation of the Project's economic benefits – only a posited \$750,000 injection into the local economy.¹⁴⁸ This alone presents a record on which a rational decision maker should find that this Project is inconsistent with the public interest.

¹⁴⁶ DEIS at 4-439.

¹⁴⁷ DEIS at 4-441.

¹⁴⁸ DEIS at 4-174.

VI. CONCLUSION

Because FERC's DEIS runs afoul of NEPA's requirements from its predicate to its conclusions, FERC cannot proceed without a significant revision to its analysis with an opportunity for further public comment, including via an issuance of a Supplemental EIS. Any revised EIS must provide a sound record for any decision FERC makes with respect to the

Project, including: (1) whether CP2 LNG's siting, construction and operation at its proposed site should be authorized despite the significant, adverse impacts to already burdened communities (both human and ecological); and (2) whether CP Express' 91 miles of proposed feedstock pipeline for export only, which will cause a host of other significant human and ecological damages can be found to be required by the public convenience and necessity (supporting a constitutionally sufficient public use determination). The undersigned believe it cannot, and that

FERC should use this opportunity to clarify what its role is with respect to LNG-related infrastructure in a properly scoped EIS – not waiting until a final Gas Act order predicated on a wrongly tailored EIS.

CO5-34

CO5-34: Comment noted.

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Rachel Lange, COLUMBUS, TX
Agency comments from the Texas Parks and Wildlife Department related to the
Draft EIS of the CP2 LNG and CP Express project were submitted via comment
letter, filed using the PERC efile process.

IND7-1

IND7-1: Comment noted.

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United States Department of the Interior

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Electronic Submittal Only
ER 23/0023

March 13, 2023

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

Subject: Comments on the Venture Global CP2 LNG and CP Express Project Draft
Environmental Impact Statement

Dear Federal Energy Regulatory Commission:

The Department of the Interior (Department) has reviewed the Venture Global CP2 LNG and CP Express Project 1-35 Draft Environmental Impact Statement (DEIS). We understand the purpose of this project is to liquefy, store, and export liquefied LNG to overseas markets via marine transport by ocean-going vessels and promote global natural gas trade and greater diversification of global supplies. In addition, the purpose of the Pipeline System is to create the capacity to transport gas required for the proposed LNG export operations from natural gas supply points in east Texas and southwest Louisiana to Terminal Facilities.

The alternatives considered in the preparation of the DEIS consisted of the No Action Alternative, and several LNG System Alternatives, Pipeline System Alternatives, Site Alternatives, CP Express Pipeline Alternatives, and Compressor Station Alternatives. None of the alternatives offered any significant environmental advantage over the proposed Project and are, therefore, not being recommended. The Federal Energy Regulatory Commission (FERC) will determine the project need and could choose the No Action Alternative.

We welcome this opportunity to cooperate with the FERC and offer the following comments for your consideration.

United States Fish and Wildlife Service (Service) comments

INTERIOR REGION 4 • MISSISSIPPI-BASIN*
INTERIOR REGION 6 • ARKANSAS-RIO GRANDE-TEXAS-GULF
INTERIOR REGION 7 • UPPER COLORADO-BASIN*

ARKANSAS, LOUISIANA, NEW MEXICO, OKLAHOMA, TEXAS
*Partial

In Louisiana, the proposed project would involve the construction of a new liquefied natural gas terminal in Cameron Parish, Louisiana, 85.4 miles of 48-inch-diameter natural gas pipeline, 6.0 miles of 24-inch-diameter natural gas lateral pipeline, one 187,000-horsepower natural gas-fired compressor station in Calcasieu Parish, six meter stations and other appurtenant facilities. We have reviewed the information provided and offer the following comments for the Louisiana project area in accordance with provisions of the National Environmental Policy Act (NEPA) of 1969 (83 Stat. 852; 42 U.S.C. 4321 *et seq.*) and the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

Threatened and Endangered Species

As stated in the DEIS, ESA section 7 consultation is ongoing for the threatened eastern black rail (*Laterallus jamaicensis jamaicensis*). The Service requested additional information regarding that federally listed species in a May 3, 2022, letter to Venture Global LNG/CP2 LNG and CP Express. Accordingly, their consultant provided a biological assessment with the information requested in December 2022, and the Service is continuing consultation for that species at this time. We anticipate completion of that consultation prior to the FERC's final EIS.

Candidate Species

As stated in the DEIS, the monarch butterfly (*Danaus plexippus*) is a candidate species under the ESA. Monarch butterflies breed and migrate throughout Texas and Louisiana. They can be found utilizing a variety of habitats such as forests, agricultural fields, and meadows that contain nectar-bearing wildflowers for feeding adults and native milkweeds as host plants for breeding adults and food for monarch caterpillars. Vegetation surveys of wetland and upland areas during field delineations provided no records of milkweed, the sole source of food for monarch caterpillars. However, the project area includes those above-mentioned habitats. Therefore, the project has the potential to impact habitat containing nectar-bearing wildflowers, on which adult monarch butterflies might feed on in Texas and Louisiana.

The Fish and Wildlife Service's, Texas Coastal Ecological Services Field Office recommended utilizing best management practices (BMPs) that include the conservation of native grasslands and other pollinator habitats by seeding and replanting existing rights-of-way or disturbed sites with native grasses, milkweeds, and nectar plants that are native to the area, organic gardening that avoids pesticides and herbicides that can destroy the monarchs or the milkweeds they need to survive; utilizing a mowing deck height of 12 inches for right-of-way maintenance to protect native vegetation communities and combat the establishment of invasive plant species. As a result, CP2 LNG and CP Express coordinated with the Natural Resources Conservation Service (NRCS) to develop native seed mixes and committed to only mowing the right-of-way once every three years.

The Service commends CP2 LNG and CP Express for coordinating with the NRCS to develop native seed mixes and mowing the right-of-way once every three years. However, to avoid the project contributing to a trend toward federal listing of the monarch butterfly, we recommend implementing that commitment and those BMPs within the Louisiana project area as well. We appreciate the FERC's and their applicant's continued cooperation in the conservation of

FA1-1

FA1-1: Comment noted.

FA1-2

FA1-2: See response to comment SA2-4. In addition, CP Express would only mow the right-of-way once every three years, in accordance with the Project-specific Plan, in both Texas and Louisiana.

FA1 - U.S. Department of the Interior

Document Accession #: 20230313-5012 Filed Date: 03/13/2023

federally listed and candidate species. If you or your staff have any questions related to the Service's comments, please contact Joshua Marceaux at 337-291-3129, or joshua_marceaux@fws.gov.

If you have any questions for the Department or need assistance, please contact me at 720-814-6167, or rebecca_collins@ios.doi.gov.

Sincerely,

**REBECCA
COLLINS**

Digitally signed by
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Rebecca Collins
Regional Environmental Officer
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