

November 20, 2023

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
Office of Energy Projects
888 First Street, NE
Washington, D.C. 20426

via Electronic Filing

Re: OEP/DPC/CB-2 Data Request Dated November 13, 2023
Saguaro Connector Pipeline, L.L.C.
Docket No. CP23-29-000

Dear Secretary Bose:

On November 13, 2023, the Office of Energy Projects of the Federal Energy Regulatory Commission (“Commission”) issued a Data Request (“Request”) to Saguaro Connector Pipeline, L.L.C. (“Saguaro”) under Docket No. CP23-29-000. In response to the Request, Saguaro respectfully submits the following:

- Data Request Response
- Attachment 1

Please direct any questions relating to this filing to the undersigned, or regulatoryaffairs@oneok.com.

Saguaro’s e-file submittal is in accordance with the Commission's Order No. 703, Filing Via the Internet guidelines, issued in Docket No. RM07-16-000 on November 15, 2007. Pursuant to §385.2010 of the Commission's regulations, copies of this cover letter are being served to each person whose name appears on the official service list for this proceeding.¹ Pursuant to Sections 385.2005 and 385.2011(c)(5) of the Commission’s regulations,² the undersigned has read this filing and knows its contents, and the contents are true as stated, to the best knowledge and belief of the undersigned. The undersigned possesses full power and authority to sign such filing.

Respectfully submitted,

/s/ David E. Keglovits

David E. Keglovits
VP and Associate General Counsel - Regulatory
100 West 5th Street
Tulsa, Oklahoma 74103

¹ 18 C.F.R. § 385.2010.

² 18 C.F.R. §§ 385.2005, 385.2011(c)(5).

Saguaro Connector Pipeline, L.L.C.
Saguaro Connector Pipeline Project
Docket No. CP23-29-000

Response to the Federal Energy Regulatory Commission's November 13, 2023, Data Request

Request

On November 8, 2023, the U.S. Department of State, Office of Global Change (State Department) submitted a request for a greenhouse gas (GHG) emissions analysis for the Saguaro Connector Pipeline Project that covers lifecycle upstream and downstream GHG emissions. As stated in the Environmental Assessment issued for the project, the courts have explained that because the authority to authorize natural gas exports rests with Department of Energy, the National Environmental Policy Act does not require the Commission to consider the upstream or downstream GHG emissions that may be indirect effects of the export itself.³ Thus, the State Department request is beyond the scope of the Commission's analysis in this proceeding.

Under Executive Order No. 10485, the Commission may issue a presidential permit only "after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense." The State Department's information request, is set forth in accession number 20231109-3024, also shown in the attachment to this letter. Please coordinate with the State Department to address their information needs to complete their review.

Response

Following the Commission's November 13, 2023, Data Request, Saguaro attempted numerous times to contact different individuals within the State Department. After unsuccessful phone and email attempts, Saguaro formulated a response outlining the National Environmental Policy Act review process in this proceeding and provided the information Saguaro believes the State Department indicated it needed to complete its review of Saguaro's Presidential Permit. The email and corresponding attachment can be found at Attachment 1. As mentioned in Attachment 1, Saguaro is available to answer any further questions from the State Department.

³ See *Sierra Club v. FERC*, 827 F.3d 36, 46-47 (D.C. Cir. 2016) (the Department of Energy's "independent decision to allow exports—a decision over which the Commission has no regulatory authority—breaks the NEPA causal chain and absolves the Commission of responsibility to include in its NEPA analysis considerations that it 'could not act on' and for which it cannot be 'the legally relevant cause.'").

Attachment 1

**Saguaro's November 17, 2023
Email to State Department**

From: Scott, Nicole
Sent: Friday, November 17, 2023 4:56 PM
To: Kotanjyan, Henry <KotanjyanVH@state.gov>
Cc: MaroneyHD@state.gov
Subject: Saguaro Connector Pipeline

Henry,

On behalf of Saguaro Connector Pipeline, L.L.C. ("Saguaro") I am contacting you pursuant to direction from FERC's Division of Pipeline Certificates, Office of Energy Projects ("FERC OEP.") Specifically, on November 13, 2023, FERC OEP directed Saguaro to "coordinate with the State Department to address their information needs to complete their review" of Saguaro's request for a Presidential Permit in FERC docket CP23-29. Since we have not connected by phone or email, I am providing what I anticipate is the information needed by the State Department to complete its review. (Please see attached document)

I intend to provide a copy of this response to FERC OEP on November 20, 2023, per its direction.

Thank you.

Nicole



Nicole Scott
Director, Federal Government Relations
www.oneok.com

Phone: 703-216-6930
Email: nicole.scott@oneok.com



Saguaro
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November 17, 2023

Mr. Henry Kotanjyan
Oil Sector Analysis
Bureau of Energy Resources
United States Department of State
(via email)

Cc: Mr. Hagen Maroney
Deputy Director
Office of Global Change
United States Department of State

Re: Saguaro Connector Pipeline

Dear Mr. Kotanjyan:

On behalf of Saguaro Connector Pipeline, L.L.C. ("Saguaro") I am contacting you pursuant to direction from FERC's Division of Pipeline Certificates, Office of Energy Projects ("FERC OEP.") Specifically, on November 13, 2023, FERC OEP directed Saguaro to "coordinate with the State Department to address their information needs to complete their review" of Saguaro's request for a Presidential Permit in FERC docket CP23-29.¹ Since we have not connected by phone or email, I am providing what I anticipate is the information needed by the State Department to complete its review. I intend to provide a copy of this response to FERC OEP on November 20, 2023, per its direction.

Background

The Federal Energy Regulatory Commission ("FERC") is the federal agency responsible for evaluating applications for section 3 authorization under the Natural Gas Act ("NGA") to site, construct, operate, or modify facilities to be used for the export of natural gas from the United States to a foreign country, and for Presidential Permits to construct, operate, maintain, or connect natural gas pipeline facilities at the border between the United States and Mexico. The construction, operation, and maintenance of such facilities at the border between the United States

¹ Data Request of FERC, Docket No. CP23-29-000 at 1 (Nov. 13, 2023) ("Nov. 13th Data Request").

and Mexico are subject to a Presidential Permit under Executive Order 10485² and section 3(a) of the NGA, as both are implemented by Part 153 of the Commission's regulations.³

Under section 3 of the NGA the Department of Energy ("DOE") is the agency responsible for authorizing exports of domestically produced natural gas to foreign countries. Therefore, NGA Section 3 also requires prior approval from the DOE for the actual export of natural gas to a foreign country, i.e., the transportation of natural gas through cross-border facilities.⁴ To be clear, DOE's authorization is solely with respect to the export of natural gas and does not extend to authorization over siting, construction, and operation of the export facilities.⁵

In its application in this proceeding, Saguaro is only requesting authorization to site, construct, connect, operate, and maintain certain natural gas pipeline facilities extending approximately 1,000 feet at the international border for the export of natural gas ("Border Facilities"). Because the Border Facilities are located at the International Boundary and will be made available to shippers seeking to export and/or import gas between the United States and Mexico, Saguaro is required to obtain section 3 authorization under the NGA from FERC and a Presidential Permit pursuant to Executive Order No. 10485, for the Border Facilities. However, FERC's authority under NGA section 3 is restricted to that delegated by the Secretary of Energy and is strictly limited "to the point of import/ exportation."⁶ Pursuant to a 2006 delegation order, the Commission has been granted only limited delegated authority to approve the construction, operation and siting "of particular facilities," and with respect to natural gas that involves the construction of new domestic facilities, "the place of entry for imports or exit for exports."⁷ In other words, FERC's NGA section 3 jurisdiction only extends to the Border Facilities, i.e. the 1,000 feet of pipeline at the site of exportation at the border.

Because Saguaro will not hold title to any of the gas that would be transported through the Border Facilities, it does not need to obtain NGA Section 3 authorization from the DOE for the

² Exec. Order No. 10485, 3 C.F.R. § 970 (1949-1953) *amended by* Exec. Order No. 12038, 3 C.F.R. § 136 (1978).

³ 18 C.F.R. §§ 153.4 - .17.

⁴ 15 U.S.C. § 717b(a).

⁵ *See, e.g., Sierra Club v. FERC*, 827 F.3d 36, 40 (D.C. Cir. 2016).

⁶ *Western Gas Interstate Co.*, 59 FERC ¶ 61,022 at 61,048 (1992); *See Southern LNG, Inc.*, 131 FERC ¶ 61,155, at P 15 n.17 (2010) (stating that "only a small segment of the pipeline close to the border is deemed to be the import or export facility for which section 3 authorization is necessary").

⁷ Secretary of Energy Delegation Order No. S1-DEL-FERC-2006, section 1.21(A) (2006) (Delegating the Commission authority to "[a]pprove or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports").

export itself.⁸ Mexico Pacific Limited LLC (“MPL”), a potential customer transporting gas across the Border Facilities, has submitted an application with the DOE to obtain authorization to export gas between the United States and Mexico,⁹ and MPL has stated that it may use the Border Facilities to export natural gas, if such facilities are constructed.¹⁰

In sum, FERC OEP’s November 13th request for Saguaro to coordinate with the State Department correctly recognized the jurisdictional limits of Saguaro’s request, and that the scope of the proceeding before FERC for a Presidential Permit under Executive Order No. 10485¹¹ and authorization under section 3 of the Natural Gas Act,¹² for the sole purpose of constructing, operating, maintaining, and connecting in Hudspeth County, Texas 1,000 feet of underground pipeline at the international border of the United States and Mexico. The proceeding before FERC does not involve the import or export or transportation of natural gas. Only the Department of Energy has jurisdiction to authorize the import or export of natural gas.¹³

FERC’S NEPA Review Is Jurisdictionally Limited to the Border Facilities

The National Environmental Policy Act (“NEPA”)¹⁴ and FERC precedent authorize FERC only to evaluate the environmental effects of the Border Facilities, because NEPA requires a federal agency to evaluate the relevant environmental effects of the proposed federal project or action that is before the agency for approval.¹⁵ FERC is the lead agency for review of the Border Facilities in accordance with NEPA.¹⁶ On February 3, 2023, FERC issued a Notice of Scoping

⁸ Application for Natural Gas Act section 3 Authorization and Presidential Permit of Saguaro Connector Pipeline, L.L.C., at 9, Docket No. CP23-29-000 at 9 (Dec. 20, 2022).

⁹ Application of Mexico Pacific Limited LLC U.S. Dep’t of Energy, Docket No. 22-167-LNG.

¹⁰ Motion of Mexico Pacific Limited LLC For Leave to Submit Reply Comments, Docket No. CP23-29-000, at 5-6 (Mar. 15, 2023).

¹¹ Nov. 13th Data Request at 1; *See also* Exec. Order No. 10485, 3 C.F.R. § 970 (1949-1953) *amended by* Exec. Order No. 12038, 3 C.F.R. § 136 (1978).

¹² 15 U.S.C. § 717b.

¹³ The 1977 Department of Energy Organization Act assigned the Secretary of Energy exclusive authority over the regulation of exports and imports of natural gas except to the extent delegated by the Secretary to the Commission. *See Department of Energy Organization Act*, Pub. Law. 95-91, section 402(f), 91 Stat. 565 (“No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.”).

¹⁴ 42 U.S.C. § 4321.

¹⁵ 42 U.S.C. § 4332(2)(C).

¹⁶ Notice of Scoping Period Requesting Comments on Environmental Issues, Docket No. CP23-29-000 at 5 (Feb. 3, 2023) (“[T]he Commission is asking agencies with jurisdiction

Period Requesting Comments on Environmental Issues for the Proposed Border Facilities Project. After receiving comments from a variety of sources, on March 15, 2023, FERC issued its Notice of Schedule for the Preparation of an Environmental Assessment for the Border Facilities Project. The schedule provided for issuance of the environmental assessment (“EA”) on August 25, 2023, and confirmed the 90-day Federal Authorization Decision Deadline of November 23, 2023. Finally, on August 25, 2023, the Commission staff issued an EA of the Border Facilities and provided its analysis of the potential environmental effects of the construction and operation of the 1,000 feet of pipeline and temporary workspaces.¹⁷

The State Department’s November 8, 2023, request is seeking a lifecycle analysis of upstream and downstream GHG emissions;¹⁸ however, as FERC noted in its November 13th data request to Saguaro and consistent with court precedent, “[NEPA] does not require the Commission to consider the upstream or downstream GHG emissions that may be indirect effects of the export itself.”¹⁹ In *Sierra Club v. United States Department of Energy*, the petitioners challenged the Commission’s section 3 authorization for the Freeport LNG terminal arguing that the Commission’s NEPA analysis was insufficient because it failed to (i) consider the indirect effects of a possible increase in domestic natural gas production being induced by the projects and (ii) analyze the cumulative environmental effects of the projects with the many proposed export projects across the country.²⁰ The D.C. Circuit held that NEPA obligates the Commission to factor in the direct and indirect environmental effects of the *construction and operation* of the export facility that are “reasonably foreseeable,” however the Commission does not have to “examine everything for which the Projects could conceivably be a but-for-cause.”²¹ The D.C. Circuit further confirmed that the Commission’s “NEPA analysis did not have to address the indirect effects of the anticipated *export* of natural gas.”²² The authority to authorize natural gas exports rests with the DOE, and the DOE’s “independent decision to allow exports—a decision over which the Commission has no regulatory authority—breaks the NEPA causal chain and absolves the Commission of responsibility to include in its NEPA analysis considerations that it ‘could not act on’ and for which it cannot be ‘the legally relevant cause.’”²³

by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.”).

¹⁷ EA at 4.

¹⁸ Memorandum of FERC, Docket No. CP23-29-000 (Nov. 9, 2023).

¹⁹ November 13, 2023, Data Request at 1; *see Sierra Club v. FERC*, 827 F.3d 36, 46-47 (D.C. Cir. 2016) (“*Freeport*”); *see also Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (“*Sabal Trail*”) (discussing *Freeport*).

²⁰ *Freeport* at 42-43.

²¹ *Freeport* at 46.

²² *Freeport* at 47.

²³ *See Sabal Trail* at 1382 (citing *Freeport* at 47-48).

Given the scope of the proceeding and the jurisdictional limitations, FERC satisfied its “hard look” requirement under NEPA by evaluating the GHG emissions resulting from the construction and operation of the Border Facilities.²⁴

State Department’s Role in Reviewing Saguaro’s Application

“When gas pipeline facilities are to be constructed at the border of the U.S. and a foreign country, considerations of foreign policy and national security are involved,” FERC is required under Executive Order No. 10485 to seek the input of “the Secretaries of State and Defense [to] address these considerations.”²⁵ In short, Executive Order 10485 requires FERC to obtain the concurrence of the Secretary of State who will consider foreign policy aspects of the application.²⁶

In its request to FERC, the State Department cited to a September 21, 2023 *Fact Sheet: Biden Harris Administration Announces New Action to Reduce Greenhouse Gas Emissions and Combat the Climate Crisis* as justification for needing a full lifecycle GHG analysis for Saguaro as part of your review of the application prior to providing your concurrence.²⁷ However, the guidance directs agencies to consider the Social Cost of GHG emissions in their environmental reviews pursuant to their obligations under NEPA. Under the guidance, the President urges agencies during their environmental review to “consider the foreseeable effects of those proposals.”²⁸ As discussed above, the Commission is not required to consider the upstream or downstream GHG emissions that may be effects of the export itself. The Commission and court precedent are clear that DOE’s authorizations and FERC’s review of the Project are not “connected,” thus FERC is not required to consider indirect emissions. The Commission has

²⁴ The EA concluded that “Project construction would result in 7,572 tons of CO₂e emissions” and “there would be no quantifiable operational emissions resulting from the Project as there would be no aboveground facilities.” EA at 57.

²⁵ *Yukon Pacific Corp.*, 39 FERC ¶ 61,216, at 61,760. Executive Order No. 10485, section 1(a)(3) provides that FERC may issue a Presidential Permit “[u]pon finding the issuance of the permit to be consistent with the public interest, and, after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense thereon, to issue to the applicant, as appropriate, a permit for such construction, operation, maintenance, or connection.”

²⁶ Letter of Department of Defense, Docket No. CP23-29-000 (Sept. 12, 2023) (“We have reviewed the application and draft Presidential Permit and have no national security concerns with the project crossing the international border. As such, DoD does not object to the issuance of the Presidential Permit to Saguaro.”).

²⁷ *Fact Sheet: Biden Harris Administration Announces New Action to Reduce Greenhouse Gas Emissions and Combat the Climate Crisis*, The White House, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/21/fact-sheet-biden-harris-administration-announces-new-actions-to-reduce-greenhouse-gas-emissions-and-combat-the-climate-crisis/> (Sept. 21, 2023).

²⁸ *Id.*

already considered all “foreseeable effects” of the construction and operation of the Border Facilities in the EA. The Commission specifically addressed climate change and included a disclosure of the social cost of GHGs. See EA at pp. 55-60.

FERC, as the federal agency responsible for permitting the Border Facilities, serves as lead agency in the NEPA review process, and all other agencies follow FERC’s lead and serve as cooperating agencies in that process.²⁹ As discussed above, FERC satisfied its NEPA review by issuing an EA in which it evaluated the GHG emissions from the construction and operation of the Border Facilities. Because FERC’s jurisdiction is limited to just the construction and operation of facilities and does not extend to the actual molecules of gas, courts have held that a lifecycle GHG emissions analysis is beyond the scope of a FERC proceeding.

With regard to authorization to export natural gas under NGA section 3 (as distinct from the construction and operation of facilities,) DOE serves as the lead agency in NEPA review and conducts its own NEPA analysis on the proposed exports. Because DOE’s jurisdiction covers the actual molecules of gas and is not limited to just the construction and operation of facilities, the DOE supplemented its environmental review of the export application in *Sierra Club v. United States Department of Energy*³⁰ with a Life Cycle Analysis like the one mentioned in the State Department’s November 8, 2023, email to FERC staff. The DOE has continued to include the Life Cycle Analysis, described more fully below, in the record of DOE export proceedings. Thus, to the extent that the State Department would like this information, MPL has provided information on the operational GHG performance of the proposed MPL facility³¹ to assist the DOE in its development of an EA in Docket No. 22-167-LNG, which is scheduled to be issued on November 17, 2023.³²

²⁹ The NGA designates the Commission to be “the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act. 15 U.S.C. §717n(b)(1). As a result, the Department of Energy participates in the NEPA process only as a “cooperating agency,” while the Commission is ultimately responsible for “supervis[ing] the preparation of [the] environmental impact statement,” *id.* § 1501.5; *see also* the Council on Environmental Quality regulations addressing cooperating agency responsibilities at 40 C.F.R. § 1501.8.

³⁰ *Sierra Club v. U.S. Dep’ of Energy*, 867 F.3d 189, 195 (D.C. Cir. 2017) (“*Freeport II*”).

³¹ MPL Response to Informational Questions, Docket No. 22-167-LNG (Nov. 9, 2023).

³² It is worth mentioning that unlike many Section 3 applications in which the applicant is constructing the natural gas export infrastructure *and* the LNG terminal, *see, e.g. Freeport II*, Saguaro is only constructing facilities that will interconnect with a proposed Mexican pipeline with a downstream connection to an LNG terminal owned by an unrelated entity. As a result, Saguaro has no information about how the natural gas flowing across its facilities may be used after crossing the border.

DOE is the Responsible Agency for Analyzing Potential Lifecycle GHG Emissions

In 2014, during President Obama’s administration, the DOE published a life cycle GHG report (“2014 Report”) prepared by DOE’s National Energy Technology Laboratory (“NETL”).³³ The 2014 Report was commissioned by the DOE to calculate lifecycle – from wellhead to power plant - GHG emissions of U.S. LNG exported for use in electric power generation in Europe and Asia, as compared to alternative energy supplies.³⁴ The 2014 Report concluded that exporting U.S. LNG to produce power in Europe and Asia would not increase GHG emissions compared to regional coal power, and that potential differences in GHG emissions relating to the use of U.S. LNG as opposed to alternative sources of gas are largely dependent on transport distance but are “indeterminate” due to “uncertainty in the underlying modeled data.”³⁵ In 2019, DOE published NETL’s update to the 2014 Report.³⁶ The DOE incorporates both environmental study reports into its environmental review under NEPA when making decisions on applications under NGA Section 3. The courts have upheld the DOE’s use of these reports in their evaluation of environmental impacts stemming from export-driven natural gas production and the potential downstream GHG emissions from the transport of U.S. natural gas abroad.³⁷

Pursuant to its NEPA obligations and Executive Order No. 14008, *Tackling the Climate Crisis at Home and Abroad*,³⁸ the DOE has determined that it is appropriate for DOE to evaluate the potential environmental impacts, including GHG emissions, of exporting natural gas from the

³³ See U.S. Dep’t of Energy, Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States, 79 Fed. Reg. 48,132 (Aug. 15, 2014); see also Office of Fossil Energy & Carbon Mgmt., Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States, U.S. Dep’t of Energy, <https://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf>.

³⁴ *Id.* at 1-2.

³⁵ *Id.* at 9, 18.

³⁶ See, e.g., Nat’l Energy Tech. Lab., Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update (DOE/NETL-2019/2041) (Sept. 12, 2019), <https://www.energy.gov/sites/prod/files/2019/09/f66/2019%20NETL%20LCA-GHG%20Report.pdf>; U.S. Dep’t of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States; Notice of Availability of Report Entitled Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update and Request for Comments, 84 Fed. Reg. 49,278 (Sept. 19, 2019).

³⁷ See *Freeport II*, 867 F.3d at 201; see also *Freeport* at 45 (finding petitioners arguments regarding DOE’s NEPA review of LNG export proceedings moot because the DOE issued two informational reports that “evaluated specific environmental aspects of the LNG production and export chain.”).

³⁸ Executive Order 14008, 86 Fed. Reg. 7619 (Feb. 1, 2021).

MPL facility to foreign countries.³⁹ DOE has indicated its EA will likely include analysis of emissions associated with (1) natural gas production in the U.S.; (2) cross-border pipelines like the proposed Border Facilities, including any emissions analysis that may have been conducted by the FERC for those cross-border pipelines; (3) construction and operation of MPL's proposed LNG production and offtake facility and related facilities, including any emissions analysis that Mexico may have conducted for the facilities; and (4) re-exporting U.S.-sourced LNG from Mexico. DOE's EA also will look at the "global nature of GHG emissions associated with re-exporting U.S.-sourced LNG from Mexico from a life cycle perspective, using DOE's two life cycle GHG reports already in the record for [DOE's] proceeding."⁴⁰

As noted above, Saguaro anticipates that the GHG lifecycle analysis requested from FERC by the State Department will be available to the Department of State from its sister agency on November 17, 2023, and, in conjunction with the analysis of the Border Facilities previously provided by FERC, will represent a picture of the GHG's related to the application before FERC and the State Department, as well as the application pending before the Department of Energy. Saguaro is eager to begin its work on this important project, and is available to answer any further questions you may have.

Sincerely,



Nicole Scott

Director Government Relations

³⁹ Notice of Environmental Assessment, Docket No. 22-167-LNG (Oct. 23, 2023).

⁴⁰ *Id.* at 6. Both the 2014 and 2019 Report are in the record of the DOE proceeding in Docket No. 22-167-LNG.