

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Rio Grande LNG, LLC

Docket No. CP16-454

Rio Bravo Pipeline Co., LLC

Docket Nos. CP16-455, CP20-481

**SOUTH TEXAS ENVIRONMENTAL JUSTICE NETWORK, VECINOS PARA
EL BIENESTAR DE LA COMUNIDAD COSTERA, SIERRA CLUB, AND
CITY OF PORT ISABEL REQUEST FOR REHEARING OF
REAUTHORIZATION ORDER**

South Texas Environmental Justice Network, Vecinos para el Bienestar de la Comunidad Costera, Sierra Club, and the City of Port Isabel (collectively, “Intervenors”) submit the following request for rehearing of the Federal Energy Regulatory Commission’s (“FERC”) August 29, 2025, *Order on Remand*, 192 FERC ¶ 61,198, Accession No. 20250829-3061 (the “2025 Remand Order”). In this Order, FERC turns a willful blind eye to the fact that Rio Grande LNG’s parent company continues to tell investors and the public that it will pursue carbon capture and sequestration as part of the Rio Grande LNG terminal. FERC also improperly rejects evidence demonstrating that air pollution from the Rio Grande LNG terminal and Rio Bravo pipelines (together, the “projects”) will cause serious, foreseeable harm to surrounding communities, which are predominantly already-disadvantaged environmental justice communities. For these and other reasons, FERC has once again failed to cure the deficiencies identified by the D.C. Circuit.

Once again, if FERC were to take the required hard look at the project's adverse impacts, FERC would recognize that the project's harms outweigh any possible public benefit, and the projects should be denied.

CONCISE STATEMENT OF ISSUES

1. FERC's analysis of carbon capture and sequestration (CCS) was arbitrary. Much of this analysis was rendered inadequate by FERC's failure to take reasonable steps to ask Rio Grande LNG and its parent NextDecade about their past, present, and future plans and their actual project requirements. *Birckhead v. FERC*, 925 F.3d 510, 520 (D.C. Cir. 2019).

1.1. FERC argues that Rio Grande has stated "that it will no longer pursue a CCS system at the LNG terminal," but FERC does not cite any such statement. Relying on a statement Rio Grande did not make is arbitrary. FERC's other reasons for not considering Rio Grande's statements that it *is* pursuing CCS were arbitrary, and FERC acted arbitrarily by failing to investigate those statements. *Birckhead*, 925 F.3d at 520.

1.2. FERC's conclusion that CCS is no longer a connected action is arbitrary. The only fact FERC cites distinguishing *Port Isabel* is the fact that Rio Grande has withdrawn its application. But while concurrently-pending applications "generally" indicate that actions are connected, such temporal overlap is not strictly required. Especially where Rio Grande continues to publicly state

that it is pursuing the CCS project that was the subject of the withdrawn application, the potentially-strategic withdrawal of that application is not determinative, and FERC required additional analysis. *City of Port Isabel v. FERC*, 111 F.4th 1198, 1212-13 (D.C. Cir. 2024) (“*Port Isabel I*”), modified on reh’g in part, 130 F.4th 1034 (D.C. Cir. 2025) (“*Port Isabel II*”).

- 1.3. FERC failed to take a hard look at CCS as an alternative. On issues such as location of sequestration, timing, and costs, FERC makes assumption that differ from Rio Grande’s prior representations. FERC acted arbitrarily by failing to investigate the bases for Rio Grande’s conclusions, or to otherwise ask questions of Rio Grande. *Birckhead*, 925 F.3d at 520. FERC’s speculation about potential technical limitations is unsupported; moreover, throughout the CCS alternatives discussion but especially on this issue, FERC improperly ignores or discounts the possibility of sequestering only pretreatment emissions. FERC’s discussion of the environmental impacts of CCS does not support specifics about any impacts, and ignores “an important aspect of the problem,” *State Farm*, 463 U.S. at 43, which is the point of CCS: to provide a benefit by reducing greenhouse gas emissions. FERC’s conclusion that it could dismiss CCS as an alternative because of FERC’s lack of authority over CO₂ transport and sequestration infrastructure arbitrarily ignores FERC’s authority to condition approvals, and fails to distinguish FERC’s treatment of other alternatives, like electrifying pipeline

compressor stations, which also require non-FERC-jurisdictional infrastructure.

2. FERC arbitrarily refused to consider Rio Grande's publicly announced expansion plans.

2.1. Rio Grande's plan to construct a sixth train within the levy, as was proposed as part of Rio Grande's original design, is a connected action even though an application for this development has not yet been filed. *Port Isabel I*, 111 F.4th at 1212.

2.2. Alternatively, the sixth train is a reasonably foreseeable future project that needed to be considered in the cumulative impacts inquiry.

2.3. FERC was also required to consider Rio Grande's plans to increase the output of the previously-approved five trains from 5.4 to 6 mtpa, either as a connected action or in the cumulative effects analysis.

3. FERC's analysis of the terminal's air pollution violated both NEPA and the NGA.

3.1. FERC's conclusion that air modeling, which showed that the project would not cause or contribute to a NAAQS violation (except for annual PM_{2.5} near the project site), demonstrated a lack of health impacts was arbitrary. The NAAQS are not set at levels that avoids all harm. *Am. Trucking Ass'ns v. EPA*, 283 F.3d 355, 360 (D.C. Cir. 2002). EPA has explicitly and repeatedly predicted health impacts that occur at air pollution levels that do not violate the NAAQS, and EPA has determined that it is appropriate to consider harms arising from pollution below the NAAQS when making decisions outside the Clean Air Act's PSD program. *See, e.g., EPA, Supplemental Finding That It Is Appropriate and Necessary To Regulate Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units*, 81 Fed. Reg. 24,420-01, 24,427, 24,440 (Apr. 25, 2016). EPA has similarly determined that the SILs do not represent a level below which health impacts do not occur, or below which impacts are statistically insignificant. *Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards*, 88 Fed. Reg. 9336-01, 9,372 (Feb. 13, 2023). EPA's COBRA tool provides a method to evaluate actual health impacts, and COBRA's evidence of specific health impacts here distinguishes prior cases that have accepted use of NAAQS in NEPA analysis.

3.2. FERC cannot conclude that, insofar as there will be health impacts from pollution that does not cause or contribute to a NAAQS violation, that these impacts are “acceptable” because pollution does not exceed the NAAQS. EPA’s policy judgment about what to “accept” for purposes of the Clean Air Act’s PSD program does not relieve FERC of the obligation to make an independent judgment about what significance or weight to give to adverse health impacts in FERC’s Natural Gas Act decisionmaking. *Sierra Club v. FERC*, 867 F.3d 1357, 1375 (D.C. Cir. 2017) (“*Sabal Trail*”).

3.3. The record therefore does not support FERC’s conclusion that the NAAQS cause-and-contribute analysis “superseded” the COBRA analysis. FERC’s other fleeting arguments for not using the COBRA analysis are unsupported.

4. FERC’s analysis of air pollution from the Rio Bravo pipeline compressor station was substantively and procedurally flawed.

4.1. Substantively, the analysis arbitrarily failed to use the most recent baseline data, *Port Isabel I* held, 111 F.4th at 1215, which shows that the area is already in exceedance of the annual PM2.5 NAAQS. FERC’s analysis also fails to explain other changes or inconsistencies between FERC’s prior analyses and the two new analyses submitted by Rio Bravo, including assertions of changes in emission rates that do not correspond with changes

in total emissions, and apparently paradoxical conclusions about higher emission rates leading to lower air quality impacts.

4.2. Procedurally, FERC acted arbitrarily by relying on an analysis that was not presented in the draft SEIS, and which the public did not have an adequate opportunity to comment on. *Port Isabel I* held, 111 F.4th at 1207-11. FERC was required to present this new analysis in a draft SEIS notwithstanding recent changes in Council on Environmental Quality and FERC regulations. FERC's effort to change its own regulation without notice and comment was arbitrary. 5 U.S.C. § 553. Even if FERC is no longer bound by the requirements of the former CEQ regulations, FERC's decision not depart from the opinion and guidance provided by those regulation was unexplained and arbitrary. Moreover, the NEPA statute itself imposes a requirement to provide for adequate public participation, as confirmed by prior judicial interpretation, e.g. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989), and by Congressional acquiescence, e.g., *Schism v. US*, 316 F.3d 1259, 1289, 1295–96 (Fed. Cir. 2002).

5. Given that Rio Grande still has not provided the air mitigation plan contemplated in FERC's 2023 Remand Order, it is arbitrary for FERC to rely on such a plan.

6. FERC has not demonstrated that the projects will provide benefits that outweigh the foreseeable harms to the public that will result from the projects' air pollution. *New Jersey Conservation Found. v. FERC*, 111 F.4th 42, 62 (D.C. Cir. 2024).

ARGUMENT

I. FERC'S ANALYSIS OF CARBON CAPTURE AND SEQUESTRATION WAS ARBITRARY

A. FERC's Refusal to Investigate or Consider NextDecade's Own Statements and Plans Was Arbitrary

The 2025 Remand Order's discussion of carbon capture and sequestration (CCS) begins by falsely asserting that Rio Grande has stated that it will not pursue CCS, a statement Rio Grande has conspicuously refused to make. FERC mischaracterizes Intervenor's as "argu[ing] that the Commission must require Rio Grande to reconcile its statement that it will no longer pursue a CCS system at the LNG terminal with NextDecade's financial documents." 2025 Remand Order P30. But Rio Grande *has never stated* that "it will no longer pursue a CCS system at the LNG terminal." FERC provides no citation for any such purported statement. The fact that Rio Grande has never made such a statement was a key point in the Intervenor's comment on the draft supplemental EIS ("DSEIS").¹ There,

¹ Comments of Sierra Club, et al. on the draft Supplemental Environmental Impact Statement re the Rio Grande LNG Terminal and Rio Bravo Pipeline Project, Docket No. CP16-454, Accession No. 20250519-5198, at 16-18 (May 19, 2025) ("DSEIS Comment").

Intervenors juxtaposed seven other notices of withdrawal of FERC applications, all of which explicitly stated that the developers would no longer pursue the project at issue, with Rio Grande's notice of withdrawal of its CCS application, which merely states that "the [CCS] Project is not sufficiently developed to allow Commission review to continue."² FERC has not addressed this glaring distinction in the notices of withdrawal of other projects. Moreover, despite Rio Grande's unusual, if not unique, language about its CCS project not being "sufficiently developed" for review, as opposed to other projects where development was, *e.g.*, "ceased," "discontinue[d]," or "cancell[ed],"³ nothing in the record indicates that, after *Port Isabel*, FERC asked Rio Grande to confirm whether it did or did not intend to ultimately "develop" the CCS project. Indeed, even in Rio Grande's response to Intervenors' comments on the DSEIS (comments in which Intervenors explicitly pointed to the fact that Rio Grande has not stated that it is not pursuing CCS), Rio Grande neither asserted that it was *not* planning to pursue or implement CCS for the Rio Grande terminal nor disputed that it *was* doing so.⁴ FERC therefore arbitrarily failed to even

² Rio Grande LNG, LLC Withdrawal of Application, Docket No. CP22-17-000, Accession No. 20240820-5125, at 1 (Aug. 20, 2024).

³ DSEIS Comment, *supra* note 1, at 17-18 (collecting examples from other withdrawals, including *PennEast Pipeline Co*, 177 FERC ¶ 61,197 P4 (Dec. 16, 2021), *Adelphia Gateway*, Withdrawal of Prior Notice, CP21-14, Accession 20211012-5713, at 2 (Oct. 12, 2021), and *Modification of Request for Extension of Time of Atlantic Coast Pipeline, LLC, et. al. under CP15-554 et al.*, Accession 20200710-5088 (July 10, 2020).

⁴ Reply Comments of Rio Grande LNG, LLC to Comments on the DSEIS, Docket No. CP16-454, Accession No. 20250603-5142 (June 3, 2025).

attempt to collect basic information necessary for FERC's analysis.⁵ Insofar as FERC is relying on the mistaken belief that Rio Grande *has* stated that "it will no longer pursue a CCS system at the LNG terminal," FERC's conclusion is contrary to the record and arbitrary.

FERC then baselessly speculates that even though NextDecade's SEC filings state a plan to pursue CCS, perhaps that plan is for some facility other than the Rio Grande terminal. 2025 Remand Order P31. This is absurd. The SEC filings do not identify any other facility NextDecade is engaged with that could be the alternative site for these plans. Moreover, NextDecade's other corporate materials (also attached to the DSEIS comment) explicitly and repeatedly state that NextDecade is developing a "Potential CCS project *at the Rio Grande Facility*."⁶ FERC's baseless speculation that Rio Grande and NextDecade's CCS plans might *not* pertain to the Rio Grande terminal is arbitrary because it is contrary to the evidence in the record. If there *was* any doubt as to whether NextDecade's CCS plans pertained to the only facility NextDecade is developing, then the only reasonable course of action would

⁵ *Birckhead v. FERC*, 925 F.3d 510, 520 (D.C. Cir. 2019).

⁶ See NextDecade May 2025 Corporate Presentation at 3 (emphasis added), filed as an attachment to Intervenor's DSEIS Comment, *supra* note 1. Accord NextDecade, Company Update, September 2025, at 24, 29; available at <https://investors.next-decade.com/static-files/549d4f32-7dfe-43f1-ba55-f62353f44d35> (last accessed Sept. 15, 2025) and attached as "NextDecade Sept. 2025 Company Update." See also NextDecade, "Rio Grande LNG Fast Facts" (Sept. 9, 2025), available at <https://nextdecadelng.wpenginepowered.com/wp-content/uploads/2025/01/ND-RGLNG-Fast-Facts-9-9-2025.pdf> (last accessed Sept. 15, 2025) and attached as "NextDecade Fast Facts" (identifying a "a potential end-to-end Carbon Capture and Storage (CCS) project" as part of the "Rio Grande LNG" project).

have been for FERC to ask Rio Grande to resolve those doubts. *Birckhead v. FERC*, 925 F.3d 510, 520 (D.C. Cir. 2019). However, nothing in the docket indicates that FERC ever asked NextDecade whether its SEC filings' statements about carbon capture pertained to the Rio Grande terminal.

The fact that the SEC filings are “cautionary” and “forward-looking” also does not justify FERC’s refusal to consider these filings or to ask NextDecade about them, *contra* 2025 Remand Order P31. These forward-looking statements may not be guarantees, but they are not wild speculation either. The SEC filings are certified as accurate and complete by NextDecade’s Principal Executive Officer and Principal Financial Officer.⁷ FERC cannot limit itself to certainties: FERC must engage in “reasonable forecasting and speculation.”⁸ All statements about future actions are inherently somewhat uncertain: until recently, Rio Grande had not yet reached a final investment decision on the fourth of the approved five liquefaction trains, and Rio Grande has not yet decided whether to actually move forward with the fifth.⁹

A more fundamental issue is that FERC has never asked Rio Grande to reconcile (1) Rio Grande’s 2021 statement that the CCS proposal was sufficiently developed that FERC should promptly reapprove the project by relying on the GHG

⁷ See, e.g., 17 C.F.R. §§ 240.13a-14.

⁸ *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014).

⁹ NextDecade Sept. 2025 Company Update.

emission reductions that CCS would provide with (2) Rio Grande's subsequent statements that the CCS project was not sufficiently developed for FERC to evaluate it. To outside observers, it appears that these statements cannot both be true, complete, and correct. If there was a basis for the Rio Grande's 2021 representations about the readiness of CCS, it is arbitrary for FERC to rely on Rio Grande's subsequent statements without requiring Rio Grande to explain what changed. If there was not a basis for Rio Grande's 2021 representations, then it is arbitrary for FERC to credulously accept the representations of an applicant who makes statements it cannot support.

Finally, although not relied upon in the 2025 Remand Order, we note that Rio Grande's arguments about how Intervenor's did not protest the withdrawal of the CCS application are irrelevant.¹⁰ The issue is that, even *after* that withdrawal, Rio Grande and NextDecade have continued to state, in official and unofficial contexts, that they are pursuing CCS at the Rio Grande terminal. These formally announced plans and efforts are pertinent to the issues before FERC on remand in these dockets, regardless of whether the separate CCS application is formally pending.

For numerous reasons, it was arbitrary for FERC to decline to investigate Rio Grande's continuing, explicit, and formal public statements that it was continuing to 'pursue' CCS for the Rio Grande project. *See Birckhead*, 925 F.3d at

¹⁰ Rio Grande Response to DSEIS Comments, Accession No. 20250603-5142, *supra* note 4, at 8.

520. In addition, by failing to consider Rio Grande’s own plans and determinations regarding CCS, FERC failed to consider an important part of the problem. *Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

B. Because Rio Grande Is Still Pursuing CCS, The CCS Project Is Still A Connected Action

Port Isabel I held that Rio Grande’s CCS proposal was a connected action, which FERC had to analyze before reauthorizing the Rio Grande LNG terminal. The court suggested that the connected action issue would become moot “if Rio Grande decides on remand that it does not wish to proceed with the CCS proposal.” *City of Port Isabel v. FERC*, 111 F.4th 1198, 1212-13 (D.C. Cir. 2024) (“*Port Isabel I*”), *modified on reh’g in part*, 130 F.4th 1034 (D.C. Cir. 2025) (“*Port Isabel II*”). But as explained above, Rio Grande has not announced such a decision. To the contrary, Rio Grande’s SEC filings and public statements still insist that Rio Grande is pursuing CCS for the Rio Grande terminal site. If Rio Grande were to explicitly state that it no longer intends to pursue CCS for the Rio Grande terminal, that might be pertinent to the connected action inquiry, but Rio Grande has conspicuously avoided making such a statement.

Absent such a statement from Rio Grande, the only changed fact that FERC argues distinguishes *Port Isabel I*’s connected action holding is that now, there is a purported lack of “temporal overlap” between the CCS and terminal projects. 2025 Remand Order P32. In evaluating whether actions are connected, courts “generally” ask whether both projects are “either under construction” or “pending before the

Commission” at the same time. *Port Isabel I*, 111 F.4th at 1213. FERC argues that neither condition is presently satisfied here. 2025 Remand Order P32. But the fact that courts “generally” look to these factors does not mean that either is strictly required. The fact still remains that “Rio Grande submitted its CCS proposal specifically in response to [the D.C. Circuit’s] 2021 remand,” *Port Isabel I*, 111 F.4th at 1213, and that Rio Grande continues to publicly state that it is pursuing CCS as part of the Rio Grande LNG project. Thus, there is a clear temporal overlap in the projects’ conception and development, and there was a temporal overlap in their presentation to FERC, even though Rio Grande has acted to terminate that overlap now. Applicants cannot be permitted to evade a comprehensive review of their projects by strategically timing their filings. Where there is a possibility of such strategic maneuvering, it is inappropriate to strictly require factors that courts have only “generally” looked to. This is yet another reason why FERC was required to seek information from Rio Grande about why Rio Grande withdrew its application and what Rio Grande’s plans for CCS are despite this withdrawal. It is remarkable that this withdrawal, like the CCS proposal, came on the heels of a D.C. Circuit ruling, rather than in apparent response to any other development.

Aside from the purported change in temporal overlap, there have been no other factual changes that could distinguish *Port Isabel*’s connected action holding, nor does FERC argue anything beyond temporal overlap. A CCS system at the Rio Grande LNG terminal would have no independent utility, *Port Isabel I*, 111 F.4th at 1212, and allowing CCS to be reviewed separately risks creating a segmentation

issue that undercuts FERC's National Environmental Policy Act ("NEPA") analysis and deprives decisionmakers and the public of the complete picture, *id.* *Port Isabel's* holdings on these issues are binding precedent and law of the case. Moreover, both FERC and the applicants are precluded from challenging these aspects of *Port Isabel's* connected action holding now. See *Nat'l Ass'n of Home Builders v. EPA*, 786 F.3d 34, 41 (D.C. Cir. 2015).

C. Regardless of Whether Rio Grande's Plan for CCS Is A Connected Action, FERC Failed to Adequately Address CCS As An Alternative

NEPA requires FERC to take a hard look at the environmental impacts of "technically and economically feasible" alternatives. 42 U.S.C. § 4332(2)(C)(iii). FERC failed to do so with regard to CCS here. FERC did not argue that CCS was technically or economically infeasible, 2025 Remand Order P29, nor would the record have supported such an argument. Instead, FERC cast various unsupported doubts about CCS in an analysis that falls short of a hard look. Most importantly, FERC failed to discuss Rio Grande's own announced plans, and FERC relied on various assumptions about Rio Grande's needs without undertaking any inquiry into the validity of those assumptions. This cursory and uncurious discussion falls short of the rigorous exploration NEPA requires. And because FERC failed to take a hard look at CCS, FERC failed to justify its conclusion not to require any form of CCS as a condition of its authorization of the terminal.

1. FERC Improperly Rejects Rio Grande's Own Plan to Sequester Carbon at A Nearby Site

Much of the supplemental EIS's CCS analysis rests on FERC's assumption that any sequestration would need to use a Class VI injection well that had already

applied for EPA authorization. FSEIS at 3-14. The final SEIS (“FSEIS”) identifies the closest such site as a proposal in Kleberg County, Texas, “about 100 miles away.” *Id.*

This is not what Rio Grande says it plans to do. Rio Grande initially stated that, “given the facility’s proximity to geologic formations optimal for CO₂ sequestration,”¹¹ it would sequester CO₂ at a site within 10 miles of the terminal. Rio Grande later stated that “[a]ll non-jurisdictional infrastructure required for sequestration of CO₂ is expected to reside within Cameron or immediately adjoining counties and will not cross the Texas state line.”¹² Kleberg County does not adjoin Cameron County; it is three counties away.

FERC has not argued that nearby aquifers or geologic formations are not technically suitable for carbon sequestration. FSEIS at 3-12 to 3-16. The SEIS offers no reason to doubt this suitability, or that a permit could be issued for such injection in the areas identified by Rio Grande. EPA, for its part, submitted scoping comments on the CCS application (after Rio Grande had indicated its intent to use a sequestration site nearby) which stated, “[r]egarding the potential Class VI CO₂ injection well location(s),” that Rio Grande would need to submit a Class VI permit

¹¹ Application of Rio Grande LNG, LLC for Limited Amendment to Section 3 Authorization to Incorporate Carbon Capture and Sequestration Systems to Rio Grande LNG Terminal Project, Docket No. CP22-17, Accession No. 20211117-5060, at 9-10 (Nov. 17, 2021) (“CCS Application”).

¹² Rio Grande LNG, LLC Response to May 2, 2022 Environmental Information Request, Docket No. CP22-17, Accession No. 20220520-5127, at page 4 of 29 (May 20, 2022).

application to EPA “for review and approval,” but EPA did not make any comment suggesting that nearby locations were unsuited for such injection, or casting doubt on whether such an application could be approved.¹³ And while the SEIS notes that Texas has applied for primacy, under which it would take over EPA’s administration of the Class VI injection well program, FSEIS at 3-13 n.62, nothing indicates that Texas would be unwilling to grant the necessary authorization.

Admittedly, it is unclear why Rio Grande has not submitted a Class VI permit application package. However, insofar as this uncertainty is pertinent, the only appropriate response would have been for FERC to ask Rio Grande about it. FERC has not done so. Prior to FERC’s suspension of environmental review in the CCS docket (and well before Rio Grande’s withdrawal of the CCS application), FERC did ask Rio Grande for details about the location of sequestration wells and pipeline infrastructure.¹⁴ Rio Grande merely replied that those details would be provided at a future date.¹⁵ However, FERC never asked what Rio Grande was waiting for, *e.g.*, what information or decisions Rio Grande needed before Rio Grande could submit the Class VI application. If Rio Grande were to now contend that sequestration near the project is not technologically or legally viable, FERC would need to require Rio Grande to reconcile that statement with Rio Grande’s

¹³ EPA Scoping Comments, Docket No. CP22-17, Accession No. 20221003-5335, at 5 (Oct 3, 2022).

¹⁴ FERC, Environmental Information Request dated Sept. 30, 2024, question 20 (Accession No. 20240930-3048).

¹⁵ Rio Grande LNG, Response to Environmental Information Request dated Sept. 30, 2024, Accession No. 20241021-5177, at question 20.

prior representations. Again, FERC acts arbitrarily and violates NEPA when it fails to seek out information necessary for its analysis. *Birckhead*, 925 F.3d at 520.

Finally, FERC must require Rio Grande to reconcile its statements (to FERC) that it would be infeasible to use Kleberg or injection wells for which permit applications have been submitted,¹⁶ with Rio Grande's statements (to SEC and the public) that it is nonetheless still pursuing CCS for the Rio Grande terminal. Rio Grande must believe that *some* sequestration options are technically and economically feasible. Alternatively, if Rio Grande actually believes that there is no feasible way to implement CCS at the terminal, it needs to state this explicitly.

2. FERC's Assumption that Timing Might Preclude Sequestration at a Nearby Site Does Not Justify Rejecting This Alternative

FERC's reason for assuming that sequestration would need to occur 100 miles away does not rest on any judgment about technical unsuitability or legal prohibition on the use of nearby sites. Instead, the only reason FERC gives for why sequestration could not occur in the nearby areas that Rio Grande has proposed is FERC's own assumptions about timing. FERC states that sequestration "closer to the Rio Grande LNG terminal" would require "upcoming development of permit applications," but that "for a new site, ... it takes about 2 or 3 years for a Class VI well site to be permitted." FSEIS at 3-14. Rejecting CCS on the basis of this timeframe is arbitrary for two reasons.

¹⁶ Rio Grande LNG, LLC Response to FERC's 09/30/2024 Environmental Information Request re the Rio Grande LNG Project, Docket No. CP16-454, Accession No. 20241021-5177 (Oct. 21, 2024).

First, FERC has not demonstrated that this timeframe would be a problem. Nothing supports the conclusion that waiting 2- to 3-years for permitting nearby Class VI wells renders this option infeasible. Construction of the first authorized Rio Grande liquefaction trains is still underway: it will be some time until the terminal begins operation and any capturable CO₂ emissions are available. Moreover, this 2- to 3-year timeframe must be considered in the context of Rio Grande's 30-year authorization period, as well as the possibility that authorization will be extended beyond that. Even if it is no longer possible to have CCS operational during, say, the first two years of project operation, this does not mean that CCS during the remaining 28 years would not be worthwhile.¹⁷ Moreover, if the timeframe is considered in light of Rio Grande's statements that it will pursue a sixth, and possibly seventh, eighth, ninth, and tenth, liquefaction trains as well, then it is entirely plausible that CCS facilities can be permitted and constructed before many trains enter operation.

Fundamentally, this is another issue where FERC failed to conduct a reasonable investigation and failed to reach an actual conclusion. The SEIS

¹⁷ Even if CCS is retrofitted after commencement of terminal operation, for capturing CO₂ from the pretreatment process, the costs of retrofitting are not significantly higher than the costs of integrating capture into a new build (presumably because the pretreatment process already involves building equipment to produce a high-purity CO₂ stream anyway). National Energy Technology Laboratory, *Cost of Capturing CO₂ from Industrial Sources*, at 66 (July 15, 2022), available at https://www.netl.doe.gov/projects/files/CostofCapturingCO2fromIndustrialSources_071522.pdf, last visited Sept. 18, 2025) (attached).

recommends against requiring CCS based, in part, on the fact that FERC “cannot conclude” that CCS would “meet the project timing needs.” FSEIS at 3-19. FERC did not, and could not, conclude that CCS would *not* meet timing needs. In particular, FERC appears not to have even considered the possibility of CCS coming online sometime after initial project operation. Nor is there any evidence that FERC attempted to formulate its own judgment on this issue—FERC provides no analysis of what the consequences of waiting 2- to 3-years for a Class VI permit would be, or whether that would be a problem. However, while FERC didn’t ask these questions, nothing suggests that these questions are unanswerable. In this context, it would be arbitrary for FERC to conclude that the timing that would be needed for injection well permitting justifies rejecting this alternative.

Second, separate from the fact that FERC has not shown that timing would be a problem, FERC cannot ignore Rio Grande’s role in timing and causing any potential delay. Crediting the SEIS’s statement that “it takes about 2 to 3 years for a Class VI well site to be permitted,” FSEIS at 3-14, if Rio Grande had started this process in 2021 (when Rio Grande applied to FERC for authorization for the CCS project and when Rio Grande argued that CCS was sufficiently certain to occur that FERC should rely on it when reconsidering the terminal on remand from *Vecinos*), the injection well permits would have been issued by now. Rio Grande’s failure to diligently follow through with its own plans cannot be a barrier to FERC evaluating and potentially requiring otherwise feasible mitigation. Or put differently, Rio Grande cannot be allowed to prevent FERC from considering reasonable

alternatives and mitigation, which *Port Isabel I* held should have been considered as part of FERC's post-*Vecinos* remand proceeding starting in 2021, by delaying plans that Rio Grande has announced.

None of this is to suggest that the only lawful course of action would have been for FERC to pause its reconsideration, in response to the *Port Isabel* remand, to wait for a Class VI injection application to be filed and acted upon. FERC routinely approves project designs that are conditioned on uncertain future issuance of approvals by other agencies. Indeed, the SEIS recommends that FERC condition approval of the Rio Bravo pipeline on Endangered Species Act consultation with the U.S. Fish and Wildlife Service, FSEIS at 4-28, and FERC ultimately imposed this condition. 2025 Remand Order, Appendix, Environmental Condition 2. And when issuing a conditional approval, FERC need not require the impossible. If FERC requires CCS, but the applications for permits for nearby Class VI injection wells are subsequently denied despite diligent efforts of the applicant, FERC could consider amending the authorization to waive this requirement. Or the authorization itself could address this contingency, stating that CCS is required but that FERC staff may waive this requirement if Rio Grande demonstrates that necessary permits were denied despite Rio Grande's diligent efforts.

In summary, the final SEIS has not identified any engineering or physical impediment to Rio Grande's plan to sequester CO₂ within ten miles of the terminal site. Such a plan would require the EPA to issue permits for new Class VI injection wells. But neither the fact that this plan would require EPA permits, nor the fact

that acquiring such permits would take several years, justifies rejecting this alternative.

3. FERC's Concerns About Technical Feasibility Ignore The Possibility of Partial Sequestration

The SEIS states that “[t]here may be technical challenges with achieving RG LNG’s stated anticipated carbon reduction goals of 95 percent.” FSEIS at 3-16. We agree that FERC should not uncritically accept Rio Grande’s representations on this or any other issue. But FERC’s mere observation that “some” CCS programs have failed to meet their emission goals, *id.*, does not demonstrate that this project would not be able to do so. FERC does not actually conclude that this emission reduction goal would be technically infeasible, nor would the record, as it stands, support such a conclusion. FERC could not dismiss this level of reduction as technically infeasible, or as unlikely to be achieved in practice, without additional analysis.

Indeed, the only project FERC cites as an example of a CCS project that failed to meet its goals entailed post-combustion capture from a coal-fired power plant. FSEIS at 3-16 (citing Nichola Groom, *Problems plagued U.S. CO2 capture project before shutdown*, Reuters (Aug. 7, 2020), <https://www.reuters.com/article/us-usa-energy-carbon-capture/problems-plagued-u-s-co2-capture-project-before-shutdown-document-idUSKCN2523K8>). On the other hand, all of the sources FERC cites discussing post-combustion capture from *gas* plants indicate that a 90% reduction is feasible, as do the National Energy Technology Laboratory reports Intervenor has cited. These sources indicate that post-combustion capture is simpler for gas plants than for coal plants. So, the fact that a coal plant has failed to

meet its capture goals does not demonstrate that Rio Grande would be unlikely to do so here.

Even if there was reason to doubt whether Rio Grande could achieve its target effectiveness for post-combustion capture, that would not mean that the post-combustion capture isn't a worthwhile alternative or mitigation strategy. A 50%, or even 33%, reduction in post-combustion CO₂ emissions would still avoid millions of tons of emissions per year.

Finally, and most importantly, whatever doubts FERC may have about Rio Grande's ambitious goal of *post-combustion* carbon capture do not apply to the alternative of capturing the *pretreatment* process's already-isolated CO₂ stream (partial carbon capture). Intervenors have repeatedly called for an analysis of this alternative. Existing LNG terminals already isolate CO₂ from feed gas as part of the pretreatment process, with many such systems already in operation. Carbon dioxide from this pretreatment process is particularly amenable to sequestration. FERC has approved sequestration of this pretreatment CO₂ for the CP2 LNG project.¹⁸ FERC offers no reason to doubt the technical feasibility or effectiveness of capture of pretreatment emissions here.

4. FERC's Discussion of Environmental Impacts of CCS Is Arbitrary

The final SEIS and 2025 Remand Order fail to take the required hard look at the environmental impacts of CCS.

¹⁸ Venture Global CP2 LNG, 187 FERC ¶ 61,199, PP9, 20-21 (June 27, 2024).

The entire point of CCS is to benefit the environment by reducing greenhouse gas emissions. But the SEIS's discussion of environmental impacts makes no mention of this benefit. The only discussion about greenhouse gas emissions reductions the SEIS provides is in its economics discussion, where the issue is addressed only indirectly. There, FERC's cost calculations imply that Rio Grande's CCS proposal would avoid 6.04 million tons per year of carbon dioxide emissions. FSEIS at 3-17 (assuming that CCS would capture 95% of the 4,328,225 tpy CO₂ emitted by gas turbines, and 100% of the 1,926,854 tpy CO₂ emitted by the thermal oxidizer).

While not acknowledged by the final SEIS, this comports with Rio Grande's own estimates.¹⁹ Capturing only the pretreatment emissions, which FERC does not dispute would be technically feasible and which would be significantly cheaper on a per-ton basis, would still avoid 1.93 million tons per year of carbon dioxide emissions, roughly a third of the benefit. FERC's 2023 remand order indicates that avoiding these emissions would, over the life of the project, avoid harm equivalent to roughly \$5 billion or \$1.6 billion in social cost, for full or pretreatment-only CCS, respectively, using the former social cost of carbon protocol's central estimate.²⁰

¹⁹ *Rio Grande LNG, LLC Response (Part 1 of 2) to Aug. 16, 2022 EIR*, Docket No. CP16-454, Accession No. 20220822-5167, at Appx. 9.A (estimating that CCS would reduce operational CO₂ emissions by 6,038,873.36 tons per year).

²⁰ *Rio Grande LNG, Order on Remand and Amending Section 7 Certificate*, 183 FERC ¶ 61,046, P98 (Apr. 21, 2023) ("2023 Remand Order") (estimating lifetime social cost of total project GHG emission to be \$5,917,433,636 using the central, 3% discount rate).

Without acknowledging the environmental benefits of greenhouse gas emission reductions, the final SEIS's discussion of the environmental impacts of CCS improperly solely discusses potential harm. In that discussion, the only specifics the SEIS provides are derived from FERC's unwarranted assumption that sequestration would occur at least 100 miles from the terminal site. FSEIS at 3-15. FERC asserts that a 100-mile CO₂ pipeline "would disturb at least 1,500 acres." *Id.* For the reasons stated above, FERC has not justified rejecting Rio Grande's assertion that carbon dioxide could be sequestered nearby, with a much shorter (potentially 10 miles or less) pipeline. As Intervenors have previously argued, a shorter pipeline would also have environmental impacts, but those impacts have not yet been explored and may be an order of magnitude less. FERC also ignored the possibility that, even if the Kleberg County sequestration site is used, the CO₂ pipeline could share the right of way with the Rio Bravo pipelines (which also travel from the terminal site to Kleberg County), and could potentially be constructed contemporaneously with (or at least partially temporally overlapping with) either of the two Rio Bravo pipelines, reducing the incremental impact of CO₂ pipeline construction.

Beyond discussing land impacts of a pipeline that FERC has not demonstrated would be necessary, the SEIS's discussion of the environmental impacts merely states that impacts "may include additional noise impacts, as well as changing the amounts of air quality impacts." FSEIS at 3-16. A hard look requires actually identifying these impacts. This is especially so because other

record evidence indicates that the impact on air pollution may be positive, and thus a further reason to adopt CCS. Rio Grande estimated that carbon capture would reduce sulfur dioxide emissions by 94.8% and fine particulate matter by 49.2%.²¹

As FERC recognizes, the (unspecified in the SEIS) change in emission totals does not tell the whole story—CCS also “changes the emission characteristics of the emitted pollutants (e.g., stack temperature of the emitted pollutants, emission concentration, and flow rate).” FSEIS at 3-16. FERC apparently faults Rio Grande for failing to provide an analysis of the consequences these changes would have on ambient air quality, rather than merely providing estimates of how CCS would change emission totals. *See* 2025 Remand Order P27 (stating that FERC paused environmental review of the CCS proposal because Rio Grande had not provided, *inter alia*, “air dispersion modeling.”). But NEPA review in general, and analysis of alternatives in particular, is FERC’s job, not Rio Grande’s. Applicants cannot be allowed to impose *de facto* limits on the scope of alternatives analysis, and thus on agency’s ability to actually require mitigation, by refusing to provide analysis of mitigation the agency could potentially require. If air pollution impacts of CCS are pertinent to FERC’s alternatives analysis, FERC needs to require Rio Grande to provide that information before reapproving the project, acquire that information from some other source, or at a minimum, demonstrate that this information is unavailable—it is not enough to merely assert that the information isn’t already in

²¹ Rio Grande LNG Response to Aug. 16, 2022 EIR, Accession No. 20220822-5167, *supra* note 21, at Appx. 9.A

the record. *Birckhead*, 925 F.3d at 520; *see also* 40 C.F.R. § 1502.21 (2024) and *infra* Part IV.B (explaining that FERC is still bound by, or has not justified departing from, the requirements of the former NEPA regulations).

Ultimately, the SEIS asserts that FERC “cannot conclude” that CCS would “offer a significant environmental advantage, or would be environmentally preferable.” FSEIS at 3-19. Like the rest of the SEIS’s discussion of CCS, this assertion is arbitrary because it relies on the assumption that CCS would require an additional 100-mile pipeline, despite the fact that Rio Grande has repeatedly insisted it would not. A shorter pipeline would reduce both the scale of impacts and uncertainty surrounding them. Even if a 100-mile pipeline was necessary, FERC overstates the impacts of that pipeline by ignoring the possibility of collocation and construction in conjunction with the Rio Bravo pipelines, which will already traverse from the terminal to Kleberg County. And while Intervenor’s have concerns about the local environmental impacts of CCS, FERC’s analysis cannot ignore the benefits of the large greenhouse gas reductions that would be the point of any CCS project or alternative. However, FERC offers no evidence that it considered this benefit here. FERC has not justified rejecting CCS on environmental grounds, and having failed to explore CCS’s benefits, FERC has not demonstrated that those benefits do not outweigh the non-environmental drawbacks of CCS.

5. FERC Has Not Demonstrated That Cost Justifies Rejecting CCS as an Alternative

Although the final SEIS provides some discussion of the cost of CCS, FERC did not reject CCS as economically infeasible or even conclude that costs were a

reason to reject this alternative. The record would not have supported such a conclusion.

The starting point of any discussion of cost should have been that Rio Grande is continuing to tell investors, the SEC, and the public that it is pursuing CCS, and that this indicates that Rio Grande has determined what the costs are and that they are, from Rio Grande's perspective, worth paying.

**a. FERC Has Not Disagreed With Rio Grande's Own
Estimate of the Cost Per Ton of Captured CO₂**

The SEIS expresses doubts about, but does not justify rejecting, Rio Grande's estimate of the cost of its CCS proposal at \$57 per metric tonne of captured CO₂. FSEIS at 3-19. The SEIS acknowledges that this estimate falls within the range provided by the Congressional Budget Office ("CBO"), which the SEIS estimates would, for combined capture of post-combustion and pretreatment emissions here, "equate to approximately \$48 to \$125 per metric tonne" for the entire CCS lifecycle. *Id.* While FERC speculates that Rio Grande's estimate may have been preliminary, *id.*, FERC never asked Rio Grande whether this estimate has been revised or updated. Once again, by failing to ask the applicant about the cost of an alternative the applicant had proposed, FERC failed to perform the information gathering inherent in FERC's NEPA responsibilities, *Birckhead*, 925 F.3d at 520, and failed to consider an important part of the problem. Regardless, the SEIS did not demonstrate that Rio Grande's estimate is an outlier or otherwise unreasonable, and the SEIS provides no reason for rejecting it. Rio Grande itself acknowledges that its cost estimate is lower than costs for some other projects, but Rio Grande

explains this difference by saying that it is due to the planned use of a “proprietary process [that] pairs with highly efficient third-party CO₂ removal technology for an end-to-end CCS solution that is expected to be effective and economic.”²²

Insofar as the CBO estimates are pertinent, FERC failed to respond to Intervenor’s comment that the SEIS incorrectly labels the CBO estimates as reflecting purely capital costs, rather than complete costs.²³ The SEIS cites the source of these estimates as “Congressional Budget Office, *Carbon Capture and Storage in the United States*, December 13, 2023, <https://www.cbo.gov/publication/59345>.” SEIS at 3-17 n.70. The CBO, in turn, states that its estimate of the cost of capture in natural gas processing comes from “International Energy Agency, *Energy Technology Perspectives 2020—Special Report on Carbon Capture, Utilization, and Storage: CCUS in Clean Energy Transitions* (September 2020), p. 101, <https://tinyurl.com/2wb55rzm>.” CBO, *Carbon Capture and Storage in the United States*, at 6 n.9. Nothing in the CBO report, or the IEA report, indicates that the cost estimates there (e.g., \$15/tonne for capture in gas processing) only reflect capital costs. On the other hand, sources that do distinguish capital costs from operating and other costs, such as reports from the National Energy Technology Lab, still conclude that the *total* cost of capture for gas processing is approximately \$16/tonne for natural gas processing, in line with the

²² NextDecade, May 2025 Corporate Presentation, *supra* note 6, at 47.

²³ DSEIS Comment, *supra* note 1, at 26.

CBO and IEA estimates, whereas the capital component of cost of capture for gas processing is only \$6.2/tonne.²⁴

The SEIS separately discusses cost estimates from an EPA document, but the SEIS makes no argument as to why those estimates should be credited over Rio Grande's and the Congressional Budget Office's. FSEIS at 3-17 to -18. Notably, the cited EPA estimates do not account for the capture of pretreatment emissions and reflect the cost of retrofitting CCS onto an existing plant, rather than new construction.²⁵ FERC's discussion of EPA's cost data also assumes a "100-mile to 125-mile long pipeline," FSEIS at 3-18, but as discussed above, FERC has not justified rejecting the possibility of nearby sequestration. FERC also has not provided a cite or explanation for its assertion that the turbines at the Rio Grande LNG terminal are equivalent to a 560,000 kW load. FSEIS at 3-17.

b. Tax Credits May Fully Offset the Cost of CCS

Credits available under Internal Revenue Code section 45Q may fully offset the cost of CCS or even result in CCS having a net negative cost. SEIS 3-18. FERC provides no reason to doubt that the section 45Q tax credits would be available for this project. Indeed, FERC provides no reason to doubt that Rio Grande would be

²⁴ National Energy Technology Laboratory, Cost of Capturing CO₂ from Industrial Sources, at 66 (July 15, 2022), available at https://www.netl.doe.gov/projects/files/CostofCapturingCO2fromIndustrialSources_071522.pdf, last visited Sept. 18, 2025) (attached). *See also* Intervenor's DSEIS Comment, *supra* note 1, at 26-27.

²⁵ EPA, Documentation for 2023 Reference Case for EPA's Power Sector Modeling Platform 2023 Using IPM, Chapter 6.1.2, Table 6-2 (April 25, 2024), available at <https://www.epa.gov/power-sector-modeling/documentation-2023-reference-case>.

eligible for the higher \$85/tonne 45Q tax credit available to facilities that “pay prevailing wages ... and meet registered apprenticeship requirements.” SEIS 3-18. Insofar as the eligibility for the higher tax credit is determinative, it was arbitrary for FERC not to investigate or ask Rio Grande about this eligibility. *Birckhead*, 925 F.3d at 520. The higher 45Q credit of \$85/tonne is essentially the midpoint of the CBO’s range of cost estimates, and is significantly higher than Rio Grande’s estimated cost of \$57/tonne.

The availability of this tax credit is one of the many reasons why FERC needs to analyze CCS as an alternative, as part of FERC’s holistic review of the project, rather than leaving it to Rio Grande to decide whether to pursue CCS as a separate action. Because the potential tax credit is, on a per-tonne basis, far greater than the cost of sequestering pretreatment emissions, Rio Grande may decide it is in its interests to pursue that partial-CCS option. However, because any surplus credit from capturing pretreatment emissions could offset the costs of capturing post-combustion emissions, considering the two together supports the conclusion that the combined cost is feasible and reasonable, even if post-combustion capture looks worse in isolation.

c. FERC Has Not Shown that the Cost of CCS Is Infeasible or Unreasonable

Distinct from the question of what CCS would cost is the question of whether those costs are worth paying. FERC does not argue that Rio Grande’s \$57/tonne estimated price, or any of the prices FERC identifies, would be economically

infeasible²⁶ or justify rejecting the CCS, even without tax credits. Insofar as the final SEIS suggests that costs could be infeasible, unreasonable, or a reason not to require the use of CCS, those suggestions are unsupported.

The SEIS estimates that Rio Grande's full CCS proposal, using the low-end CBO estimates and without tax credits, would cost \$289 million. FSEIS at 3-18. The SEIS states that this is equivalent to approximately 1 percent of the terminal capital cost, *id.*, although as explained above, the CBO estimates reflect total costs, not capital cost. Using Rio Grande's estimate of \$57/tonne, the total CCS cost would be \$344 million, still only 1.1% of the terminal capital cost. The SEIS tacitly concedes that these costs would be economically feasible. The SEIS speculates that if tax credits are unavailable (the SEIS does not identify any reason why they wouldn't be), that these "low-end" costs "may make the project less cost competitive unless purchasers of the supply are willing to pay these added costs to reduce emissions." FSEIS at 3-18. Once again, FERC did not perform any analysis. FERC did not demonstrate that the terminal *would not* be cost-competitive at these costs, for example, by comparing what Rio Grande's costs would be with the costs of other terminals. And FERC ignored the fact that Rio Grande has already secured customers for much of the terminal's output, and that it secured these customers while advertising and emphasizing its plans for CCS, arguing that this made Rio

²⁶ 42 U.S.C. § 4332(2)(C)(iii).

Grande a more environmentally responsible choice than other options.²⁷ FERC ignores NextDecade’s own view, indicated by NextDecade’s own statements, that CCS makes the project *more* competitive, not less.

FERC separately speculates that *if* carbon capture costs are closer to the higher estimates FERC attributes to EPA, amounting to 7% of the terminal capital cost, that this “upper end” cost “*could*” make the terminal economically infeasible, SEIS 3-18 (emphasis added). Even at this high price and without tax credits, the SEIS neither concludes nor demonstrates that this would be the case. And with the higher 45Q tax credit, even the final SEIS’s highest estimate of CCS net cost would be equivalent to only 5.5% of terminal capital cost. Nor has FERC shown that these higher costs would prevent the terminal from being sufficiently competitive to acquire customers.

Finally, FERC’s discussion of cost again ignores the possibility of applying CCS only to the pretreatment emissions. Insofar as the cost of capturing pretreatment emissions is less than the available 45Q tax credit, capturing pretreatment can make the broader CCS project more affordable. But if FERC were to demonstrate that, even with these credits, the costs of post-combustion CCS were not economically feasible or reasonable, that would not justify throwing the baby out with the bathwater and rejecting pretreatment-only CCS as well.

²⁷ See, e.g., *Rio Grande LNG*, NEXTDECADE, <https://www.next-decade.com/rio-grande-lng/> (last visited Sept. 24, 2025) and attached.

D. Limits of FERC Authority Do Not Justify Rejecting CCS

As explained above, while the SEIS and 2025 Remand Order provide some discussion of the location, timing, technical feasibility, environmental impact, and cost of CCS, FERC has not actually stated that any of these issues provide a reason for rejecting CCS as an alternative, nor would the record support any such determination.

The final issue FERC raises in its discussion of CCS as an alternative is “the Commission’s inability to compel Rio Grande to construct non-jurisdictional facilities.” 2025 Remand Order P29. As with the other issues FERC has raised, this does not justify rejecting CCS as an alternative.

At the threshold, it is odd, at least, for FERC to worry about whether it can “compel” actions that the developers have repeatedly stated they plan to take anyway. But even if Rio Grande was not still publicly stating that it plans to pursue CCS, FERC would have the authority to consider *and require* CCS as an alternative, notwithstanding FERC’s lack of direct regulatory authority over CO₂ transport or injection.

As the D.C. Circuit recognized in *Sabal Trail*, “[w]hat activities does FERC regulate?” and “[w]hat factors can FERC consider when regulating in its proper sphere?” are distinct questions.²⁸ FERC would not be *compelling* Rio Grande to construct non-jurisdictional facilities; FERC would be conditioning its approval of the terminal on Rio Grande’s *agreeing* to construct facilities necessary to enable

²⁸ *Sabal Trail*, 867 F.3d at 1373.

CCS at the terminal. In this regard, CCS is no different than electrifying pipeline or LNG terminal compressors, alternatives that FERC routinely considers in NEPA analyses, even where these alternatives would require construction of power lines outside of FERC's jurisdiction.²⁹ Intervenors raised this argument in comments on the draft SEIS, but neither the final SEIS's response to comments nor the 2025 Remand Order offers any argument as to why non-jurisdictional CCS infrastructure is meaningfully different than the powerline infrastructure those other projects' electrification alternatives would require.

FERC also routinely authorizes projects where the authorization is conditional on getting some other permit from another agency, and where those other permitting agencies may not act on the applicant's preferred timeline. Where other agencies have in ways that disrupted project completion, FERC has responded by extending deadlines or otherwise modifying certificates. *See, e.g., Mountain Valley Pipeline, LLC Equitrans, L.P.*, 173 FERC ¶ 61,026, PP12-13 (2020). FERC could follow a similar path here: require Rio Grande to pursue CCS, but then extend or modify the authorization if, despite good faith efforts, Rio Grande is unable to secure necessary authorizations from other agencies.

The Department of Energy ("DOE") has similarly interpreted the Natural Gas Act ("NGA") to provide authority to condition Gas Act approval on the

²⁹ *See, e.g.,* Final EIS for the Commonwealth LNG Project, Docket No. CP19-502, Accession 20220909-3017, at 3-47 (Sept. 9, 2022); *Transcontinental Gas Pipe Line Company, LLC*, 186 FERC ¶ 61,047, PP53-58 (Jan. 18, 2024).

applicant's commitment to conducting activities that the NGA does not itself directly regulate. In approving Alaska LNG's application for authority to export gas to non-Free Trade Agreement nations, the Department included a condition regarding production of the gas to be exported, notwithstanding the fact that the Department did not have direct regulatory authority over that production.³⁰

Specifically, the DOE required that:

Alaska LNG shall submit to DOE, as part of its monthly report, a statement certifying that the natural gas produced for export in the form of LNG in the prior month did not result in the venting of byproduct carbon dioxide (CO₂) into the atmosphere, unless required for emergency, maintenance, or operational exigencies and in compliance with the FERC Order.³¹

The DOE's imposition of this condition illustrates why FERC can require CCS for the Rio Grande terminal here. The DOE has no authority to "compel" parties extracting gas on Alaska's north slope to reinject produced carbon dioxide into the ground. However, the Department can *condition* its export approval to ensure that gas is not exported unless it is produced in what the Department determines to be an acceptable way. So too here. FERC must take a hard look at whether to condition its approval of the Rio Grande LNG terminal on Rio Grande's commitment to

³⁰ Dep't of Energy, DOE/FECM Order No. 3643-C, *Alaska LNG Project LLC*, Order Affirming and Amending DOE/FE Order No. 3653-A Following Partial Grant of Rehearing, at 16, 26, 27 (Apr. 13, 2023), *available at* <https://www.energy.gov/sites/default/files/2023-04/ord3643-C.pdf>.

³¹ *Id.* at 27.

mitigating the terminal's climate impact by sequestering some or all of the project's CO₂ emissions.

II. FERC ARBITRARILY REFUSED TO CONSIDER RIO GRANDE'S ANNOUNCED EXPANSION PLANS

A. Rio Grande's Plan for a Sixth Train Is A Connected Action

In discussing why Rio Grande's CCS proposal was a connected action, *Port Isabel* provided the following hypothetical:

For example, imagine that an applicant proposed an initial project to build an LNG terminal with four liquefaction trains. Suppose the applicant then proposes to add—as a distinct project—a fifth liquefaction train to the terminal (and perhaps a sixth, seventh, and so on). Assume the initial project could stand on its own, but the other liquefaction-train projects could proceed only if the initial project were completed. Under the Commission's reading of the regulation, those formally distinct projects—though clearly parts of the same functional development—would be deemed unconnected for NEPA purposes, allowing the Commission to segment the projects' environmental reviews and avoid addressing their collective environmental impact. That result would defy the commonsense policy behind the connected-action regulation.

Port Isabel I, 111 F.4th at 1212. This hypothetical describes the circumstances Rio Grande is in now. At the time the SEIS was prepared, Rio Grande had announced that it would pursue a sixth train and was considering up to ten trains.³² And, of course, the sixth train was part of Rio Grande's initial proposal.

³² DEIS Comments, *supra* note 1, Attachment NextDecade May 2025 10-Q, at 18.

To be clear, this case presents the specific problem that the connected action requirement is intended to resolve. Here, what was initially conceived of as a single project was divided into segments, and the consequence of that division has been to deprive decisionmakers and the public of the chance to see the big picture in terms of cumulative air impacts, terrestrial and shipping traffic, etc. FERC must recognize the impact that temporarily abandoning the sixth train has had on FERC and the public's ability to review the project. When the *Vecinos* petitioners sued over FERC's initial approval, they pointed to the volume of greenhouse gas and criteria pollutant emissions the terminal would have, and they pointed out that the recently disclosed increased capacity each train would have would mean ship traffic, with additional emissions and disruption, beyond what FERC had analyzed. Shortly thereafter, Rio Grande proposed to modify the project to omit the sixth train, and Rio Grande argued that this would reduce project impacts. On remand from *Vecinos*, FERC relied on the fact that omitting the sixth train would reduce operational emissions. *See, e.g.* 2023 Remand Order PP145, 148, 150 (noting that ozone modeling was updated to "account for ... Terminal's current design," i.e., only five trains).

Despite this clear fact pattern, FERC has not justified refusing to treat the sixth train as a connected action here. After Intervenor raised Rio Grande's expansion plans in their comments on the draft SEIS, the only response FERC provided is in the final SEIS's response to comments, stating that the expansion is not "a reasonably foreseeable project" because "NextDecade has not filed an application with the Commission for the project." FSEIS Appendix I, Table I-2 Gen

4. But as with Rio Grande's applied-for and then-withdrawn CCS application, Rio Grande cannot be permitted to use strategic timing of its filings to defeat comprehensive review.

In the unpublished *Vecinos para el Bienestar de la Comunidad Costera v. FERC* decision, No. 20-1045, 2021 WL 3716769 (D.C. Cir. Aug. 3, 2021), the D.C. Circuit held that, when Rio Grande first admitted that its six liquefaction trains would produce more than the 4.5 mpta each that Rio Grande had represented to FERC, FERC was not required to consider expansion of the terminal beyond 27 mtpa of total capacity because Rio Grande had stated it would omit the sixth train and "ha[d] expressly disclaimed any intention of producing more than the 27 million metric tons per year that already have been authorized." *Id.* at *2. However implausible or implausible that disclaimer may have been at the time, that disclaimer is explicitly not in place now: Rio Grande has represented, to the public and in its official SEC filings, that it intends to add trains and increase the terminal output. This fact distinguishes *Vecinos*; the situation is now instead parallel to the hypothetical described in *Port Isabel*.

The sixth train (if not the further trains) must be evaluated as a connected action, following *Port Isabel I*. Because the sixth train was already previously proposed, was considered in the original 2019 EIS (albeit under the assumption that it would have lower output than what is now proposed), is within the levy of the existing terminal, and would have its construction overlap in time and place with the rest of the terminal (*see* 2019 EIS at 2-33), it has a temporal overlap with the

rest of the terminal, even though Rio Grande has not yet filed its application proposing to re-add the sixth train. And the sixth train would not have independent utility; it would tie in with, and depend upon, the currently-approved terminal infrastructure, including storage tanks, berths, and other equipment distinct from the other five trains; it would be part of the existing project rather than a functionally independent neighboring facility.

As explained in the CCS section, FERC cannot allow Rio Grande to strategically time its applications or modify and then un-modify its project in order to limit FERC review. Rio Grande only announced its intention to pause development of the sixth train after petitioners filed suit in *Vecinos*. See 2021 WL 3716769 at *1. However, Rio Grande is now re-proposing the sixth train, and it is possible that Rio Grande will be able to construct it on the same schedule that would have applied even if Rio Grande had never purported to abandon Train 6. Rio Grande gave its contractor, Bechtel, the notice to proceed with construction in October 2023. Rio Grande's original construction schedule did not call for work on train 6 until "Q3 Year 4," continuing through "Q3 Year 7." 2019 EIS at 2-33. Thus, under this schedule, construction on train six would not start until 2028. It is entirely possible that FERC will have reauthorized Train 6 before then, especially if FERC tiers off the environmental analysis that has already been done.

Conversely, including the sixth train would likely change the air and other analyses here. For example, expanding the terminal to add a sixth train would, roughly speaking, increase air emissions by 20 percent, between emissions from the

new infrastructure and increasing utilization of the shared infrastructure, shipping, and the like. The final SEIS predicts that the terminal, with five trains, will increase ambient 1-hour NO₂ levels by 133.81 µg/m³. FSEIS at 4-37. Although not a substitute for more sophisticated analysis, if a 20 percent increase in emissions increases this impact by 20 percent, to an incremental 160 µg/m³ impact on ambient air quality, it could mean that ambient 1-hour NO₂ levels would reach 207.75 µg/m³, nearly 20 µg/m³ beyond the NAAQS. *Id.* This would be a significant impact by FERC's own rubric: it would exceed the NAAQS, and Rio Grande's contribution to the exceedance would be more than the significant impact level. Even if Train 6 is treated as a separate project, including Train 6 as a cumulative or off-site source in the modeling would still likely demonstrate that the rest of the Rio Grande project would cause or contribute to a cumulative NAAQS violation.

B. Alternatively, The Sixth Train Is Reasonably Foreseeable and Must Be Included In the Cumulative Effects Analysis and Air Modeling

In the alternative, even if the sixth train is not treated as a connected action, it must be included in FERC's cumulative impacts analysis. FERC's only response to Intervenor's comment calling for analysis of the sixth train was to argue that it was not reasonably foreseeable because Rio Grande had not yet filed an application. FSEIS Appendix I, Table I-2 Gen 4. That Rio Grande will file such an application is reasonably foreseeable, given Rio Grande's repeated and explicit statements that it intends to do so. And unlike other projects where an agency may not be able to reasonably foresee the effects of a future project until an application has been filed, FERC can foresee those effects here, for several reasons. One, FERC has already

reviewed the sixth train. Two, insofar as the design of the trains has been updated since FERC's analysis of Train 6, FERC has already reviewed those updates as applied to trains 1 through 5 and can apply the analysis of the current design here. FERC can similarly foresee the impact of the shipping traffic that will serve this additional train.

C. FERC Must Consider Rio Grande's Announced Plans to Increase The Output of Trains 1-5

Adding additional liquefaction trains isn't the only foreseeable future action FERC must consider. In another example of history repeating itself, Rio Grande has again announced that its already-approved trains can produce more gas than what Rio Grande sought FERC approval for, and Rio Grande has once again made that announcement to the public without informing FERC. Rio Grande is now informing the public and investors that it expects liquefaction trains 1-5 to reliably produce 6 mtpa per year each,³³ up from the 5.4 contemplated by the existing authorization. Increasing the output of these trains will at a minimum require additional pretreatment and LNG shipping, relative to what would occur otherwise. This will have foreseeable consequences for the cumulative air impacts analysis. Accordingly, FERC should consider those impacts now, FERC should investigate NextDecade's practice of announcing increases in output after having assuring FERC that no such increases would occur, and FERC should provide clear instruction that, when

³³ NextDecade, Company Update, September 2025, *supra*, at 12-13, 17, 40.

design changes or other pertinent project changes occur, NextDecade must promptly inform FERC alongside the general public and investors.

III. FERC'S ANALYSIS OF THE TERMINAL'S AIR POLLUTION WAS ARBITRARY

The Rio Grande terminal would be one of the largest sources of air pollution in the Rio Grande Valley, if not the single largest source. Although neither the SEIS nor the 2025 Remand Order provides emission data, the applicant estimates that each year, terminal operations will emit 1,201 tons of NO₂, 482.86 tons of VOC, and 257.3 tons of fine particulate matter.³⁴ The terminal's impact on ambient air quality will exceed the "significant impact level" ("SIL") used on Clean Air Act Prevention of Significant Deterioration ("PSD") analysis for nitrogen oxides,³⁵ ozone,³⁶ and annual fine particulate matter.³⁷

Throughout these proceedings, community groups have argued that FERC must consider how the terminal's air pollution will actually affect surrounding communities, beyond merely looking to compliance with the Clean Air Act. That analysis of actual effects is required regardless of whether FERC uses an environmental justice lens, or whether FERC looks at "all affected communities."

³⁴ Rio Grande LNG, LLC Supplement to 12/16/2024 Supplemental Responses to FERC's 09/30/2024 EIR re the Rio Grande LNG Project, Docket No. CP16-454, Accession 20250121-5211, at 19 (Jan. 21, 2025). These figures combine emissions from the terminal, *id.* Appendix F, with emissions from associated marine traffic, *id.* Appendix G.

³⁵ FSEIS at Table 4-1, page 4-37; *accord* 2025 Remand Order P37 n.107.

³⁶ FSEIS at 4-37 (ozone impact is 1.75 ppb), Accession No. 20250121-5211 at page 19-20, Tables 4-2 and 4-3 (explaining that modeled impact is 174.5% of the ozone SIL).

³⁷ FSEIS at 4-38.

2025 Remand Order P58. In scoping comments and comments on the draft SEIS, intervenors explained how EPA’s COBRA tool provided evidence that the terminal’s air pollution would have foreseeable adverse effects here.³⁸ That tool predicts that the terminal’s air pollution will cause hundreds of premature deaths, thousands of missed school and work days, and millions of dollars worth of harm.

FERC’s conclusion that it could disregard this COBRA analysis was arbitrary, and FERC provided no basis for disagreeing with the COBRA predictions. The air modeling FERC relied on does not “supersede[]” the COBRA analysis. 2025 Remand Order P48. The air modeling only evaluates what air quality will be, without replicating COBRA’s second step of evaluating the consequences of the resulting air quality on human health. FERC’s position is that this second step is unnecessary when the modeling shows that the project will not cause or contribute to a NAAQS violation (within the meaning of the Clean Air Act’s PSD program), but FERC misunderstands the EPA documents on which FERC purports to rely. EPA sets NAAQS at levels that provide a “margin of safety,”³⁹ but FERC is incorrect in asserting that EPA has determined that air pollution at levels below the NAAQS is “designated as safe,” 2025 Remand Order P48, or as “free from risk.”⁴⁰ To the contrary, EPA has consistently affirmed that air pollution below the NAAQS can

³⁸ See Scoping Comment of Sierra Club et al., Docket No. CP16-454, et al. Accession 20241015-5531 (Oct. 15, 2024), Attachment “COBRA Web Edition _ Rio Grande LNG.pdf”.

³⁹ 42 U.S.C. § 7409(b)(1).

⁴⁰ See *Safe*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/safe> (last visited Sept. 25, 2025).

cause foreseeable harm to human health. Thus, insofar as FERC was purportedly deferring to an EPA scientific judgment, EPA did not actually make such a judgment, and FERC's actions were arbitrary. Nor can FERC defer to EPA's policy judgment that the harms caused by pollution that does not exceed the NAAQS are "acceptable," 2025 Remand Order P49, for purposes of EPA's administration of the Clean Air Act. The NGA provides FERC with different obligations and authorities than the Clean Air Act provides other agencies. In discharging its unique authority under the NGA, FERC must consider impacts that occur despite compliance with other statutes. *Calvert Cliffs' Coordinating Comm. v. Atomic Energy Comm'n*, 449 F.2d 1109, 1122–23 (D.C. Cir. 1971). Thus, the modeling showing compliance with the NAAQS does not show that there are no pertinent health impacts and, therefore, does not "supersede[]" the COBRA analysis.

Nor could FERC reject the COBRA analysis by dismissing COBRA as merely a "screening tool." 2025 Remand Order P49. The purpose of a screening tool is to identify issues that warrant additional analysis. FERC could have responded to the COBRA analysis by using one of the available, more sophisticated tools to evaluate actual health impacts, and if FERC had done so, FERC's choice of methodology may have been entitled to deference. But FERC did not do so, and agency discretion as to choice of analytic methodology does not permit an agency to refuse to analyze an issue at all. FERC's assertion that COBRA is "unsuitable for project-specific analyses" is arbitrary, as FERC fails to explain why project-specific analysis differs

from the “planning purposes” that FERC concedes COBRA may be sufficient for. 2025 Remand Order P49.

Thus, FERC violated NEPA by failing to take a hard look at the impacts of the projects’ air pollution, and FERC violated the NGA because FERC failed to demonstrate that the harm caused by this air pollution did not render the projects contrary to the public interest.

A. The Record Does Not Support The Conclusion That The Terminal’s Air Pollution Will Not Impact Health

1. Air Pollution That Does Not Exceed the NAAQS Can Cause Foreseeable Health Impacts

The SEIS concludes that although the terminal’s NO₂ and ozone pollution will have impacts exceeding the respective SILs, that levels of either pollutant will not exceed the NAAQS. SEIS at 4-37. FERC argues that the NAAQS are “designated as safe” by EPA. 2025 Remand Order P48. FERC has not explained what it means by “safe”, or what conclusion FERC draws therefrom. Insofar as FERC is arguing that these pollution below the NAAQS is “free from risk,” and that air pollution below the NAAQS cannot cause health impacts, FERC’s conclusion is unsupported and has been explicitly rejected by EPA.

EPA does not set the NAAQS at a level “below which . . . pollutants are known to be harmless.”⁴¹ Instead, EPA sets NAAQS at levels “requisite to protect the public health” while “allowing an adequate margin of safety.”⁴² But providing a

⁴¹ *Am. Trucking Ass’ns v. EPA*, 283 F.3d 355, 360 (D.C. Cir. 2002).

⁴² 42 U.S.C. § 7409(b)(1).

“margin of safety” does not mean absolutely “safe,” or “free from risk.” Indeed, in setting the NAAQSs for ozone, nitrogen dioxide, and fine particulates, EPA explicitly acknowledged evidence demonstrated that each of the pollutants caused harm at levels below the NAAQS.

For ozone, although EPA set the 8-hour NAAQS at 70 ppb, EPA cited epidemiological studies that found evidence of harm from ozone concentrations as low as 30 or 40 ppb, including increased emergency room visits and hospital stays.⁴³ EPA explained that for asthmatic children, exposure to 8-hour maximum ozone concentrations as low as 30 ppb increased emergency department visits.⁴⁴ Even in “young, healthy adults,” controlled exposure studies found that exposure to ozone levels of 60 ppb impaired lung function.⁴⁵ EPA repeatedly noted that studies had found no “evidence of a threshold” below which ozone levels had no impact, with studies examining ozone levels as low as 30 and 40 ppb.⁴⁶

The fact that EPA ultimately adopted an ozone standard of 70 ppb does not mean that EPA disagreed with these studies identifying health impacts at lower ozone levels. Setting the NAAQS has a scientific component, but is also a “policy

⁴³ *National Ambient Air Quality Standards for Ozone*, 80 Fed. Reg. 65,292, 65,303-06 (Oct. 26, 2015). When EPA reviewed this standard in 2020, EPA agreed with the Clean Air Science Committee’s “conclusion that the newly available evidence does not substantially differ from that available in the [2015] review.” *Review of the Ozone National Ambient Air Quality Standards*, 85 Fed. Reg. 87,256, 87,284-85 (Dec. 31, 2020).

⁴⁴ 80 Fed. Reg. at 65,306.

⁴⁵ *Id.* at 65,303.

⁴⁶ *Id.* at 65,303, 65,306, *accord id.* at 65,309,

decision” about the appropriate margin of safety, or conversely, the tolerable level of risk. *Murray Energy Corp. v. Env’t Prot. Agency*, 936 F.3d 597, 611 (D.C. Cir. 2019).

For nitrogen dioxide, EPA’s preface to the NAAQS explains that “there is little evidence of any effect threshold” for short-term nitrogen dioxide exposures and that the relationship between exposures and adverse impacts “appear linear within the observed range of data.” EPA, Primary National Ambient Air Quality Standards for Nitrogen Dioxide, 75 Fed. Reg. 6,474, 6,480 (Feb. 9, 2010).

Finally, **for PM_{2.5}**, EPA’s preface to the rule setting the NAAQS also clearly stated that PM_{2.5} can cause harm below the NAAQS. In setting the current NAAQS, EPA again stated that the scientific evidence supports a “no-threshold relationship” between long-term PM_{2.5} exposure and mortality. EPA, Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 89 Fed. Reg. 16,202, 16,226 (Mar. 6, 2024). Of course, here, the PM_{2.5} NAAQS will actually be exceeded in some areas.

EPA’s view that health impacts can occur at pollution levels below the NAAQS is affirmed by EPA’s actions in contexts other than setting the NAAQS and the PSD program. In the regulatory impact analysis for its 2012 Mercury and Air Toxics Standards, EPA concluded that the rule would provide \$31 to \$81 billion worth co-benefits, in the form of avoided health impacts, by reducing PM_{2.5} and sulfur dioxide (which contributes to secondary formation of PM_{2.5}).⁴⁷ “A large

⁴⁷ EPA-452/R-11-011, Regulatory Impact Analysis for The Final Mercury and Air Toxics Standards, at ES-3 (2011), *available at*

fraction of the PM_{2.5}-related benefits” occurred from reducing PM_{2.5} levels that would have been below the then-effective annual PM_{2.5} NAAQS anyway.⁴⁸ And a significant fraction of the “avoided premature deaths” occurred at annual PM_{2.5} levels below 10 µg/m³, or even 7.5 µg/m³.⁴⁹ After the Supreme Court remanded the rule for additional consideration of costs, *Michigan v. EPA*, 576 U.S. 743 (2015), EPA affirmed that “there is a substantial body of scientific evidence supporting the existence of health impacts from exposure to PM_{2.5}, even at low concentrations below the NAAQS,” that “there is no scientific basis for ignoring health benefits” of further reducing PM_{2.5}, and that the NAAQS did not limit EPA’s ability to consider harm caused by pollution below the NAAQS in other regulatory contexts.⁵⁰

EPA similarly explicitly stated that pollution that does not exceed the NAAQS can cause harm, that this harm can be foreseen, and that it is appropriate for regulators to act on it in the COBRA model and EPA’s related documentation. In developing COBRA, EPA reviewed the scientific research summarized in the 2015 NAAQS rulemaking, as well as subsequent research.⁵¹ The fact that COBRA

<https://www3.epa.gov/ttnecas1/regdata/RIAs/matsriafinal.pdf> (attached). The range in value reflects different choices of discount rate for future benefits/avoided harm.

⁴⁸ *Id.* at ES-4.

⁴⁹ *Id.*

⁵⁰ EPA, Supplemental Finding That It Is Appropriate and Necessary To Regulate Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units, 81 Fed. Reg. 24,420-01, 24,427, 24,440 (Apr. 25, 2016).

⁵¹ EPA, User’s Manual for the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA) (March 2025), at Exhibit C-3, “Epidemiological Studies Used to Estimate Adverse Health Impacts of PM_{2.5} and O₃” (hereinafter “COBRA User Manual”), *available at* <https://www.epa.gov/cobra/users-manual-co-benefits-risk-assessment-cobra->

predicts health impacts even when air pollution would not exceed the NAAQS is a deliberate choice on EPA's part, reflecting EPA's scientific judgment that such effects do occur and are foreseeable. EPA provides an example in which, in a single county, the difference between annual PM_{2.5} levels of 7.7 and 7.8 µg/m³ of annual PM_{2.5} (a 0.04 µg/m³ change, rounded) for one year equates to 2.4 to 4.2 statistical adult premature deaths caused or avoided over the next 20 years.⁵² This is despite the fact that both PM_{2.5} levels are well below the NAAQS. EPA's COBRA User Manual broadly affirms that "EPA's most current understanding of the scientific literature is that there is no threshold in the relationship between PM_{2.5} and adverse health effects."⁵³

Thus, on the factual question of whether air pollution below the NAAQS can cause harm, FERC's conclusions are unsupported and are squarely refuted by the available evidence. FERC is attributing to EPA a scientific judgment that EPA not only has not made, but that EPA has explicitly and repeatedly refuted.

2. An Increase in Air Pollution That Is Less Than the SIL Can Cause Foreseeable Health Impacts

FERC is also factually mistaken insofar as FERC contends that an increase in air pollution that is less than the SIL is "safe," and cannot cause foreseeable

[screening-model](#) and attached to Intervenor's DSEIS Comment. Newer research the EPA considered included Michelle Turner, et al., *Long-Term Ozone Exposure and Mortality in a Large Prospective Study*, 193 Am. J. of Respiratory and Critical Care Med. 1134 (2016), doi:[10.1164/rccm.201508-1633OC](#) (attached). That study concluded, *inter alia*, that ozone exposure increased respiratory and circulatory mortality down to levels of 35 ppb. Turner 2016 at 1140.

⁵² COBRA User Manual at 39.

⁵³ *Id.* at C-5.

harm. FERC argues that “modeled potential contribution[s] ... below the annual PM2.5 SIL [are] ... not statistically significant,” 2025 Remand Order P39, and that a source that will have an impact below the SILs will “have an insignificant effect on ambient air quality,” *id.* at P34 n.98. As with the issue of harm below the NAAQS, insofar as FERC is making a factual argument that increases below the SIL have no foreseeable effects, rather than a policy judgment about what effects may be disregarded as *de minimis*, this factual argument is both unsupported and squarely refuted by evidence in the record. (And insofar as FERC is making a policy judgment, FERC is wrong for reasons stated *infra*).

As with the NAAQS, FERC is attributing to EPA a judgment EPA did not make. EPA has *not* determined that any of the SILs represent the limit of statistical significance, a threshold below which pollutants do not have perceptible impacts, or any other purely scientific concern. This fact is clearly demonstrated by EPA’s preface to the “good neighbor rule,” more formally “Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards, 88 Fed. Reg. 9336-01, 9,342 (Feb. 13, 2023). In that rule, EPA held that an upwind state would be “‘linked’ to a downwind air quality problem” if the upwind state’s contribution equaled or exceeded 1 percent of the ozone NAAQS, or 0.70 ppb.⁵⁴ EPA considered and rejected comments arguing that an upwind state should not be linked to a downwind air quality problem unless its

⁵⁴ *Id.*

contribution exceeded the ozone SIL, of 1 ppb.⁵⁵ EPA explained that “the threshold used in the context of PSD SIL serves an entirely different purpose” than the threshold used in the interstate transport rule, “and so it does not follow that they should be made equivalent.”⁵⁶ The SILs represent EPA guidance on when it is appropriate to trigger certain requirements of the PSD program, not a judgment about when air pollution will have perceptible effects.

Similarly, EPA’s COBRA User Manual explicitly states EPA’s belief that changes in annual PM_{2.5} levels that are smaller than the SIL can have foreseeable effects on health, including premature deaths.⁵⁷ EPA provides an example of a project that would cause a 0.04 µg/m³ change in annual PM_{2.5},⁵⁸ a change well below the 0.13 µg/m³ SIL. Rather than argue that a modeled change this small has no effects, EPA explains how COBRA can be used to foresee health impacts that would result from this seemingly small change, including “2.4 to 4.2 adult premature deaths” per year of exposure.⁵⁹

These clear examples from EPA are not refuted by the EPA SILs guidance document FERC cites, which does not support FERC’s suggestion that increases below the SIL cannot have foreseeable effects. The 2025 Remand Order, at P34 n.98, cites EPA’s 2018 Guidance on SILs for Ozone and PM. Note that this guidance

⁵⁵ *Id.* at 9372.

⁵⁶ *Id.*

⁵⁷ COBRA User Manual at 39.

⁵⁸ *Id.*

⁵⁹ *Id.*

has been superseded by the 2024 guidance.⁶⁰ Nonetheless, in the 2018 document, EPA is clear that SILs do not represent a strictly scientific or mathematical judgment about the limits of our ability to predict changes in air quality. Instead, EPA’s choice of SILs rests on both “technical *and policy* considerations.”⁶¹ EPA explained that:

The principles of statistical significance testing *do not by themselves* provide a single, unique threshold for determining the statistical significance of a change in the design value. ... Therefore, it is necessary to consider the function and application of SIL values *in the context of the PSD program* and to select a change in air quality that is reasonably representative of the showing that a proposed source will not cause or contribute to a NAAQS violation, as required by the Act and PSD regulations. ... We ... selected the recommended SIL values as a function of the [confidence intervals], the baseline value, *and policy considerations*.⁶²

EPA further explained that even the intermediate step of selecting a confidence interval “required an exercise of judgment based on the technical *and policy considerations*.”⁶³

⁶⁰ EPA, Memorandum on Supplement to the Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program (April 30, 2024), *available at* https://www.epa.gov/system/files/documents/2024-08/silguidance_july_2024.pdf.

⁶¹ EPA, Memorandum on Guidance on Significant Impact Levels for Ozone & Fine Particles in the Prevention of Significant Deterioration Permitting Program, 11 (April 17, 2018) (emphasis added), *available at* https://19january2021snapshot.epa.gov/sites/static/files/2018-04/documents/sils_guidance_2018.pdf

⁶² *Id.* at 12 (emphases added).

⁶³ *Id.*

The fact that the SILs does not just represent a determination about the limits of statistical significance, or the ability to measure changes in air quality, is further demonstrated by the fact that EPA has revised the PM_{2.5} SIL based on a change in the NAAQS. If the SIL represented the limit of the models' resolution, it would only be appropriate to update the SIL when the model was updated, but EPA has revised the SILs based on revisions to the NAAQS as well.⁶⁴ Specifically, EPA explained that it “determined recommended SIL values by multiplying the inherent variability indicator (i.e., median statistic of the relative variability from the 50 percent CIs from the entire U.S. ambient monitoring network) by the level of the associated NAAQS.”⁶⁵ Thus, the SIL incorporates EPA's policy judgment about the appropriate level for setting the NAAQS, and not just a judgment about what changes in air quality can be meaningfully predicted.

Still further evidence that the SILs do not represent a scientific limit on foreseeability comes from the fact that EPA sets different SILs for different purposes. In 2024, after revising the annual PM_{2.5} NAAQS, EPA issued updated SILs guidance.⁶⁶ In this update, for annual PM_{2.5}, EPA set a SIL of 0.13

⁶⁴ U.S. Environmental Protection Agency (EPA). 2024. Supplement to the Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program, at 7, *available at* https://www.epa.gov/system/files/documents/2024-08/silguidance_july_2024.pdf (cited by FSEIS at 16 and Appendix B).

⁶⁵ *Id.* at 5.

⁶⁶ EPA, Supplemental Guidance on SILs, *supra* note 59.

0.13 $\mu\text{g}/\text{m}^3$ for determining compliance with the NAAQS.⁶⁷ But for purposes of evaluating PSD increments in Class I areas, EPA recommended a much lower SIL, of 0.03 $\mu\text{g}/\text{m}^3$.⁶⁸ This lower SIL is not because of greater ability to foresee changes in Class I areas, but is instead because EPA sought to “uphold a higher level of protection” there.⁶⁹ But regardless of the level of protection EPA seeks to provide, if EPA thought that models were incapable of foreseeing increases below 0.13 $\mu\text{g}/\text{m}^3$, or that increases below this level were always statistically insignificant, there would be no point in setting a lower SIL. The fact that EPA set a lower SIL for PSD increments in Class I areas in order to serve the goal of providing higher protection illustrates the 2018 guidance document’s repeated statement that selection of the SIL turns both on statistics and on the context and policy goals at issue.

Yet another example of how EPA has refuted FERC’s claim that the SILs represent the limit of foreseeability is the fact that EPA has recognized that even for purposes of determining NAAQS compliance, SILs may be inappropriate in specific factual situations. EPA’s 2018 guidance states that:

upon considering the permit record in an individual case, if a permitting authority has a basis for concern that a demonstration that a proposed source’s impact is below the relevant SIL value at all locations is not sufficient to demonstrate that the proposed source will not cause or contribute to a violation, then the permitting authority should require additional information from the permit

⁶⁷ *Id.* at 6-7.

⁶⁸ *Id.* at 7-8.

⁶⁹ *Id.* at 7.

applicant to make the required air quality impact demonstration.⁷⁰

If, as FERC contends, the impacts below the SIL were always statistically “insignificant,” and necessarily had “an insignificant effect on ambient air quality”, 2025 Remand Order P34 n.98, then there would have been no need for EPA to include this provision in the 2018 guidance.

B. FERC Cannot Conclude That Health Impacts Resulting from Pollution That Does Not Cause or Contribute to a NAAQS Violation Are *Per Se* “Acceptable”

As explained above, EPA does not set the NAAQS at levels that are “safe” in the sense of being “harmless.” EPA recognizes that some health impacts will occur at the levels EPA has chosen for the ozone, nitrogen dioxide, and fine particulate NAAQS. *See Murray Energy Corp.*, 936 F.3d at 610 (upholding EPA’s decision to set the ozone NAAQS at 70 ppb despite evidence indicating that health impacts would occur under this standard). EPA’s decision that those impacts are “acceptable” in the context of EPA’s administration of the Clean Air Act, 2025 Remand Order P49, does not entail the conclusion that this project’s impacts are acceptable for purposes of FERC’s decision to approve this specific project under the NGA here, nor does it excuse FERC from the NEPA obligation to take a hard look at those impacts. EPA’s “acceptance” of these harms is not the kind of factual determination on which FERC may credit another agency’s expertise. *Cf. City of Bos. Delegation v. FERC*, 897 F.3d 241, 255 (D.C. Cir. 2018). EPA’s acceptance is a policy judgment about how to

⁷⁰ EPA, Guidance on SILs, *supra* note 60, at 18.

answer a question other than the one before FERC, which cannot substitute for FERC's own analysis.

Under the NGA, FERC has the authority and obligation to consider environmental impacts in its public interest analysis. This includes environmental impacts—like air pollution—for which other agencies have primary responsibility. *Pub. Serv. Comm'n of State of N. Y. v. FERC*, 589 F.2d 542, 558 (D.C. Cir. 1978) (citing, *inter alia*, *City of Pittsburgh v. Fed. Power Comm'n*, 237 F.2d 741, 754 (D.C. Cir. 1956)).

Because the NGA requires FERC to do more than merely ensure that the project complies with the permitting requirements set by other authorities, “the existence of permit requirements overseen by another federal agency or state permitting authority cannot substitute for a proper NEPA analysis.” *Sierra Club v. FERC*, 867 F.3d 1357, 1375 (D.C. Cir. 2017) (“*Sabal Trail*”). As the D.C. Circuit held in *Calvert Cliffs*, compliance with permitting requirements set by other agencies:

essentially establish a *minimum condition* for the granting of a license. But they need not end the matter. The [agency] can then go on to perform the very different operation of balancing the overall benefits and costs of a particular proposed project, and consider alterations (above and beyond the applicable ... standards) which would further reduce environmental damage.

449 F.2d at 1125. Where a statute provides open-ended authority like the NGA, NEPA requires a case-by-case analysis, beyond application of one-size-fits-all standards:

Much will depend on the particular magnitudes involved in particular cases. In some cases, the benefits will be great

enough to justify a certain quantum of environmental costs; in other cases, they will not be so great and the proposed action may have to be abandoned or significantly altered so as to bring the benefits and costs into a proper balance.

Id. at 1123. Commensurate with these authorities, the D.C. Circuit has held that FERC violated NEPA and the NGA when it ignored the potential for a project's air pollution to contribute to cumulatively significant impacts even though the project would not violate the Clean Air Act. *Healthy Gulf v. FERC*, 107 F.4th 1033, 1044-45, 1047 (D.C. Cir. 2024). And failing to adequately address harms undermines FERC's Natural Gas Act conclusions that those harms do not render the terminal or pipeline contrary to the public interest.

As these cases illustrate, the question before FERC is fundamentally different than the questions EPA answered in setting the NAAQS or SILs. By requiring project-specific weighing of harms against benefits to the public, the NGA sharply differs from the Clean Air Act's PSD program. Under the Clean Air Act, projects that would "cause or contribute" to a NAAQS violation are categorically prohibited by a one-size-fits-all rule. The PSD program has no mechanism for arguing that harms caused by contribution to a NAAQS violation, while serious, are outweighed by a countervailing benefit. The strength of this prohibition provides context for understanding why EPA does not set NAAQS at a level that avoids *all* harm: the NAAQS reflect EPA's judgment about air quality that no American should ever be exposed to, rather than a judgment about when air quality begins to have any impact. But on the other hand, the PSD program provides no mechanism

for determining that harms that do *not* rise to this categorically unacceptable level are nonetheless unwarranted in individual contexts.

FERC's exercise of independent judgment is even more important under the NGA than other agencies' authority under many other statutes, because FERC's authority is not merely parallel: the NGA *preempts* state and local authority beyond the exercise of delegated Clean Air Act authority.⁷¹ Because Congress vested open-ended authority over gas infrastructure projects exclusively with FERC, it is imperative that FERC exercise that authority. FERC cannot shirk this responsibility by pointing to other agencies with lesser authorities.

Thus, the fact that EPA has deemed harms that result from pollution below the NAAQS "acceptable" for purposes of setting the NAAQS does not mean that FERC can dismiss the effects of a particular project's pollution as "acceptable" without analysis of what those effects actually are, followed by weighing of those effects against the benefits of this particular project.

C. The COBRA Analysis, As Unrebutted Evidence That Air Pollution Here Will Cause Harm Even Without A NAAQS Exceedance, Factually Distinguishes Cases That Have Upheld Reliance on NAAQS in NEPA Analyses

With this context, it is clear that the COBRA analysis here distinguishes cases that have held that agencies appropriately relied on the NAAQS in their NEPA analysis.

⁷¹ See, e.g., *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1315 (D.C. Cir. 2015)

None of the cases FERC cites in the 2025 Remand Order examined factual evidence indicating that air pollution would cause harm despite not exceeding the NAAQS. *See* 2025 Remand Order P49 n.147. FERC principally relies on *Sabal Trail*, which held in a footnote that

FERC appropriately relied on EPA’s national ambient air quality standards (NAAQS) as a standard of comparison for air-quality impacts. By presenting the project’s expected emissions levels and the NAAQS standards side-by-side, the EIS enabled decisionmakers and the public to meaningfully evaluate the project’s air-pollution effects by reference to a generally accepted standard

867 F.3d at 1371 n.7. But *Sabal Trail* did not consider evidence predicting the harm that pollution would cause even without a NAAQS exceedance, and thus, demonstrating that comparison with the NAAQS would *not* enable “meaningful[] evaluat[ion]” of project impacts. Thus, while *Sabal Trail* indicates that in the absence of more specific information, comparison with the NAAQS can be meaningful, nothing in *Sabal Trail* supports the conclusion that when there is more specific information available, agencies can ignore it.

Similarly, none of the other cases FERC cites—including *Lowman v. Fed. Aviation Admin.*, 83 F.4th 1345, 1364–66 (11th Cir. 2023), *Dine Citizens Against Ruining Our Env’t v. Haaland*, 59 F.4th 1016, 1046 (10th Cir. 2023), and *Tinicum Twp., Pa. v. U.S. Dep’t of Transp.*, 685 F.3d 288, 296-98 (3d Cir. 2012)—discussed evidence indicating that air pollution would have foreseeable health impacts even if ambient air quality did not exceed the NAAQS.

Thus, in these cases, agencies were using the NAAQS as evidence of whether harm would occur—the type of factual determination for which agencies may credit

the conclusion of another agency with subject-matter expertise. *City of Boston*, 897 F.3d at 255.

In this case, however, the COBRA analysis (which also constitutes application of EPA’s subject-matter expertise), together with information about EPA’s own caveats regarding the NAAQS, demonstrates that here, the NAAQS do not reflect EPA’s factual judgment about whether air pollution will have health impacts. But the policy question about whether harms are “acceptable”—or more specifically, the weight that should be given to harms in FERC’s NGA analysis—is the type of question on which FERC must exercise independent judgment. *Pub. Serv. Comm’n of State of N. Y.*, 589 F.2d at 558, *Calvert Cliffs*’, 449 F.2d at 1125. FERC erred in concluding that *Sabal Trail* and other cases permitted FERC to halt its analysis of criteria pollutants once FERC determined that pollution levels would not exceed the NAAQS.

D. FERC Has Not Justified Rejecting COBRA’s Use In Project-Level Review

For the reasons stated above, FERC erred in concluding that the air modeling and the conclusion that the project would not cause or contribute to a NAAQS violation “superseded” the COBRA analysis. FERC’s other fleeting arguments for disregarding the COBRA analysis, 2025 Remand Order P49, are also arbitrary.

Although FERC invokes its discretion as to choice of methodology to use in analyzing impacts, that discretion does not extend to the choice not to study impacts at all. Here, FERC dismisses the COBRA analysis but has not provided any other analysis of the impacts of air pollution that does not exceed the NAAQS.

FERC's dismissal of COBRA as a screening tool is similarly flawed. Although EPA explains that COBRA is particularly useful as a screening tool, because of its ease of use, FERC has not demonstrated that COBRA is *only* suitable for use in this context. But even if COBRA was only a screening tool, the point of a screening tool is to distinguish things that warrant further consideration from those that can be disregarded. Here, FERC has not argued that the health impacts predicted by COBRA are so de minimis that COBRA demonstrates that there is no need for further analysis—and it would be astounding if FERC had argued that the hundreds of premature deaths and millions in health impacts were so trivial. So if COBRA is used as a screening tool here, that tool indicates that further analysis is warranted, but FERC failed to provide that analysis. FERC has not disputed Intervenor's argument that, insofar as a more sophisticated analysis of criteria pollutants' health impacts below the NAAQS is warranted, tools to provide that analysis are available. *See* DSEIS Comment at 45 (discussing how the Human Health Risk Assessment Protocol could be used for this purpose).

FERC's attempt to draw a distinction between "state planning," which FERC concedes COBRA "may be sufficient for," and "NEPA analysis" fails, because FERC has not identified any differences between the two with any pertinence to COBRA's suitability. FERC's only argument on this point are citations to FERC's discredited claim that adverse impacts do not occur below the NAAQS. 2025 Remand Order P49 n.151. As to FERC's claim that the NAAQS have "a more robust scientific basis," EPA cites the same studies in support of the NAAQS and COBRA. But even if the

NAAQS’ basis could be characterized as “more robust” in terms of process, the fact remains that the NAAQS do not answer the question before FERC, which is will there be foreseeable health impacts as a result of these projects’ air pollution.

Conversely, EPA’s statement that COBRA is not suited for determining NAAQS compliance does not mean that COBRA is not suited to the task it was actually designed for: predicting actual health outcomes from changes in pollution. Those health impacts can occur regardless of whether the NAAQS are exceeded.

Finally, FERC’s general invocation of other uncertainties does not support FERC’s “find[ing]” that COBRA is “unsuitable for project-specific analyses.” 2025 Remand Order P49. FERC does not identify difference between project-specific analyses and other analysis that is pertinent to the question of COBRA’s suitability. FERC’s reference to “project-specific analyses” is a distinction without a difference. If FERC’s position those uncertainties are pertinent, the appropriate response is to prepare one of the more sophisticated analyses the COBRA User Manual and Intervenor’s DSEIS comments discussed—analyses which could have reduced or resolved these uncertainties while still providing the analysis of actual health impacts that is missing from the SEIS. But FERC has not justified disregarding the results of this EPA-developed modeling tool, which addresses an important issue not otherwise addressed in the record.

IV. FERC'S ANALYSIS OF PIPELINE COMPRESSOR STATION AIR IMPACTS WAS ARBITRARY

Separate from the terminal, in analyzing the impact of air pollution from the pipeline—specifically the compressor station—FERC repeated two of the errors identified in *Port Isabel I*. FERC failed to provide the public with a meaningful opportunity to comment on the analysis supporting FERC's conclusion, and FERC relied on inappropriate monitoring data regarding baseline conditions. *Port Isabel I*, 111 F.4th at 1209, 1215.

A. FERC's Analysis of Compressor Station Impacts Is Substantively Flawed

Although Intervenors and the public were not provided a full opportunity to review and comment on FERC's analysis of air pollution from the Rio Bravo compressor station, it is still clear that that analysis is flawed.

First, Rio Bravo and FERC do not use current baseline data. The final SEIS's PM_{2.5} analysis uses 2021-2023 data from the Dona Park monitor. FSEIS 4-48 to -49. The 2022-2024 design value for annual PM_{2.5} at this monitor is 9.3 µg/m³, which already exceeds the NAAQS.⁷² EPA published this validated data on June 3, 2025,⁷³ a month before Rio Bravo submitted its updated analysis and two months before FERC issued the final SEIS. But the data was available as of the beginning

⁷² PM_{2.5} Design Values, 2025, Table 5a, available at https://www.epa.gov/system/files/documents/2025-06/pm25_designvalues_2022_2024_final_05_28_25.xlsx preserved at *Air Quality Design Values*, EPA, available at <https://www.epa.gov/air-trends/air-quality-design-values> (last visited Sept. 24, 2025).

⁷³ *Id.*

of 2025, and as *Port Isabel I* held, 111 F.4th at 1215, FERC has never argued that it needed to wait for EPA to validate air monitor data, nor would the facts support such an argument. Using updated data refutes FERC's assertion that air quality around the compressor station will not exceed the NAAQS. Because air quality will reach levels that FERC agrees are unhealthy, FERC was required to consider Rio Bravo's contribution to it, including through the lens of cumulative impacts, regardless of whether Rio Bravo's individual contribution fell below the "significant impact level" used in Clean Air Act analysis. *See Healthy Gulf*, 107 F.4th at 1043-44 (holding that FERC erred by concluding that because a project's contribution to unhealthy air quality was individually insignificant, there was no further need to analyze cumulative impacts).

Second, FERC has not justified its analysis even as to baseline data ending in 2023. The draft SEIS, at 4-47, estimated ambient background annual PM_{2.5} levels at 9.9 µg/m³, based on the average of Dona Park and two other nearby monitors. Rio Bravo's post-draft-SEIS filings reject these other monitors in favor of Dona Park exclusively. Accession No. 20250519-5153 at 12, Accession No. 20250701-5352 at 9. Rio Bravo argued that one of these monitors (the one reporting higher values, although Rio Bravo does not state this) could be excluded due to distance and proximity to the coast. *Id.* But those are not new facts, and do not address why this average using this monitor was used initially. Failure to acknowledge and distinguish this initial reasoning was arbitrary.

Third, FERC ignores other cumulative sources — *i.e.*, foreseeable future sources not represented in existing baseline data. The final SEIS notes that for sources that are “minor” under the Clean Air Act’s PSD program, “cumulative air quality modeling is not typically required.” FSEIS at 4-47. But NEPA is not the Clean Air Act, and NEPA requires consideration of cumulative effects in all EISs, even when the Clean Air Act would not. *Healthy Gulf*, 107 F.4th at 1043-44. FERC did not provide any analysis of cumulative effects in its discussion of the pipeline’s impact on air quality. *Compare* FSEIS Table 4-3 (adding compressor station impacts to existing background concentrations) *with* FSEIS Table 4-1 (adding terminal impacts to ambient background *and* the “offsite contribution” of other foreseeable sources). Nor did FERC provide any argument as to why such a cumulative effects analysis was unnecessary, other than to misguidedly point to the Clean Air Act’s separate framework.

Fourth, moving to the compressor station’s own emissions, the final SEIS is fundamentally unclear in its own analysis. The SEIS discussion of compressor station air impacts begins by stating that “[e]missions from Compressor Station 1 *would not change* from the potential to emit indicated in the 2020 Project Amendment EA.” FSEIS at 4-46 (emphasis added). However, the SEIS then goes on to rely on modeling submitted by Rio Bravo that “updated the emission factors used to estimate potential emission rates.” FSEIS at 4-47. It is arbitrary for the SEIS to state that the emissions totals are both unchanged and updated. This confusion is exacerbated by the final SEIS’s arbitrary failure to disclose any estimate of actual

emissions: the final SEIS reprints Rio Bravo's modeling results but does not identify the emissions estimates that informed that modeling. Because FERC does not identify the Rio Bravo's new analysis's actual emissions estimates, it is unclear whether FERC is even aware of, or has made an informed decision to agree with, the magnitude of Rio Bravo's change: Rio Bravo's July 2025 filing indicates that the new estimates are *two orders of magnitude* lower than the "previous" estimates. Accession No. 20250701-5352 at Table 2, pages 3-4. Note, however, that the values Rio Grande gives for "previous" estimates do not obviously match the values given in the 2020 EA. *Compare* 2020 Project Amendment EA, Table 5 at 27 (estimating 40.26 tpy PM_{2.5}) *with* Accession No. 20250701-5352 at Table 2, pages 3 (estimating combustion turbine operating emissions at 45.45 tpy PM_{2.5} (11.3626 for each of four turbines), with the compressor station having various other smaller emission sources as well). Compressor station emissions have been a moving target, and FERC has not demonstrated clear awareness of the moves, much less an informed judgment as to what the actual value should be.

Fifth, Rio Bravo's own filings also have unexplained and apparently paradoxical changes. Rio Bravo stated that its July 2025 updated air modeling "supplement[ed]" its May 19 submission "for clarification purposes and to correct minor typographical errors." Accession No. 20250701-5352, Cover Letter. But this update changed key numeric values in the analysis, in ways that go far beyond clarifying what was said before or correcting typographical errors. On emission factors, Rio Bravo's update implicitly concedes that the May 19 submission was

overly optimistic, presenting PM_{2.5} emission factors for the combustion turbines (the main source of emissions) that are almost four times higher. *Compare* Accession No. 20250519-5153 Table 1 (estimating combustion turbine PM_{2.5} emissions at 0.00049 lb/MMBtu) *with* Accession No. 20250701-5352 at Table 1 (estimating 0.00186 lb/MMBtu). But while the July update increases the emission factor (emissions per MMBtu), it does not increase the estimated potential to emit, on an hourly annual basis. *Compare* Table 2 in Accession Nos. 20250519-5153 *and* 20250701-5352. Rio Bravo does not indicate that the heat rate for the turbines has changed. It is therefore unclear how the emissions per MMBtu can increase without also increasing the hourly or annual potential to emit. Even more paradoxically, while Rio Bravo's July filing predicts *identical* potential to emit and a *higher* emission factor, it predicts a *lower* impact on ambient air quality than the May filing. *Compare* Accession No. 20250519-5153 at Table 4 (estimating 24-hour PM_{2.5} impact at 0.32 µg/m³) *with* Accession No. 20250701-5352 at Table 4 (estimating 0.193 µg/m³). Neither FERC nor Rio Bravo has acknowledged, much less explained and justified, these counterintuitive results.

In summary, there are numerous issues with the final SEIS's discussion of direct and cumulative impacts of the Rio Bravo compressor station's air pollution. Intervenors and the public had limited ability to probe these issues because of FERC's failure to present its analysis in a draft document circulated for public comment. But even without the opportunity for such scrutiny, it is clear that

FERC's analysis has arbitrary assumptions and omissions that cause it to fall short of the hard look NEPA requires.

B. The Public Did Not Have an Adequate Opportunity to Comment on the Pipeline's Air Pollution Impacts

The draft SEIS was released on March 28, 2025, with public notice of its availability published April 4, 2025, establishing a deadline for public comments 45 days later, on May 19, 2025. The draft SEIS concluded that as a result of compressor station operation, surrounding air quality would reach 10.7 $\mu\text{g}/\text{m}^3$ for annual PM_{2.5}, exceeding the 9 $\mu\text{g}/\text{m}^3$ NAAQS, and that the compressor station's contribution to this exceedance would be 0.8 $\mu\text{g}/\text{m}^3$, more than six times EPA's SIL.⁷⁴ Thus, by FERC's own standard, the adverse impacts of the compressor station would be significant, because they cause and contribute to a NAAQS exceedance.

Rather than accept this conclusion, the draft SEIS invited Rio Bravo to submit an updated analysis, speculating that "further refinement" of the air modeling might demonstrate lesser impacts.⁷⁵ The draft SEIS instructed Rio Bravo to file this updated modeling "Prior to the end of the draft supplemental EIS comment period."⁷⁶ But Intervenor and the public had no adequate opportunity to comment on this new modeling.

⁷⁴ DSEIS at 4-47, table 4-3.

⁷⁵ DSEIS at 4-48.

⁷⁶ *Id.* at 4-48.

First, as *Port Isabel I* emphasized, NEPA requires that FERC provide the public with an opportunity to comment on *FERC's* analysis, not merely on the developers' submissions. 111 F.4th at 1211. FERC did not provide any such opportunity. FERC's analysis was presented in the final SEIS issued July 31, 2025. FERC did not solicit comments on this document. And although Intervenor were analyzing the SEIS and working to prepare comments, Intervenor (and the rest of the public) were cut short when FERC issued its 2025 Remand Order only 29 days later, despite FERC having previously stated that it anticipated issuing the final EIS on July 31, 2025, and then the final order on November 20, 2025.⁷⁷ If FERC had stuck to its own schedule, then even absent a public comment period on FERC's analysis, the public at least would have had an additional 81 days to submit unsolicited comments.

Second, even if, *contra Port Isabel I*, the public could be expected to comment on Rio Bravo's submissions rather than FERC's analysis, here, the public did not have an adequate opportunity to comment on these either. Rio Bravo filed an updated analysis at 3:17 p.m. Eastern time on the last day of the draft SEIS comment period.⁷⁸ 103 minutes before the 5:00 p.m. comment deadline. The public, therefore, had no effective ability to even *read* this new analysis before comments

⁷⁷ Notice of Schedule of Environmental Review, at 6 (Sept. 17, 2024).

⁷⁸ Rio Bravo Pipeline Company LLC submits response to EIR No. 5 from the DSEIS, Docket No. CP16-454, Accession Number No. 20250519-5153 (May 19, 2025).

on the draft SEIS were due, much less an opportunity to examine and comment on this last-minute submission. And that last-minute filing isn't even the analysis FERC relied upon: Rio Bravo submitted another revision of its modeling on July 1, 2025, which is what FERC actually used. *See* FSEIS at ES-6; *compare* FSEIS at Table 4-3 (estimating compressor station contribution to 24-hour PM_{2.5} at 0.32 µg/m³) *with* Rio Bravo Pipeline Company LLC Supplement to 05/19/2025 Response to EIR No. 5, Accession No. 20250701-5352, at Table 4 (July 1, 2025) (same) and Rio Bravo Pipeline Company LLC Response to EIR No. 5, Accession No. 20250519-5153, at Table 4 (May 19, 2025) (estimating 0.32 µg/m³).

The 2025 Remand Order briefly and inadequately responds to comments about the inadequacy of public comment on this issue. First, FERC suggests that public comment on Rio Bravo's late submissions is unnecessary because those submissions show a decrease, rather than an increase, in impacts. 2025 Remand Order P46. The issue is that the public did not have an adequate opportunity to probe and challenge the late modeling; however, FERC is nonetheless relying on the late modeling to support the conclusion that, notwithstanding the new annual PM_{2.5} standard, the Rio Bravo pipeline will not have significant air impacts. This is not a situation in which new information shows that impacts will be less than what FERC previously determined to be acceptable, because FERC has never concluded that the project would be required by the public convenience and necessity even if it violated the new annual PM_{2.5} NAAQS.

Second, FERC argues that it would have considered late-filed comments. The possibility of commenting on Rio Bravo's submissions is not a substitute for commenting on FERC analysis, as *Port Isabel I* held. As to FERC's filings, even if the public could have been expected to comment on the final SEIS despite the lack of a formal comment opportunity or solicitation, FERC cut that opportunity short by approving the project 30 days after the final SEIS was issued, despite having told the public that they could expect to have until November for FERC to issue an order.

Third, and most perniciously, FERC argues that "neither NEPA nor the Commission's regulation require specific procedures to be used in a supplemental EIS," 2025 Remand Order P46, indicating that FERC no longer understands it to be necessary, when issuing a SEIS, to provide a reasonably complete draft and a 45-day comment period. This is wrong for several reasons. Notwithstanding FERC's attempt to revise its NEPA regulations this summer, FERC remains bound by its 1987 adoption of the CEQ NEPA regulations in effect at that time. Even if FERC's adoption of the CEQ regulations is no longer binding, FERC had not provided a reason for departing from those regulations' interpretation of NEPA. And even if FERC is no longer required to specifically provide a 45-day comment period, the fact that FERC did not solicit *any* public comment on the analysis FERC used violates NEPA itself: courts have interpreted the statute to require public comment, and Congress has acquiesced to or ratified CEQ's decades-long interpretation of the statute.

1. FERC Remains Bound by Regulations Requiring that A Draft SEIS be Preceded by A Reasonably Complete Draft and 45-day Comment Period

FERC's NEPA regulations, adopted in 1987, explicitly adopted the CEQ NEPA regulations in effect at that time.⁷⁹ In adopting this regulation, FERC was clear and explicit that it was exercising its own authority. FERC noted that it had received comments questioning whether CEQ "regulations are binding on the Commission as a matter of law."⁸⁰ FERC responded to those comments by explaining that "there is no need to address" that question, because "the Commission is *voluntarily* complying with CEQ regulations."⁸¹ FERC further explained that FERC understood its rule to incorporate and adopt the CEQ regulations as its own.⁸² FERC's initially proposed NEPA rules would have reprinted, verbatim or near-verbatim, many of the CEQ regulations under FERC's own codification.⁸³ FERC's final 1987 rule concluded that such reprinting was an "unnecessary repetition," and therefore changed the regulatory text "to focus on the Commission's particular requirements."⁸⁴ However, the preamble to the 1987 final rule makes clear that this was a stylistic change, not a substantive one, and does not call into question FERC's intention to adopt CEQ's regulations as FERC's own.

⁷⁹ *Regulations Implementing National Environmental Policy Act of 1969*, 52 Fed. Reg. 47,897, 47,898 (Dec. 10, 1987) (enacting 18 C.F.R. § 380.1).

⁸⁰ *Id.*

⁸¹ *Id.* (emphasis added).

⁸² *Id.*

⁸³ *See Notice of Proposed Rulemaking: Regulations Implementing the National Environmental Policy Act of 1969*, 44 Fed. Reg. 50,052, 50,055-61 (Aug. 27, 1979).

⁸⁴ 52 Fed. Reg. at 47,898.

On June 30, 2025, FERC purported to issue a final rule amending FERC's NEPA regulations to remove references to the CEQ regulations.⁸⁵ FERC argues that this removal means FERC is not required to follow the former CEQ regulations here. 2025 Remand Order P61. But FERC's decision amend its NEPA regulations with a direct final rule, rather than notice-and-comment rulemaking, was arbitrary and unlawful. Because the prior rule was adopted via notice and comment, it could only be modified through this procedure, 5 U.S.C. 553, absent exceptions inapplicable here. In this regard, FERC's NEPA rulemaking authority is different than CEQ's. CEQ rescinded its regulations through an interim final rule because CEQ concluded that it did not have the authority to issue regulations binding other agencies.⁸⁶ But CEQ affirmed other agencies' authority and obligation to enact NEPA regulations governing their own NEPA analyses.⁸⁷ CEQ has specifically stated that agencies may continue to "voluntarily" rely on the 40 CFR part 1500-1508 regulations even though those regulations have been formally withdrawn.⁸⁸ That is precisely what FERC committed itself to doing in enacting 18 C.F.R. § 380.1 in 1987. And FERC has authority to continue adopting those regulations for itself now. FERC therefore erred in arguing that public comment on FERC's rulemaking

⁸⁵ FERC Order No. 908, Removal of References to Council on Environmental Quality's Rescinded Regulations, 191 FERC ¶ 61,237 (June 30, 2025).

⁸⁶ *Removal of National Environmental Policy Act Implementing Regulations*, 90 Fed. Reg. 10,610, 10,613-14 (Feb. 25, 2025).

⁸⁷ Council on Env't Quality, Memorandum for Heads of Federal Departments and Agencies (Feb. 19, 2025), available at: <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf>.

⁸⁸ *Id.*

“would serve no purpose,” Order No. 908 P13, because there was a FERC decision to be informed by public comment: whether to exercise FERC’s independent authority to decide, as FERC did in 1987, to follow the withdrawn CEQ regulations voluntarily, even though those regulations did not bind FERC.

FERC’s decision to withdraw references to the CEQ regulations was arbitrary because it was finalized without notice and comment. That unlawful rulemaking, therefore, does not excuse FERC from following prior 18 C.F.R. 380.1, which in turn requires FERC to follow the former CEQ regulations. That includes the regulation specifying that a supplemental EIS must follow the requirements of a regular EIS, the requirement that a regular EIS be preceded by a draft that is reasonably complete, and the requirement that the public have at least 45 days to comment on that reasonably complete draft. *See* 40 C.F.R. §§ 1502.9(b), (d)(1), (d)(3), 1506.11(d) (2024).

Moreover, even if FERC’s amendment to its regulations was not arbitrary, FERC’s staff guidance manual continues to state that FERC should provide 45 days for comment on a draft EIS. Nothing in the guidance indicates that draft supplemental EISs should be treated differently.

2. Even FERC Is No Longer Bound by CEQ Regulations, FERC Has Not Articulated A Reason for Departing From Them

Even if FERC is no longer *bound* by its adoption and incorporation of CEQ’s regulations, this would not justify failing to apply CEQ’s most recent guidance and reasoning on the appropriate way to implement NEPA, which is embodied by the 2024 NEPA regulations.

CEQ did not remove its NEPA regulations because they represented an improper interpretation of the statute. Rather, as CEQ explained, it removed the regulations because Executive Order 14154 directed their removal, and CEQ could identify no other authority for issuing binding NEPA regulations. *See* 90 Fed. Reg. at 10,613.

Even if CEQ's approach to implementing NEPA no longer can be binding, its views on the best way to implement the statute and extensive explanation for those views have not gone away. Nor has FERC's view, expressed in its 1987 NEPA rulemaking, that the CEQ approach was reasonable and should be adopted voluntarily. The "reasons for the old" policy are still on the books, so the Agency must "show that there are good reasons for the new policy." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Declining to consider decades of CEQ experience with the statute also no doubt "entirely fail[s] to consider an important aspect of the problem." *State Farm*, 463 U.S. at 43. Accordingly, insofar as FERC no longer concludes that a SEIS must follow the procedures for an EIS, that a draft need not be reasonably complete, or that public comment is not required, FERC was obligated to explain any differences in the approach it took. Ultimately, FERC has not explained why it determined that it did not need to provide the public with an opportunity to comment on the air analysis FERC relied upon, even though that analysis was substantially different than the analysis included in the draft SEIS.

3. Courts Interpret NEPA to Require Public Comment on Draft EISs, and By Extension SEISs

Although the NEPA statutory text does not explicitly require a draft EIS and public comment thereon, the Supreme Court has long recognized the centrality of public participation in NEPA. The Court has noted that NEPA guarantees that “relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). In this way, it’s not enough to simply publish an environmental document that the public may passively review. “Publication of an EIS, both in draft and final form . . . serves a larger informational role.” *Id.* It gives the public “assurance that the agency has indeed considered environmental concerns in its decisionmaking process” and “more significantly, provides a springboard for public comment.” *Id.* (emphasis added) (citations omitted); *see also Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (EIS designed to “provide a springboard for public comment” (citation modified)). Allowing the public to participate early on addresses NEPA’s “manifest concern with preventing uninformed action,” because it is through the “broad dissemination of information” that “the public” can “react to the effects of a proposed action at a meaningful time.” *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989). Such disclosure allows the public to meaningfully participate in NEPA, as Congress intended. To strip this mandate from NEPA would be “incongruous with [NEPA’s] approach to environmental protection.” *Marsh*, 490 U.S. at 371.

The Courts of Appeals have reached the same conclusion. For example, the Second Circuit held that NEPA required “an environmental full disclosure” so that the public could “weigh a project’s benefits against its environmental costs.” *Sierra Club v. U.S. Army Corps of Eng’rs*, 772 F.2d 1043, 1049 (2d Cir. 1985). Allowing the public to weigh costs against benefits is meaningless if the public cannot provide comments to the relevant agencies with that weighing in mind. Rather, an agency must invite comment, and respond; doing so “insures the integrity of the agency process by forcing it to face those stubborn, difficult-to-answer objections without ignoring them or sweeping them under the rug.” *Id.* Likewise, the Ninth Circuit has recognized the “crucial role” that public engagement plays in “realizing NEPA’s policy goals.” *Prutehi Litekyan: Save Ritidian v. U.S. Dep’t of Airforce*, 128 F.4th 1089, 1101 (9th Cir. 2025). Both public notice and the public participation it supports “are at the heart of the NEPA review process.” *California v. Block*, 690 F.2d 753, 770 (9th Cir. 1982). This emphasis on public participation reflects the “paramount Congressional desire to internalize opposing viewpoints into the decision-making process” before an agency arrives at a final decision. *Id.* at 771. To that end, it is not enough to provide “public notice,” because NEPA requires “public participation in the evaluation of the environmental consequences of a major federal action.” *Id.*

Accordingly, regardless of what regulations are controlling, FERC’s conclusion that it could rely on an analysis of air impacts that had not been

provided for public comment violated the NEPA statute itself, as the statute has been judicially interpreted.

4. Congressional Acquiescence

In addition to these judicial interpretations, the fact that Congress acquiesced to CEQ and the Court's long-standing interpretation of NEPA confirms that public comment and input are, in fact, statutorily mandated. "[C]ongressional acquiescence" to a practice or interpretation of an administrative agency indicates its approval under two conditions: the practice must be "long-standing," *Rice v. Wilcox*, 630 F.2d 586, 590 (8th Cir. 1980); *cf. NLRB v. Noel Canning*, 573 U.S. 513, 524–25 (2014) (explaining that "long settled and established practice is a consideration of great weight" in ascertaining whether the coordinate branches have respected the separation of powers), and the circumstances must illustrate Congress's "extensive awareness" of the interpretation or action to which it has allegedly acquiesced. *Schism v. US*, 316 F.3d 1259, 1289, 1295–96 (Fed. Cir. 2002); *Bob Jones Univ. v. US*, 461 U.S. 574, 599 (1983).

An "unusually strong" showing of Congressional acquiescence can be made when Congress considers and rejects alternative proposals and when its enactments reference or implicitly "placed its stamp of approval on such agreements." *Five Lakes Outing Club v. US*, 468 F.2d 443, 446 (8th Cir. 1972) (procedure long employed by Commissioner had gained court approval, and was "acquiesced in by Congress" before "expressly incorporated into the Code"); *Farmers Coop. Co. v. Comm'r of Internal Revenue*, 288 F.2d 315, 323–24 (8th Cir. 1961) ("over forty years"

of “rulings and administrative practices” followed by congressional action “at least impliedly approved” that interpretation).

Congress has shown longstanding, extensive awareness of CEQ’s NEPA regulations and authority and has at least implicitly agreed that they constitute appropriate interpretations of the statute. Indeed, in a few places, Congress has done even more, directly incorporating CEQ’s regulations by reference in many places. *See, e.g.*, 33 U.S.C. § 2348a(a) (defining categorical exclusion, environmental assessment, and finding of no significant impact with reference to CEQ’s implementing regulations); 23 U.S.C. § 139(d)(5) (defining a cooperating agency with reference to CEQ’s implementing regulations); 16 U.S.C. § 6511(7)(C) (defining a decision document with reference to applicable CEQ regulations). Congress has also legislated against the backdrop of CEQ’s NEPA regulations many times, such as with the recent Fiscal Responsibility Act, through which Congress enacted the first major statutory changes to NEPA in fifty years. *See* Pub. L. No. 118-5, 137 Stat. 10 (June 3, 2023). That legislation clarified certain procedural aspects of NEPA’s implementation, incorporating some of CEQ’s prior regulations into statutory text, without any indication that Congress looked askance at CEQ’s interpretations of NEPA’s requirements to seek out and consider public input on NEPA documents. Other examples include requiring agencies to comply with the regulations for specific projects or exempting agencies from the regulatory requirements altogether. *See, e.g., Building Chips in America Act of 2023*, Pub. L. 118-105, 138 Stat. 1587 (Oct. 2, 2024).

All of this illustrates that Congress has accepted that the longstanding CEQ regulations reflect the appropriate interpretation of NEPA as a general matter. There is even more evidence that Congress has accepted CEQ's public participation requirements. Congress has directly legislated against the backdrop of CEQ's public participation requirements. Through the *Fixing America's Surface Transportation Act*, Pub. L. No. 114-94, 129 Stat. 1312 (Dec. 4, 2015) ("FAST Act"), Congress, in part, streamlined the review process for certain federal infrastructure projects. For example, Congress expressly required agencies to establish public comment periods of 45 to 60 days for all draft EISs, and public comment periods not exceeding 45 days for all other environmental review and comment periods. 42 U.S.C. § 4370m-4(d)(1)-(2). However, even though streamlining was the goal, these provisions still took for granted that public comment periods were required under NEPA: a statutory minimum indicates that public comment periods are not optional. The 45-day minimum was legislated from CEQ's rules. *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*, 85 Fed. Reg. 43,4301, 43,372 (July 16, 2020) ("[A]gencies shall allow at least 45 days for comments on draft statements."). By legislating in this way, Congress confirmed the necessity of public participation in NEPA.

V. RIO GRANDE STILL HAS NOT PROVIDED PLANS CALLED FOR BY FERC'S PRIOR ORDERS

More than two years ago, FERC ordered Rio Grande LNG "prepare and file a Project Ambient Air Quality Mitigation and Monitoring Plan for reducing the air

quality impacts of overlapping construction, commissioning, and terminal operations.”⁸⁹ This plan was to be filed “prior to commissioning.”⁹⁰ Even if Rio Grande is not in technical violation of this requirement, because commissioning has not yet commenced, it is a problem that it has been two years and Rio Grande still has not filed the plan or indicated when it will do so.

FERC did not respond to Intervenor’s comments on this issue in their comments on the draft SEIS. We reiterate that, as explained in the May 22, 2023 request for rehearing and in Commissioner Clements’s dissent from the authorization order, FERC’s air quality and public interest analysis cannot rely on this “plan to have a plan.”⁹¹ Without even the broad contours of what this mitigation will entail, FERC has no basis for concluding that mitigation will work, or achieve any particular level of reduction. The fact that Rio Grande still has not provided this plan, despite having two additional years to do so, casts further doubt on whether it is possible to develop an effective mitigation plan here.

⁸⁹ *Rio Grande LNG*, Order on Remand and Amending Section 7 Certificate, 183 FERC ¶ 61,046, P142 and Amended Environmental Condition 144 (Apr. 21, 2023).

⁹⁰ *Id.*; see also 2025 Remand Order P40 (reiterating this requirement).

⁹¹ *Vecinos para el Bienestar de la Comunidad Costera et al*, Request for Rehearing, at 30-33 (May 22, 2023).

**VI. FERC HAS FAILED TO SUPPORT ITS CONCLUSION THAT THE
TERMINAL AND PIPELINE ARE IN THE PUBLIC INTEREST, AS
REQUIRED BY THE NATURAL GAS ACT**

For the reasons stated above, air pollution emitted by construction and operation of the Rio Grande LNG terminal and Rio Bravo Pipeline will have foreseeable adverse effects on surrounding communities. This is not a case in which there are no foreseeable harms to the public. FERC must incorporate these harms into its determination of whether the projects are in the public interest.⁹² Because FERC has not done so, its decision to approve the projects is arbitrary.

More fundamentally, it is not clear how, under FERC and the Department of Energy's current application of the NGA and interpretation the Department's delegation of authority to FERC, it would even be *possible* for FERC to determine that the projects' benefits to the public outweighed these foreseeable harms without further consultation with the Department. The only meaningful benefits provided by the terminal are benefits of the exports the terminal will enable, and the only benefits provided by the pipeline are those provided by the terminal. But because FERC interprets the NGA, and the Department's delegation order, not to provide FERC with any authority to weigh the benefits of exports, there is no way for *FERC* to decide whether the project benefits outweigh the harms caused by project infrastructure—harms that unequivocally are within FERC's authority and obligation to consider.

⁹² See *New Jersey Conservation Found. v. FERC*, 111 F.4th 42, 62 (D.C. Cir. 2024).

The Department of Energy's separate determinations do not solve this dilemma for FERC. Although the Department has approved Rio Grande's export applications, the Department's approvals do not rest on an affirmative finding of net public benefit; the Department issues approvals so long as exports are not proven to be harmful. And insofar as the Department's orders provide evidence of *some* benefit to the public, the question before FERC is whether exports provide *enough* benefit to outweigh the harms that will be caused by the FERC-jurisdictional infrastructure. This is a question the Department does not answer, but that FERC has heretofore refused to consider.

FERC bears the burden of providing a reasonable explanation for its decisions. Ordinarily, FERC avoids this issue by finding that export infrastructure will not have serious harms. But in a case like this one, where the project *will* have foreseeable harms, FERC must do more. FERC bears the burden of solving this dilemma in the first instance. Perhaps FERC could issue a conditional approval, identifying the harms and withholding authorization until the Department, as an exercise of its exclusively-retained authority, to determine whether exports provide harms outweighing those benefits. Perhaps FERC could ask the Department to weigh in first, and provide FERC with additional information before FERC issues a final reauthorization. But regardless of what FERC ultimately attempts, it is clear that the analysis FERC has provided so far fails to address the foreseeable harms, and is therefore arbitrary and not supported by substantial evidence.

CONCLUSION

For the reasons stated above, the 2025 Remand Order is arbitrary and capricious, and fails to meet FERC's obligations under the NGA or NEPA.

Intervenors request that FERC set aside and rehear this order. Ultimately, these projects are contrary to the public interest, and should be denied.

Respectfully submitted September 29, 2025.

/s/ Nathan Matthews

Nathan Matthews

Earthjustice

2101 Webster Street, Suite 1300

Oakland, CA 94612

(415) 977-5695

nathan.matthews@sierraclub.org

on behalf of South Texas Environmental Justice Network, Vecinos para el Bienestar de la Comunidad Costera, and Sierra Club

/s/ Rebecca McCreary

Rebecca McCreary

Sierra Club

1650 38th Street, Suite 103W

Boulder, CO 80301

(305) 449-5595 ext. 103

rebecca.mccreary@sierraclub.org

On behalf of Sierra Club

/s/ Gilberto Hinojosa

Gilberto Hinojosa

531 E. St. Francis St.

Brownsville, Texas 78520

(956) 554-4218

ghinojosa@ghinojosalaw.net

Attorney for City of Port Isabel

CERTIFICATE OF SERVICE

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

Dated at Oakland, CA this 29th day of September, 2025.

/s/ Nathan Matthews

Nathan Matthews

Earthjustice

180 Steuart St., #194330

San Francisco, CA 94105

(415) 217-2040

nmatthews@earthjustice.org