

ORAL ARGUMENT HAS NOT BEEN SCHEDULED

No. 22-1251

In the
United States Court of Appeals
For the District of Columbia Circuit

PUBLIC CITIZEN, INC.,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

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

**AMICI CURIAE BRIEF OF NORTH PORT ST. JOE PROJECT AREA
COMMITTEE, INC., AND PIONEER BAY COMMUNITY DEVELOPMENT
CORPORATION IN SUPPORT OF PETITIONER AND REVERSAL**

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**An admitted member of this Court.*

Dated: January 25, 2023

**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES,
AND RULE 26.1 DISCLOSURE**

Pursuant to D.C. Circuit Rule 28(a)(1) and Federal Rule of Appellate Procedure 26.1, counsel for Amici Curiae Earthjustice certify as follows:

(A) Parties and Amici. Except for the following, all parties, intervenors, and amici appearing in proceedings before the Federal Energy Regulatory Commission and this Court are, to the best of my knowledge, listed in the Certificate as to Parties, Rulings and Related Cases filed by counsel for Petitioner Public Citizen Inc., on January 18, 2023:

- Earthjustice attorneys Moneen Nasmith, Jordan Luebke, Elizabeth Livingston de Calderon, and Bradley Marshall are counsel to Amici Curiae in support of Petitioner in No. 22-1251.
- Elizabeth Benson and Ankit Jain are counsel for Amicus Curiae, Sierra Club, Delaware Riverkeeper Network, PennFuture, and Clean Air Council, in support of Petitioner in No. 22-1251.

(B) Rulings Under Review. Petitioner Public Citizen, Inc., seeks review of the following Federal Energy Regulatory Commission decisions:

1. *Nopetro LNG, LLC*, Order on Petition for Declaratory Order, Docket No. CP21-179-000, 178 FERC ¶ 61,168 (issued Mar. 25, 2022) (JA __–__).
2. *Nopetro LNG, LLC*, Order Addressing Arguments Raised on Rehearing,

Docket No. CP21-179-001, 180 FERC ¶ 61,057 (issued July 29, 2022) (JA __-__).

(C) Related Cases. The case now pending before this Court was not previously before this Court or any Court other than the Federal Energy Regulatory Commission.

(D) Rule 26.1 Disclosure. Amici, North Port St. Joe Project Area Committee, Inc., and Pioneer Bay Community Development Corporation, are not publicly held corporations, do not issue stock, and do not have any parent corporation.

Dated: January 25, 2023

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GLOSSARY

Coalition	Amicus curiae North Port St. Joe Project Area Committee, Inc., d/b/a North Port St. Joe Project Area Coalition
EIS	Environmental Impact Statement
EPA	United States Environmental Protection Agency
FERC	Respondent Federal Energy Regulatory Commission
LNG	Liquefied natural gas
NEPA	National Environmental Policy Act
Nopetro Pet.	Intervenor Nopetro LNG, LLC's Petition for Declaratory Order, Docket No. CP21-179 (Apr. 20, 2021)
PCB	Polychlorinated biphenyl
Pet. Br.	Petitioner Public Citizen, Inc.'s Opening Brief, Public Citizen, Inc. v. Federal Energy Regulatory Commission, No. 22-1251 (filed Jan. 18, 2023)
Pioneer	Amicus curiae Pioneer Bay Community Development Corporation
Project	Nopetro's LNG, LLC's proposed Port St. Joe liquefied natural gas export terminal

**CERTIFICATE OF COUNSEL REGARDING AUTHORITY TO FILE AND
SEPARATE BRIEFING**

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), counsel for amici curiae may file a brief accompanied by a motion for leave of court. Pursuant to D.C. Circuit Rule 29(d), counsel for North Port St. Joe Project Area Committee, Inc., and Pioneer Bay Community Development Corporation certifies that it is filing a separate brief from other amici curiae, because separate briefs are necessary to ensure that the unique interests of the local community are being adequately represented in this proceeding. While Amici North Port St. Joe Project Area Committee, Inc. and Pioneer Bay Community Development Corporation share the position of other amici supporting Petitioner in its challenge the Federal Energy Regulatory Commission's decision, the reasons for its opposition are distinct from those being represented by other amici and particular to the experiences and history shared by the community of North Port St. Joe.

Dated: January 25, 2023

/s/ Moneen Nasmith
Moneen Nasmith

**BRIEF IN SUPPORT OF REVERSAL OF THE FEDERAL ENERGY
REGULATORY COMMISSION’S ORDER DECLINING JURISDICTION**

Pursuant to the Court’s December 9, 2022, order, and D.C. Cir. R. 28, 29, and 32, the Amici submit this Brief in Support of Reversal of the Federal Energy Regulatory Commission’s Order Declining Jurisdiction over the Nopetro LNG, LLC, liquefied natural gas export terminal in Port St. Joe, Florida. The Amici, North Port St. Joe Project Area Committee, Inc., and Pioneer Bay Community Development Corporation, are represented in this matter by Earthjustice, an environmental advocacy organization. Any communications regarding this matter may be directed to Moneen Nasmith of Earthjustice at 48 Wall Street, 15th Floor, New York, NY 10005, mnasmith@earthjustice.org, 212-845-7384.

STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS

Pursuant to Fed. R. App. P. (29(a)(4)(E), Amici Curiae state that no counsel for any party authored this brief in whole or in part, and that no person or entity, other than Amici and their counsel, made a monetary contribution intended to fund the preparation and submission of this brief.

STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

The Amici Curiae are both community-driven non-profit organizations whose members reside in the historically African American community of North Port St. Joe, and whose missions are dedicated to overcoming the history of systemic social, economic, and environmental injustice imposed on this community. North Port St. Joe is immediately adjacent to the site where Nopetro LNG, LLC has proposed to build a liquefied natural gas (LNG) export terminal (the Project). Amici have been working for years to revitalize their community by cleaning up the toxic legacy left by previous industrial facilities and fostering a more healthful and sustainable economy rooted in tourism and small, locally-owned businesses. Amici support Public Citizen Inc.'s petition seeking review and reversal of a Federal Energy Regulatory Commission (FERC) decision that unlawfully declined jurisdiction over the proposed terminal and, in so doing, eliminated the only opportunity for a meaningful review of the community impacts of the Project. FERC's decision not to exercise its jurisdiction means that the Project—a major industrial gas export facility—will be constructed and operated next to the North Port St. Joe community without the public participation, environmental review, and consideration of alternative sites and mitigating measures that otherwise-applicable federal statutes would require. Amici submit this brief to highlight the impacts to their community and missions that this Project

will bring and that no government or agency will consider if FERC's unlawful refusal to exercise its responsibilities under the Natural Gas Act and the National Environmental Policy Act (NEPA) is allowed to stand.

North Port St. Joe Project Area Committee, Inc., d/b/a **North Port St. Joe Project Area Coalition** (the Coalition)¹ is a 501(c)(3) local social and environmental justice network of community residents seeking to redevelop critical infrastructure, housing, and the North Port St. Joe business district. The Coalition works with community members, local and state government, academic institutions, and other partners to assess community health needs and implement solutions to overcome the history of environmental racism inflicted on North Port St. Joe for many decades. The Coalition has an interest in protecting its members' and North Port St. Joe's pathway to healthy residential and economic development.

Pioneer Bay Community Development Corporation (Pioneer),² is a small 501(c)(3) non-profit community development organization that members of the Coalition formed in 2018 to address human and environmental health challenges linked to community deterioration, including poverty, lack of opportunity, disenfranchisement, loss of population and youth flight in North Port St. Joe.

¹ North Port St. Joe Project Area Coalition, <https://redevelopingnpsj.org> (last accessed Jan. 25, 2023).

² Pioneer Bay Community Development Corporation, <https://pioneerbaycdc.org/> (last accessed Jan. 25, 2023).

Pioneer seeks to “[b]uild[] a resilient community, [and] redeveloping without gentrification.”³ Pioneer works with multiple stakeholders to accomplish these goals, and, in recognition of its compelling vision and plans, has been awarded three EPA grants, including a 2022 EPA Environmental Justice Collaborative Problem Solving Grant to further support this work. Pioneer has an interest in protecting its members’ and North Port St. Joe’s pathway to healthy residential and economic development.

SUMMARY OF ARGUMENT

FERC’s refusal to exercise its exclusive jurisdiction to regulate an LNG export terminal that will sit directly between the historically overburdened environmental justice community of North Port St. Joe and the Gulf of Mexico is contrary to the purpose and intent of the National Gas Act and the National Environmental Policy Act (NEPA). By shirking its responsibility to review the debilitating environmental impacts that the LNG terminal will impose on this community, FERC assures that no agency will consider the significant environmental and community impacts that this terminal will impose on North Port St. Joe. The community already suffers from a legacy of environmental racism and injustice that it is working to overcome; FERC’s statutory obligations require it to consider that history and minimize additional negative impacts. FERC’s unlawful

³ *Id.*

decision not to exercise its jurisdiction here impermissibly deprives the people of Port St. Joe of the opportunity to participate in a public process that is required under federal law to consider whether siting an LNG export terminal in this already-overburdened area is in the public interest.

North Port St. Joe is a historically African American community that was subjected to decades of environmental racism from adjacent industrial operations. Decades of extensive pollution left the community environmentally overburdened and with a depressed economy. Since then, the community launched an organized effort to overcome this legacy, redevelop the area to the benefit of its residents, and build a sustainable tourism-based economy. These efforts are already bearing fruit, through the development of new strategic partnerships, the award of substantial federal grants, and a growing tourism industry.

Nopetro's proposed LNG export terminal would destroy this progress. The threat of explosion, increased traffic and air pollution, operating noise, and other impacts of the terminal would drive away tourists, contaminate the land, sea, and air, and threaten the physical safety of North Port St. Joe's residents and visitors. With FERC disclaiming jurisdiction based on a misinterpretation of the Natural Gas Act, however, not a single one of these impacts has been or will be considered.

ARGUMENT

I. North Port St. Joe s a Historically Overburdened Community Working to Overcome a Legacy of Environmental Racism.

The community of North Port St. Joe is a once-segregated, still predominately African American part of Port St. Joe, a small town on the coast of Florida’s panhandle.⁴ North Port St. Joe is physically cut off from the remainder of the town and the coastline: a series of railroad tracks form a barrier between the historically white downtown Port St. Joe to the south; and a strip of contaminated land that previously housed a noxious paper mill and associated manufacturing plants cuts the community off from St. Joseph Bay and the Gulf of Mexico to the west. For 50 years, the paper mill contaminated the community’s air, water and soil—a legacy of pollution that continues to affect the health and wellbeing of the community to this day. With the closure of the paper mill and related industrial activities, the community has been able to invest in a new vision of itself, one that rejects heavy industrial activities and relies instead on more sustainable and locally-owned businesses. However, with little-to-no community input, Nopetro

⁴ Even today, more than 80% of residents of North Port St. Joe are Black, while over 80% of residents in downtown Port St. Joe are white. *Compare* U.S. Census Bureau, Block Group 3, Census Tract 9602, Gulf County, Florida https://data.census.gov/profile/Block_Group_3,_Census_Tract_9602,_Gulf_County,_Florida?g=1500000US120459602003 with U.S. Census Bureau, Block Group 1, Census Tract 9603.02, Gulf County, Florida https://data.census.gov/profile/Block_Group_1,_Census_Tract_9603.02,_Gulf_County,_Florida?g=1500000US120459603021.

LNG now proposes to construct and operate a massive new gas liquefaction and export terminal on the very same land where the paper mill operated and caused North Port St. Joe's disproportionate pollution and health problems. And with FERC wrongly refusing to exercise jurisdiction over the Project, the critical facts of the community's historic burden of contamination and its attempts to overcome that legacy will go completely ignored.

a. North Port St. Joe Bears a Disproportionate Burden of Industrial Pollution.

Many of North Port St. Joe's original and predominantly Black residents came in the late 1800s and early 1900s, drawn to the local economy's fishing, turpentine, and lumber industries.⁵ In 1938, however, the St. Joe Paper Company constructed and began operating a large industrial pulp mill and companion plants that manufactured paper products like liner board and corrugated cardboard boxes. *Winfield v. St. Joe Paper Co.*, No. MCA 76-28, 1979 WL 15343, at *1 (N.D. Fla. June 25, 1979). These facilities were directly adjacent to the African American neighborhood in North Port St. Joe, or Millview, as it also came to be known (see Figure 1 below). The St. Joe Paper Company's activities came at significant and lasting costs to the community.

⁵ North Port St. Joe Project Area Committee, *Redeveloping North Port St. Joe: Implementing the Community's Plan* at 7 (Dec. 2016), <https://www.slideshare.net/johnahendry/redeveloping-north-port-st-joe-70387839>.

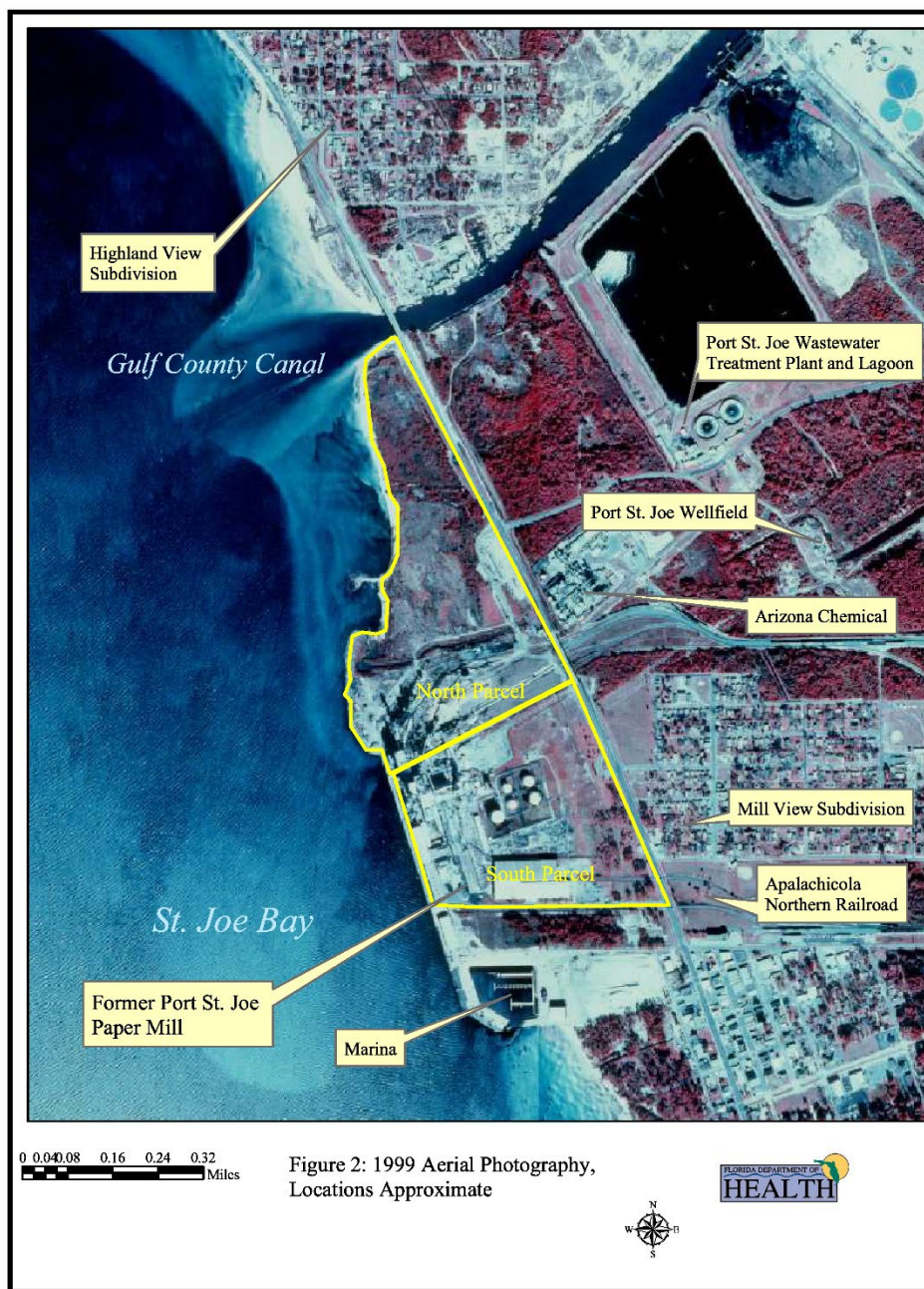


Figure 1: Location of the former St. Joe Paper Mill adjacent to North Port St. Joe (Millview)⁶

⁶ Agency for Toxic Substances and Disease Registry, U.S. Department of Health and Human Services, Public Health Assessment for Former St. Joe Forest Products

The operation of any paper mill involves intensive industrial processes that result in significant ambient pollution. In general, “[i]t is a matter of common knowledge and . . . a fact of which courts may take judicial cognizance, that all wood pulp mills emit noxious and disagreeable odors,” smoke, and gases. *Nat’l Container Corp. v. State ex rel. Stockton*, 138 Fla. 32, 49, 189 So. 4, 11 (1939). The process involves breaking down entire trees into chips that are then “cooked” in various acidic chemical baths until only cellulose pulp remains. *Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1022 (D.C. Cir. 1978). The waste stream of these processes and associated wash waters “contain a variety of chemicals produced during ‘cooking’ and other processes, including acids and large quantities of dissolved cellulose-breakdown products.” *Id.* These wastes are then released from the facility in various effluent streams or sludges. The Environmental Protection Agency (EPA) implemented general paper mill effluent standards in the 1970s due to the “substantial and damaging impacts on the quality of water” of paper mill discharges. 39 Fed. Reg. 18742, 18746 (May 29, 1974). Of particular concern,

Site (A/K/A St. Joe Paper Mill) Port St. Joe, Gulf County Florida, EPA Facility ID: FLD004056602 at 49 (Jan. 2006), https://www.floridahealth.gov/%5C%5C/environmental-health/hazardous-waste-sites/_documents/s/stjoeforestproducts010606.pdf [hereinafter HHS Health Assessment].

paper mill sludge contains highly toxic dioxins, which the EPA has recognized as carcinogenic.⁷

For the 30-plus years before EPA imposed standards on paper mills, the St. Joe Paper Company operated in North Port St. Joe without any such limitations. From the outset, the paper mill's construction and operation "discolored and possibly made poisonous" the adjacent waters of the St. Joseph Bay due to the "application of chemicals released by the paper mill into the water," which rendered nearby bayfront property "totally unfit for swimming or bathing purposes." *Port St. Joe Dock & Terminal Ry. Co. v. Maddox*, 140 Fla. 110, 113, 191 So. 775, 776–77 (1939). It polluted the air and land, too. For example, its power boilers spewed fugitive fly ash and other particulate matter emissions from the plant for years, failing to limit the emissions or meet air quality standards for years more even when new regulations required it. *St. Joe Paper Co. v. State Dep't of Env'tl. Regul.*, 371 So. 2d 178, 179 (Fla. Dist. Ct. App. 1979). Court records confirm that the mill emitted ash particulates in excess of even the state's modified limit of 5600 pounds *per day* into the surrounding community. *Id.* at 179–80. Its violation of an already-extended compliance deadline was so severe

⁷ U.S. EPA, *Learn About Dioxin*, <https://www.epa.gov/dioxin/learn-about-dioxin> (last accessed Jan. 25, 2023).

that the plant could have been fined up to \$7.01 million, *id.* at 181, or nearly \$30 million today.⁸

Over its years of operations, this complex of heavy industrial facilities also discharged hazardous waste streams, including arsenic, lead, polycyclic aromatic hydrocarbons, polychlorinated biphenyls (PCBs), and vanadium, all of which have been found in soil and water samples of the former site in concentrations above Florida soil clean up target level thresholds.⁹ For most of the mill's operation, wastewater was discharged without treatment to an unlined impoundment and then into St. Joseph Bay. Former mill workers have detailed numerous practices and incidents which contributed to the contamination of the area, including: dumping of boiler ash; leaks in lead-lined piping and tanks containing sulfuric acid; overflow from tanks containing process liquors; leaking PCB transformers; burial of crushed drums containing residual chemicals; spills of diesel fuel, petroleum products, and degreasers; and burial of pulp and lime wastes in the former barge basin.¹⁰

The legacy of environmental racism against the North Port St. Joe community extends even to the land their homes would be built upon. The St. Joe

⁸ U.S. Bureau of Labor Statistics, *CPI Inflation Calculator*, https://www.bls.gov/data/inflation_calculator.htm (last accessed Jan. 25, 2023).

⁹ HHS Health Assessment at 10–17.

¹⁰ *Id.* at 8.

Company had a long practice of dumping its mill waste, including wood chips, tree bark, lime grits, oil boiler ash, and slag into nearby timberlands and wetland areas it owned. *The St. Joe Co. v. Leslie*, 912 So. 2d 21, 22 (Fla. Dist. Ct. App. 2005); Amended Complaint ¶¶ 3, 27, *Bailey v. The St. Joe Co.*, No. 2004-264-CA (Fla. Gulf Circuit Ct. filed Aug. 20, 2004) [hereinafter *Bailey Complaint*]¹¹. Community members filed a lawsuit over how the St. Joe Company later leveled much of this land, divided it into lots, and sold those properties to individual community members and contractors for the express purpose of building homes. *Bailey Complaint* ¶¶ 3, 26–32. The St. Joe Company did not disclose that these lots had been wetlands in their natural condition and that it had dumped mill wastes to fill the lots. *Id.* ¶¶ 5, 28–31. Because the Company exercised control over the local housing market, it was able to perpetuate the racist practice of ensuring that minority residents were the ones who unwittingly bought homes on contaminated properties. *See id.*

In addition to the direct contamination, the pine chip and bark fill the Company used on these properties degraded over time, causing the land under homes to subside, wreaking havoc on the homes that North Port St. Joe community members had built. *Bailey Complaint* ¶¶ 3, 27. These homes suffered extensive

¹¹ Available at <https://www.civitekflorida.com/ocrs/app/search.xhtml> (Click tab “Case Search” and enter 2004 for “Year,” CA for “Court Type,” and 264 for “Sequence #”).

structural damage as they settled, preventing occupants from closing doors and windows to keep out insects, vermin, and moisture, severing natural gas service lines, detaching facades and ultimately rendering many properties uninhabitable. *Id.* ¶¶ 33, 36-40, 43, 48, 56, 62, 67, 71. Contaminants in waste the Company dumped as fill also migrated into groundwater that now pools as noxious standing water over the subsiding ground.

In addition, the mill and its industrial activities prevented the community from engaging in many other forms of meaningful economic development. As one of the significant sources of employment in the area, the St. Joe Paper Company engaged in racist practices that treated white employees better and kept the Black employees who resided in the North Port St. Joe area in positions that were compensated less and involved more dirty and dangerous tasks.¹² Local residents were, therefore, prevented from amassing the same wealth as their white counterparts that they could have invested back into the community. The more

¹² *Winfield v. St. Joe Paper Co.*, No. MCA 76-28, 1979 WL 15343, at *23, *26 (N.D. Fla. June 25, 1979) (“It is largely undisputed that prior to the effective date of Title VII in 1965 overt racial discrimination in the terms and conditions of employment was the ordinary practice at the plant. . . . On the whole the jobs held by whites paid more and carried more responsibility than those held by blacks. Black jobs tended to be the most physically demanding, dirty and dangerous at the plant. . . . [B]lack workers at St. Joe Paper Company have historically been shunted into dead-end jobs . . . consisting generally of the dirtiest, most dangerous and lowest-paying jobs in the mill. . . . The only plausible explanation for this pattern is racial discrimination.”).

hazardous nature of their jobs also meant that Black mill employees suffered from injuries and health outcomes that limited their financial well-being. In addition, the smells, sounds, and smoke from the mill's operations caused other commercial opportunities to locate elsewhere and kept the community all the more reliant on the employment the mill provided, despite the discriminatory and limiting nature of the mill's jobs for Black community members.

Although the paper mill closed in 1999, the mill infrastructure was dismantled in 2003-04, and the site has since been partially remediated, its legacy continues to affect North Port St. Joe. Buried contaminants remain, including below the water table.¹³ And the houses in Millview built above former St. Joe dumping sites continue to sustain damage as buried wastes decompose and settle. This structural damage to local buildings makes the community all the more vulnerable to hurricanes, as was apparent when Hurricane Michael, one of the strongest hurricanes to hit the United States, made landfall nearby in 2018. As the community relied on the mill as a significant employer in North Port St. Joe, its closure left many in the community without many options. In short, when the St. Joe Company packed up its mill operations, it removed a major source of income for the community, while leaving behind decades of pollution.

¹³ HHS Health Assessment at 13–14 .

b. The Community is Actively Working to Overcome the Legacy of Environmental Racism, Revitalize North Port St. Joe, and Determine its Own Future.

Since the mill's closure, the residents of North Port St. Joe have been working to rebuild and revitalize their own community. More recently, in 2016, community members founded the North Port St. Joe Project Area Coalition, a local social and environmental justice network of community residents seeking to redevelop critical infrastructure, housing, and the North Port St. Joe business district. Concerned residents first formed the Coalition with the goal of reviving a local redevelopment master plan that had been created in 2009. The Coalition held public meetings, raised funds, and in 2018, broadened its efforts to support the North Port St. Joe community by helping residents with emergency aid after the devastating impact of Hurricane Michael. In early 2021, the Coalition worked with EPA's College/Underserved Community Partnership Program and the nearby University of West Florida to bring resources to the community, partnering to conduct research and assess many of the environmental justice challenges faced by North Port St. Joe residents.

To further expand its reach, in 2018 the Coalition founded an independent organization, the Pioneer Bay Community Development Corporation (Pioneer), to address human and environmental health challenges linked to community deterioration, including poverty, lack of opportunity, disenfranchisement, loss of

population and youth flight in North Port St. Joe. Pioneer has been awarded three competitive federal grants through the EPA: an assessment grant, a jobs training grant, and a collaborative problem-solving grant—totaling over \$850,000 in Brownfield Assessment and Cleanup support.¹⁴ In particular, the 2022 EPA Environmental Justice Collaborative Problem Solving Grant will allow Pioneer to expand partnerships with local stakeholders, non-profits, local governments, universities, and public agencies to conduct assessments on public health and housing needs in North Port St. Joe. It will also allow Pioneer to develop plans to repair damage to homes and environmental quality from Hurricane Michael and from the former paper mill's legacy pollution and, ultimately, to incorporate project findings into the community's existing master plan. Pioneer also successfully engaged with the Florida Department of Health, when the group ensured robust participation in an assessment of community environmental health and helped 161 North Port St. Joe households to participate in the survey.

The Coalition also has developed a redevelopment plan that seeks to restore its business district.¹⁵ The Plan seeks to capitalize on the area's coastal location

¹⁴ U.S. EPA, *EPA presents Pioneer Bay Community Development Corporation with funding to assist in cleanup and assessments* (May 23, 2022), <https://www.epa.gov/newsreleases/epa-presents-pioneer-bay-community-development-corporation-funding-assist-cleanup-and>.

¹⁵ North Port St. Joe Project Area Coalition, *Redeveloping Martin Luther King Boulevard* (Jan. 2018),

and the “upturn in tourism and investment in second home and beachfront rental property.”¹⁶ The vision seeks investment in the area around the community’s main thoroughfare, Martin Luther King Boulevard, including extending sidewalks and bike paths and encouraging mix-used development, to attract visitors who are drawn to “vibrant towns with walkable neighborhoods and a range of services and attractions.”¹⁷ Local efforts to redevelop North Port St. Joe around a cleaner economy have already seen some success, as “[t]ourism provides North Port St. Joe with a growing number of jobs . . . and new enterprise opportunities.”¹⁸

c. Siting an LNG Terminal in North Port St. Joe Would Threaten the Community and Imperil Current and Future the Progress on Sustainable Redevelopment.

The list of potential impacts that an LNG terminal can inflict on a community is long. LNG terminals are massive industrial facilities that handle and store large quantities of volatile chemicals that pose a real safety risk to the surrounding community, particularly one located as close to the facility as North Port St. Joe. In addition, siting such a facility next to North Port St. Joe re-exposes a community that already suffers from the long-term effects of a disproportionate degree of pollution to more potential contamination. The Project also is

<https://static1.squarespace.com/static/5849b0e6197aea5821503130/t/5af0c8e588251b9fb60f0f70/1525729553028/FinalReport.pdf>.

¹⁶ *Id.* at 5.

¹⁷ *See id.* at 5, 7, 17.

¹⁸ *Redeveloping North Port St. Joe*, *supra* n. 5 at 14.

fundamentally at odds with the community's plans for and progress towards long-term revitalization.

Nopetro's LNG facility places the entirety of North Port St. Joe at grave risk in the event of an accident. Nopetro initially plans to produce 3.86 billion cubic feet per year of LNG and has made it clear that it intends to expand the facility after construction should FERC disclaim jurisdiction. Nopetro LNG, LLC, Petition for Declaratory Order at 4, 6, Docket No. CP21-179 (Apr. 20, 2021) (Nopetro Petition) (JA __). Even the initial amount of 3.86 billion cubic feet equates to an average of 10,568,104 cubic feet of LNG per day.¹⁹ FERC has estimated that a spill of just 440,000 cubic feet (less than 5% of what Nopetro proposes to process per day), under a wind of 4.5 miles per hour (a relatively low speed for coastal Florida), would travel 13,000 feet downwind before dissipating enough to no longer pose a risk of igniting.²⁰ When spilled, LNG runs the risk of creating a pool fire, where the LNG is simultaneously evaporating and burning. A pool fire of 440,000 cubic feet of LNG would create sufficient thermal radiation to cause second-degree burns within 60 seconds to people 4,600 feet—nearly a

¹⁹ 3,860,000,000 divided by 365.25 equals 10,568,104.

²⁰ FERC, *Consequence Assessment Methods for Incidents Involving Releases from Liquefied Natural Gas Carriers* at 39 (2004), available at <https://www.ferc.gov/sites/default/files/2020-05/cons-model.pdf>.

mile—away.²¹ The maps supplied by Nopetro to FERC make clear that almost all, if not all, of the community of North Port St. Joe is within 4,600 feet of the proposed facility. Nopetro Petition at 26 (JA ___).

To further put the facility that Nopetro proposes in perspective, the best-known LNG disaster in the United States, which destroyed roughly a *square mile* of Cleveland, released approximately 1,100,000 gallons of LNG.²² Nopetro plans to process almost 72 times as much LNG in North Port St. Joe *every day*.²³ The physical properties of methane have not changed since the Cleveland disaster—although storage technology has changed such that an accidental release may be less likely, the damage an accidental release could cause has not.

In addition, Nopetro plans to move all of the Project's LNG from its facility to adjacent docks for export in ISO containers via truck. Nopetro Petition at 4

²¹ See *id.* at 38 (showing that with a modeled 20 mph wind, an LNG pool fire of this size would radiate heat energy of 5 kW/m² at 4,600 feet); National Oceanic and Atmospheric Administration Office of Response and Restoration, *Thermal Radiation Levels of Concern*, <https://response.restoration.noaa.gov/oil-and-chemical-spills/chemical-spills/resources/thermal-radiation-levels-concern.html> (last visited January 18, 2023).

²² U.S. Bureau of Mines, *Report on the Investigation of the Fire at the Liquefaction, Storage, and Regasification Plant of the East Ohio Gas Co., Cleveland, Ohio, October 20, 1944* at 24 (Feb. 1946), available at https://digital.library.unt.edu/ark:/67531/metadc38535/m2/1/high_res_d/metadc38535.pdf.

²³ 1 gallon equals 0.13368 cubic feet. 1,100,000 gallons equates to 147,049 cubic feet. 10,568,104 cubic feet divided by 147,049 equals 71.9.

(JA __). ISO 40-foot containers have an approximate capacity of 10,000 gallons.²⁴ The 10,568,104 cubic feet of LNG per day Nopetro intends to initially produce equates to 79,054,908 gallons, or 7,905 such 40-foot ISO containers of LNG every day.²⁵ That equates to almost 3 million ISO tanks per year being filled and moved from Nopetro's facility to the export dock, each of which presents real risks to the community and its shoreline.

LNG terminal equipment also contributes to local air quality degradation. While the specifics of Nopetro's plans are not known (because the company has not provided the detailed information that the Natural Gas Act and NEPA will require should FERC exercise its jurisdiction), LNG terminals typically include gas-fired combustion turbines. Gas-fired turbines can be major sources of hazardous air pollutants, such as formaldehyde, toluene, benzene, and acetaldehyde,²⁶ along with other air pollutants known to cause adverse health effects.²⁷ In addition, Nopetro's proposal will involve a massive increase in local

²⁴ See Chart Industries, *LNG ISO Intermodal Containers* (2013), https://files.chartindustries.com/14732510_LNG_ISO.pdf.

²⁵ 1 cubic foot is 7.48051948 gallons. 10,568,104 multiplied by 7.48051948 equals 79,054,908. Dividing by ISO tanks' 10,000 gallon capacity equals 7,905 tanks.

²⁶ See, e.g., U.S. EPA, *Stationary Combustion Turbines: National Emission Standards for Hazardous Air Pollutants (NESHAP)*, <https://www.epa.gov/stationary-sources-air-pollution/stationary-combustion-turbines-national-emission-standards>.

²⁷ See, e.g., EPA, Fact Sheet, Final Amendments to Air Toxics Standards for Stationary Combustion Turbines to Remove a Stay of the Formaldehyde Standards

truck traffic, “contribut[ing] to the formation of ground level ozone (smog), which can trigger health problems such as aggravated asthma, reduced lung capacity, and increased susceptibility to respiratory illnesses, including pneumonia and bronchitis.”²⁸

Moreover, siting the Project where Nopetro has proposed would completely undermine the community’s plans to rebuild itself with a sustainable tourism-based economy. Tourism is a recognizable interest for the Amici and one that NEPA review would address. *See Billups v. City of Charleston*, 961 F.3d 673, 686 (4th Cir. 2020) (recognizing significant interest in protecting tourism); 40 C.F.R. § 1508.1(g)(4) (defining “impacts” or “effects” considered under NEPA to “include ... aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative”). First, any accident or spill from the facility would undoubtedly drive away tourists who are unwilling to bear the safety risk that Nopetro is imposing on North Port St. Joe. Second, the Project would cut off the North Port St. Joe community from the coastline and doom the community’s efforts to create a tourist industry along the Gulf Coast. The facility would sit in

in Two Subcategories, <https://www.epa.gov/system/files/documents/2022-03/turbine-neshap-amendments-final-rule-fact-sheet-final.pdf> (noting that hazardous air pollutants “are known or suspected to cause cancer and other serious health effects or adverse environmental effects.”).

²⁸ *See, e.g.*, U.S. Department of Transportation, *Cleaner Air*, <https://www.transportation.gov/mission/health/cleaner-air> (last accessed Jan. 25, 2023).

the same location as the old paper mill and reimpose a physical and visual barrier between the community and the tourist draw provided by the area's coastline.

Third, construction and operation of the Project will create noise, pollution, and visual effects that are incompatible with the quiet, seaside destination that the community is now and seeks to foster for tourists. Just the trucks traveling to and from the facility's dock will mean 15,810 truck trips per day at full capacity,²⁹ an average of 11 truck trips *every minute*.

II. If FERC is Permitted to Disclaim Jurisdiction, There Will be No Review of the Impacts the Nopetro Terminal Will Impose on the Community, Contrary to the Purpose of NEPA and the Natural Gas Act.

FERC's decision to disclaim jurisdiction based on an incorrect reading of its statutory authority and in the face of the tremendous harms the Project will visit upon the community of North Port St. Joe is inconsistent with the purpose and intent of both the Natural Gas Act and NEPA. Congress' intent in giving FERC its responsibility over LNG terminals was to fill the regulatory vacuum otherwise left around these dangerous facilities. As Public Citizen, Inc.'s opening brief describes, the purpose of the Natural Gas Act and its subsequent amendments was to ensure that FERC conducted a full review of these terminals. Pet. Br. at 7–14. Indeed, the “exclusive authority” the Natural Gas Act confers on FERC over “the

²⁹ See n. 25 *supra*. 7,905 trips to deliver LNG ISO containers to the dock plus 7,905 return trips to the filling area.

siting, construction, expansion, [and] operation of [] LNG terminal[s]” effectively discourages states from developing any systems to regulate these facilities. 15 U.S.C. § 717b(e)(1). The catastrophic consequences the Project could inflict on the community of North Port St. Joe are precisely those that Congress and federal law are supposed to ensure are carefully evaluated and weighed before construction and operation of such a facility can proceed.

The effect of FERC’s decision is that the Project’s real and potential impacts to the environment, to community, and to environmental justice, discussed in detail above, will go completely un-reviewed and unaddressed. *See* Comments of Cecile T. Scofield at 1, Docket No. CP21-179 (May 5, 2021) (JA__). In contrast to FERC’s comprehensive responsibilities and requirements for evaluating the impacts of LNG terminals, any state or local permits that might apply to the Project would not include any NEPA-like environmental review or any environmental justice review. There is no meaningful environmental justice legal or policy framework in the state of Florida; and since there is nothing in state law or regulation that allows any state agency to consider environmental justice in its permitting actions, state agencies cannot make such considerations based on federal law. *See Rowe v. Oleander Power Project*, No. 99-0932, 1999 WL 33116652 at *4 (Fla. Dep’t of Env’tl. Prot. Nov. 10, 1999) (Final Order No.

DEP99-1030) (finding consideration of federal environmental justice authority beyond the regulatory jurisdiction of Florida agencies in permitting decisions).³⁰

In making FERC “the *exclusive* siting authority and lead agency under NEPA for [LNG terminals],” *see, e.g., Columbia Riverkeeper v. U.S. Coast Guard*, 761 F.3d 1084, 1089 (emphasis added) (internal quotations omitted); *see* 15 U.S.C. § 717b(e)(1), Congress gave the Commission the responsibility to review the environmental impacts of these facilities under NEPA, obtain community input, and consider safety concerns, Pet. Br. at 45–46. These are not mere check-the-box steps. Federal law mandates that FERC’s evaluation of an LNG export terminal include consideration of the environmental and community impacts of the terminal. *See Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1325 (D.C. Cir. 2021) (“*Vecinos*”). Where an LNG terminal will

“significantly affect[] the quality of the human environment,” the Commission must prepare a detailed Environmental Impact Statement

³⁰ The only two environmental justice entities established by the state of Florida appear to be dormant. The last time Florida considered environmental justice was in the 1990s, when the state Legislature established the Florida Environmental Equity and Justice Commission in 1994 to study environmental justice in the state. 1994 Fla. Sess. Law Serv. Ch. 94-219. Then, in 1998, the Legislature created the Center for Environmental Equity and Justice (CEEJ) at Florida Agricultural and Mechanical University to facilitate research and education. Fla. Stat. § 760.854 (2021); 1998 Fla. Sess. Law Serv. Ch. 98-304. Since the founding of the CEEJ in 1998, there have been no other legislative or Florida agency actions substantively addressing environmental justice and equity concerns, and nothing added to any Florida laws or the Florida Administrative Code requiring or even allowing any statewide agencies to consider environmental justice in permitting actions.

(“EIS”) that addresses (i) the environmental impact of the proposed action; (ii) any “adverse environmental effects” that “cannot be avoided” if the proposal is implemented; (iii) available alternatives to the proposed action; (iv) the “relationship between local short-term uses of [the] environment and the maintenance and enhancement of long-term productivity”; and (v) “any irreversible and irretrievable commitments of resources” that “would be involved in the proposed action should it be implemented.” [42 U.S.C. § 4332(2)(C)]. The purpose of the EIS is to “force[] the agency to take a ‘hard look’ at the environmental consequences of its actions, including alternatives to its proposed course,” and to “ensure[] that these environmental consequences, and the agency’s consideration of them, are disclosed to the public.” *Sierra Club v. FERC*, 867 F.3d 1357, 1367 (D.C. Cir. 2017).

Vecinos, 6 F.4th at 1325–26.

The scope of environmental effects that would be covered in a FERC EIS of an LNG terminal such as the one at issue here is broad. NEPA requires evaluation of an LNG terminal’s air and water quality impacts, habitat and species effects, noise and visual impacts, contributions to climate change, and environmental justice considerations, among others. *See, e.g.*, 87 Fed. Reg. 23,453 23,461 (Apr. 20, 2022). New guidance emphasizes the importance of the NEPA review for environmental justice communities, because the public health risks are often higher for these majority-minority or low-income communities:

Numerous studies have found that environmental hazards (including those driven by climate change) are more prevalent in and pose particular risks to areas where people of color and low-income populations represent a higher fraction of the population compared with the general population. The NEPA process calls for identifying potential environmental justice-related issues and meaningfully

engaging with communities that proposed actions and reasonable alternatives (as well as the no-action alternative) may affect.

Council on Environmental Quality, *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change*, 88 Fed. Reg. 1196, 1211 (Jan. 9, 2023). Critically for projects such as this one, environmental justice reviews also must include a high degree of engagement with affected environmental justice communities and completion of a cumulative impacts analysis, which considers historic burdens the community has experienced, among other factors. *See, e.g.*, U.S. EPA, EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum at 1–4 (Jan. 2023).³¹ FERC would also be required to “identify[] and address[], as appropriate, disproportionately high and adverse human health or environmental effects of [the Project] on minority populations and low-income populations.” Executive Order 12,898, § 1-101, 59 Fed. Reg. 7,629 (Feb. 11, 1994). To do so, the Commission would have to conduct an “‘environmental justice’ analys[i]s by ‘collect[ing], maintain[ing], and analyz[ing] information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations.’” *Vecinos*, 6 F.4th at 1326 (quoting

³¹ <https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf>.

Executive Order 12,898 at § 3-302(b)). In other words, here, the people of North Port St. Joe who will be most directly and significantly affected by the Project would have an opportunity to influence the overall evaluation of the Project.

Moreover, the results of the public input and Project review processes must be folded into FERC's ultimate decision to allow an LNG terminal to move forward with construction and operation. NEPA requires that FERC "give appropriate consideration to environmental values in their decision making." 87 Fed. Reg. 23,453 (2022). And the Natural Gas Act requires evaluation of a proposed project's environmental and community impacts as part of the Commission's determination of whether the project is consistent with the "public interest." 15 U.S.C. § 717b(a); *see also Vecinos*, 6 F.4th at 1326. Reliance on a deficient NEPA analysis will undermine a determination by FERC that a project is in the public interest under the Natural Gas Act. *Vecinos*, 6 F.4th at 1331. Thus, completion of a thorough and comprehensive review that identifies the types and severity of impacts such as the ones the Project would impose on the North Port St. Joe community can—and should—result in a denial of the authorization to construct and operate the terminal, the selection of an alternative to the Project to minimize impacts to the community, or, at a minimum, the adoption of robust mitigation measures to reduce community impacts.

Congress has made it clear that FERC is the entity responsible for evaluating the impacts of LNG export terminals and considering the results of that evaluation in its decision of how to regulate the construction and operation of these facilities. Allowing the Commission to shirk its responsibilities here based on an incorrect and irrational interpretation of the Natural Gas Act violates the text of the Act, the purpose of the Act to protect the public interest, and the text and purpose of NEPA. This Court should not allow FERC to abdicate its responsibility to consider the real-world effects of siting Nopetro's proposed liquefied natural gas export terminal in North Port St. Joe. FERC must consider the repeated and cumulative legacy of pollution that the Project would subject the community to, and how the Project would reverse local-led progress towards a cleaner and more just local economy.

CONCLUSION

For the reasons stated above, as well as the arguments advanced by Petitioner's Opening Brief, this Court should reject FERC's mistaken interpretation of the Natural Gas Act, reverse FERC's decision that the Commission does not have jurisdiction over the Project, and remand to FERC with instructions to review the Project in a manner consistent with federal law.

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(G), I hereby certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(a)(5) because it contains 6,096 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) as it has been prepared in Microsoft Word 365 using 14-point Times New Roman typeface and is double-spaced (except for headings, footnotes, and block quotations).

Dated: January 25, 2023

/s/ Moneen Nasmith
Moneen Nasmith

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2023, I electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit via the CM/ECF System the foregoing Amicus Brief. All participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Moneen Nasmith
Moneen Nasmith