

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Texas LNG Brownsville LLC

Docket No. CP16-116-004

MOTION TO INTERVENE AND PROTEST OF SIERRA CLUB, SOUTH TEXAS ENVIRONMENTAL JUSTICE NETWORK, AND ESTO’K GNA TRIBAL NATION OF TEXAS

FERC approved the Texas LNG project on November 22, 2019. That order required the facilities to be fully completed and available for service within five years. Almost five years later, Texas LNG has not reached final investment decision, let alone commenced construction on the project. Texas LNG therefore requests an extension of five years, equal to the length of its original authorized construction and operation timeframe.

Texas LNG provides support for only one of its listed reasons for its delay: litigation surrounding the Project’s authorizations and permits. FERC should reject Texas LNG’s extension request not only due to the underlying public interest changing, but due to changes in the underlying environmental background for the project. As a result, FERC should reject Texas LNG’s claim that it has “good cause” for an extension, pursuant to 18 C.F.R. § 385.2008.

For these reasons and the others described below, Sierra Club, South Texas Environmental Justice Network, and the Esto’k Gna Tribal Nation of Texas move to intervene in this docket and protest the requested extension. The extension should be denied, or in the alternative, cannot be granted without additional analysis and process.

Motion to Intervene

As explained in *Adelphia Gateway, LLC*, 178 FERC ¶ 61,030, P10 (2022), FERC’s policy is to allow any entity to intervene in response to a request to extend a certificate or authorization deadline regardless of party status in original proceedings. Here, Sierra Club, South

Texas Environmental Justice Network, and the Esto'k Gna Tribal Nation of Texas should be permitted to intervene because each group readily satisfies the elements required for intervention.¹

A. Intervention of Sierra Club

Sierra Club is the nation's largest grassroots environmental organization. It is dedicated to the protection of the natural environment and public health and has a longstanding interest and expertise in the development and use of natural gas resources in Texas and in or around the Gulf of Mexico. Accordingly, Sierra Club's intervention is in the public interest.² Sierra Club has experience with FERC's obligations and authorities regarding greenhouse gas emissions and other environmental impacts of facilities that FERC regulates.

Separately and alternatively, Sierra Club should be granted intervention because its members' interests will be directly affected by this proceeding.³ As of May 2024, Sierra Club has over 22,000 members in Texas. Many of these members live, work, and recreate in areas that would be impacted by Texas LNG. Unless FERC grants the instant extension request, the project will not be built. Building and operating the project would expose Sierra Club members to air pollution, visual and noise impacts, vessel traffic that interferes with Sierra Club members' marine recreation, and other impacts.

Sierra Club has demonstrated the vitality of these interests in many ways, including its participation in prior proceedings concerning the project. More broadly, Sierra Club runs national advocacy and organizing campaigns dedicated to reducing American dependence on

¹ See 18 C.F.R. § 385.214.

² 18 C.F.R. § 385.214(b)(2)(iii).

³ 18 C.F.R. § 385.214(b)(2)(ii).

fossil fuels, including natural gas, and to protecting public health. These campaigns, including its Beyond Coal and Beyond Dirty Fuels campaigns, are dedicated to promoting a swift transition away from fossil fuels and towards reducing global greenhouse gas emissions.

Sierra Club therefore satisfies the conditions for intervention both because it is in the public interest and as a representative for interested consumers.⁴

Pursuant to 18 C.F.R. § 385.203(b)(1)-(2), Sierra Club states that the exact name of the movant is Sierra Club, and the movant’s principal place of business is 2101 Webster Street, Suite 1300, Oakland, CA 94612.

Pursuant to 18 C.F.R. § 385.203(b)(3), Sierra Club identifies the following persons for correspondence and communications regarding the application:

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Pursuant to 18 C.F.R. § 385.214(b)(1), Sierra Club’s position is that the request for an extension should be denied, and that the underlying certificate should be vacated because, without the extension, the project cannot be completed by the current deadline.

B. Intervention of South Texas Environmental Justice Network

South Texas Environmental Justice Network (“STEJN”) should be granted intervention pursuant to 18 C.F.R. § 385.214(b)(2)(ii). STEJN is an organization with approximately 2,000 supporters, including members in South Texas. If the Project goes forward, our members will be

⁴ 15 U.S.C. § 717n(e); 18 C.F.R § 385.214(b)(2).

impacted by the effects of water, air pollution, noise, etc. Separately and alternatively, STEJN's intervention would be in the public interest as provided by 18 C.F.R. § 385.314(b)(2)(iii).

STEJN supports the leadership of frontline BIPOC (Black, Indigenous, and People of Color) communities. STEJN includes numerous organizations, campaigns, individuals, and Tribal leadership from the South Texas region that challenge the status quo and corporate power to build a future aligned in values that centers on the social and environmental health of local communities living in reciprocal relationships with our shared natural home. Members of STEJN will be adversely impacted by the Project because they will inhale its air pollution emissions, sustain property damage due to the additional LNG ship carrier traffic, and have higher energy bills due to the additional LNG exports. Additionally, the proposed Project could impact STEJN's members because of the greenhouse gas emissions associated with the Project that will contribute to climate change. Texans have already experienced expensive disasters related to climate change and will experience more if the Project's greenhouse gas emissions are released into the atmosphere.

Pursuant to 18 C.F.R. § 385.203(b)(3), STEJN identifies the following person for correspondence and communications regarding the application:

Rebekah Hinojosa
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Pursuant to 18 C.F.R. § 385.203(b)(1)-(2), STEJN's position is that the request to grant an extension of time, until November 22, 2029, to construct and place into service the proposed Texas LNG terminal on the north side of the Brownsville Ship Channel located in Cameron County, Texas should be denied.

C. Intervention of Esto’k Gna Tribal Nation of Texas

Pursuant to 18 C.F.R. § 385.203(b)(1)-(2), the Esto’k Gna Tribal Nation of Texas (“the Tribe”) states that the exact name of the movant is Esto’k Gna Tribal Nation of Texas. Pursuant to 18 C.F.R. § 385.203(b)(3), the Esto’k Gna Tribal Nation of Texas identifies the following persons for service of correspondence and communications regarding this application:

Juan Mancias
Esto’k Gna Tribal Nation of Texas
1250 Roemer Lane
Floresville, TX 78114
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The Tribe should be granted intervention pursuant to 18 C.F.R. § 385.214(b)(2)(ii). The location of the Texas LNG project prevents the Tribe and its members from accessing sacred lands and offering their prayers. Alternatively, and separately, the Tribe’s intervention is in the public interest and should be granted pursuant to 18 C.F.R. § 385.314(b)(2)(iii).

Pursuant to 18 C.F.R. 385.203(b)(1)-(2), the Tribe’s position is that this request for an extension should be denied that the underlying certificate should be vacated because it is clear that the project will not be completed by the deadline imposed therein.

Protest

I. Request for Extension and Public Meeting

The undersigned groups respectfully request that FERC extend the public comment period on the above referenced application by 15 days. Extending the comment period on the program would be consistent with the background administrative law principle that the public be given a *meaningful* opportunity to weigh-in on agency decisionmaking processes. This mandate improves the quality of agency action and ensures that the administrative process has both public accountability and legitimacy. As touted by FERC, public comments are critical to FERC’s

decision-making process.⁵ Public comments can have specific to far-reaching impacts on individuals, communities, industries, and the environment.⁶ Through comments, the public provides Commission staff information that adds important context, detail or data that can result in better outcomes.⁷ Here, the affected community has provided important context and details by engaging at every opportunity.

During the brief 15-day window for comments on this extension request, the Cameron County Commissioners' Court was considering a Texas Tax Code Chapter 312 tax abatement for Texas LNG.⁸ Due to the overlap in comment opportunities for this project, the impacted community was unable to meaningfully learn and comment on both this extension application and the Cameron County tax abatement proceedings. Furthermore, the immediate community impacted by the Texas LNG project is predominately Spanish speaking, with over 85 percent of Brownsville residents speaking a language other than English at home.⁹ Failure to include adequate translation of Texas LNG's extension application and FERC's extension notice further frustrates the community's ability to engage with the public opportunity in this instance.

To accommodate these extenuating circumstances, the undersigned request that FERC provide a 15-day extension on the deadline for comments on the Texas LNG extension request. Additionally, the undersigned request that a public meeting be held by FERC for this extension request, with the inclusion of Spanish language translation.

⁵ <https://www.ferc.gov/submitting-effective-comments>

⁶ *Id.*

⁷ *Id.*

⁸ <https://www.cameroncountytexas.gov/public-notice-of-intent-to-consider-tax-abatement-agreement-at-the-june-4-2024-commissioners-court-meeting/>.

⁹ <https://www.census.gov/quickfacts/fact/table/brownsvillecitytexas/HEA775222>

II. Texas LNG Has Not Demonstrated Good Cause for the Extension

“Good cause” for an extension requires an applicant to show that it “diligently pursu[ed] completion of the project” and made “good faith efforts to meet its deadline,” but could not do so due to circumstances outside the applicant’s control.¹⁰ There is not good cause for an extension where an applicant “set its certificate on a shelf and let it lie dormant,” rather than being “actively engaged in preparations in anticipation of commencing construction.”¹¹

Texas LNG’s purported efforts—*e.g.*, receiving, maintaining, and defending permits, investing in the project, making progress on commercialization—are irrelevant to FERC’s good cause inquiry here.¹² When FERC determines that a developer made good faith efforts to satisfy its deadline, it does so on the basis that the developer pursued all available avenues for progress.¹³ Again, FERC’s good cause standard requires the developer to make a good faith attempt to meet the deadline rather than a good faith attempt to complete the project at some indefinite point. Thus, these purported actions do not establish good faith efforts where Texas LNG simply failed, without any explanation, to begin construction early enough to satisfy its deadline. Texas LNG has not established that it made the requisite good faith effort to satisfy its deadline or that it was prevented from satisfying its deadline.

¹⁰ *Const. Pipeline Co., LLC*, 169 FERC ¶ 61,102, PP21-22 (Nov. 8, 2019).

¹¹ *Chestnut Ridge Storage*, 139 FERC ¶ 61,149, P8 (May 23, 2012).

¹² *See e.g.*, Texas LNG Extension Application, Accession No. 20240524-5213.

¹³ *See Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,026, PP13-14 (Oct. 9, 2020) (explaining that the developer had “actively worked to restore *all* permits necessary for construction.”); *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,138, P13 (Feb. 20, 2020) (explaining that the developer worked to obtain “all necessary approvals); *Const. Pipeline Co., LLC*, 165 FERC P 61,081, P25 (Nov. 5, 2018) (same); *Arlington Storage Co., LLC*, 155 FERC ¶ 61,165, PP11, 13 (May 16, 2016) (explaining that the developer was working to remove the only remaining barrier to construction).

a. Texas LNG’s Litigation History and Permits Do Not Establish Good Cause for an Extension

“The purpose of conditioning certificate authority with a deadline for completion of construction is to ‘diminish[] the potential that the public interest might be compromised by significant changes occurring between issuance of the certificate and commencement of the project.’” *Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,026 (Oct. 9, 2020), P 17, quoting *Altamont Gas Transmission Co.*, 75 FERC ¶ 61,348, at 62,103 (1996). To meet this purpose and achieve the original in-service date Texas LNG should have been ready to start work as soon as FERC granted the certificate on November 22, 2019. Nevertheless, it has not begun construction to date. Its application sets forth no sufficient rationale for this delay.

The history of litigation concerning Texas LNG does not provide grounds for granting the extension. There were no delays due to the D.C. Circuit litigation, *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321 (D.C. Cir. 2021) (“*Vecinos I*”). No stays of the FERC Certificate or other permits or preliminary injunctions stopped Texas LNG from commencing construction or completing it within the time allotted by the Certificate. *Cf. Sierra Club v. FERC*, 97 F.4th 16, 24 (D.C. Cir. 2024) (hereafter “*Northern Access*”) (FERC has found good cause for an extension includes “legal or litigation-related *barriers*” (emphasis supplied)).

As Texas LNG notes in its extension request, the D.C. Circuit remanded the Commission’s authorization and rehearing orders back to the Commission to re-analyze the Project’s impacts on environmental justice communities and explain why the Commission was not required to use the social cost of carbon protocol tool. 6 F.4th at 1331-32. The D.C. Circuit also required that the Commission reconsider its determination of public interest under Section 3 of the NGA. *Id.* Texas LNG was the applicant, provided information to FERC for preparation of the EIS, opposed Petitioners’ request for rehearing, and voluntarily intervened in the D.C. Circuit

litigation. Its multiplication of proceedings and unsuccessful defense of the unlawful environmental impact statement (EIS) and Certificate are not grounds for an extension. Moreover, the D.C. Circuit did not vacate the Certificate. It remanded without vacatur so that construction could proceed during the remand and FERC's new analysis. Texas LNG chose not to take advantage of this and cannot now claim its choice not to proceed justifies an extension.¹⁴

Nor does the pending D.C. Circuit litigation, *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, D.C. Cir. nos. No. 23-1175 (L), 23-1222 ("*Vecinos II*"), justify an extension. Petitioners contend FERC's analysis and lack of NEPA process on remand necessitated the lawsuit, and, as in the first lawsuit, an unlawful action (in this case FERC's remand order) should not be grounds for an extension. Also, the D.C. Circuit denied Petitioners' request for a stay, hence Texas LNG could have proceeded during the litigation but once again chose not to do so.

If Petitioners prevail in the lawsuit, the Certificate (or remand order) could be vacated, in which case there will be no valid FERC decision to extend. If not vacated, it could once again be remanded to FERC for further analysis or explanation. FERC should not issue an extension based on speculation of a remand without vacatur, since under that scenario the court still would have determined the underlying action was inadequate. FERC should not extend a potentially

¹⁴ Texas LNG's application also does not substantiate any delay due to the state court proceedings on its TCEQ Title V permit. It also refers to its Corps of Engineers' § 404 permit and Texas CZMA authorization in January, 2024, but these were not the subject of litigation. There is no indication in their application that Texas LNG acted diligently or was working with the agencies to ensure these were issued faster, much less that it was poised to begin construction and would have done so but for the absence of these permits. Considering construction was not imminent, there did not appear to be any reason for the agencies to issue the permits sooner than they did. Texas LNG could have taken various measures ahead of them such as staging, site preparation, finalization of contracts or announcing its FID, but did not. There is also no indication it began construction or took any on the ground action once it obtained the permits.

unlawful certificate. Nor should FERC presuppose that the outcome of remand, a NEPA procedure on remand, or additional public participation, would be to uphold the prior certificate without modification and issue an extension of that Certificate in advance.¹⁵

Texas LNG also states in support of its application that it has all necessary Department of Energy (“DOE”) approvals. However, since those were issued the Department of Energy has acknowledged that its analysis of greenhouse gas impacts in its Natural Gas Act section 3 public interest determinations was outmoded and needed revising. The White House, which ordered DOE to pause all new section 3 authorizations for exports to non-FTA countries while it conducted this revision, stated “[t]he current economic and environmental analyses DOE uses to underpin its LNG export authorizations *are roughly five years old and no longer adequately account for considerations like . . . the latest assessment of the impact of greenhouse gas emissions.*” If DOE’s 5-year-old methodology for analyzing the impacts of greenhouse gas emissions no longer “adequately account[s] for” those impacts, then FERC – whose 2019 analysis of the impact of the Project’s massive greenhouse gas emissions is just as old – should also reconsider its previous analysis.

For years, FERC and DOE have applied a standard practice to subject LNG authorizations to a seven-year deadline for the project to enter into service or commence exports, respectively. In April 2023, DOE issued a Policy Statement reinforcing its standard seven-year deadline in part because the determinations underlying initial authorizations become

¹⁵ Petitioners raised several issues in *Vecinos II*, including FERC’s use of social of cost of carbon, disparate impacts and the environmental justice analysis, air quality monitoring, the need for an SEIS, and carbon capture. Petitioners’ incorporate those arguments from their briefing as they also provide grounds for denying the extension.

stale.¹⁶ DOE also recognized that extending faltering projects' approvals creates an “authorization overhang” that unnecessarily clouds forecasting for new LNG exports and may deter newer project proposals utilizing newer technology and better environmental justice practices. Following DOE's policy statement, two projects that have been stalled for years submitted entirely new applications (Lake Charles LNG and Magnolia LNG), enabling DOE to conduct an updated analysis in light of current circumstances, including improvements in technology and scientific understandings of the projects' economic and environmental impacts. Like DOE, FERC should subject long-stalled projects, such as Texas LNG, to real scrutiny: FERC's underlying determinations become stale over time, and allowing authorizations to continue indefinitely also prevents FERC from understanding the cumulative impacts of new projects.

b. The Changes in Global Energy Markets Constitute a Changed Circumstance FERC Must Consider

Texas LNG next points to challenges to “commercial and marketing, regulatory, and construction” that constitute extenuating circumstances outside of Texas LNG’s control, which other LNG projects have cited as rationale after the emergence of the COVID-19 pandemic.¹⁷ Texas LNG argues that the project will help “meet the rising global demand for LNG that is

¹⁶ U.S. Dep’t of Energy, Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries, 88 Fed. Reg. 25,272 (Apr. 26, 2023).

¹⁷ Any COVID-19 related market impacts began waning *over three years ago*, in early 2021. International Energy Agency, World Energy Outlook 2021 at 88, 90-91, available at <https://iea.blob.core.windows.net/assets/4ed140c1-c3f3-4fd9-acae-789a4e14a23c/WorldEnergyOutlook2021.pdf> (attached) (“Worldwide energy demand in 2021 is set to recover the ground that was lost the previous year, with a 4% increase returning global energy demand to pre-pandemic levels.”). Other U.S. LNG facilities announced numerous offtake agreements from December 2020 through 2021. And other developers constructed their projects through COVID-19 by creating COVID-19 safety procedures.

expected to increase significantly over the coming decades.”¹⁸ This assertion fails to account for changes in the global energy market as more and more countries are moving away from fossil fuels due to climate change and energy uncertainty.

Global energy markets are now working to transition away from fossil fuels, including LNG, as quickly as possible. The International Energy Agency has concluded that heat pumps, building efficiency, and similar measures can significantly reduce European gas use in the next few years.¹⁹ Since Russia’s invasion of Ukraine, European nations have taken steps to find other permanent sources of energy supplies. Some analyses conclude that the EU can entirely eliminate reliance on Russian gas by 2025, with efficiency and renewable energy making up for two thirds of the former Russian supply.²⁰ Similarly, the United Kingdom’s Energy & Climate Intelligence Unit has concluded that *all* of the UK’s gas demand that was recently met by Russian gas could be eliminated through installation of heat pumps and better installation within five years.²¹ European Energy Commissioner Kadri Simson has emphasized that Europe remains committed to renewable energy goals, and is looking to additional gas imports only for the short

¹⁸ Extension Request at 4-5.

¹⁹ International Energy Agency, A 10-Point Plan to Reduce the European Union’s Reliance on Russian Natural Gas (March 3, 2022), available at <https://www.iea.org/reports/a-10-point-plan-to-reduce-the-european-unions-reliance-on-russian-natural-gas> (attached).

²⁰ Briefing: EU Can Stop Russian Gas Imports by 2025, <https://www.energy.gov/sites/default/files/2023-04/30.%20EU%20Can%20Stop%20Russian%20Gas.pdf>.

²¹ Harry Cockburn, *Heat Pumps and Insulation ‘Fastest Way to End Reliance on Russian Gas*, THE INDEPENDENT, March 9, 2022, available at <https://www.independent.co.uk/climate-change/news/heat-pumps-russian-gas-north-sea-b2032017.html> (attached); see also Energy & Climate Intelligence Unit, *Ukraine Conflict and Impacts on UK Energy*, <https://eciu.net/analysis/briefings/uk-energy-policies-and-prices/briefing-ukraine-conflict-and-impacts-on-uk-energy> (attached).

term.²² Members of the U.S. Congress and the European Parliament have emphasized that, notwithstanding the need to assist Europe in transitioning off of Russian gas, no new gas infrastructure or exports should be approved.²³

Since FERC's initial approval of the Texas LNG project, the U.S.'s own commitments to reduce greenhouse gas emissions increase the likelihood that other countries will also reduce their emissions, including through drastically reducing demand for U.S. LNG.²⁴ Independent of the Department of Energy's evaluation of exports, these changes implicate FERC's evaluation of Texas LNG's export infrastructure. In light of the accelerated effort to transition from fossil fuels, FERC must consider the real possibility that the project will be idle or operate below capacity for much of the authorization period. If this occurs, the purported benefits of the project will be greatly diminished, but there will be no corresponding reduction in the harms caused by construction of the project. Thus, this information calls into question FERC's prior balancing of project benefits and costs, and FERC's overall public interest determinations.

²² See, e.g., Ben Lefebvre, POLITICO, DOE Declares an Energy War (Apr. 28, 2022), <https://www.politico.com/newsletters/morning-energy/2022/04/28/doe-declares-an-energy-war-00028380> (attached) (quoting Sec. Granholm's statement that "Perhaps renewable energy is the greatest peace plan this world will ever know.").

²³ Jared Huffman et al., Letter to U.S. President Biden and E.C. President Von der Leyen (May 19, 2022), https://huffman.house.gov/imo/media/doc/Letter%20Regarding%20the%20EU-US%20Joint%20Energy%20Security%20Statement_5.19.22.pdf (attached).

²⁴ President Biden issued Executive Order 14,008, "Tackling the Climate Crisis at Home and Abroad," 86 Fed. Reg. 7619 (Jan. 27, 2021). This order reaffirmed that the United States would "rejoin the Paris Agreement" on reducing greenhouse gas emissions and develop a target for reducing domestic greenhouse gas emissions (a "nationally determined contribution," in the parlance of the Paris Agreement). *Id.* at 7619-20. Then, on November 13, 2021, President Biden announced a "commitment to reduce U.S. emissions by 50-52% from 2005 levels in 2030," in connection with the U.N. Framework Convention on Climate Change Conference of the Parties 26 summit in Glasgow. Beyond this interim step, Executive Order 14,008 concluded that "[r]esponding to the climate crisis will require . . . net-zero global emissions by mid-century or before." 86 Fed. Reg. at 7619.

III. FERC Should Revisit the Original Certificate, and Prepare an EIS or SEIS Prior to an Extension

The Natural Gas Act (NGA), NEPA and the Commission’s prior precedents all provide bases for FERC to revisit its prior findings due to a significant change in circumstances.

Northern Access, 97 F.4th at 26. FERC should do so in this case because the “public interest is compromised by significant changes occurring between issuance of the certificate and commencement of the project.”” *Mountain Valley Pipeline, LLC, supra*.

Granting the extension is a major federal action that requires its own NEPA analysis. Although FERC could tier off the prior analysis, doing so would require FERC to re-evaluate that analysis’s conclusions, rather than merely looking to changed circumstances. *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 784 (9th Cir. 2006).

Alternatively, the NEPA supplementation framework controls whether FERC may rely on its prior analysis. There are multiple changed circumstances in this case — *e.g.* the identification on remand of a greater number of people in environmental justice communities subject to disproportionate or disparate impacts, the availability of carbon capture and sequestration (evidenced by the neighboring Rio Grande LNG proposal), FERC’s acknowledgment that it can use the social cost of carbon to monetize the costs of their GHG analyses and the use of SCC by other agencies, changes to energy markets, changes to National Ambient Air Quality Standards,²⁵ newly proposed critical habitat for the critically endangered

²⁵ On February 7, 2024, EPA strengthened the National Ambient Air Quality Standards for Particulate Matter (PM NAAQS) to protect millions of Americans from harmful and costly health impacts, such as heart attacks and premature death. For information on EPA’s revision of the standard, see <https://www.epa.gov/pm-pollution/final-reconsideration-national-ambient-air-quality-standards-particulate-matter-pm>.

Rice’s whale,²⁶ and the pause in DOE’s section 3 reviews— jointly and severally demonstrate that supplementation is required. *See* 40 CFR §1502.9(d)(1) (the agency “shall” prepare an SEIS when major federal action remains to occur and the extension would be a substantial change in the project that is relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns); *People Against Nuclear Energy v. U.S. Nuclear Regulatory Comm’n*, 678 F.2d 222, 234 (D.C. Cir. 1982), *rev’d on other grounds sub nom. Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983); and *Stand Up for California! v. United States Department of the Interior*, 994 F.3d 616, 629 (D.C. Cir. 2021) (“a supplemental EIS must be prepared where new information ‘provides a *seriously* different picture of the environmental landscape.’”).

Additionally, FERC must consider new information concerning climate change and the total greenhouse gas emissions (*i.e.*, upstream, downstream, and direct emissions) of LNG projects. One recent report, for example, estimates the lifecycle methane emissions from LNG exports and climate damages stemming from US fossil fuel exports.²⁷ Similarly, three documents from the International Panel on Climate Change’s (“IPCC”) 6th Assessment Report emphasize the inevitability of a climate-destabilized future absent urgent and aggressive carbon emission reductions, highlighting the need to curb GHG emissions *now*.²⁸ Evidence

²⁶ Endangered and Threatened Species; Designation of Critical Habitat for the Rice's Whale, 88 Fed. Reg. 47453 (Jul. 24, 2023).

²⁷ Jeremy Symons, Exporting Carbon at 7-16 (Sept. 2023) (attached).

²⁸ *See* Climate Change 2021: The Physical Science Basis, Summary for Policymakers, IPCC, available at <https://www.ipcc.ch/report/ar6/wg1/> (Oct. 2021) (attached) [hereinafter “IPCC Physical Science Summary”]; IPCC, Climate Change 2022 Impacts, Adaptation and Vulnerability, Summary for Policy Makers at 8, A.3, available at https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf (Feb. 2022) (attached) [hereinafter “IPCC Impacts Summary”]; IPCC, Climate Change 2022: Mitigation of Climate Change, Summary for Policy Makers, available at

demonstrating the link between human GHG emissions and extreme weather “has strengthened since” the prior IPCC report.²⁹ Because “[c]limate change impacts and risks are becoming increasingly complex and more difficult to manage,” it is increasingly likely that “multiple climate hazards will occur simultaneously” and “compounding overall risk.”³⁰ Moreover, “[u]navoidable sea level rise will bring cascading and compounding impacts resulting in losses of coastal ecosystems and ecosystem services, groundwater salinisation, flooding and damages to coastal infrastructure that cascade into risks to livelihoods, settlements, health, well-being, food and water security, and cultural values in the near to long term (high confidence).”³¹ In short, the IPCC’s AR6 reports add to the mounting evidence demonstrating the dual climate risks associated with the Texas LNG facility: (1) that the facility’s staggering GHG emissions will fuel climate change, and (2) that the climate-driven hazards at the project site will increase the risk of significant contamination being released into the surrounding communities and ecosystems.

IV. The Extension Request Should Be Denied and an SEIS Prepared Because Applicable Air Quality Data Exceeds EPA’s New PM2.5 Standard

After FERC’s EIS, Certificate, and Remand Order were issued, EPA lowered the NAAQS for particulate matter, PM2.5, effective May 6, 2024. The air quality data underlying Texas LNG’s approval is at Document Accession No. 202301130-5250 filed date January 30,

https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SPM.pdf (Apr. 2022) (attached).

²⁹ IPCC Physical Science Summary at 8, A.3.

³⁰ IPCC Impacts Summary at 8, A.3

³¹ *Id.* at SPM.B.5.2.

2023 (available in the *Vecinos II* Joint Appendix at JA504-505).³² It shows exceedances of the new annual PM_{2.5} NAAQS, which EPA lowered from 12.0 µg/m³ to 9.0 µg/m³.³³

FERC's discussion of air pollution in its Texas LNG remand order relies on modeling Texas LNG submitted on January 30, 2023. Texas LNG Remand Order, P76 [JA036]. That analysis used background data from 2018 through 2020 at an air monitor 28 kilometers west of the terminal.³⁴ R.1553, Accession No. 20230130-5250, pdf 7 [JA503]. Texas LNG concluded that the projects would nearly cause a violation of the NAAQS for fine particulate matter (PM_{2.5}). *Id.* at pdf 9-10 [JA504-05] (predicting annual PM_{2.5} of 11.75 µg/m³, with a NAAQS of 12, and 24-hour PM_{2.5} of 32.29, with a NAAQS of 35); *accord* Remand Order, B27 [JA071].

Since then, EPA changed the PM_{2.5} standard:

Based on the Environmental Protection Agency's (EPA's) reconsideration of the air quality criteria and the national ambient air quality standards (NAAQS) for particulate matter (PM), the EPA is revising the primary annual PM_{2.5} standard by lowering the level from 12.0 µg/m³ to 9.0 µg/m³. The Agency is retaining the current primary 24-hour PM_{2.5} standard and the primary 24-hour PM₁₀ standard.

The Agency also is not changing the secondary 24-hour PM_{2.5} standard,

³² The JA is in FERC's possession along with all of the *Vecinos II* briefing. Pages 504-05 are attached as an attachment for FERC's convenience.

³³ Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 89 Fed. Reg. 16,202 (Mar. 6, 2024).

³⁴ For the reasons set forth in Sierra Club's briefs in *Vecinos II*, FERC's limiting its consideration of air impacts to the Brownsville monitoring station was arbitrary and capricious. It should have used the Isla Blanca monitoring data as well, which shows impacts on the surrounding community. FERC's rationale, that it lacked three years of EPA published verified data from that station, is immaterial because it has the EPA published verification now, and the verified data constitutes new information triggering the SEIS requirement.

secondary annual PM_{2.5} standard, and secondary 24-hour PM₁₀ standard at this time. The EPA is also finalizing revisions to other key aspects related to the PM NAAQS, including revisions to the Air Quality Index (AQI) and monitoring requirements for the PM NAAQS.³⁵

Comparing Texas LNG's submitted air quality data, upon which the original EIS, Certificate, and FERC's remand order were based, to the new annual PM_{2.5} standard, indicates exceedances of the new standard. This draws FERC's entire public interest determination into question and compels reconsideration of that determination rather than an extension. The data demonstrates an impact to the public health, environmental justice communities, Petitioners' members, and cumulative impacts, to an extent not previously foreseen or accounted for in FERC's decisions.

The new EPA standards and data showing the exceedances also constitute a change in circumstance or information that require an SEIS under 40 C.F.R. § 1502.9(d)(1). This SEIS would have to be completed and taken into account before granting an extension. This should include a re-evaluation of the emissions of the project and alternatives. Ultimately, Texas LNG should have to begin the FERC application process anew to address this new standard, since meeting the new standard may require changes to Texas LNG's processes and affect the basis of FERC's public interest determination.

Conclusion

For the foregoing reasons, Sierra Club, South Texas Environmental Justice Network, and the Esto'k Gna Tribal Nation of Texas hereby move to intervene in the above docket regarding

³⁵ Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 89 Fed. Reg. 16,202 (Mar. 6, 2024).

Texas LNG's request for an extension and hereby protests that extension request. Texas LNG's request for an extension should be denied, or in the alternative, cannot be granted without additional analysis far beyond that presented by Texas LNG's cursory application.

Respectfully submitted June 17, 2024,

/s/ Rebecca McCreary

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CERTIFICATE OF SERVICE

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

Dated at Boulder, Colorado on June 17, 2024.

/s/ Rebecca McCreary
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