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

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| **Venture Global CP2 LNG, LLC** | **)** | **Docket Nos. CP22-21** |
| **Venture Global CP Express, LLC** | **)** | **CP22-22** |
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**COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT OF NATURAL RESOURCES DEFENSE COUNCIL**

## INTRODUCTION

Natural Resources Defense Council (NRDC) submits the following Comments on the Federal Energy Regulatory Commission's (FERC or Commission) Draft Environmental Impact Statement (DEIS) for the CP2 LNG and CP Express projects (Project or CP2) proposed by Venture Global CP2 LNG, LLC and Venture Global CP Express, LLC (collectively, Venture Global or Applicant). Specifically, Venture Global proposes an 18-train liquefaction facility with a nameplate capacity of 20 million tonnes per annum (MTPA) with a peak achievable capacity of 28 MTPA, as well as an 85.4 mile, 48-inch-diameter gas pipeline. As discussed in depth below, NRDC's position is that the Commission's DEIS fails to comply with the National Environmental Policy Act's (NEPA) bedrock requirement that agencies take a "hard look" at the environmental impacts of, and alternatives to, a proposed action. Further, if approved and completed, the Project would cause significant and irreparable harm to nearby communities, species, the environment, and climate that are directly inconsistent with the public interest. Project authorization would therefore be contrary to the foundational elements of the Natural Gas Act (NGA).

## COMMENTS

### A. FERC must correct its continual failure to articulate a coherent standard for the exercise of its NGA Sec. 3 authority.

FERC has no genuine framework for determining and analyzing whether or not a proposed LNG export facility is consistent with the public interest. The Commission's failure to articulate a standard with which it will wield its statutory authority under Section 3 of the NGA[1] has tainted this (and other future) NEPA analyses.

To provide a basic description of this problem, the Commission need not look much further than then-Chairman Glick's concurrence in the Commission's recent Certificate Order approving the Commonwealth LNG project. There, the Chairman noted FERC's lack of framework for determining whether Section 3-regulated proposed LNG export infrastructure is consistent with the public interest, and that the Commission does not engage in any meaningful balancing of the benefits and harms to the public interest.[2]

The Commission's current practice is to shirk its duty to engage in genuine public interest review by treating the U.S. Department of Energy's (DOE) approval to export the commodity as conclusively establishing that the infrastructure provides public benefits, but no one—not FERC, not DOE, nor anyone else—ever evaluates whether those benefits outweigh and justify the harm caused by a particular LNG export terminal. Applying that practice to this review, this DEIS explains that, as proposed, the Project would bring forth a number of relevant costs in a number of different contexts. Ultimately, the Commission holds a duty under the Natural Gas Act to

[1] 15 U.S.C. § 717b(e).

[2] *Commonwealth LNG, LLC*, 181 FERC ¶ 61,143 (Nov. 17, 2022), Glick, concurring, at P2, Accession No. 20221117-3091.

meaningfully evaluate this proposed Project through a genuine framework to balance those relevant costs against assessed benefits. A failure to do so is contrary to the Natural Gas Act and to bedrock principles of administrative law. The Commission's 'split' authority with DOE under Sec. 3 of the NGA undoubtedly complicates the Commission's ability to engage in some meaningful cost-benefit analysis, but the Commission's hands are not so bound that in can never ensure consistency with the public interest or never determine a "degree of adverse impact so great that the public interest requires the Commission to reject a section 3 application."[3] At any time, DOE could seek to rescind or modify its delegation order of Section 3(e) authority to the Commission, and the Commission should seek such a change. More simply, the Commission could articulate some intelligible policy regarding how it will implement that standard with respect to authorizing siting, construction, and operation of LNG terminals for which DOE has made a finding that the commodity export is not inconsistent with the public interest. Until the Commission does *something*, its NEPA reviews, such as this one, cannot assuredly be able to assist the Commission in its "consider[ation] as part of its decision to authorize natural gas facilities, all factors bearing on the public interest including a project's purpose and need."

### B. <u>The Commission entirely adopts the applicant's stated purpose and need for the Project, fails to include a true "no-action" alternative, rendering the Commission's alternatives analysis faulty throughout the DEIS.</u>

An EIS must "briefly specify the underlying purpose and need for a project."[4] The purpose and need statement dictates the range of "reasonable" alternatives that the agency must consider in evaluating the environmental impacts of a proposed action.[5] "An agency may not

[3] *Id*. at P 7.

[4] DEIS 1-3 (citing 40 C.F.R. §1502.13).

[5] *See Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991).

define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality."[6] Here, the Commission in crafting[7] its unlawfully narrow statement of purpose and need for the project, does expressly that. The Commission's identified is based explicitly on CP2's stated purpose:

> "CP2 LNG states that the purpose of the proposed Project is to liquefy, store, and export a nameplate liquefaction capacity of 20 MTPA of liquefied LNG, with approximately 28.0 MTPA capacity possible under optimal conditions, to overseas markets via marine transport by ocean-going vessels. CP2 LNG also states that conversion of natural gas to LNG would promote a global natural gas trade and greater diversification of global supplies. CP Express states that the purpose of the Pipeline System is to create the firm transportation capacity needed to transport 4 billion cubic feet per day (Bcf/d) of feed gas required for the proposed LNG export operations from natural gas supply points in east Texas and southwest Louisiana to the Terminal Facilities."[8]

Consistent with its review of other LNG export projects, the Commission has again unquestioningly and unflinchingly adopted the Applicant's narrowly-drafted statement of purpose and need; accordingly, the alternatives analyzed in the DEIS center around the Applicant's ultimate aims. This is improper under NEPA and the APA. Here, defining the "purpose and need" as an LNG export facility with 20 MTPA of nameplate capacity and 28 MTPA of capacity possible in optimal conditions with a pipeline that transports 4 Bcf/d from supply points in east Texas and southwest Louisiana "to the Terminal facilities" is functionally the same as defining the "purpose and need" as "building the CP2 Project." This wrongfully narrow lens taints any assessment of the true costs of the Project and will unduly warp the

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[6] *Id*. at 196.

[7] DEIS at 1-3 ("CP2 LNG's and CP Express' purpose and objective in proposing the Project were defined in its application with the Commission. [T]he project proponent is the source for identifying the purpose for developing, constructing, and operating a project.")

[8] *Id*.

Commission's ultimate consideration of the projects costs and consistency with the public interest.

In addition to the requirement to specify a clear purpose and need for a project, NEPA imposes a clear-cut procedural obligation on the Commission to take a "hard look" at alternatives that may entail less significant impacts on resources affected by the Project.[9] An EIS must "[e]valuate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination."[10] Each alternative shall be "considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits." *Id.* "The existence of a viable but unexamined alternative renders an [EIS] inadequate."[11] Rather than engaging in the rigorous and "open" alternatives analysis that NEPA imposes upon the Commission, here the Commission frames its alternatives analysis around the aims of the Applicant.

NEPA also requires that the Commission "[e]valuate reasonable alternatives to the proposed action" and "include the no action alternative".[12] Where the agency is evaluating a proposal for a project, "'no action' . . . would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward."[13] Here, the No-Action alternative analysis states:

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[9] *See Balt. Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 100 (1983).

[10] 40 C.F.R § 1502.14.

[11] *See Ala. Wilderness Recreation & Tourism Ass'n v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995) (internal citations and quotation marks omitted).

[12] 40 C.F.R. § 1502.14

[13] *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981).

> "The No-Action Alternative might result in end users of LNG making different arrangements to meet their needs. Although it is speculative to predict what actions might be taken by policymakers or end users if the No-Action Alternative is selected, it is possible that renewable energy sources (e.g., solar power), traditional energy sources (e.g., coal or fuel oil), or traditional long-term energy sources (e.g., nuclear power) could be used in lieu of the Project. But the location of the facility and use of the fuel (electricity, heating, industrial feed stock, etc.) would also be speculative. In addition, alternative energy sources would not meet the Project objective of liquefying natural gas for export and are beyond the scope of this EIS. We have prepared this EIS to inform the Commission and stakeholders about the expected impacts that would occur if the Project were constructed and operated. The Commission will determine the Project need and could choose the no-action alternative.[14]

The Commission's no-action alternative contravenes basic NEPA principles, is not a genuine no-action alternative, and conforms with no-actions statements that CEQ has prohibited[15] as it assumes that if the proposed project is not approved, another project of identical emissions will substitute for it with identical emissions. The Commission's characterization of its no-action alternative skews the agency's entire analysis of alternatives, failing to serve as the 'measuring stick' that allows for meaningful comparison between the purported benefits of the proposed action and its environmental impacts.

Particularly when read together, the Commission's flawed statement of purpose and need and ingenuine no-action alternative render any conclusion other than building the project foregone. This is precisely the sort of scenario that NEPA caselaw and guidance have aimed to avoid.

[14] DEIS at 3-37.

[15] *See* 46 Fed. Reg. at 18,027 (defining "no action" in instances involving federal decisions on proposals for projects) (also reminding all federal decision makers not to "simply assume that if the federal action does not take place, another action will perfectly substitute for it and generate identical emissions, such that the action's net emissions relative to the baseline are zero.")

### C. The project will have serious impacts on environmental justice communities, but the Commission's DEIS wrongly discards alternatives that would reduce impacts to environmental justice communities, particularly alternative pipeline routes.

NEPA requires EIS's to examine all foreseeable, potential impacts of a project; including ecological, cultural, economic, social, aesthetic, historic, or health, whether direct, indirect, or cumulative.[16] In accordance with Executive Order 12898, agencies must consider the environmental justice impacts of their actions on low-income and minority communities. As proposed, the Project terminal site and pipeline route will have profoundly negative impacts on environmental justice communities. The proposed terminal site (as determined to be suitable in the Commission's DEIS) is just 2,450 feet from the nearest residential neighborhood, located within a low-income environmental justice community,[17] and located in closer proximity to a noise-sensitive community than any other alternative site considered by the Commission.[18] None of the other alternative sites considered by the Commission are located within environmental justice (low-income or minority) communities.[19] As for pipeline routes, all four pipeline routes (inclusive of the CP Express Route) considered by the Commission would cross environmental justice communities, but the route chosen for the CP Express was the longest proposed route, leading to more disturbances to land surrounding the pipe.[20] Without clear guidance from the Commission as to the weight particular impacts have on the commission's determination of

[16] 40 C.F.R. § 1508.8.

[17] 40 C.F.R. § 1508.8.

[18] DEIS at 4-2677.

[19] For some of those other sites, the LNG ships could pass by environmental justice communities, but for the Sabine Pass alternative, it would neither be located in nor pass by these overly burdened communities.

[20] DEIS at 3-53 and 3-54.

significance or insignificance of project impacts (in this case those significantly and disproportionately negatively impacting environmental justice communities) it is unclear whether the Commission's dismissal of other project alternatives are rational and represent the 'hard look' mandated by NEPA.

### D. The Commission's analysis of air quality impacts ultimately conflates attainment with insignificance, despite acknowledgement that related air pollution (even when consistent with NAAQS standards) can imperil health.

NEPA requires agencies to consider "every significant aspect of the environmental impact of a proposed action[.]"[21] This includes air quality impacts. In the DEIS, the Commission considers Project impacts on air quality.[22] The Commission's DEIS states that because Project air pollutants will be minimized or within the NAAQS, their impacts will not be significant. The Despite the fact that the Project will be located within an environmental justice community, the DEIS fails to investigate specifically how Project air emissions will affect environmental justice communities. By failing to perform this additional analysis, FERC continues to fail to take a hard look at the impacts of declining air quality on environmental justice populations impacted by projects that will yield large-scale emissions.

Air pollution that does not exceed the individual NAAQS can still cause harmful health impacts, and this is acknowledged by the Commission which states that "NAAQS attainment alone may not assure there is no localized harm to [sensitive] populations due to project emissions of volatile organic compounds (VOCs), hazardous air pollutants (HAP), and issues such as the presence of non-Project-related pollution sources, local health risk factors, disease

[21] *See Greater Yellowstone Coal. v. Lewis*, 628 F.3d 1143, 1150 (9th Cir. 2010).

[22] DEIS at Section 4.12.1.

prevalence, and access (or lack thereof) to adequate care."[23] Despite this plain acknowledgement that these potential, foreseeable, related health impacts can occur despite NAAQS attainment, the Commission arbitrarily and entirely fails to look further into these potential, foreseeable impacts as applied specifically to environmental justice communities.

### E. FERC improperly failed to assess impacts from project carbon capture and sequestration (CCS) facilities.

The Commission has a duty under NEPA and the NGA to consider the environmental impacts of all project facilities–despite this the Commission provides no credible reason why the vast majority of Carbon Capture and Sequestration-related features (which it classifies as non-jurisdictional)[24] associated with the LNG export terminal could not be considered in FERC's DEIS. CP2 is proposing project features to capture and sequester roughly 500,000 tons of CO2, (less than 6% of its operational emissions) per year.[25] As NRDC and others in the docket have raised, other comparable LNG facilities have proposed more aggressive and ambitious (nearly 90% of operational emissions) direct emissions capture features.[26] As for the proposed features for this project, the Commission concludes that "[t]he proposed CCS system would be permitted separately under EPA's Underground Injection Class VI program" and "[a]s such, for purposes of the NEPA analysis, [it is evaluating] the portion of the CCS system within the LNG terminal footprint."[27] This choice to "carve out" particular relevant, foreseeable impacts of the project is unpersuasive—for an array of other project features, impacts, and elements permitted primarily

[23] DEIS at 4-220.

[24] DEIS at 2-9.

[25] DEIS at 4-441.

[26] *Id*.

[27] DEIS at 1-13.

by other agencies, the Commission still fulfills its duties to acknowledge and assess these aspects and impacts of the projects it considers. The Commission arbitrarily, unlawfully and unpersuasively attempts to shirk its responsibility to do so for the proposed CCS features of the Project–an attempt that is that much more concerning given that these features very likely will be considered by the Commission when it makes its consideration as to whether the project is in the public interest.

### F. <u>In failing to assess the significance of project greenhouse gas (GHG) emissions the Commission refuses to adequately consider the climate change implications of the Project.</u>

The Commission has a mandate under NEPA and the Natural Gas Act to take a hard look at the impact of Project GHG emissions, evaluate their significance and impact, and ultimately, to factor these GHG emissions into the Commission's public interest determination.[28] But here as in other recent project reviews,[29] FERC explicitly refuses to provide these analyses, citing its "generic proceeding to determine whether and how the Commission would conduct significance determinations going forward" and compares proposed project GHG to other state and national benchmarks.[30] While FERC has repeatedly demonstrated it can indeed apply administrative tools to estimate the social cost of the projects it authorizes, disclose those costs, or compare project emissions against other numeric benchmarks, it still refuses to engage in making an actual, explicit assessment as to whether the Project's emissions are significant. FERC's continued refusal to consider the significance of the lifecycle climate impacts associated with the gas that

[28] *Sabal Trail,* 867 F.3d at 1376.

[29] *See, e.g., Commonwealth LNG, LLC,* EIS at 4-396.

[30] DEIS at 4-440.

will flow through the Project is directly contrary to the "hard look" that NEPA requires.[31] FERC's legal mandate to consider these impacts are clear,[32] yet Nonetheless, FERC continues to punt to "some day intentions" to identify, finalize and apply its desired method for making significance determinations. The Commission's continual "punt" on its obligation to conduct significance determinations defies reason, and has been criticized by Commissioners in recency.[33] FERC has, in past instances, demonstrated that it can indeed engage in such analysis.[34] In refusing to assess the significance of the Project's GHGs, the Authorization Order "effectively writes climate change out of the public interest determination entirely"[35] and "as a logical matter, the argument that there is no single standard methodology for evaluating the significance of GHG emissions does not prevent the Commission from adopting a methodology, even if other potential methods are available."[36] Although FERC's Interim GHG policy statement[37] remains a draft, FERC nonetheless bears the obligation to engage in a GHG significance determination, and its failure to do so for the CP2 project is arbitrary and capricious. In its initiation,

[31] *Balt. Gas & Elec. Co. v. N.R.D.C.*, 462 U.S. 87, 97, 103 S.Ct. 2246, 76 L.Ed.2d 437 (1983).

[32] *See Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1162 (10th Cir. 2002) (NEPA "requires agencies to consider environmentally significant aspects of a proposed action, and, in so doing, let the public know that the agency's decisionmaking process includes environmental concerns."). The Commission states that it includes the national and state emissions quantities to offer "context" the project's proposed emissions, but how the Commission actually uses this figure in its analysis is unstated and unclear.

[33] *See, e.g., Commonwealth LNG, LLC*, 181 FERC ¶ 61,143 (Nov. 17, 2022), Glick, concurring, at P3, Accession No. 20221117-3091.

[34] *N. Nat. Gas Co.*, 174 FERC ¶ 61,189, at P 32 (2021).

[35] *See Venture Global Calcasieu Pass LLC*, 166 FERC ¶ 61,144 (2019) (Glick, Comm'r, dissenting at P 6 & n.11).

[36] *Id.* at P 7.

[37] *Certification of New Interstate Nat. Gas Facilities Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,197 at P 2 (2022).

introduction, and approval of its Interim GHG policy statement, FERC itself admitted that it has identified some potential pathways for making GHG significance determinations. Additionally, FERC has been presented with a number of sound options with which it could adopt and utilize to assess whether a project's CO2 emissions are significant.[38]

### G. Overall, the project is an example of unlawful and unnecessary Sec. 3-regulated LNG terminal and Sec. 7-regulated pipeline overbuild.

Overall, the Commission's DEIS (most particularly in its dismissal of potential alternatives and unlawfully narrow statement of project purpose and need) is representative of the Commission's broader inability to accurately determine public need. This is particularly true given that a myriad of Commission-approved LNG export projects remain unbuilt.[39] As proposed, the export terminal has a nameplate capacity of 20 MTPA.[40] However, as designed, the pipeline system is designed to deliver 4 Bcf/d to the export facility, or the approximate equivalent of 30 MTPA, which is significantly more than the capacity of the export terminal, even if operating at "optimal conditions." It is unanswered by FERC, or the applicant why a more truncated or smaller-diameter pipeline system would be inappropriate or lessen project impacts on impacted communities or the environment. Additionally, as identified in the statement of purpose and need,[41] states that the project purpose is to exporting 20 MTPA of LNG. However, the facility site itself is proposed with a capacity of 28 MTPA under optimal

[38] *See e.g.*, Motion for Leave and Supplemental Reply Comments of Natural Resources Defense Council, Accession No. 20220923-5190, Docket Nos. PL18-1-000, PL21-3-000 (September 23, 2022).

[39] *See*, North American LNG Export Terminals – Existing, Approved not Yet Built, and Proposed, *available at* *https://cms.ferc.gov/media/north-american-lng-export-terminals-existing-approved-not-yet-built-and-proposed-8*.

[40] DEIS at 1-3.

[41] *Id.* at 3-38.

conditions. This inefficient, and unjustified design, and significant additional footprint remains entirely unexplained–inconsistent with the 'hard look' the Commission must take when considering the environmental impacts of the Project.

## CONCLUSION

Adequate NEPA review is of critical importance to ensuring citizen participation and access to information. NEPA's framework requires agencies to demonstrate (and reviewing courts to ensure) that they have taken the required "hard look." Just as Venture Global has failed to show that the CP2 is a necessary, just, or environmentally-sound proposal, the Commission has also failed to show that its EIS has met the mandates of NEPA, the APA, and as applied, the NGA and the ESA.

Respectfully submitted this 13th day of March, 2023,

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## CERTIFICATE OF SERVICE

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

Dated this 13th day of March, 2023, in Alamogordo, New Mexico.

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