

192 FERC ¶ 61,198  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: David Rosner, Chairman;  
Lindsay S. See and Judy W. Chang.

Rio Grande LNG, LLC	Docket Nos. CP16-454-000 CP16-454-008
Rio Bravo Pipeline Company, LLC	CP16-455-000 CP16-455-005 CP20-481-000 CP20-481-002
Rio Grande LNG, LLC Rio Grande LNG Train 4, LLC Rio Grande LNG Train 5, LLC	CP24-70-000

ORDER ON REMAND

(Issued August 29, 2025)

1. This case is before the Commission on remand from the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).<sup>1</sup> The court remanded the Commission's April 21, 2023 Order on Remand and Amending Section 7 Certificate<sup>2</sup> that approved the construction and operation of Rio Grande LNG, LLC's (Rio Grande) proposed liquefied natural gas (LNG) terminal project (Rio Grande LNG Terminal) and Rio Bravo Pipeline Company, LLC's (Rio Bravo) proposed pipeline project (Rio Bravo Pipeline Project)<sup>3</sup> directing the Commission to: (1) issue a supplemental environmental

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<sup>1</sup> *City of Port Isabel v. FERC*, 111 F.4th 1198 (D.C. Cir. 2024) (*Port Isabel I*); *reh'g granted, in part*, 130 F.4th 1034 (D.C. Cir. 2025) (*Port Isabel II*) (remanding to the Commission for further consideration without vacatur).

<sup>2</sup> *Rio Grande LNG, LLC*, 183 FERC ¶ 61,046 (2023 Remand Order), *order on reh'g*, 185 FERC ¶ 61,080 (2023) (2023 Rehearing Order).

<sup>3</sup> *Rio Grande LNG, LLC*, 169 FERC ¶ 61,131 (2019) (Authorization Order), *order on reh'g*, 170 FERC ¶ 61,046 (2020) (2020 Rehearing Order). In *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, the D.C. Circuit remanded the

impact statement (EIS);<sup>4</sup> (2) consider Rio Grande's carbon capture and sequestration (CCS) proposal as part of its environmental review of the terminal;<sup>5</sup> and (3) include data from the Isla Blanca monitor in its air quality analysis or provide a new, reasoned explanation for declining to use this data.<sup>6</sup>

2. After undertaking the actions required by the court, we reaffirm that the Rio Grande LNG Terminal is not inconsistent with the public interest under section 3 of the Natural Gas Act (NGA), and the Rio Bravo Pipeline Project is required by the public convenience and necessity under section 7 of the NGA, as conditioned in the Commission's orders, and as described and modified herein.

## **I. Background**

### **A. Authorization Order**

3. On November 22, 2019, under section 3 of the NGA, the Commission authorized Rio Grande to construct and operate a new LNG terminal designed to produce a nominal capacity of up to 27 million metric tonnes per annum (MTPA) of LNG for export.<sup>7</sup> The

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Authorization Order and 2020 Rehearing Order. 6 F.4th 1321 (D.C. Cir. 2021) (*Vecinos*). The Commission addressed the remanded issues in its 2023 Remand Order. The D.C. Circuit, in *Vecinos*, also remanded, in the same opinion, the Commission's orders in *Texas LNG Brownsville LLC*, which the Commission addressed in the appropriate docket. 183 FERC ¶ 61,047, *order on reh'g*, 185 FERC ¶ 61,079 (2023).

<sup>4</sup> *Port Isabel I*, 111 F.4th at 1207, 1210.

<sup>5</sup> *Id.* at 1212–14.

<sup>6</sup> *Id.* at 1215.

<sup>7</sup> Authorization Order, 169 FERC ¶ 61,131 at P 5. In August 2016, Rio Grande received authorization from the U.S. Department of Energy, Office of Fossil Energy (DOE) to export the project's full capacity, which is equivalent to 1,318 billion cubic feet (Bcf) annually (approximately 3.6 Bcf per day (Bcf/d)) equivalent of natural gas in the form of LNG to countries with which the U.S. has a Free Trade Agreement. *Rio Grande LNG, LLC*, DOE Docket No. 15-190-LNG, Order No. 3869 (2016), <https://www.energy.gov/sites/prod/files/2016/08/f33/ord3869.pdf>. Assuming a gas density of 0.7 kilogram per cubic meter (kg/m<sup>3</sup>), 3.6 Bcf/d is 26.1 MTPA, which is roughly equivalent to the authorized 27 MTPA. On February 10, 2020, DOE issued an order authorizing Rio Grande to export LNG to non-Free Trade Agreement nations, but with which the U.S. still permits such trade. *Rio Grande LNG, LLC*, DOE Docket No. 15-190-LNG, Order No. 4492 (2020),

project facilities would occupy 750.4 acres of land on a 984.2-acre parcel on the northern embankment of the Brownsville Ship Channel in Cameron County, Texas,<sup>8</sup> and include five natural gas liquefaction trains, each with a nominal capacity of 5.4 MTPA;<sup>9</sup> four full-containment LNG storage tanks, each with a net capacity of approximately 180,000 cubic meters; two LNG carrier loading berths; one 1,500-foot-diameter turning basin; LNG truck loading and unloading facilities with four loading bays; two natural gas liquids truck loading bays; and other facilities such as administrative buildings, a central control building, a workshop, a warehouse, electrical equipment enclosures, a communication system, and other support structures.<sup>10</sup>

4. The Authorization Order also issued a certificate of public convenience and necessity, under section 7 of the NGA, to Rio Bravo to construct and operate a new interstate natural gas pipeline system designed to provide up to 4.5 billion cubic feet per day (Bcf/d)<sup>11</sup> of firm natural gas transportation capacity from several interconnects in the

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<https://www.energy.gov/sites/prod/files/2020/02/f71/ord4492.pdf>.

<sup>8</sup> The parcel is owned by the Brownsville Navigational District, a political subdivision of Texas that operates the Port of Brownsville. Rio Grande's parent company, NextDecade, executed an Option to Lease the acreage from the Brownsville Navigational District. Authorization Order, 169 FERC ¶ 61,131 at P 7 n.12.

<sup>9</sup> On April 15, 2020, Rio Grande requested and the Commission approved a design change for the Rio Grande LNG Terminal to reduce the number of liquefaction trains from six to five and to optimize the liquefaction design to increase the liquefaction capacity of the five remaining trains from 4.5 to 5.4 MTPA each, keeping the total export capacity at 27 MTPA. *See Rio Grande LNG, LLC*, 174 FERC ¶ 61,048, at P 4 (2021) (rehearing order affirming design changes authorized by Commission staff's August 13, 2020 Letter Order). We note that the 2019 authorization, as reviewed by the D.C. Circuit in *Vecinos*, authorized and considered the impacts associated with six natural gas liquefaction trains. On May 23, 2024, while the 2023 Remand Order was on appeal, the Commission in Docket No. CP24-70-000 authorized the partial transfer of Rio Grande's section 3 authorization associated with Train 4 and Train 5 to Rio Grande LNG Train 4, LLC and Rio Grande LNG Train 5, LLC. *Rio Grande LNG, LLC*, 187 FERC ¶ 61,097 (2024) (2024 Transfer Order). The partial transfer of the section 3 authorization did not change any of the terms and conditions of the authorization previously issued to Rio Grande. This order when referring to Rio Grande's obligations under the authorization includes all three entities.

<sup>10</sup> Authorization Order, 169 FERC ¶ 61,131 at PP 6-7.

<sup>11</sup> 4.5 Bcf/d is the equivalent of 4,500,000 dekatherms (Dth) per day assuming one Dth equals one thousand cubic feet (Mcf) of gas.

vicinity of the Agua Dulce Hub in Nueces County, Texas, to the Rio Grande LNG Terminal on the Brownsville Ship Channel in Cameron County. As approved in the Authorization Order, the Rio Bravo Pipeline Project would consist of: a 2.4-mile-long header system, 135.5 miles of parallel 42-inch-diameter pipelines (referred to as Pipelines 1 and 2); three compressor stations; four metering sites along the header system; two interconnect booster compressor stations, each with a metering site; and other appurtenant facilities.<sup>12</sup> The Rio Bravo Pipeline Project will be constructed in two phases,<sup>13</sup> with the in-service date of Phase 1 coinciding with the commencement of the Rio Grande LNG Terminal operations.<sup>14</sup>

5. The Commission determined, based on the findings in the 2019 Final EIS,<sup>15</sup> that the projects' direct and indirect impacts on environmental resources would be temporary or reduced to less-than-significant levels by the implementation of appropriate mitigation measures.<sup>16</sup> The Commission concluded that it could not determine the projects' impacts caused by greenhouse gas (GHG) emissions nor could it determine the significance of the

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<sup>12</sup> Authorization Order, 169 FERC ¶ 61,131 at PP 1, 9. In the 2023 Remand Order the Commission granted Rio Bravo's amendment request to modify certain facilities. 183 FERC ¶ 61,046 at PP 2-3 (amending Rio Bravo's certificate by reducing the number of authorized compressor stations from three to one, increasing the horsepower at the remaining compressor station, eliminating certain measurement facilities, extending both parallel pipelines by 0.2 mile, changing the operating pressure of the pipelines and header system, and increasing the diameter of one of two parallel pipelines), *order on reh'g* 185 FERC ¶ 61,080.

<sup>13</sup> Pursuant to the Authorization Order, Rio Bravo's project is required to be made available for service by November 22, 2026. Construction has not commenced for the pipeline project and Rio Bravo has not sought an extension of time.

<sup>14</sup> On March 6, 2020, Commission staff issued a notice to proceed for limited construction activities for the Rio Grande LNG Terminal facilities. Additionally, on October 14, 2022, in Docket No. CP16-454-004, the Commission granted Rio Grande a two-year extension of time, to November 22, 2028, to construct and make available for service the Rio Grande LNG Terminal. *Rio Grande LNG, LLC*, 181 FERC ¶ 61,032 (2022), *order on reh'g*, 182 FERC ¶ 61,027 (2023).

<sup>15</sup> A final EIS for the projects was issued on April 26, 2019. *See* Commission staff, Rio Grande LNG Project Final EIS, Docket Nos. CP16-454-000 and CP16-455-000 (issued Apr. 26, 2019) (2019 Final EIS).

<sup>16</sup> Authorization Order, 169 FERC ¶ 61,131 at P 22.

projects' contribution to climate change.<sup>17</sup> The Commission also found that neither the construction nor operation of the projects would result in disproportionately high or adverse environmental and human health impacts on environmental justice communities.<sup>18</sup> The Commission agreed with the conclusions presented in the 2019 Final EIS and found that the projects, if constructed and operated as described in the 2019 Final EIS, would be environmentally acceptable actions.<sup>19</sup>

## **B. 2020 Rehearing Order**

6. On December 23, 2019, Sierra Club and eight other petitioners jointly sought rehearing and stay of the Authorization Order.<sup>20</sup> The Vecinos Groups raised concerns including air quality impacts, environmental justice impacts, mitigation measures, GHG emissions, and the Commission's public interest determination. Specifically, they stated that the Commission violated the National Environmental Policy Act (NEPA) by failing to take a hard look at whether environmental justice communities would bear a disproportionate share of the negative environmental consequences from the projects.<sup>21</sup> The Vecinos Groups also asserted that the Commission's conclusions regarding its inability to determine whether the projects' GHG emissions and contribution to climate change were significant, and its reasoning as to why it would not use the social cost of carbon protocol to assess the impacts from the projects' GHG emissions were arbitrary.<sup>22</sup>

7. On January 23, 2020, the Commission issued an order on rehearing and dismissing the stay request. The Commission affirmed the Authorization Order's decision to not calculate or apply the social cost of carbon protocol.<sup>23</sup> The Commission also concluded

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<sup>17</sup> *Id.* P 109. *See also* 2019 Final EIS at 4-479 to 4-482.

<sup>18</sup> Authorization Order, 169 FERC ¶ 61,131 at P 98. *See also* 2019 Final EIS at 4-233 to 4-238; 4-468 to 4-469.

<sup>19</sup> Authorization Order, 169 FERC ¶ 61,131 at P 133.

<sup>20</sup> Specifically, Sierra Club, Texas RioGrande Legal Aid (on behalf of Shrimpers and Fisherman of the RGV and Vecinos para el Bienestar de la Comunidad Costera), Save RGV from LGV, Defenders of Wildlife, the City of South Padre Island, the City of Port Isabel, the Town of Laguna Vista, and affected landowners Cynthia and Gilberto Hinojosa (collectively, Vecinos Groups) filed a request for rehearing.

<sup>21</sup> Vecinos Groups December 23, 2019 Request for Rehearing and Stay at 5, 34.

<sup>22</sup> *Id.* at 6.

<sup>23</sup> 2020 Rehearing Order, 170 FERC ¶ 61,046 at P 103.

that the 2019 Final EIS adequately identified and addressed impacts on environmental justice communities,<sup>24</sup> and reaffirmed the conclusion from the 2019 Final EIS and Authorization Order that there would not be any disproportionately high or adverse environmental and human health impacts on those communities.<sup>25</sup> Subsequently, the Vecinos Groups petitioned for review of the Authorization and 2020 Rehearing Orders in the D.C. Circuit.

C. *Vecinos para el Bienestar de la Comunidad Costera v. FERC*

8. On August 3, 2021, the D.C. Circuit, in *Vecinos*, remanded the Authorization and 2020 Rehearing Orders, holding that the Commission's NEPA analyses of the projects' impacts on climate change and environmental justice communities were deficient under the Administrative Procedure Act (APA), and thus the Commission "must also revisit its determinations of public interest and convenience under Sections 3 and 7 of the NGA."<sup>26</sup> Specifically, the court held that the Commission failed to address the petitioners' argument that 40 C.F.R. § 1502.21(c) (2024) of the Council on Environmental Quality's (CEQ) regulations required the Commission to use the social cost of carbon protocol or some other generally accepted methodology to assess the impact of the projects' GHG emissions and thus failed to adequately analyze the impact of the projects' GHG emissions.<sup>27</sup> The court directed the Commission on remand to: "explain whether 40 C.F.R. § 1502.21(c) calls for [the Commission] to apply the social cost of carbon protocol or some other analytical framework, ... and if not, why not."<sup>28</sup>

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<sup>24</sup> The 2020 Rehearing Order stated that "Commission staff concluded that within the census block groups intersected by a two-mile radius around the pipeline facilities and LNG terminal site, the minority population percentages in 24 of the 25 affected tracts exceed the EPA's categorical thresholds to be minority populations or low-income populations, or in most cases both." *Id.* P 64.

<sup>25</sup> *Id.* P 98.

<sup>26</sup> *Vecinos*, 6 F.4th at 1331.

<sup>27</sup> *Id.* at 1329.

<sup>28</sup> *Id.* at 1329-30. CEQ rescinded its regulations, effective April 11, 2025. 90 Fed. Reg. 10610 (Feb. 25, 2025). CEQ's then-applicable regulations provided that "[i]f . . . information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because . . . the means to obtain it are not known, the agency shall include within the environmental impact statement . . . [t]he agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community."

9. The court also held that the Commission's decision to limit its environmental justice analysis of the projects' impacts to those affected communities in census blocks within two miles of the project sites was arbitrary,<sup>29</sup> given that the 2019 Final EIS determined that certain environmental effects of the projects would extend beyond that radius, noting that air quality impacts could occur within a radius of 31 miles.<sup>30</sup> The court directed the Commission to explain why it chose to analyze the projects' impacts only on communities within a two-mile radius, or, in the alternative, to analyze the projects' impacts on communities within a different radius, and determine whether the Commission's environmental justice conclusion still held.<sup>31</sup>

#### **D. Rio Grande's CCS Proposal**

10. On November 17, 2021, Rio Grande filed an application to amend its section 3 authorization to incorporate a CCS system into the Rio Grande LNG Terminal. Rio Grande stated the construction and operation of the CCS system would enable it to "voluntarily capture and sequester at least 90% of the carbon dioxide (CO<sub>2</sub>) produced at the [] Terminal."<sup>32</sup> The proposed carbon capture process would remove CO<sub>2</sub> from both feed gas to be liquefied at the terminal and exhaust flue gas from the main refrigerant compressor gas turbines central to the liquefaction process. Once captured, the CO<sub>2</sub> would be transported via pipeline to an underground geologic formation permitted by the U.S. Environmental Protection Agency (EPA) and relevant Texas agencies via its underground injection control Class VI permitting regime for geologic sequestration.

11. Commission staff issued several environmental and engineering data requests regarding the proposal.<sup>33</sup> After review, staff determined Rio Grande's responses were deficient or staff's requests remained unanswered. As a result, on April 14, 2023, the Commission issued a Notice Suspending Environmental Review Schedule of the Proposed CCS System Amendment.

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<sup>29</sup> *Vecinos*, 6 F.4th at 1331.

<sup>30</sup> *Id.* at 1330.

<sup>31</sup> *Id.* at 1331.

<sup>32</sup> Rio Grande, Application for Limited Amendment to NGA Section 3 Authorization, Docket No. CP22-17-000, at 3 (filed Nov. 17, 2021) (CCS Amendment Application).

<sup>33</sup> Commission staff issued engineering information requests on April 27, 2022 and January 27, 2023, and environmental information requests on May 2, 2022, November 10, 2022, and January 30, 2023.

12. On August 20, 2024, Rio Grande requested to withdraw its amendment application, stating the CCS proposal “is not sufficiently developed to allow Commission review to continue.”<sup>34</sup> On September 10, 2024, the Commission issued a Notice of Effectiveness of Withdrawal, terminating the amendment proceeding.<sup>35</sup>

**E. 2023 Remand and Rehearing Orders**

13. On April 21, 2023, the Commission issued the 2023 Remand Order, which addressed the issues remanded by the court in *Vecinos* and supplemented the environmental analysis for both the Rio Grande LNG Terminal and the Rio Bravo Pipeline Project, by: (1) explaining that 40 C.F.R. § 1502.21(c) does not require the Commission to apply the social cost of carbon protocol in this proceeding because the protocol was not developed for project level review and does not enable the Commission to credibly determine whether the project’s GHG emissions are significant and (2) updating the analysis of the projects’ environmental justice impacts.<sup>36</sup>

14. The 2023 Remand Order also granted Rio Bravo’s request to amend its certificate to reduce the number of authorized compressor stations from three to one, increase the horsepower at the remaining compressor station, eliminate certain measurement facilities, extend both parallel pipelines by 0.2 mile, change the operating pressure of the pipelines and header system, and increase the diameter of one of two parallel lines.<sup>37</sup> The Commission determined that the Rio Bravo Pipeline Project, as conditioned in the Authorization Order and the proposed amendments and modifications, was required by the public convenience and necessity.<sup>38</sup> The Commission also determined that the Rio Grande LNG Terminal, as conditioned in the Authorization Order and modified in the 2023 remand proceeding, was not inconsistent with the public interest.<sup>39</sup>

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<sup>34</sup> Rio Grande, Withdrawal of Application, Docket No. CP22-17-000, at 1 (filed Aug. 20, 2024).

<sup>35</sup> Notice of Effectiveness of Withdrawal of Application to Amend Section 3 Authorization, Docket No. CP22-17-000, 89 Fed. Reg. 76112 (Sept. 17, 2024).

<sup>36</sup> 2023 Remand Order, 183 FERC ¶ 61,046 at P 3.

<sup>37</sup> *Id.* PP 23; Rio Bravo, Application to Amend Certificate of Public Convenience and Necessity, Docket No. CP20-481-000 (filed June 16, 2020).

<sup>38</sup> 2023 Remand Order, 183 FERC ¶ 61,046 at P 3.

<sup>39</sup> *Id.* P 208.



15. On May 22, 2023, Sierra Club and three other petitioners (Port Isabel Groups)<sup>40</sup> sought rehearing of the 2023 Remand Order. The Port Isabel Groups argued that the Commission erred in the 2023 Remand Order by failing to: (1) consider additional issues that were not remanded by the court in *Vecinos*, including providing an opportunity for the public to comment on the new air quality analysis and environmental justice effects;<sup>41</sup> (2) address Rio Grande's plans to incorporate CCS into the project;<sup>42</sup> (3) properly consider air pollution and environmental justice impacts;<sup>43</sup> (4) properly consider GHG emissions impacts;<sup>44</sup> (5) properly consider information concerning the Rio Bravo Pipeline Project;<sup>45</sup> and (6) supplement its 2019 Final EIS based on new information concerning SpaceX's facility for launching rockets.<sup>46</sup>

16. On October 27, 2023, the Commission issued an order addressing the arguments raised on rehearing.<sup>47</sup> The Commission found that it reasonably limited its analysis on remand to the two issues subject to the court's remand—whether the social cost of GHG or similar protocol should be used and the scope of the Commission's environmental justice analysis.<sup>48</sup> The Commission asserted that the Port Isabel Groups' CCS system argument was outside the scope of the remand and the Commission was evaluating the proposed CCS system amendment in a separate, pending proceeding.<sup>49</sup> The Commission

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<sup>40</sup> Specifically, Sierra Club, Vecinos para el Bienestar de la Comunidad Costera, City of Port Isabel, and the Carrizo/Comecrudo Tribe of Texas filed a request for rehearing.

<sup>41</sup> Port Isabel Groups May 22, 2023 Request for Rehearing at 3.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 4-6.

<sup>44</sup> *Id.* at 6.

<sup>45</sup> *Id.* at 7.

<sup>46</sup> *Id.*; see also 2019 Final EIS at 4-420 ("Development of a commercial space launch facility, the SpaceX Commercial Spaceport Project, about 5.5 miles southeast of the Rio Grande LNG Terminal site, began in September 2014.).

<sup>47</sup> 2023 Rehearing Order, 185 FERC ¶ 61,080.

<sup>48</sup> *Id.* P 13.

<sup>49</sup> *Id.* P 17.

also stated the CCS system amendment was not a connected action with the Rio Grande LNG Terminal.<sup>50</sup>

17. The Commission affirmed that the revised emissions estimates in the 2023 Remand Order were properly supported and consistent with Rio Grande's air quality permit issued by the Texas Commission on Environmental Quality (TCEQ).<sup>51</sup> The Commission found that the Isla Blanca monitor was appropriately excluded from the air quality analysis because the monitor did not have three years of data at the time the analysis was completed, as EPA and TCEQ recommends.<sup>52</sup> In light of the court's prior approval of the Commission's ozone analysis, the Commission declined to revisit this issue.<sup>53</sup> The Commission also clarified that although the 2023 Remand Order noted that the Significant Impact Level (SIL)-based radius of impact was 12.8 kilometers, that radius was referenced to provide context for use of a more-conservative radius of 50 kilometers around the LNG Terminal site for assessing project impacts on environmental justice communities.<sup>54</sup> The Commission reaffirmed its finding that operation of the projects, when combined with the other projects within the cumulative geographic scope for air quality, would not cause or contribute to a potential exceedance of the National Ambient Air Quality Standards (NAAQS) on a regional or localized basis and, as a result, environmental justice communities would not experience significant air quality impacts from criteria pollutants covered under the NAAQS during operation of the projects.<sup>55</sup>

18. The Commission stated that it was not required to prepare a supplemental EIS because none of the circumstances to do so under CEQ's regulations at 40 C.F.R. § 1502.9(d) were applicable.

19. The Commission reiterated its finding that the social cost of carbon has no utility in the NEPA determination of significance and is not appropriate for project level

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<sup>50</sup> *Id.* P 21.

<sup>51</sup> *Id.* P 25.

<sup>52</sup> *Id.* P 27.

<sup>53</sup> *Id.* P 29.

<sup>54</sup> *Id.* P 31.

<sup>55</sup> *Id.* P 34.

review.<sup>56</sup> The Commission also found that the upstream emissions related to the amended Rio Bravo Pipeline Project were not reasonably foreseeable.<sup>57</sup>

20. Subsequently, the Port Isabel Groups petitioned for review of the 2023 Remand Order in the D.C. Circuit.<sup>58</sup>

**F. City of Port Isabel v. FERC**

21. On August 6, 2024, the D.C. Circuit, in *Port Isabel I*, vacated and remanded the Commission's 2023 Remand and Rehearing Orders authorizing the Rio Grande LNG Terminal and Rio Bravo Pipeline Project.<sup>59</sup> The court faulted the Commission for failing to issue a supplemental EIS in connection with its revised environmental justice analysis.<sup>60</sup> Additionally, the court found that the Commission did not adequately explain why it excluded data from the Isla Blanca monitor that purportedly showed a potential NAAQS exceedance for fine particulate matter during the study period.<sup>61</sup> The court found that the CCS proposal needed to be considered as part of the Commission's environmental review of the Rio Grande LNG Terminal<sup>62</sup> and went on to find that, even if Rio Grande were to withdraw the CCS proposal, the Commission must analyze the proposal as an alternative before reauthorizing the Rio Grande LNG Terminal.<sup>63</sup>

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<sup>56</sup> *Id.* P 56.

<sup>57</sup> *Id.* P 63.

<sup>58</sup> Separately on May 23, 2024, the Commission amended Rio Bravo's certificate to adjust the certificated pipeline route at four locations and to modify the design of the mainline pipelines by using an alternative maximum allowable operating pressure (MAOP) calculation. *Rio Grande LNG, LLC*, 187 FERC ¶ 61,104 (2024) (2024 Order Amending Certificate) (amending certificate to minimize impacts to potential ocelot habitat, address concerns from a landowner and the U.S. Fish and Wildlife, avoid recently constructed infrastructure, and align the Rio Bravo Pipeline Project with the approved design of the Rio Grande LNG Terminal).

<sup>59</sup> *Port Isabel I*, 111 F.4th 1198.

<sup>60</sup> *Id.* at 1210.

<sup>61</sup> *Id.* at 1215.

<sup>62</sup> *Id.* at 1213.

<sup>63</sup> *Id.*

22. On March 18, 2025, the D.C. Circuit partially granted Rio Grande's and Rio Bravo's petition for panel rehearing of the August 6, 2024 opinion.<sup>64</sup> The panel determined that vacatur was not appropriate because the Commission's procedural omissions to not prepare supplemental NEPA were not fundamental and the seriousness of the deficiencies did not outweigh the disruptive effects of vacatur.<sup>65</sup> Therefore, the court granted partial rehearing and remanded the case to the Commission without vacatur.<sup>66</sup> The court also declined to opine on whether the legal landscape was altered by two intervening executive orders issued in January 2025—(i) Executive Order 14,713,<sup>67</sup> which revoked Executive Order 12,898 that required federal agencies to identify and mitigate impacts on environmental justice communities,<sup>68</sup> and (ii) Executive Order 14,514, which prohibits agencies from “weigh[ing] any environmental considerations except those expressly provided by statute.”<sup>69</sup> The court noted that these legal developments “may alter the procedures the Commission must conduct on remand,” but left it to the Commission to decide the legal implications of the January 2025 executive orders.<sup>70</sup>

## II. Procedural Issues

23. On September 13, 2024, the Commission issued a Notice of Intent to Prepare a Supplemental EIS for the Proposed Rio Grande LNG Terminal and Rio Bravo Pipeline Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review (Notice of Intent). The notice was published in the *Federal Register* on September 20, 2024,<sup>71</sup> and mailed to the project stakeholders. The notice opened a comment period that ended on October 15, 2024. In response to the Notice of Intent, the Commission received approximately 80 comments from individuals,

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<sup>64</sup> *Port Isabel II*, 130 F.4th 1034.

<sup>65</sup> *Id.* at 1037.

<sup>66</sup> *Id.* at 1038.

<sup>67</sup> Exec. Order No. 14,173, 90 Fed. Reg. 8633, 8634 (Jan. 21, 2025).

<sup>68</sup> Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994).

<sup>69</sup> Exec. Order No. 14,154, 90 Fed. Reg. 8353, 8356 (Jan. 20, 2025).

<sup>70</sup> *Port Isabel II*, 130 F.4th at 1036.

<sup>71</sup> 89 Fed. Reg. 77129 (Sept. 20, 2024).

environmental and public interest groups, Tribes, federal and state agencies, and a member of Congress.

24. Commission staff prepared a draft supplemental EIS,<sup>72</sup> which was issued on March 28, 2025. The notice of the draft supplemental EIS was published in the *Federal Register* on April 4, 2025, establishing a 45-day comment period that ended on May 19, 2025.<sup>73</sup> The Commission mailed the notice of the draft supplemental EIS to project stakeholders. South Texas Environmental Justice Network filed a timely, unopposed motion to intervene and protest.<sup>74</sup> In response to the draft supplemental EIS, the Commission received over 80 comments from non-governmental organizations, individuals, including a member of Congress, Rio Grande, and Rio Bravo.

25. Commission staff issued the final supplemental EIS on July 31, 2025. The Notice of Availability of the Final Supplemental EIS for the Proposed Rio Grande LNG Terminal and Rio Bravo Pipeline Project was published in the *Federal Register* on August 5, 2025,<sup>75</sup> and mailed to project stakeholders. The final supplemental EIS addressed project alternatives; wildlife; air quality; environmental justice; and cumulative impacts. The final supplemental EIS addressed all environmental comments received on the draft supplemental EIS prior to July 31, 2025.

26. On August 13, 2025, four members of Congress filed a joint comment in support of the Rio Grande LNG Terminal, stating that the project will strengthen economic and national security, has already created thousands of jobs in Texas, and brought billions of dollars of investment to the state.<sup>76</sup>

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<sup>72</sup> 42 U.S.C. §§ 4321 *et seq.*, *see also* 18 C.F.R. pt. 380 (2024) (Commission's regulations implementing NEPA); FERC, *Staff Guidance Manual on Implementation of NEPA*, (June 2025), <https://www.ferc.gov/media/staff-guidance-manual-implementation-national-environmental-policy-act-june-2025>.

<sup>73</sup> 90 Fed. Reg. 14,834 (April 4, 2025).

<sup>74</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214(c) (2024); *see also* 18 C.F.R. § 380.10 (2024) (allowing for intervention on the basis of a draft EIS).

<sup>75</sup> 90 Fed. Reg. 37485 (Aug. 5, 2025).

<sup>76</sup> U.S. Representatives Wesley P. Hunt, Randy Weber, Dan Crenshaw, and August Pfluger August 13, 2025 Joint Comment at 1.

### III. Discussion

#### A. Remanded Issues

##### 1. CCS System Alternative

27. As detailed above, Rio Grande filed an application on November 17, 2021, to incorporate a CCS system into the design and operation of its approved LNG terminal. Rio Grande stated that “[o]nce captured, the CO<sub>2</sub> will be transported via pipeline to an underground geologic formation.”<sup>77</sup> However, Rio Grande did not identify the locations of the geologic formations that would receive the CO<sub>2</sub> for sequestration, nor did Rio Grande submit any specific information (e.g., routing, construction timing, or construction methods) regarding the pipeline that would transport the CO<sub>2</sub>.<sup>78</sup> Commission staff issued several environmental and engineering data requests to Rio Grande seeking more information regarding the CCS system,<sup>79</sup> but responses from Rio Grande to a number of questions were deficient or questions remained unanswered. Therefore, on April 14, 2023, the Commission suspended its environmental review of the proposed CCS system amendment, noting that Rio Grande had not provided requested information regarding air dispersion modeling, spill containment, hazard detection, hazard control, firewater, fire protection, and safety.<sup>80</sup> On August 20, 2024, Rio Grande requested to withdraw its proposal, which was effective September 4, 2024.

28. On remand, the court directed the Commission to analyze the CCS system as an alternative even if Rio Grande withdrew its proposal.<sup>81</sup>

29. In the supplemental EIS, Commission staff analyzed the CCS system alternative.<sup>82</sup> The supplemental EIS documented the uncertainty in potential environmental impacts on

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<sup>77</sup> CCS Amendment Application at 2.

<sup>78</sup> Supplemental EIS at 3-10.

<sup>79</sup> See *supra* note 33.

<sup>80</sup> Notice Suspending Environmental Review Schedule of the Proposed CCS System Amendment, Docket No. CP22-17-000, 88 Fed. Reg. 24407 (Apr. 20, 2023).

<sup>81</sup> *Port Isabel I*, 111 F.4th at 1213.

<sup>82</sup> Only the CCS-related infrastructure that would be constructed within the actual terminal site (e.g., heat exchangers, pumps, blowers; CO<sub>2</sub> absorber, dehydration, and compression systems; amine regenerator and reboiler; waste heat recovery unit) would be within the Commission’s jurisdiction. All other CCS facilities and pipelines outside the boundary of the LNG terminal would not be within the Commission jurisdiction but

other resources from construction and operation of the CCS system, the unknown CCS system construction timelines and economic feasibility of the facility, the lack of permitting assurances, and the Commission's inability to compel Rio Grande to construct non-jurisdictional facilities.<sup>83</sup> Therefore, Commission staff, following the D.C. Circuit's direction on remand, analyzed the CCS system as an alternative in the supplemental EIS and did not recommend adopting the alternative. We agree with the analysis in the supplemental EIS.<sup>84</sup>

30. Sierra Club and South Texas Environmental Justice Network assert that the Commission's analysis failed to consider the fact that NextDecade, the parent company of Rio Grande LNG, has stated that it will continue pursuing a CCS system for the Rio Grande LNG Terminal.<sup>85</sup> Sierra Club and South Texas Environmental Justice Network cite two filings NextDecade made before the Securities and Exchange Commission, a February 28, 2025 10-K filing and a May 7, 2025 10-Q filing, which both state that NextDecade is in the business of "construction and development activities related to the liquefaction of natural gas and sale of LNG and the capture and storage of CO<sub>2</sub> emissions."<sup>86</sup> They argue that the Commission must require Rio Grande to reconcile its statement that it will no longer pursue a CCS system at the LNG terminal with NextDecade's financial documents.<sup>87</sup> Finally, Sierra Club and South Texas

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would be under the jurisdiction of other federal agencies, such as EPA, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), and the state of Texas. *See Venture Global CP2 LNG, LLC*, 187 FERC ¶ 61,199, at P 21 (2024) (concluding "that the CCS facilities located within the terminal fence-line up to the entry point of the send-out pipeline are subject to the Commission's jurisdiction under section 3(e) of the NGA").

<sup>83</sup> Supplemental EIS at 3-12 to 3-21.

<sup>84</sup> *See Sierra Club v. FERC*, D.C. Cir. No. 24-1199 slip op. at 5 (Aug. 1, 2025) ("FERC has ... 'substantial discretion' to determine what constitute 'feasible alternatives.'") (quoting *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 145 S. Ct. 1497, 1512-13 (2025) (*Seven Cnty.*)).

<sup>85</sup> Sierra Club May 19, 2025 Comments at 15-16.

<sup>86</sup> *Id.* (quoting NextDecade, Filing (10-K) (Feb. 28, 2025) at 8).

<sup>87</sup> *Id.* at 18.

Environmental Justice Network assert that the CCS system is a connected action under NEPA and must be analyzed together with the Rio Grande LNG Terminal.<sup>88</sup>

31. We disagree that NextDecade's statements in its financial filings require the Commission to seek additional information from Rio Grande. While Sierra Club and South Texas Environmental Justice Network point to NextDecade's financial filings, they fail to highlight that NextDecade prefaces its 10-K filing with a "cautionary statement" alerting investors that such forward-looking statements contained within are expectations for future operations and economic performance, and notes that statements contained therein may vary from actual results and includes "any carbon capture and storage projects we may develop and the timing of that progress."<sup>89</sup> Further, even if NextDecade is generally in the CCS business, that does not mean that it intends to pursue CCS at the Rio Grande LNG Terminal.

32. As for Sierra Club and South Texas Environmental Justice Network's connected action argument, the court in *Port Isabel I* indicated that the Commission "must consider the [CCS system] action together in its environmental analysis," but the court contemplated this exact scenario—no application for a CCS system pending before the Commission—and determined that "[e]ven if Rio Grande decides on remand that it does not wish to proceed with the CCS proposal (thereby mooted the connected-action issue), the Commission must, at the very least, analyze the proposal as an alternative via a supplemental EIS before reauthorizing the Rio Grande terminal."<sup>90</sup> The court's ruling on the connected-action issues in *Port Isabel I* is dispositive. For the sake of argument, we will explain why our determination is consistent with the Commission's precedent on analyzing connected actions and D.C. Circuit precedent, and is supported by the Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County*.<sup>91</sup> "An agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration."<sup>92</sup> The court in *Port Isabel I* explained that "to assess whether actions are connected, and thus must be considered together, we consider whether they have 'substantial independent utility' and

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<sup>88</sup> *Id.* at 19.

<sup>89</sup> NextDecade, Filing (10-K) (Feb. 28, 2025) at 4.

<sup>90</sup> *Port Isabel I*, 111 F.4th at 1213.

<sup>91</sup> *Seven Cnty.*, 145 S. Ct. at 1512 (an agency "exercises substantial deference" when preparing an EIS).

<sup>92</sup> *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).



whether they overlap temporally.”<sup>93</sup> While NextDecade’s filings before the Securities and Exchange Commission and statements made by its Chief Executive Officer envision the possibility of investing in CCS infrastructure, Rio Grande does not have a pending application before the Commission for adding a CCS system to the LNG terminal. At the time staff developed its supplemental EIS, the Rio Grande LNG Terminal was under construction without a CCS system (i.e., there is no temporal overlap as no application for a CCS system was pending before the Commission).<sup>94</sup> Thus, staff’s decision to analyze the CCS system as an alternative, rather than a connected action, was appropriate.

## **2. Operational Air Quality Analysis**

33. On remand, the court directed the Commission to either include the data from the Isla Blanca monitor in its air quality analysis or provide a new, reasoned explanation for declining to use it.<sup>95</sup> As detailed below, the Commission used the Isla Blanca monitor data to reanalyze the air quality in the supplemental EIS.

### **a. Rio Grande LNG Terminal**

34. The Rio Grande LNG Terminal is subject to the Clean Air Act (CAA) Prevention of Significant Deterioration (PSD) program as a new major source of air emissions in an attainment area.<sup>96</sup> Under the PSD program, the Rio Grande LNG Terminal must demonstrate that it will not cause or contribute to a violation of any applicable NAAQS for

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<sup>93</sup> *Port Isabel I*, 111 F.4th at 1213 (citing *City of Bos. Delegation v. FERC*, 897 F.3d 241, 252 (D.C. Cir. 2018) (quotation omitted)).

<sup>94</sup> *Id.* (the temporal-overlap factor asks whether the projects are “either under construction” or “pending before the Commission for environmental review and approval” at the same time). We also reiterate that the Commission lacks jurisdiction to regulate the CCS system beyond the fenceline of the terminal and the Supreme Court explained that “NEPA requires agencies to focus on the environmental effects of the project at issue.” *Seven Cnty.*, 145 S. Ct. at 1515. NEPA does not require an agency “to evaluate environmental effects from separate projects upstream or downstream from the project at issue,” *id.* at 1518 (citing *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 770 (2004)), especially where the agency “possesses no regulatory authority over those separate projects.” *Id.* at 1517.

<sup>95</sup> *Port Isabel I*, 111 F.4th at 1215.

<sup>96</sup> Supplemental EIS at 4-31. An attainment area is an area with air quality that is currently compliant with the NAAQS for a particular criteria pollutant. The Rio Grande LNG Terminal would be subject to PSD review. *Id.*

criteria pollutants before obtaining a permit from the state permitting agency, here, TCEQ.<sup>97</sup> With respect to the six criteria pollutants, the EPA has developed SILs as a tool that permitting authorities, typically state agencies, may use to demonstrate whether emissions from a proposed source or modification will cause or contribute to air pollution in excess of the NAAQS for purposes of complying with the PSD program requirements.<sup>98</sup> When considering a PSD application, many state permitting agencies use an analysis involving up to three steps that uses modeled project emissions in comparison to the SILs to determine if a facility would not cause or contribute to any exceedances of the NAAQS.<sup>99</sup> The

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<sup>97</sup> 42 U.S.C. § 7475(a)(3). NAAQS are limits on the atmospheric concentration of six pollutants, called criteria pollutants, that are harmful to public health and the environment. *See* 42 U.S.C. § 7409. The six criteria pollutants are: carbon monoxide (CO), lead (Pb), NO<sub>2</sub>, ozone (O<sub>3</sub>), particulate matter (PM), and sulfur dioxide (SO<sub>2</sub>).

<sup>98</sup> 42 U.S.C. § 7475(a)(3) (generally prohibiting construction of a major emitting facility unless the facility operator demonstrates that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any: (a) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which Part C of 42 U.S. Code Chapter 85 Subchapter I (Prevention of Significant Deterioration of Air Quality) applies more than one time per year, (b) NAAQS in any air quality control region, or (c) any other applicable emission standard or standard of performance under the chapter). *See, e.g.,* EPA, *Guidance on Significant Impact Levels for Ozone & Fine Particles in the Prevention of Significant Deterioration Permitting Program* 11 (April 17, 2018), [https://19january2021snapshot.epa.gov/sites/static/files/2018-04/documents/sils\\_guidance\\_2018.pdf](https://19january2021snapshot.epa.gov/sites/static/files/2018-04/documents/sils_guidance_2018.pdf) (EPA Ozone and PM SILs Guidance) (noting that the SILs for ozone and PM are numerical values below which the EPA considers a source to have an insignificant effect on ambient air quality because the degree in changes in pollutant concentrations caused by an individual contribution below the SIL are “indistinguishable from the inherent variability in the measured atmosphere and may be observed even in the absence of the increased emissions” and “changes in air quality within this range are not meaningful, and, thus, do not contribute to a violation of the NAAQS”); *see also* EPA, *Guidance Concerning the Implementation of the 1-hour NO<sub>2</sub> NAAQS For the Prevention of Significant Deterioration Program* 4, 11 (June 29, <https://www.epa.gov/sites/default/files/2015-07/documents/appwno2.pdf> (EPA Interim 1-hour NO<sub>2</sub> SIL Guidance) (noting that it “considers a source whose individual impact falls below a SIL to have a de minimis impact on air quality concentrations that already exist” and that further analysis would “yield trivial gain” with regard to reducing ambient pollutant concentrations).

<sup>99</sup> The three-part analysis is outlined in EPA’s air quality modeling procedures at 40 C.F.R. pt. 51, app. W (2024).

Commission has adopted the same three-step analysis to evaluate a project's potential air quality impacts. The three steps are: (1) a preliminary screening step; (2) if necessary, a full cumulative impacts analysis; and (3) if necessary, a cause and contribute (i.e., culpability) analysis.<sup>100</sup>

35. Generally, during Step One, the preliminary screening step, the applicant models a source's potential emissions and compares the proposed facility's highest projected ambient air quality impact to the SIL for each criteria pollutant and averaging period (e.g., 1-hour, 8-hour, 24-hour, or annual) to determine if the project's emissions exceed the SIL.<sup>101</sup> If the predicted impacts for a particular criteria pollutant are below the applicable SIL, then no further analyses or modeling are required for that pollutant/averaging period.<sup>102</sup> If model-predicted concentrations are greater than the applicable SIL, a cumulative impact analysis is performed for that pollutant and averaging period (i.e., Step Two).<sup>103</sup> Under the Step Two cumulative impact analysis, each criteria pollutant that exceeded the SIL for a specific averaging period in Step One is modeled individually. The cumulative analysis considers emissions from existing regional sources in addition to the project's modeled emissions at multiple receptors within the potential area of impact.<sup>104</sup> If there are no predicted NAAQS exceedances identified in the cumulative impact analysis, there is no need to proceed to Step Three, the cause and contribute analysis.

36. If there is a predicted NAAQS exceedance, then the state permitting agency moves to Step 3, under which the state evaluates whether the proposed facility's level of emissions of the criteria pollutant at issue is at a level that the EPA considers to have

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<sup>100</sup> See supplemental EIS at 4-32 to 4-33. See also *Commonwealth LNG, LLC*, 191 FERC ¶ 61,205, at PP 4-5 (2025); *Venture Glob. CP2 LNG, LLC*, 191 FERC ¶ 61,153, at P 5 (2025).

<sup>101</sup> See supplemental EIS at 4-32 to 4-33.

<sup>102</sup> See EPA Ozone and PM SILs Guidance at 11 (stating that "a permitting authority can reasonably conclude that emissions of a proposed source that have a projected impact below the SIL values provided in this memorandum are not the reason for, responsible for, or the 'but for' cause of a NAAQS violation"); EPA, *Legal Memo: Application of Significant Impact Levels in the Air Quality Determination for PSD Permitting under the CAA* 13 (Apr. 17, 2018), [https://www.epa.gov/sites/default/files/2018-04/documents/legal\\_memo\\_randum\\_final\\_4-17-18.pdf](https://www.epa.gov/sites/default/files/2018-04/documents/legal_memo_randum_final_4-17-18.pdf).

<sup>103</sup> Supplemental EIS at 4-33.

<sup>104</sup> See *id.*

contributed to the potential NAAQS exceedance. States use the applicable SIL as a threshold for this determination. Accordingly, in cases where the cumulative modeling of existing sources identifies a potential NAAQS exceedance of a criteria pollutant, for most criteria pollutants, if the modeled contribution from the project is less than the SIL at the receptor and time period of the predicted NAAQS exceedance, the proposed facility is deemed to not have caused or contributed to the exceedance and the state may issue the permit.<sup>105</sup>

37. Commission staff's air quality analysis in the supplemental EIS generally followed this three-step process to analyze the project's air emissions as part of its examination of project effects under NEPA.<sup>106</sup> Rio Grande opted to provide, for Commission review, a Step 2 cumulative impact analysis for the Rio Grande LNG Terminal for each criteria pollutant, not just those that exceeded the SIL for the averaging period.<sup>107</sup> The cumulative modeling was run using the background data obtained from the Isla Blanca monitoring station as well as the Brownsville air monitoring stations. As relevant here, the results from the cumulative impact analysis only showed NAAQS exceedances for 24-hour and annual inhalable particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM<sub>2.5</sub>) at certain receptors.<sup>108</sup> Thus, Commission staff

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<sup>105</sup> See *Commonwealth LNG, LLC*, 191 FERC ¶ 61,205 at P 5 (citing 42 U.S.C. § 7475(a)(3)). As we explained in an order on remand responding to the D.C. Circuit's directive in *Healthy Gulf v. FERC*, 107 F.4th 1033 (D.C. Cir. 2024), because the 1-hour NO<sub>2</sub> SIL is an interim standard that does not provide an adequate threshold for determining the significance of cumulative effects, for purposes of Commission staff's environmental review, any modeled NAAQS violation for 1-hour NO<sub>2</sub> with a modeled non-zero contribution by the facility is considered to potentially worsen a NAAQS exceedance. *Commonwealth LNG, LLC*, 191 FERC ¶ 61,205 at P 16.

<sup>106</sup> Supplemental EIS at 4-32 to 4-39.

<sup>107</sup> *Id.* at 4-35 to 4-36 (noting that generally cumulative modeling is not required for pollutants where the initial modeling does not exceed the SIL). See also *id.* at 4-33, explaining that in the 2019 Final EIS the Step 1 preliminary screening assessment showed that the terminal project's emissions only exceeded the SIL for 1-hour and annual NO<sub>2</sub> and 24-hour and annual PM<sub>2.5</sub>, accordingly for the 2019 Final EIS, the Commission moved to Step 2 of the analysis, cumulative modeling, for just those two pollutants: NO<sub>2</sub> and PM<sub>2.5</sub>.

<sup>108</sup> *Id.* at 4-38 to 4-39. For purposes of air quality modeling, a receptor is a location or point within the model grid of 50 kilometers x 50 kilometers where the model calculates pollutant concentrations. Receptors are distributed over the entire modeling area, with closer spacing near the facility and wider spacing further from the facility.

determined, and we agree, there are no significant impacts associated with the operational emission contributions of the Rio Grande LNG Terminal with respect NO<sub>2</sub>, CO, inhalable particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM<sub>10</sub>), and SO<sub>2</sub>.<sup>109</sup> Staff moved to Step 3 cause and contribute analysis only for PM<sub>2.5</sub>.

38. Step Three cause and contribute analysis showed that with respect to 24-hour PM<sub>2.5</sub>, the contribution by the Rio Grande LNG Terminal to each exceedance concentration at the same receptor and time period was less than the EPA-designated SIL.<sup>110</sup> The modeling showed that existing, permitted offsite sources (i.e., existing background emissions sources) were driving the modeled NAAQS exceedances in the project area and Commission staff concluded that the Rio Grande LNG Terminal is not considered to have contributed to the modeled NAAQS exceedance.<sup>111</sup> Therefore, Commission staff determined that the project's minor contribution to the maximum modeled impact did not cause or contribute to those 24-hour PM<sub>2.5</sub> exceedances and concluded that the project's direct or cumulative impacts for 24-hour PM<sub>2.5</sub> would not be significant.<sup>112</sup> In other words, the modeling demonstrates that the Rio Grande LNG Terminal's emission contributions at any NAAQS exceedance location would be below the respective SILs and thus would not have a significant impact on regional air quality.<sup>113</sup> We agree.

39. Regarding annual PM<sub>2.5</sub>, the cumulative modeling showed that the emissions from the Rio Grande LNG Terminal combined with the local ambient concentrations are above the existing NAAQS. In the majority of the area, the terminal's modeled potential contribution is below the annual PM<sub>2.5</sub> SIL and, thus is not statistically significant. However, there are two discrete areas just north of the terminal, within the Laguna Atascosa National Wildlife Refuge, where the cumulative model shows the project's contribution above the SIL, and thus we conclude air quality impacts in those areas could be significant.<sup>114</sup> The highest overall modeled maximum contribution from the terminal

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<sup>109</sup> *Id.* at ES-5.

<sup>110</sup> *Id.* at 4-38.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 4-38 to 4-39.

<sup>113</sup> Modeled pollutants from the Rio Grande LNG Terminal have concentrations under the SIL and are considered to be within the day-to-day variability of ambient air concentrations recorded by the air monitoring station. Therefore, the emission contributions of the LNG terminal have no statistically significant effect on the regional background concentrations of those pollutants. *Id.* at 4-38, n. 138.

<sup>114</sup> For example, cumulative modeling showed Rio Grande LNG Terminal's

operation is 0.19 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), which is above the annual  $\text{PM}_{2.5}$  SIL of 0.13 ( $\mu\text{g}/\text{m}^3$ ). There are no permanent residences or other usages (e.g., workplaces or schools) in these two discrete areas of the wildlife refuge in which the project would contribute to annual levels of exposure, and the overall impact is below the secondary annual  $\text{PM}_{2.5}$  NAAQS and the 24-hour  $\text{PM}_{2.5}$  NAAQS.<sup>115</sup> Moreover, while we note that the annual  $\text{PM}_{2.5}$  NAAQS exceedances are occurring regardless of operation of the project, due to background concentrations of annual  $\text{PM}_{2.5}$ ; the project's modeled potential contribution to the two exceedances within a portion of the wildlife refuge adjacent to the project would be minimal (less than 2% above background),<sup>116</sup> and, consistent with EPA's guidelines, that the modeled contributions reflect a highly conservative, worst-case analysis.<sup>117</sup>

40. Additionally, we note that TCEQ is the state agency tasked with implementing the relevant portions of the CAA. In accordance with PSD permit requirements established by TCEQ, Rio Grande must minimize air quality impacts by adhering to applicable federal and state regulations and utilizing Best Available Control Technology (BACT) for annual  $\text{PM}_{2.5}$ , to meet the emissions limitations required by the TCEQ.<sup>118</sup> With respect to particulate matter and as applied here, BACT is an emissions limitation based

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annual  $\text{PM}_{2.5}$  contributions using the Isla Blanca Monitor Design Value, at the point of maximum modeled impact within the cumulative modeled area, could contribute approximately 0.033  $\mu\text{g}/\text{m}^3$  (direct emissions of 0.0073  $\mu\text{g}/\text{m}^3$  + secondary emissions of 0.026  $\mu\text{g}/\text{m}^3$ ), which is below the annual  $\text{PM}_{2.5}$  SIL of 0.13 *Id.* at 4-39.

<sup>115</sup> *Id.* Secondary NAAQS standards set limits to protect public welfare, including protection against decreased visibility, damage to animals, crops, vegetation, and buildings. *See* EPA, *NAAQS Table* (July 31, 2025), <https://www.epa.gov/criteria-air-pollutants/naaqs-table>.

<sup>116</sup> This was calculated using the following formula using the Isla Blanca Monitor Design Values: (direct impacts of the project + secondary impacts of the project) / ambient background = resulting percentage. *See* Supplemental EIS at 4-37 (Table 4-1).

<sup>117</sup> We note that air dispersion modeling impacts tend to be an overestimate of the resulting ambient impacts, as the air dispersion modeling inputs for the SIL analysis conservatively used the maximum hourly and annual emission rates, assumes that the facility would run at the maximum number of hours indicated in the state air permit, and used conservative emission factors (i.e., a worst-case scenario). For the cumulative air dispersion modeling analysis, these same worst-case assumptions in relation to hourly and annual emission rates would apply, as well as the assumption that other projects within 50 kilometers would all be operating concurrently.

<sup>118</sup> Final EIS at 5-15 – 5-16.

on the maximum degree of control that can be achieved by applying good combustion practices to minimize particulate matter emissions.<sup>119</sup> Prior to commissioning and consistent with our 2023 order on remand, we are requiring Rio Grande to prepare and file a *Project Ambient Air Quality Mitigation and Monitoring Plan* for reducing the air quality impacts of overlapping construction, commissioning, and terminal operations; such plan may include measures such as revising construction and commissioning schedules to reduce impacts. The plan must also describe the site selection process for installing air quality monitors and include procedures for data management and reporting.<sup>120</sup>

41. While staff's review of Rio Grande's updated modeling showed the project could contribute to NAAQS exceedances, Rio Grande's PSD permit from TCEQ concluded that the project would not contribute to a NAAQS exceedance.<sup>121</sup> We again note that Rio Grande's updated modeling demonstrate a "worst case" of maximum potential emissions. Rio Grande's updated modeling report indicated that the "anticipated actual background concentration in this area, given the limited industrial source contribution as compared to other regional monitors, will be lower than measured and thus also lower than represented as a maximum background here."<sup>122</sup> In the event the monitoring required by the *Project Ambient Air Quality Mitigation and Monitoring Plan* shows a violation of TCEQ-permitted emissions, Rio Grande shall immediately contact TCEQ to report the violation and establish a plan of action to correct the violation in accordance with the terms of the facility air permit and applicable state law.

**b. Rio Bravo Pipeline**

42. Rio Bravo's Compressor Station 1 is in an area classified as in attainment for all criteria pollutants.<sup>123</sup> In conjunction with the 2020 environmental assessment for the Rio Bravo Pipeline Project Amendment, a preliminary NAAQS analysis was performed for

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<sup>119</sup> Final EIS at 4-253; Rio Grande LNG and Rio Bravo Pipeline PSD Permit no. PSDTX1498.

<sup>120</sup> Supplemental EIS at 4-75.

<sup>121</sup> The Preliminary Determination Summary from TCEQ concluded, "[t]he modeling analysis indicates that the proposed project will not violate the NAAQS, cause an exceedance of the increment, or have any adverse impacts on soils, vegetation, or Class I Areas."

<sup>122</sup> Air Dispersion Modeling Report, January 21, 2025 at 36.

<sup>123</sup> *Id.* at 4-46. Rio Bravo's Compressor Station 1 would not be subject to the PSD permitting requirements. *Id.*

CO, NO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, and SO<sub>2</sub> in comparison to the NAAQS for Compressor Station 1.<sup>124</sup> The analysis showed the compressor station's emissions combined with the ambient background concentrations are less than the NAAQS for all pollutants.<sup>125</sup> The modeling also showed that the facility's impacts decrease significantly at a relatively short distance from the proposed site location.<sup>126</sup>

43. On remand, Commission staff revisited the air quality modeling for Compressor Station 1 to consider if the ambient background changed significantly in the area such that there might now be a NAAQS exceedance and in light of updated census data, as well as recent changes in the annual PM<sub>2.5</sub> NAAQS.<sup>127</sup> Additionally, Commission staff obtained an updated air quality dispersion modeling for all emission generating equipment at Compressor Station 1 for 24-hour and annual PM<sub>2.5</sub>.<sup>128</sup>

44. Rio Bravo's updated air quality dispersion analysis demonstrates that the impacts from Compressor Station 1 would not exceed any of the NAAQS.<sup>129</sup> The analysis further showed that facility-only impacts of 24-hour and annual PM<sub>2.5</sub> would not exceed the respective SILs at any offsite points.<sup>130</sup> Thus, Commission staff determined that operation of Compressor Station 1 would not cause or contribute to a violation of the 24-hour PM<sub>2.5</sub> or annual PM<sub>2.5</sub> NAAQS at any offsite locations including nearby residences.<sup>131</sup> Commission staff concluded there would be no significant air quality impacts from operation of Compressor Station 1.<sup>132</sup> We agree.

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<sup>124</sup> *Id.* at 4-47; 2020 Rio Bravo Amendment EA at 28.

<sup>125</sup> Supplemental EIS at 4-47 (citing 2020 Rio Bravo Amendment EA, tbl. 6 at 28).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*; *see also id.* at ES-6, n. 13 (“On March 6, 2024, the EPA published its final rule lowering the primary annual NAAQS for PM<sub>2.5</sub> to 9.0 micrograms per cubic meter (“µg/m<sup>3</sup>”). The new, more stringent standard replaces the prior primary annual PM<sub>2.5</sub> NAAQS of 12.0 µg/m<sup>3</sup>, which was established in 2012.”).

<sup>128</sup> *Id.* at 4-47 to 4-48.

<sup>129</sup> *Id.* at 4-48.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*



45. Save RGV and Jim Chapman argue that the comment period for the draft supplemental EIS should have been extended until the public could view and comment on Rio Bravo's updated air quality dispersion modeling analysis for Compressor Station 1 for 24-hour and annual PM<sub>2.5</sub> emissions.<sup>133</sup> Sierra Club and South Texas Environmental Justice Network contend that if the Commission revised its air impacts analysis after issuance of the draft supplemental EIS, that a revised supplemental draft EIS must be issued with a 45-day public comment period.<sup>134</sup>

46. Commission staff's draft supplemental EIS served as "a springboard for public comment"<sup>135</sup> and any information that is filed as part of the Commission's review of the project is available in the Commission's public record. The final supplemental EIS analyzed the effects of Compressor Station 1 using the information provided by Rio Bravo and determined that the PM<sub>2.5</sub> emissions from Compressor Station 1 would be less than what was presented in the draft supplemental EIS; thus, the conclusion regarding air quality impacts presented in the final supplemental EIS was less than what was presented in the draft. Further, it is the Commission's practice to consider all comments filed in natural gas infrastructure proceedings, even those filed after established deadlines, to the extent practicable without delaying Commission action, which we do here. Additionally, neither NEPA nor the Commission's regulations require specific procedures to be used in a supplemental EIS.<sup>136</sup> Here, an opportunity to comment was provided after the Notice of Intent and after the draft supplemental EIS. We find this to be sufficient to allow the public, parties, and the applicant to comment on the Commission's NEPA process and to assist the Commission in its decision-making process regarding the Rio Bravo Pipeline Project. The thorough environmental review for these projects resulted in over 2009 pages of detailed analysis and reports, not including the applications, reports, and data responses prepared by the applicant. We find the environmental record here to be sufficient.

47. Sierra Club and South Texas Environmental Justice Network provided an analysis using EPA's CO-Benefits Risk Assessment Health Impacts Screening and Mapping Tool

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<sup>133</sup> Save RGV May 19, 2025 Comment at 2; Jim Chapman May 19, 2025 Comment at 2.

<sup>134</sup> Sierra Club and South Texas Environmental Justice Network May 19, 2025 Comment at 35-36.

<sup>135</sup> *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197, at P 105 (2018) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)).

<sup>136</sup> *Seven Cnty.*, 145 S. Ct. at 1507 ("Simply stated, NEPA is a procedural cross-check, not a substantive roadblock. The goal of the law is to inform agency decision making, not to paralyze it.").

(COBRA), finding that adverse health impacts will occur regardless of whether pollution levels exceed the NAAQS.<sup>137</sup> Sierra Club and South Texas Environmental Justice Network argue that the Commission must weigh the harm that project pollution will cause in its public interest analysis, and either deny the project or reconsider mitigation measures to reduce emissions.<sup>138</sup>

48. The supplemental EIS properly analyzed the emissions impacts using regulatory thresholds for criteria pollutants, i.e., the NAAQS.<sup>139</sup> Although COBRA may be appropriate for state or local agency screening, it is superseded by the EPA's NAAQS which are approved and designated as safe by the EPA for all receptors, including sensitive groups.<sup>140</sup> The terminal's emission contributions for all modeled pollutants, except for annual PM<sub>2.5</sub>, fall under the NAAQS.<sup>141</sup> For the annual PM<sub>2.5</sub> standard, the local ambient concentrations are above the existing NAAQS.<sup>142</sup> Rio Bravo's Compressor Station 1 would not exceed the NAAQS for any criteria pollutant.<sup>143</sup> Commission staff also followed EPA's 2005 Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities to evaluate the potential for short- and long-term health effects due to the inhalation exposure to hazardous air pollutants (HAP) as a result of the project related emissions.<sup>144</sup> Staff concluded that health risk from inhalation of HAPs from the Rio Grande LNG Terminal would not be significant.<sup>145</sup> We agree.

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<sup>137</sup> Sierra Club and South Texas Environmental Justice Network May 19, 2025 Comment at 2.

<sup>138</sup> *Id.* at 47.

<sup>139</sup> Supplemental EIS at 4-35, 4-41.

<sup>140</sup> *Commonwealth LNG, LLC*, 191 FERC ¶ 61,205 at P 27 (“the EPA’s COBRA tool is superseded by the EPA-established NAAQS, which are approved and designated as safe by the EPA for populations including sensitive groups”).

<sup>141</sup> Supplemental EIS at 4-41.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 4-52.

<sup>144</sup> *Id.* at 4-44 to 4-48.

<sup>145</sup> *Id.* at 4-48.

49. An agency's choice among reasonable analytical methodologies is entitled to substantial deference, so long as it falls within a broad zone of reasonableness.<sup>146</sup> And courts have held that compliance with NAAQS is a reasonable methodology for evaluating air quality impacts under NEPA.<sup>147</sup> The Commission relies on the EPA as the air quality authority with the expertise to establish air quality thresholds/limits to protect public health under the CAA.<sup>148</sup> EPA concluded in its risk-based analysis that the NAAQS are appropriate and designed to ensure public safety by setting acceptable concentration limits that minimize health risks and to protect sensitive populations, such

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<sup>146</sup> *Seven Cnty.*, 145 S. Ct. at 1513 (“Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness.”); *Cmtys. Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678, 689 (D.C. Cir. 2004) (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 201 (D.C. Cir. 1991) (stating that an agency’s “choice of analytical methodologies is entitled to deference”)).

<sup>147</sup> *Sierra Club v. FERC*, 867 F.3d 1357, 1370, n.7 (D.C. Cir. 2017) (*Sabal Trail*) (“[The Commission] appropriately relied on EPA’s [NAAQS] as a standard of comparison for air-quality impacts. By presenting the project’s expected emissions levels and the NAAQS standards side-by-side, the EIS enabled decisionmakers and the public to meaningfully evaluate the project’s air-pollution effects by reference to a generally accepted standard.”); *Diné Citizens Against Ruining Our Env’t v. Haaland*, 59 F.4th 1016, 1046 (10th Cir. 2023) (stating that Bureau of Land Management took a sufficiently hard look at emissions under NEPA by utilizing the NAAQS); *Coal. for Advancement of Reg’l Transp. v. Fed. Highway Admin.*, 576 F. App’x 477, 492, n.1 (6th Cir. 2014) (citing *Tinicum Twp., Pa. v. U.S. Dep’t of Transp.*, 685 F.3d 288, 296–98 (3d Cir. 2012) and *Sierra Club v. FHWA*, 715 F.Supp.2d 721, 741 (S.D. Tex. 2010), *aff’d*, 435 F. App’x 368 (5th Cir. 2011)) (explaining that the cited cases have recognized that NEPA’s requirements are per se satisfied by demonstrating conformity with NAAQS”); *Lowman v. Fed. Aviation Admin.*, 83 F.4th 1345, 1364–66 (11th Cir. 2023) (upholding the Federal Aviation Administration’s reliance on its regulations defining a significance threshold for air quality as one where the “action would cause pollutant concentrations to exceed one or more of the NAAQS”).

<sup>148</sup> *Venture Global CP2 LNG, LLC*, 192 FERC ¶ 61,157, at P 29 (2025); *see also Healthy Gulf v. FERC*, 107 F.4th at 1043 (EPA’s NAAQS set the level “requisite to protect the public health” while “allowing an adequate margin of safety”) (quoting 42 U.S.C. § 7409(b)(1)); *Transcon. Gas Pipe Line Co.*, 187 FERC ¶ 61,024, at P 74 (2024); *EMR Network v. FCC*, 391 F.3d 269, 273 (D.C. Cir. 2004) (finding agency properly relied on outside agency expertise); *see Sierra Club v. La. Dep’t of Env’t Quality*, 100 F.4th 555, 567-68 (5th Cir. 2024) (affirming the use of SILs in cause and contribute analyses).

as at-risk populations of people with asthma, older adults, and children.<sup>149</sup> EPA explains that “COBRA is a screening tool that provides estimates of the impact of air pollutant emission changes on ambient [PM<sub>2.5</sub>] and ozone (O<sub>3</sub>) air pollution concentrations” and that “[a]nalyses can be performed at the state or county level and across the 14 major emissions categories.”<sup>150</sup> While the COBRA analysis may be sufficient for state planning purposes, the refined analysis used for NAAQS and the EPA’s 2005 Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities is more appropriate for a NEPA analysis.<sup>151</sup> The NAAQS were developed through a public rulemaking process and has a more robust scientific basis.<sup>152</sup> Further, COBRA is inappropriate for modeling and determining the attainment of NAAQS and has a number of additional limitations, caveats, and uncertainties which we find unsuitable for project-specific analyses.<sup>153</sup>

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<sup>149</sup> Review of the Primary Nat’l Ambient Air Quality Standards for Oxides of Nitrogen, 83 Fed. Reg. 17,226, 17,230-17,274 (Apr. 18, 2018) (codified at 40 C.F.R. §§ 50 *et seq.* (2024)).

<sup>150</sup> EPA, *User’s Manual for the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA)*, at 6 (<https://www.epa.gov/system/files/documents/2025-03/cobra-user-manual-v5.2.pdf>) (COBRA User Manual).

<sup>151</sup> Supplemental EIS at app. I, tbl. I-2; *see also Commonwealth LNG, LLC*, 191 FERC ¶ 61,205 at P 27 (“the EPA’s COBRA tool is superseded by the EPA-established NAAQS, which are approved and designated as safe by the EPA for populations including sensitive groups”). The NAAQS are health based, and the EPA sets two types of standards: primary and secondary. The primary standards are designed to protect the health of sensitive populations such as asthmatics, children, and the elderly, with an adequate margin of safety. 42 U.S.C. § 7409(b)(1); EPA, *NAAQS Table*, <https://www.epa.gov/criteria-air-pollutants/naaqs-table> (last accessed June 3, 2025). The secondary standards are concerned with protecting the public welfare, e.g. to address visibility, damage to crops, vegetation, buildings, and animals. 42 U.S.C. § 7409(b)(2).

<sup>152</sup> EPA must review and revise the NAAQS every five years “as may be appropriate.” 42 U.S.C. § 7409(d)(1); *see also* EPA, *Overview of the Environmental Protection Agency’s Process for Reviewing the National Ambient Air Quality Standards* 1-2, [https://www.epa.gov/system/files/documents/2024-12/naaqs-process-document\\_dec-2024v\\_0.pdf](https://www.epa.gov/system/files/documents/2024-12/naaqs-process-document_dec-2024v_0.pdf).

<sup>153</sup> COBRA User Manual at 23-24 (listing uncertainty surrounding the values of key components such as emissions inventories, population data, and health impact functions and recommending “caution when interpreting the results of analyses”); *id.* at 7 (explaining that COBRA can be used to help identify “policy options” for state and local official who can then “conduct analyses with more sophisticated air quality models to

Based on the foregoing, and consistent with precedent, we agree with Commission staff's use of the NAAQS when assessing a project's impacts on air quality.<sup>154</sup>

### 3. Environmental Justice

50. Rio Grande contends the Commission's obligation to perform an environmental justice analysis, and any power it may have had to deny project authorization based on such an analysis, have been revoked<sup>155</sup> pointing to two recently issued executive orders,<sup>156</sup> CEQ's rule rescinding its NEPA regulations,<sup>157</sup> and the D.C. Circuit's decision in *Marin Audubon*,<sup>158</sup> which held that CEQ lacks legal authority to issue binding regulations.<sup>159</sup> Rio Grande argues there is no need to include an environmental justice analysis in the final supplemental EIS, but if the Commission does, Rio Grande asserts that the Commission should explicitly state it is doing so solely for informational purposes only and is not legally required to do so.<sup>160</sup> Rio Grande further suggests that the Commission should also state that it is not basing its decision on such analysis and that if it were to include environmental justice as a factor in its determination, the Commission would reach the same decision.<sup>161</sup>

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finalize their policy choices").

<sup>154</sup> *Seven Cnty.*, 145 S. Ct. at 1513 ("When assessing significant environmental effects and feasible alternatives for purposes of NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS.").

<sup>155</sup> Rio Grande May 19, 2025 Comment at 2.

<sup>156</sup> Exec. Order No. 14,173, 90 Fed. Reg. 8633, 8634; Exec. Order No. 14,154, 90 Fed. Reg. 8353, 8356.

<sup>157</sup> Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610.

<sup>158</sup> *Marin Audubon Soc'y v. Fed. Aviation Admin.*, 121 F.4th 902, 908 (D.C. Cir. 2024), *reh'g denied*, 2025 WL 374897 (D.C. Cir. Jan. 31, 2025).

<sup>159</sup> Rio Grande May 19, 2025 Comment at 2.

<sup>160</sup> *Id.* at 3.

<sup>161</sup> *Id.*

51. Rio Bravo states that it does not concede that the Commission has any legal obligation to consider environmental justice community impacts but is not challenging the Commission's decision to include it.<sup>162</sup> It argues the rescission of Executive Order 12,898 undermines the Commission's ability to abide by *Port Isabel I* as it relates to the Commission's procedural obligations under NEPA and whether an agency must specify which of the impacts it considers are relevant to environmental justice communities.<sup>163</sup> Rio Bravo notes any reference to "environmental justice" is absent from NEPA's text.<sup>164</sup> Rio Bravo contends that, given the multiple legal developments, the Commission's consideration of cumulative impacts in the draft supplemental EIS, including as related to environmental justice communities, more than exceeds its obligations under NEPA, the Commission's regulations implementing NEPA, and the D.C. Circuit's decisions in *Port Isabel I* and *Port Isabel II*.<sup>165</sup> Rio Bravo argues that the Commission is not required to examine cumulative effects, including those related to environmental justice communities, as part of its NEPA review.<sup>166</sup>

52. In *Port Isabel I*, the court directed the Commission to issue a supplemental EIS because its updated environmental justice analysis constituted new information and resulted in new conclusions regarding the effects.<sup>167</sup> Since that time, two executive orders relating to the consideration of environmental justice in the federal decision-making processes were issued. First, Executive Order 14,154, *Unleashing American Energy*, section 6 states that agencies may no longer weigh any environmental considerations except those expressly provided by statute.<sup>168</sup> Second, Executive Order 14,173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, section (3)(a)(i)<sup>169</sup> revoked Executive Order 12,898,<sup>170</sup> *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, which

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<sup>162</sup> Rio Bravo June 9, 2025 Comment at 5, n.18.

<sup>163</sup> *Id.* at 6.

<sup>164</sup> *Id.* at 7.

<sup>165</sup> *Id.* at 9.

<sup>166</sup> *Id.*

<sup>167</sup> *Port Isabel I*, 111 F.4th at 17.

<sup>168</sup> 90 Fed. Reg. 8353, 8356.

<sup>169</sup> 90 Fed. Reg. 8633, 8634.

<sup>170</sup> 59 Fed. Reg. 7629.

required federal agencies to identify and address any disproportionate impacts their activities may have on minority and low-income populations. In addition, Executive Order 14,154 section 5(b) required CEQ to propose rescinding its NEPA-implementing regulations.<sup>171</sup> CEQ issued an interim final rule rescinding its NEPA regulations on February 25, 2025, which became effective on April 11, 2025.<sup>172</sup>

53. In *Port Isabel II*, the court stated that its decision was “based on the law and facts at the time of the Commission’s orders . . .”<sup>173</sup> and it “decline[d] to resolve these multifaceted disputes over the impact of the intervening Executive Orders in the first instance.”<sup>174</sup> The court observed that “the Executive Orders give rise to new legal arguments that could justify a choice by the Commission not to perform some or all of the procedural steps that we held were required” and stated it would “leave it to the Commission to have the ‘first word’ on the Executive Orders’ implications.”<sup>175</sup>

54. In accord with the court’s directives in *Port Isabel I*, Commission staff on March 28, 2025, issued for public comment a draft supplemental EIS, which included a potential disproportionate and adverse environmental justice analysis. We clarify that the analysis in the supplemental EIS was provided for informational purposes only. As the court in *Port Isabel II* acknowledged, the Commission must in the first instance adapt to the intervening change in law when implementing the court’s directives.<sup>176</sup> Pursuant to Executive Orders 14,154 and 14,173 the Commission is not obligated to consider disproportionate and adverse impacts on environmental justice communities in our NEPA documents or decisions.<sup>177</sup> Consistent with our recent proceedings, here, when addressing the court’s remand, we review the entire record and consider environmental effects on all affected communities.<sup>178</sup> As described in the supplemental EIS, the

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<sup>171</sup> 90 Fed. Reg. 8355.

<sup>172</sup> Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610.

<sup>173</sup> *Port Isabel II*, 130 F.4th at 1038.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 1039.

<sup>176</sup> *Id.*

<sup>177</sup> Exec. Order No. 14,154, 90 Fed. Reg. 8353 (Jan. 20, 2025); Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 21, 2025).

<sup>178</sup> See, e.g., *N. Nat. Gas Co.*, 190 FERC ¶ 61,114, at P 30 (2025); *Rover Pipeline*

project's potential impacts on local communities due to construction of the project would include less than significant impacts on wetlands, recreational and subsistence fishing opportunities, tourism-opportunities and industries, water use, traffic, marine traffic, noise, as well as reliability and safety.<sup>179</sup> Recreational and subsistence fishing activities could be affected due to increased noise, restrictions on fishing in the immediate vicinity of the LNG terminal, and LNG and barge vessel traffic, but fishing opportunities would still exist along the undeveloped channel shoreline, as well as in nearby public areas.<sup>180</sup> Tourism would be impacted due to the potential increase in noise, changes in the visual landscape, and increased traffic along State Highway 48, but given the availability of recreational opportunities further from the facility sites, a decrease in visits is not anticipated.<sup>181</sup> Given the Brownsville Public Utilities Board's ability to meet water demand in the near term and projected surplus from 2030-2080, impacts on water availability would not be significant.<sup>182</sup> While there may be increased traffic as a result of the project, the traffic levels would remain well within the capacity of State Highway 48 and Rio Grande and Rio Bravo would implement mitigation measures in coordination with applicable transportation authorities.<sup>183</sup> Despite the expected increase in marine traffic, the U.S. Coast Guard has determined the waterway is suitable for project use.<sup>184</sup> Construction of the Rio Grande LNG Terminal has resulted in at most faintly audible noise impacts over ambient background noise levels at the nearest Noise Sensitive Areas and operation of the terminal will not result in a perceptible increase in sound levels.<sup>185</sup> There are no residences or other Noise Sensitive Areas within one mile of any of Rio Bravo's meter stations or Compressor Station 1 so any noise increase would not likely be perceptible at these distances and noise impacts from construction at Contractor Yards and other Rio Bravo Pipeline Project facilities would be temporary and local.<sup>186</sup> Given the environmental conditions included in the Commission's prior orders to mitigate

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*LLC*, 191 FERC ¶ 61,233, at P 16 (2025).

<sup>179</sup> Supplemental EIS at 4-57 to 4-86.

<sup>180</sup> *Id.* at 4-60 to 4-61.

<sup>181</sup> *Id.* at 4-62.

<sup>182</sup> *Id.* at 4-66 to 4-67.

<sup>183</sup> *Id.* at 4-67 to 4-69.

<sup>184</sup> *Id.* at 4-70.

<sup>185</sup> *Id.* at 4-79.

<sup>186</sup> *Id.* at 4-80.



potential offsite risks to all affected populations, Commission staff determined the risk of accidental and intentional events on local communities would be less than significant.<sup>187</sup>

55. As for visual impacts, while Rio Grande must maintain a certain level of lighting and other visibility features for operational safety and security,<sup>188</sup> it has developed mitigation measures that would reduce day and nighttime visibility of the LNG terminal's aboveground facilities, including the selection of grey tank coloring, horticultural plantings, and the construction of a levee that would obstruct most construction activities and low-to-ground operational facilities from view.<sup>189</sup> Rio Grande would also implement several light reduction techniques, including limiting the amount of outdoor lighting installed, dimming lights at night, and directing lights downward.<sup>190</sup> Based on the location of the LNG terminal and Rio Grande's mitigation measures, we conclude that the LNG terminal project would not result in a significant impact on visual resources for residents and visitors in the immediate vicinity of the proposed LNG terminal site.<sup>191</sup> However, the supplemental EIS describes that communities in the areas near the Rio Grande LNG Terminal may experience significant cumulative visual impacts because of the visual impacts of other nearby projects, including the proposed Texas LNG facility.<sup>192</sup>

56. Air quality impacts near Rio Bravo's Compressor Station 1 would not be significant. For the majority of the modeled area around the Rio Grande LNG Terminal the air quality impacts would not be significant, but, as described above, impacts in two locations north of the Rio Grande LNG Terminal in the Laguna Atascosa National Wildlife Refuge could be significant for annual PM<sub>2.5</sub>.<sup>193</sup> We continue to conclude that approval of the projects would result in less than significant impacts on local communities with implementation of the environmental conditions set forth in the

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<sup>187</sup> *Id.* at 4-84.

<sup>188</sup> Authorization Order, 169 FERC ¶ 61,131 at Condition 40, Condition 96, Condition 98. *See also* 2019 Final EIS at 4-319, 4-357, and 4-372.

<sup>189</sup> Supplemental EIS at 4-72.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 4-95.

<sup>193</sup> *Id.* at ES-7.

Commission's prior authorizations for the projects with the exception of cumulative visual impacts and annual PM<sub>2.5</sub> as a result of the Rio Grande LNG Terminal.<sup>194</sup>

57. Faustino Lopez, III asserts mitigation efforts appear insufficient to prevent disproportionate harm.<sup>195</sup> Save RGV and Jim Chapman question why no remedies or mitigation are offered for impacts that will be disproportionate and adverse to communities with environmental justice concerns.<sup>196</sup> Kenneth Saxon argues the Commission is at fault for noting these disproportionate impacts without offering mitigation, alternatives, or the possibility that the projects may not be reauthorized.<sup>197</sup>

58. As discussed, the Commission is under no obligation to consider disproportionate and adverse effects and appropriately considered mitigation for potentially significant effects on all affected communities. The courts have made clear that NEPA does not require the formulation of a specific mitigation plan, only that mitigation is discussed in "sufficient detail to ensure that environmental consequences have been fairly evaluated."<sup>198</sup> The Supreme Court has made clear that NEPA does not mandate particular results, including specific mitigation measures to mitigate the adverse effects of major federal actions.<sup>199</sup>

59. Here, Commission staff published a supplemental EIS that builds off the previous NEPA documents and the analysis presented in our orders, identifies baseline conditions for all relevant resources, assesses impacts on those resources that would result from

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<sup>194</sup> *Id.* at 4-85 to 4-86.

<sup>195</sup> Faustino Lopez, III June 9, 2025 Comment at 1.

<sup>196</sup> Save RGV May 19, 2025 Comment at 2; Jim Chapman May 19, 2025 Comment at 2.

<sup>197</sup> Kenneth Saxon May 19, 2025 Comment at 1.

<sup>198</sup> *Sierra Club v. FERC*, 38 F.4th 220, 233 (D.C. Cir. 2022) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 352 ); *see also Mayo v. Reynolds*, 875 F.3d 11, 15-16 (D.C. Cir. 2017) (recognizing that the role of NEPA analysis is primarily information-forcing, imposes only procedural requirements, and does not impose a duty on agencies to include "a detailed explanation of the specific measures which will be employed to mitigate the adverse impacts of a proposed action") (quoting *Methow Valley*, 490 U.S. at 353); *Miss. River Basin All. v. Westphal*, 230 F.3d 170, 176-77 (5th Cir. 2000) (acknowledging that NEPA does not impose a substantive requirement that a complete mitigation plan be actually formulated and adopted).

<sup>199</sup> *See Methow Valley*, 490 U.S. at 350, 352.

construction and operation of the projects, assesses reasonable alternatives, and, as necessary, makes recommendations to mitigate impacts. The Authorization Order and 2023 Remand Order included mitigation measures as environmental conditions. We find that a further discussion of mitigation measures would not meaningfully inform the Commission's or the public's consideration of the proposed projects and alternatives<sup>200</sup> and that nothing more is required to satisfy our obligations under NEPA.

60. Sierra Club and South Texas Environmental Justice Network contend that recent executive orders and CEQ actions do not alter the Commission's authority or environmental obligations, arguing that NEPA itself imposes these obligations on the Commission directly.<sup>201</sup> They further claim that NEPA requires supplementation and consideration of alternatives, health impacts, and cumulative effects.<sup>202</sup> Even if these authorities did not bind the Commission, Sierra Club and South Texas Environmental Justice Network argue, the Commission cannot change its interpretation of the scope of its NEPA obligations without announcing those changes in, or prior to, the draft supplemental EIS, to provide the public with a meaningful opportunity to comment thereon.<sup>203</sup> These commentators also assert that the Commission remains bound by the CEQ regulations in effect in 1987, when the Commission adopted its NEPA regulations.<sup>204</sup> Sierra Club and South Texas Environmental Justice Network maintain that if the Commission seeks to revise those regulations, it must do so through a notice and comment rulemaking,<sup>205</sup> further noting that CEQ has specifically stated that agencies may continue to "voluntarily" rely on CEQ's prior NEPA regulations even though they have been formally withdrawn.<sup>206</sup>

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<sup>200</sup> See *Dep't of Transp. v. Pub. Citizen*, 541 U.S. at 767 (2004) ("[I]nherent in NEPA and its implementing regulations is a 'rule of reason.'"); *Mayo v. Reynolds*, 875 F.3d at 20 ("The rule of reason governs [a court's] review of an agency's environmental analysis.").

<sup>201</sup> Sierra Club and South Texas Environmental Justice Network May 19, 2025 Comment at 4, 6.

<sup>202</sup> *Id.* at 8.

<sup>203</sup> *Id.* at 6.

<sup>204</sup> *Id.* at 5.

<sup>205</sup> *Id.* at 7.

<sup>206</sup> *Id.* at 8.

61. We disagree. It would not be appropriate for the Commission to follow CEQ's now-rescinded regulations as they are now legally inoperative due to CEQ's own rescission and the D.C. Circuit's finding that CEQ's regulations were *ultra vires*.<sup>207</sup> The Commission made this clear when, on June 30, 2025, it issued a final rule removing references to CEQ's rescinded regulations in parts 380 and 385 of the Commission's regulations.<sup>208</sup> The final rule explained that, consistent with CEQ's rulemaking removing its NEPA implementing regulations, the Commission updated its own regulations to remove references to CEQ's regulations and, where applicable, replace them with a citation to NEPA.<sup>209</sup> Lastly, any arguments regarding the rulemaking process for revising the Commission's NEPA implementing regulations are outside the scope of this proceeding.

**B. Other Issues**

**1. GHG Emissions**

62. Amphibian Refuge asserts the supplemental EIS should include a more detailed discussion of GHG emissions, noting that the Rio Grande LNG Terminal will produce GHG emissions from flaring and fugitive emissions and the ultimate use of LNG at the location where it is burned will also produce GHG emissions.<sup>210</sup>

63. As stated in the 2023 Remand Order, Rio Grande estimated that construction of the Rio Grande LNG Terminal would result in 2,659,332 tons of CO<sub>2</sub>e emissions over the eight years of construction, inclusive of terminal, barge, and commissioning emissions.<sup>211</sup> GHG emissions from the operation of the Rio Grande LNG Terminal would result in annual CO<sub>2</sub>e emissions of about 6,451,324 tons per year. However, we note that NEPA does not require that the Commission formally label project-related GHG emissions as significant or insignificant.<sup>212</sup> With regard to Amphibian Refuge's concern about

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<sup>207</sup> *Marin Audubon Soc'y v. Fed. Aviation Admin.*, 121 F.4th 902, *reh'g denied en banc*, No. 23-1067, 2025 WL 374897 (D.C. Cir. Jan. 31, 2025).

<sup>208</sup> *Removal of References to the Council on Env't Quality's Rescinded Reguls.*, 191 FERC ¶ 61,237 (2025). The final rule became effective on August 14, 2025. 90 Fed. Reg. 29423 (July 3, 2025).

<sup>209</sup> *Id.* P 4.

<sup>210</sup> Amphibian Refuge April 17, 2025 Comment at 1.

<sup>211</sup> 2023 Remand Order, 183 FERC ¶ 61,046 at P 96.

<sup>212</sup> *See Citizens Action Coal. of Ind., Inc. v. FERC*, 125 F.4th 229, 241-42 (D.C. Cir. 2025) (holding that "the absence of a 'significance' label does not violate NEPA,

downstream GHG emissions associated with ultimate use, as the Supreme Court recently held, NEPA does not require agencies to address downstream effects of the project outside of its jurisdiction. The Commission is not required to consider the environmental effects where such consideration would have no effect on the Commission's decision-making because it lacks the power to act.<sup>213</sup>

### C. Environmental Conclusion

64. In response to the *Port Isabel I* opinion, the supplemental EIS, as modified by this order, analyzed the CCS alternative, updated the air quality analysis, and analyzed the projects' impacts on communities located within the area where project impacts could occur. This analysis is in addition to the environmental analysis in the 2019 Final EIS, Authorization and 2020 Rehearing Orders, 2023 Remand and Rehearing Orders, the Environmental Assessments for the Rio Bravo Amendments, the 2024 Order Amending Certificate, and this order. Accordingly, we have completed the "hard look" required by NEPA and have satisfied our NEPA obligations.<sup>214</sup> We ultimately conclude that, notwithstanding the project's adverse impacts, as identified in the aforementioned

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CEQ guidance, or FERC regulations") (citing *Food & Water Watch v. FERC*, 104 F.4th 336, 346 (D.C. Cir. 2024) (*East 300*)); see also *Transcon. Gas Pipe Line Co., LLC*, 187 FERC ¶ 61,200, at P 33 (2024) (applying *East 300* in the context of an EA).

<sup>213</sup> Under D.C. Circuit precedent, the Commission need not consider the effects of downstream transportation, consumption, or combustion of exported gas because the DOE's "independent decision to allow exports . . . breaks the NEPA causal chain and absolves the Commission of responsibility to include [these considerations] in its NEPA analysis." *Sierra Club v. FERC*, 827 F.3d 36 (D.C. Cir. 2016) (*Freeport*); see also *Seven Cnty.*, 145 S. Ct. at 1517-18 (holding that NEPA does not require an agency "to evaluate environmental effects from separate projects upstream or downstream from the project at issue," (citing *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 770 (2004))), especially where the agency "possesses no regulatory authority over those separate projects"; *Sierra Club v. FERC*, 827 F.3d 59, 68-69 (D.C. Cir. 2016); *EarthReports, Inc. v. FERC*, 828 F.3d 949, 956 (D.C. Cir 2016) (same); *Sabal Trail*, 867 F.3d at 1372 (explaining *Freeport*).

<sup>214</sup> As the Supreme Court has recently reminded, "[i]n deciding cases involving the American economy, courts should strive, where possible, for clarity and predictability." *Seven Cnty.*, 145 S. Ct. at 1518; see also *id.* at 1514 (emphasizing the need for deference "to the informed discretion of the responsible federal agencies" regarding the scope and contents of an EIS (quoting *Marsh v. Oregon Nat. Res. Council*, 490 U. S. 360, 377 (1989))).

documents and orders, the Rio Grande LNG Terminal and Rio Bravo Pipeline Project are environmentally acceptable actions.

**D. Public Interest and Public Convenience and Necessity Determination**

65. Section 3 of the NGA provides that an application “shall” be approved if the Commission finds the proposal “will not be [in]consistent with the public interest,” subject to “such terms and conditions as the Commission [may] find necessary or appropriate.”<sup>215</sup> Thus, section 3 “sets out a general presumption favoring such authorization[s].”<sup>216</sup> To overcome this favorable presumption and support denial of an NGA section 3 application, there must be an “affirmative showing of inconsistency with the public interest.”<sup>217</sup>

66. Sierra Club and South Texas Environmental Justice Network assert that the projects are contrary to the public interest because they will not provide public benefits capable of outweighing health impacts and other harms.<sup>218</sup> Sierra Club and South Texas Environmental Justice Network also state that the NGA’s requirement to consider the public interest includes an obligation to consider environmental impacts.<sup>219</sup> Save RGV contends the projects are not in the public interest due to cumulative air quality impacts, disproportionate and adverse impacts to surrounding low-income communities, potential impact on water availability, and long-term carbon emission levels.<sup>220</sup> Jim Chapman adds that the projects are not in the public interest due to their proximity to an expanding

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<sup>215</sup> 15 U.S.C. § 717b(a), (e)(3). In addition, NGA section 3(c) provides that the exportation of gas to Free Trade Agreement nations “shall be deemed to be consistent with the public interest.” *Id.* § 717b(c).

<sup>216</sup> *EarthReports, Inc. v. FERC*, 828 F.3d at 953 (quoting *W. Va. Pub. Servs. Comm’n v. U.S. Dep’t of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982)); *see also Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017).

<sup>217</sup> *Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d at 203 (quoting *Panhandle Producers & Royalty Owners Ass’n v. Econ. Regul. Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

<sup>218</sup> Sierra Club and South Texas Environmental Justice Network May 19, 2025 Comment at 2, 47.

<sup>219</sup> *Id.* at 14.

<sup>220</sup> Save RGV May 19, 2025 Comment at 3.

SpaceX Starship launch site.<sup>221</sup> The Carrizo Comecrudo Tribe of Texas requested that the Commission provide a balancing of the project's proposed benefits and potential adverse effects, including health impacts, loss of native land, habitat loss, contribution to climate change, increased noise and traffic, development in wetlands potentially exacerbating impacts from climate intensified hurricanes, and loss of jobs, particularly those related to fishing and tourism.<sup>222</sup> Jason Hale states that economic development and community safety should not be a one or the other choice, but an all the above choice.<sup>223</sup>

67. In the Authorization Order, the Commission determined that, subject to the conditions imposed in the order, Rio Grande's proposal is not inconsistent with the public interest<sup>224</sup> and reaffirmed this finding in its 2023 Remand Order.<sup>225</sup> Here, we continue to reaffirm that finding, as modified herein. As discussed above, communities in the areas near the Rio Grande LNG Terminal may experience significant cumulative visual impacts. As to air quality impacts, while impacts at two discrete areas just north of the LNG terminal in the Laguna Atascosa National Wildlife Refuge would be significant due to an exceedance of annual PM<sub>2.5</sub>, there would not be a significant impact on regional air quality.<sup>226</sup> Most project impacts would not be significant or would be reduced to less-than-significant levels with the implementation of the environmental conditions set forth in the Commission's prior authorizations for the projects and the mitigation measures recommended in the supplemental EIS. Thus, we continue to find that the project, as conditioned in the Commission's orders and as modified herein, is an environmentally acceptable action.

68. With respect to the potential benefits of the project, we note that in August 2016 the DOE authorized Rio Grande to export the project's full capacity to countries with which the United States has a Free Trade Agreement.<sup>227</sup> On February 10, 2020, DOE authorized Rio Grande to export LNG to non-Free Trade Agreement nations, finding that exports of LNG will generate net economic benefits to the broader United States

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<sup>221</sup> Jim Chapman May 19, 2025 Comment at 3.

<sup>222</sup> Carrizo Comecrudo Tribe of Texas October 15, 2024 Comment at 9.

<sup>223</sup> South Texas Environmental Justice Network May 19, 2025 Comment at 19.

<sup>224</sup> Authorization Order, 169 FERC ¶ 61,131 at P 18-25.

<sup>225</sup> 2023 Remand Order, 183 FERC ¶ 61,046 at P 208.

<sup>226</sup> Supplemental EIS at ES-5 to ES-6.

<sup>227</sup> *Rio Grande LNG, LLC*, DOE Docket No. 15-190-LNG, Order No. 3869 (2016).

economy, improve the United States' ties with its trading partners, and make a positive contribution to the United States' trade balance.<sup>228</sup>

69. We continue to support our previous findings of the benefits of the project. Further, as stated above, we continue to find that, under section 3 of the NGA, the Rio Grande LNG Terminal is not inconsistent with the public interest, as conditioned in the Commission's orders and as modified herein.

70. Sierra Club and South Texas Environmental Justice Network contend that the Rio Bravo Pipeline Project will only serve to support exports, rather than supplying domestic customers, and does not provide benefits that justify exposing local communities to significant environmental harm.<sup>229</sup>

71. In the Authorization Order, the Commission applied the Certificate Policy Statement<sup>230</sup> and found that the Rio Bravo Pipeline Project was required by the public convenience and necessity because the proposed pipeline will enable Rio Bravo to transport natural gas to the Rio Grande LNG Terminal, Rio Bravo executed a precedent agreement with RioGas Marketing, LLC for the full capacity of the pipeline for a 20-year term, and the project will have minimal adverse impacts on existing shippers, other pipelines and their customers, and landowners and surrounding communities.<sup>231</sup> In the 2023 Remand Order<sup>232</sup> and 2024 Order Amending Certificate,<sup>233</sup> the Commission reaffirmed its previous findings of the project's benefits and that the Rio Bravo Pipeline Project, as amended, was required by the public convenience and necessity. Here, we continue to reaffirm this finding, as modified herein. As discussed above, in regard to the Rio Bravo Pipeline Project, project impacts for all resources would be less than

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<sup>228</sup> *Rio Grande LNG, LLC*, DOE Docket No. 15-190-LNG, Order No. 4492, at 40 (2020).

<sup>229</sup> Sierra Club and South Texas Environmental Justice Network May 19, 2025 Comment at 35.

<sup>230</sup> *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (*Certificate Policy Statement*).

<sup>231</sup> Authorization Order, 169 FERC ¶ 61,131 at P 32.

<sup>232</sup> 2023 Remand Order, 183 FERC ¶ 61,046 at PP 25-30, 208.

<sup>233</sup> 2024 Order Amending Certificate, 187 FERC ¶ 61,104 at PP 14-18, 77.



significant. Thus, we continue to find that the project, as conditioned in the Commission's orders and as modified herein, is an environmentally acceptable action.

#### IV. Conclusion

72. As stated above, we find that the projects are environmentally acceptable actions, the Rio Grande LNG Terminal is not inconsistent with the public interest, and the Rio Bravo Pipeline Project is required by the public convenience and necessity.

73. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicants have complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the projects, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

74. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this authorization. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>234</sup>

75. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, applicant data responses, and exhibits therein, and all comments, and upon consideration of the record,

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<sup>234</sup> See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

The Commission orders:

(A) The Commission affirms its earlier determinations that the Rio Grande LNG Terminal is not inconsistent with the public interest, and the Rio Bravo Pipeline Project is required by the public convenience and necessity.

(B) All directives in the Commission's prior orders remain in effect.

(C) Rio Grande and Rio Bravo shall continue to comply with all applicable terms and environmental conditions set forth in the appendix to the Authorization Order and Appendix A in the Remand Order and the appendix of this order.

(D) Rio Grande must immediately contact TCEQ, should the monitoring required by the *Project Ambient Air Quality Mitigation and Monitoring Plan* show a violation of TCEQ-permitted emissions, to report a violation and establish a plan of action to correct the violation in accordance with the terms of the facility air permit and applicable state law.

(E) Rio Grande and Rio Bravo shall notify the Commission's environmental staff by telephone or e-mail of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Rio Grande or Rio Bravo. Rio Grande and Rio Bravo shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

( S E A L )

Carlos D. Clay,  
Deputy Secretary.

## Appendix

### Environmental Conditions

As recommended in the supplemental Environmental Impact Statement (EIS) and modified herein, this authorization includes the following conditions:

1. Rio Grande LNG, LLC; Rio Grande LNG Train 4, LLC; Rio Grande LNG Train 5, LLC; and Rio Bravo Pipeline Company, LLC shall comply with all conditions of the Commission's 2019 Authorization Order, 2023 Remand Order, 2024 Transfer Order, and 2024 Order Amending Certificate, as appropriate.
2. Rio Bravo Pipeline Company, LLC shall **not begin** construction activities **until**:
  - a. FERC staff receives comments from the U.S. Fish and Wildlife Service (FWS) regarding the proposed action;
  - b. FERC staff completes Endangered Species Act consultation with the FWS; and
  - c. Rio Bravo Pipeline Company, LLC has received written notification from the Director of the Office of Energy Projects, or the Director's designee, that construction or use of mitigation may begin.

Document Content(s)

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