

191 FERC ¶ 61,205
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Commonwealth LNG, LLC

Docket No. CP19-502-003

ORDER ON REMAND

(Issued June 18, 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).¹ The court remanded the Commission's orders authorizing the siting, construction, and operation of Commonwealth LNG, LLC's (Commonwealth) Commonwealth LNG Project² for (1) failing to adequately assess the cumulative effects of the project's nitrogen dioxide (NO₂) emissions under the National Environmental Policy Act (NEPA)³ and (2) failing to adequately explain, under NEPA, the Commission's decision to not make a significance determination regarding greenhouse gas (GHG) emissions.⁴ Based on the foregoing, the court instructed the Commission to revisit its public interest determination under section 3 of the Natural Gas Act (NGA).⁵ For the reasons discussed below, we (1) find that there may be a significant cumulative air quality impact as a result of operation of the project due to modeled National Ambient Air Quality Standard (NAAQS) exceedances for 1-hour NO₂, although such exceedances are likely to occur even if the project is not operating (i.e., due to background concentrations) and the project's modeled potential contribution to exceedances would be minimal, (2) find that no further mitigation measures are required for the project's NO₂ emissions because Commonwealth will

¹ *Healthy Gulf v. FERC*, 107 F.4th 1033 (D.C. Cir. 2024) (*Healthy Gulf*).

² *Commonwealth LNG, LLC*, 181 FERC ¶ 61,143 (2022) (Authorization Order); *Commonwealth LNG, LLC*, 183 FERC ¶ 61,173 (2023) (Rehearing Order).

³ *Healthy Gulf*, 107 F.4th at 1043-44.

⁴ *Id.* at 1042-43.

⁵ *Id.* at 1047.

implement Best Available Control Technologies (BACT) for the project, (3) affirm the Commission's decision not to make a significance determination regarding GHG emissions, and (4) conclude that the Commonwealth LNG Project is not inconsistent with the public interest.

I. Background

A. Original Project Review and 2022 Cumulative Impacts Analysis

2. On August 20, 2019, as amended July 8, 2021, Commonwealth filed an application under NGA section 3⁶ and Part 153 of the Commission's regulations⁷ for authorization to site, construct, and operate the Commonwealth LNG Project, a natural gas liquefaction and export terminal in Cameron Parish, Louisiana. The Commonwealth LNG Project would be located on the west side of the Calcasieu Ship Channel, near the entrance to the Gulf of America.⁸

3. On March 31, 2022, Commission staff issued a draft environmental impact statement (EIS) for the project.⁹ On September 9, 2022, Commission staff issued the final EIS.¹⁰ In the final EIS, Commission staff declined to characterize the project's GHG emissions as significant or insignificant "because the Commission is conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going forward."¹¹ The final EIS also addressed air quality and cumulative impacts, as described in more detail below.

4. Under the Clean Air Act (CAA), new major sources of air emissions in attainment areas,¹² such as the Commonwealth LNG Project, must demonstrate that they will not cause

⁶ 15 U.S.C. § 717b.

⁷ 18 C.F.R. pt. 153 (2024).

⁸ For further discussion of the project's specifications, *see* Authorization Order, 181 FERC ¶ 61,143 at PP 3-6.

⁹ Notice of the draft EIS was published in the *Federal Register* on April 6, 2022. 87 Fed. Reg. 19918 (Apr. 6, 2022).

¹⁰ Notice of the final EIS was published in the *Federal Register* on September 15, 2022. 87 Fed. Reg. 56639 (Sept. 15, 2022).

¹¹ Final EIS at 4-388, 4-396, 5-419.

¹² An attainment area is an area with air quality that is currently compliant with the National Ambient Air Quality Standards for a particular criteria pollutant. *See id.* at 4-204.

or contribute to a violation of any applicable NAAQS before obtaining a permit under the Prevention of Significant Deterioration (PSD) program.¹³ With respect to the six criteria pollutants, the U.S. Environmental Protection Agency (EPA) has developed Significant Impact Levels (SIL) 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.¹⁴ When considering a PSD application, state permitting agencies generally require 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

¹³ 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), NO₂, ozone (O₃), particulate matter (PM), and sulfur dioxide (SO₂).

¹⁴ 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) (EPA Ozone and PM SILs Guidance), https://19january2021snapshot.epa.gov/sites/static/files/2018-04/documents/sils_guidance_2018.pdf (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 NO₂ NAAQS For the Prevention of Significant Deterioration Program* 4, 11 (June 29, 2010) (EPA Interim 1-hour NO₂ SIL Guidance), <https://www.epa.gov/sites/default/files/2015-07/documents/appwno2.pdf> (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).

exceedances of the NAAQS.¹⁵ As described in more detail below, the three-step analysis includes: (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.¹⁶

5. 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.¹⁷ 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.¹⁸ 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).¹⁹ 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.²⁰ 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. Under the CAA, 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 contributed to the potential NAAQS exceedance. States use the applicable SIL as a threshold for this determination. Accordingly, in cases where the

¹⁵ The three-part analysis is outlined in EPA's air quality modeling procedures at 40 C.F.R. pt. 51, app. W (2024).

¹⁶ *Venture Glob. CP2 LNG, LLC*, 191 FERC ¶ 61,153, at P 5 (2025); *see* final EIS at 4-226 to 4-231; final supplemental EIS at 13-21.

¹⁷ *See* final EIS at 4-225.

¹⁸ *See id.*; final supplemental EIS at 14 n.26; 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_memorandum_final_4-17-18.pdf.

¹⁹ Final EIS at 4-225.

²⁰ *See id.*

cumulative modeling of existing sources identifies a potential NAAQS exceedance of a criteria pollutant, 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.²¹

6. The Commission, in its 2022 environmental review and Authorization Order, followed this three-step process to analyze the project's air emissions as part of its examination of project effects under NEPA.²² Commonwealth provided, for Commission review, a Step 2 cumulative impact analysis for the Commonwealth LNG Project for each pollutant that exceeded the SIL for the averaging period, specifically 1-hour and annual NO₂, 1-hour SO₂, and 24-hour PM_{2.5}.²³ As relevant here, the results from the cumulative impact analysis showed NAAQS exceedances for 1-hour NO₂ at certain receptors.²⁴ The Step Three cause and contribute analysis showed that the contribution by the Commonwealth LNG Project to each exceedance concentration at the same receptor and time period was less than the EPA-designated SIL.²⁵ Thus, the modeling showed that existing, permitted off-site sources (i.e., existing background emissions sources provided by the Louisiana Department of Environmental Quality's Emissions and Inventory

²¹ See *id.* at 4-225 to 4-226; see 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).

²² See *Healthy Gulf*, 107 F.4th at 1043-44 (describing the Commission's use of the SILs in its analysis); final EIS at 4-225 to 4-226. The cumulative air dispersion modeling in the final EIS was conducted in accordance with EPA's 40 C.F.R. pt. 51, app. W. See final EIS at 4-225 (discussing AERMOD as the preferred model).

²³ Final EIS at 4-225 to 4-227.

²⁴ *Id.* at 4-229 to 4-231. 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.

²⁵ *Id.* at 4-231.

Reporting Center) were driving the modeled NAAQS exceedances in the project area.²⁶ Based on the foregoing, Commission staff concluded where the modeling predicted an exceedance of a NAAQS threshold, the exceedance would in most cases occur even in the absence of the project's emissions.²⁷ Therefore, Commission staff determined that the project's minor contribution to the maximum modeled impact did not cause or contribute to those 1-hour NO₂ exceedances and concluded that the project's direct or cumulative impacts to air quality would not be significant.²⁸

B. 2022 Authorization Order

7. On November 17, 2022, the Commission issued the Authorization Order for the Commonwealth LNG Project.²⁹ The Commission accepted, with minor modifications, the environmental recommendations in the final EIS and included them as conditions in Appendix A to the order.³⁰ The Commission agreed with the conclusions presented in the final EIS and found that the project, if implemented as described in the final EIS, was an environmentally acceptable action.³¹

8. Specifically, the Commission adopted the final EIS's analysis of air quality impacts, noting that cumulative modeling (i.e., Step Two of the three-step analysis) showed that operation of the project (including LNG terminal stationary sources and mobile sources) may contribute to potential NO₂ 1-hour NAAQS exceedances. However, the Commission further noted that the project's contribution (including LNG stationary and mobile sources) would be less than the SIL at each exceedance location.³² The Commission agreed with the conclusions in the final EIS that the project would not cause or significantly contribute to a potential exceedance of the NAAQS, would not result in

²⁶ *Id.*

²⁷ *See id.* at app. H (providing each modeled exceedance).

²⁸ *See id.* at 4-231 to 4-232, 4-392, 5-416, 5-418 to 5-419.

²⁹ Authorization Order, 181 FERC ¶ 61,143.

³⁰ *Id.* P 84. The modifications included minor stylistic edits and the addition of Condition 39, which requires Commonwealth to file for review and written approval by Commission staff Emergency Response Plans and any associated cost sharing plan provisions in coordination with federal, state, and local agencies for hazards that may reach State Highway 27, a highway that bisects Commonwealth's property. *See id.* P 16.

³¹ *Id.* P 84.

³² *Id.* P 63 (citing final EIS at 4-198).

significant impacts on air quality in the region, and that while environmental justice communities in the study area would experience cumulative impacts on air quality, those impacts would be less than significant.³³

9. The Commission also found that the project's GHG construction emissions and direct operational emissions were reasonably foreseeable.³⁴ The Commission adopted the final EIS's climate analysis, "recogniz[ing] that the project may release GHG emissions that contribute incrementally to future global climate change impacts, and [identifying] climate change impacts in the region."³⁵ The Commission reiterated that "[i]n light of this analysis, and because we are conducting a generic proceeding to determine whether and how [the] Commission will conduct significance determinations for GHG emissions going forward, the Commission is not herein characterizing these emissions as significant or insignificant."³⁶

C. 2023 Rehearing Order

10. On December 19, 2022, Sierra Club, Natural Resources Defense Council, Center for Biological Diversity, Healthy Gulf, the Louisiana Bucket Brigade, the National Audubon Society, and Turtle Island Restoration Network (together, the Environmental Coalition or Coalition) jointly filed a timely request for rehearing of the Authorization Order. As relevant to this order, the Coalition argued that the Commission failed to: (1) properly consider air pollution impacts, particularly on environmental justice communities; (2) properly consider GHG emissions; and (3) properly weigh the project's adverse impacts against its benefits under NGA section 3.³⁷

11. On June 9, 2023, the Commission issued the Rehearing Order, which affirmed the Authorization Order's balancing conclusion under section 3 of the NGA,³⁸ as well as the Authorization Order's reasoning for declining to characterize the project's estimated

³³ *Id.* (citing final EIS at 4-198, 4-387 to 4-388).

³⁴ *Id.* P 74.

³⁵ *Id.* P 75 (citing final EIS at 4-395 to 4-396).

³⁶ *Id.*

³⁷ Rehearing Request at 7-9, 31-44, 46-53.

³⁸ Rehearing Order, 183 FERC ¶ 61,173 at PP 9-11.

direct GHG emissions as significant or insignificant under NEPA³⁹ and the Authorization Order's air quality analysis, which incorporated the final EIS.⁴⁰

D. The Court's Remand Order

12. On July 16, 2024, the D.C. Circuit remanded the Authorization Order and Rehearing Order on the basis of the Commission's analysis of the project's cumulative NO₂ emissions⁴¹ and its conclusion that it could not determine whether the project's GHG emissions were significant under NEPA.⁴² The court directed the Commission to (1) with respect to Step Three of its cumulative air analysis, either "explain how its use of the 1-hour NO₂ SIL is consistent with a proper cumulative effects analysis or to adequately assess the cumulative effects of the [p]roject's NO₂ emissions using a different methodology"⁴³ and (2) address with respect to the Commission's consideration of the project's GHG emissions, whether and why *Northern Natural Gas Co.*, in which the Commission determined that the level of emissions in question was not significant, is distinguishable.⁴⁴ Because the Authorization Order's conclusion that the project is not inconsistent with the public interest under section 3 of the NGA incorporated the final EIS's analysis, the court directed the Commission to reconsider that determination as well.⁴⁵

E. Supplemental Environmental Review

13. On November 27, 2024, the Commission issued a *Notice of Schedule for the Preparation of a Supplemental Environmental Impact Statement for the Commonwealth LNG Project*, which was published in the Federal Register on December 4, 2024.⁴⁶ Commission staff prepared a draft supplemental EIS for the project, which was issued on February 14, 2025, and addressed cumulative air impacts for NO₂ operational emissions.

³⁹ *Id.* PP 37-38, 40-41.

⁴⁰ *Id.* PP 47-57.

⁴¹ *Healthy Gulf*, 107 F.4th at 1043-44.

⁴² *Id.* at 1042-43.

⁴³ *Id.* at 1044.

⁴⁴ *Id.* at 1043.

⁴⁵ *Id.* at 1047.

⁴⁶ 89 Fed. Reg. 96242 (Dec. 4, 2024).

Notice of the draft supplemental EIS was published in the *Federal Register* on February 24, 2025, establishing April 7, 2025, as the deadline for filing comments or motions to intervene.⁴⁷ Copies of the notice were mailed to Commission staff's environmental mailing list.

14. In response to the draft supplemental EIS, the Commission received written comments from one federal agency, one Tribe, six non-governmental organizations (three of whom submitted joint comments), one labor union, two sets of individuals, and Commonwealth. No new motions to intervene were filed. Primary issues raised by the commenters relate to project need, water resources, aquatic resources, wetlands, socioeconomics, climate change, air quality and health impacts, and cumulative impacts.

15. Commission staff issued the final supplemental EIS on May 16, 2025. The *Notice of Availability* of the final supplemental EIS was published in the *Federal Register* on May 22, 2025,⁴⁸ and was mailed to Commission staff's environmental mailing list. The final supplemental EIS addresses all environmental comments received within the scope of the draft supplemental EIS.

16. In the final supplemental EIS, staff reassessed the cumulative effects of the project's NO₂ operational emissions without relying solely on the 1-hour NO₂ SIL, explaining that the 1-hour NO₂ SIL is an interim standard that does not provide an adequate threshold for determining the significance of cumulative effects.⁴⁹ As described below, staff concluded that any modeled NAAQS violation for 1-hour NO₂ with a modeled non-zero contribution by the facility is considered to potentially worsen a NAAQS exceedance.⁵⁰ Staff analyzed modeled impact locations and determined there might be a significant cumulative air quality impact as a result of operation of the project, due to minor increases in emissions in areas where there are residences and other locations frequented by the public.⁵¹ However, staff also determined that because most of the NAAQS modeled exceedances for 1-hour NO₂ would occur even if the facility was

⁴⁷ 90 Fed. Reg. 10482 (Feb. 24, 2025).

⁴⁸ 90 Fed. Reg. 21913 (May 22, 2025).

⁴⁹ Supplemental final EIS at 18 (contrasting the interim NO₂ SIL with the SILs for PM_{2.5} and ozone, which have a technical basis that relies on a statistical analysis of the natural variability of air quality to determine if a modeled change in cumulative concentration represents a design value that is statistically distinct from design values that would naturally occur).

⁵⁰ *See id.*

⁵¹ *See id.* at 18-21 (discussing specific locations of modeled exceedances).

not operating (i.e., due to background concentrations), the project's contribution to exceedances would be minimal, and because Commonwealth has already committed to mitigating 1-hour NO₂ emissions, as detailed in its BACT assessment in its PSD permit, no further mitigation measures are required for the project's NO₂ emissions.⁵²

II. Discussion

A. NEPA

1. NO₂ Cumulative Impacts

17. The court held, with respect to the Commission's obligations under NEPA,⁵³ that the Commission's discussion of cumulative NO₂ effects, which concluded that the "[p]roject's NO₂ emissions' *cumulative* effects [were] insignificant because the [p]roject's *incremental* NO₂ emissions fell below the 1-hour NO₂ SIL at each NAAQS exceedance location," was arbitrary.⁵⁴ The court explained that "on the Commission's view, the cumulative effect of a [p]roject's emissions would never be deemed significant unless the [p]roject's incremental emissions were already significant on their own."⁵⁵ The court asked the Commission to explain with respect to the Commission's cumulative effects analysis how use of the 1-hour NO₂ SIL is proper or "to adequately assess the cumulative effects of the [p]roject's NO₂ emissions using a different methodology."⁵⁶ On remand, as detailed in the supplemental EIS, staff reassessed the cumulative effects of the project's NO₂ operational emissions without relying solely on the 1-hour NO₂ SIL and concluded that there may be a significant cumulative air quality impact as a result of operation of the project due to the project's minor contributions to potential NAAQS exceedances, but that no further mitigation measures are required for the project's NO₂ emissions.

⁵² *Id.* at 19, 22.

⁵³ We note that the Commission's obligations under NEPA differ from a state agency's authority under the CAA. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty*, No. 23-975, slip op. at 1-2 (U.S. May 29, 2025) (explaining that unlike the CAA, "NEPA imposes no substantive environmental obligations or restrictions. [It] is a purely procedural statute" that requires an agency to "report" and "does not require the agency to weigh environmental consequences in any particular way").

⁵⁴ *Healthy Gulf*, 107 F.4th at 1043-44.

⁵⁵ *Id.* at 1044.

⁵⁶ *Id.*

18. Generally, the Commission would consider compliance with the state PSD program and any required mitigation, as is the case here, as a reasonable indication that the project's air emissions will not result in significant effects.⁵⁷ As EPA is the air quality authority with the expertise to establish air quality thresholds and limits to protect public health, the Commission will also rely on EPA's air quality dispersion modeling and NAAQS standards as the best available methodology to analyze cumulative air quality effects.⁵⁸ As stated in the final supplemental EIS, the cause and contribute analysis under the CAA PSD program for the 1-hour NO₂ NAAQS does not alone support a finding of no cumulatively significant effects under NEPA because EPA has not yet conclusively stated that individual contributions below the 1-hour NO₂ SIL are indistinguishable from the natural variability in the measured atmosphere and may be observed even in the absence of the increased emissions, as it has for other criteria pollutant SILs.⁵⁹ Accordingly, with respect to 1-hour NO₂, although staff noted that

⁵⁷ The U.S. Supreme Court has disapproved of NEPA being wielded to stop or slow down infrastructure projects that "otherwise comply with all relevant substantive environmental laws." *See Seven Cnty. Infrastructure Coal. v. Eagle Cnty*, No. 23-975, slip op. at 12-13 (U.S. May 29, 2025) (explaining that delay leads to "fewer and more expensive" infrastructure projects being built as well as "fewer jobs, as new projects become difficult to finance and build in a timely fashion").

⁵⁸ *See Healthy Gulf*, 107 F.4th at 1043 (explaining that EPA sets the NAAQS at the level "requisite to protect the public health" while "allowing an adequate margin of safety" (quoting 42 U.S.C. § 7409(b)(1))); *EMR Network v. Fed. Comm'n's Comm'n*, 391 F.3d 269, 273 (D.C. Cir. 2004) (finding agency properly relied on outside agency expertise); *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 under the CAA); *Transcon. Gas Pipe Line Co.*, 187 FERC ¶ 61,024, at P 74 (2024) ("In carrying out its NEPA responsibilities, Commission staff relies on other agencies' expertise, including that of the EPA and Virginia DEQ, which establish methodologies and standards for assessing air quality impacts").

⁵⁹ *See* final supplemental EIS at 17-18 (discussing EPA Ozone and PM SILs Guidance and EPA Interim 1-hour NO₂ SIL Guidance). *Compare* EPA Ozone and PM SILs Guidance at 11 (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") *with* EPA Interim 1-hour NO₂ SIL Guidance at 4, 11 (noting that it "considers a source whose individual impact falls below

modeled impacts tended to be overestimated, as the modeling conservatively used the maximum emission rates (i.e., a worst-case scenario) for most off-site sources,⁶⁰ the final supplemental EIS concluded that any modeled NAAQS violation with a modeled non-zero contribution by the facility is considered to worsen a NAAQS exceedance.⁶¹ Based on the existence of modeled cumulative 1-hour NO₂ NAAQS exceedances, which include contributions due to project emissions in areas where there are residences and other locations frequented by the public, staff concluded that there may be a significant cumulative air quality impact as a result of operation of the project.⁶² We agree with staff's approach given the direction from the D.C. Circuit in this case, but note that this is a highly conservative analysis for the reasons discussed herein.

19. Staff also determined that because most of the modeled NAAQS exceedances are likely to occur regardless of operation of the project (i.e., due to background concentrations), the project's contribution to exceedances would be minimal, and because Commonwealth is already required to implement BACT, any additional mitigation would likely not be perceptible within the exceedance areas.⁶³ For example, the highest overall modeled maximum cumulative impact for 1-hour NO₂ was 308 micrograms per cubic meter (µg/m³)⁶⁴ but the project's contribution⁶⁵ at that exceedance location was only

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).

⁶⁰ See final supplemental EIS at 19.

⁶¹ See *id.* at 18.

⁶² See final supplemental EIS at 18-22 (discussing specific locations of modeled exceedances).

⁶³ See *id.* at 19; see also Louisiana Department of Environmental Quality, *Prevention of Significant (PSD) Permit, PSD-LA-841(M1)*, Office of Environmental Services, LA DEQ 6 (June 14, 2024), <https://edms.deq.louisiana.gov/app/doc/view?doc=14336073> (requiring Commonwealth to apply BACT and describing LDEQ's top-down approach, which involves first determining the most stringent control technique available for a similar or identical source).

⁶⁴ This is inclusive of background sources concentration plus Commonwealth's LNG stationary sources and LNG carriers and tugs.

⁶⁵ The project's contribution includes the LNG carriers and tugs associated with the project.

0.005 $\mu\text{g}/\text{m}^3$ —less than .002% of the total NO_2 concentration.⁶⁶ The highest project contribution at any 1-hour NO_2 NAAQS-exceedance location was 2.8 $\mu\text{g}/\text{m}^3$, which is below the SIL of 7.5 $\mu\text{g}/\text{m}^3$ and only 1.5% of the NAAQS standard.⁶⁷ We note that BACT requirements to reduce NO_2 emissions for this project include installing Dry Low NO_x combustion systems to reduce the amount of NO_2 created during combustion and Selective Catalytic Reduction systems to remove NO_2 from combustion exhaust, as well as the use of clean fuels and good combustion practices, which is expected to achieve a 90% reduction in the project's NO_2 emissions.⁶⁸ For these reasons, staff did not recommend further mitigation measures for the project's NO_2 emissions. We agree with staff's conclusions.

2. GHG Significance

20. Regarding the Commission's explanation of why it did not determine whether the project's GHG emissions were significant, the court held that "the Commission failed to explain its apparent departure from the approach it took in *Northern Natural Gas Co. (Northern Natural)*."⁶⁹ The court credited petitioners' argument that it was "unclear why the Commission could not have concluded, using the logic of *Northern Natural*," that the project's estimated GHG emissions of 3.2 million metric tons of CO_2e a year "were significant because they would register above any threshold the Commission could reasonably adopt."⁷⁰ The court also distinguished *Food & Water Watch v. FERC (East 300)*, which held that NEPA⁷¹ does "not require an agency to formally label GHG emissions and their ensuing costs 'as either significant or insignificant,' so long as the agency prepares an EIS and adequately discusses the emissions and their significance,"

⁶⁶ See final supplemental EIS at 19.

⁶⁷ See *id.* The cumulative model used maximum emission rates for most off-site sources to ensure conservativeness and, therefore, tended to overestimate air quality impacts. *Id.*

⁶⁸ *Id.* at 19 & app. D, tbl. D-2.

⁶⁹ *Healthy Gulf*, 107 F.4th at 1042 (citing *Northern Natural*, 174 FERC ¶ 61,189 (2021)).

⁷⁰ *Id.*

⁷¹ The court also cited to 40 C.F.R. § 1508.9(a)(1) (2024), which has now been rescinded. The Council on Environmental Quality's final rule rescinding its NEPA regulations became effective on April 11, 2025. 90 Fed. Reg. 10,610 (Feb. 25, 2025).

because “the Commission did not dispute the premise that it must make a significance determination absent a sufficient explanation for not doing so in a particular proceeding.”⁷²

21. As we have explained,⁷³ notwithstanding *Northern Natural*, it is the Commission’s practice not to make a binary significance determination for GHG emissions and to instead rely on a qualitative discussion of the potential adverse effects, as upheld by the D.C. Circuit.⁷⁴ To the extent that the Commission’s previous orders in these proceedings were not clear, we confirm, consistent with the holding in *East 300* and as discussed below, that we are not required to under NEPA and are unable to determine whether GHG emissions are significant or insignificant. Following the court’s remand of the Authorization and Rehearing Orders, in *Venture Global CP2 LNG, LLC*, we expressly overruled *Northern Natural*, explaining that the Commission’s significance determination in *Northern Natural* does not represent Commission policy or practice.⁷⁵ We reiterate that conclusion here for the reasons described below.

⁷² *Healthy Gulf v. FERC*, 107 F.4th at 1040 & n.2 (citing *East 300*, 104 F.4th 336, 346 (D.C. Cir. 2024), then citing Authorization Order, 181 FERC ¶ 61,143 at PP 75-76; Rehearing Order, 183 FERC ¶ 61,173 at PP 38-41).

⁷³ *Transcon. Gas Pipe Line Co., LLC*, 190 FERC ¶ 61,048, at PP 81-82 (2025); *Venture Glob. CP2 LNG, LLC*, 189 FERC ¶ 61,148, at PP 87-88 (2024), *on reh’g*, 191 FERC ¶ 61,153 (2025).

⁷⁴ *East 300*, 104 F.4th at 346; *see also Citizens Action Coal. of Indiana, Inc. v. FERC*, 125 F.4th 229, 241-42 (D.C. Cir. 2025) (rejecting the argument that the Commission unreasonably failed to label emissions as significant or not significant when it did so in *Northern Natural*, because the Commission had sufficiently explained it did not need to attach such a label due to the fact that it thoroughly analyzed project emissions in the EIS). *Cf. Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, No. 23-975, slip op. at 1-2 (U.S. May 29, 2025) (underscoring that “inherent in NEPA . . . is a ‘rule of reason,’ which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process” (quoting *Dep’t of Trans. v. Public Citizen*, 541 U. S. 752, 767 (2004))).

⁷⁵ *Venture Glob. CP2 LNG, LLC*, 189 FERC ¶ 61,148 at P 87; *see also Transcon. Gas Pipe Line Co., LLC*, 190 FERC ¶ 61,048 at P 80. The Commission may abandon prior precedent provided that the change is permitted under the relevant statutes and that we acknowledge the departure and explain that we believe the new position is better. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (when an agency makes a change in policy, “it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the

22. The Commission's significance determination in *Northern Natural* did not provide a threshold or numerical limit or establish a methodology that the Commission could use to determine the significance of GHG emissions in future cases.⁷⁶ The fact that the Commission felt itself able to determine that the particular amount of GHG emissions in that proceeding were insignificant did not imply that the Commission could likewise determine what level of GHG emissions would be significant or insignificant in any other case. In fact, the Commission in *Northern Natural* cited to the Commission's then-pending 2021 Notice of Inquiry, which sought information on options to assess significance of the effects of GHG emissions, to bolster the idea that the Commission would have the ability to assess significance in the future.⁷⁷ After the Commission issued a draft GHG Policy Statement in 2022,⁷⁸ it ultimately terminated the GHG Policy Statement proceeding in 2025, noting that "[w]e find, based on the record that has been developed, that the issues addressed in that proceeding are, in general, better considered on a case-by-case basis, when raised by parties to those proceedings, as the Commission has done following the issuance of the draft GHG Policy Statement."⁷⁹

23. As described here and in our prior orders, we find that we cannot rely on *Northern Natural* as precedent for evaluating significance, even as a de minimis floor.⁸⁰ Accordingly, as discussed herein, we will continue to consider and contextualize adverse GHG impacts on a case-by-case basis in accordance with our responsibilities under the NGA and NEPA.

conscious change of course adequately indicates"). See also *Grace Petroleum Corp. v. FERC*, 815 F.2d 589, 591 (D.C. Cir. 1987) (recognizing the Commission's "well-settled right" to "overrule established precedent" provided that it offers a reasoned explanation for doing so).

⁷⁶ *Northern Natural*, 174 FERC ¶ 61,189 at PP 33-36.

⁷⁷ *Id.* PP 33, 36.

⁷⁸ *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,108 (2022); *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197, at P 2 (2022) (converting the interim policy statement to draft and stating the Commission would not apply the draft GHG Policy Statement to pending or new projects until the Commission issued any final guidance after public comment).

⁷⁹ *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 190 FERC ¶ 61,049, at PP 1, 6 (2025) (Order Terminating Proceeding).

⁸⁰ *Transcon. Gas Pipe Line Co., LLC*, 190 FERC ¶ 61,048 at P 82; *Venture Glob. CP2 LNG, LLC*, 189 FERC ¶ 61,148 at P 88.

3. Environmental Conclusion

24. Based on the discussion of the project's NO₂ operational emissions and resulting cumulative impacts, mitigation measures, and climate change impacts in the final EIS, final supplemental EIS, Authorization and Rehearing Orders, and this order, as applicable, we have completed the "hard look" required by NEPA and have satisfied our NEPA obligations.⁸¹ We acknowledge that the construction and operation of the Commonwealth LNG Project would increase the atmospheric concentration of GHGs and would contribute cumulatively to climate change. We ultimately conclude that, notwithstanding the project's adverse impacts, as identified in the final EIS, final supplemental EIS, Authorization and Rehearing Orders, and herein, the Commonwealth LNG Project is an environmentally acceptable action.

B. Public Interest Determination

25. Section 3 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."⁸² The NGA section 3 standard "sets out a general presumption favoring such authorization[s]."⁸³ 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."⁸⁴

26. In the Authorization Order, the Commission determined that, subject to the conditions imposed in the order, Commonwealth's proposal is not inconsistent with the

⁸¹ As the U.S. Supreme Court has recently reminded, "[i]n deciding cases involving the American economy, courts should strive, where possible, for clarity and predictability." *Seven Cnty. Infrastructure Coal. v. Eagle Cnty*, No. 23-975, slip op. at 21 (U.S. May 29, 2025); *see also id.* at 13-14 (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))).

⁸² 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).

⁸³ *EarthReports, Inc. v. FERC*, 828 F.3d 949, 953 (D.C. Cir 2016) (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).

⁸⁴ *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)).

public interest.⁸⁵ We reaffirm those findings, as modified herein. The final EIS and final supplemental EIS, taken together, find that some impacts would be permanent and significant, such as impacts on visual resources, and that the cumulative air quality impacts for NO₂ may be significant. Additionally, the project will increase the atmospheric concentration of GHGs, which, in combination with past, current, and future emissions from all other sources globally, would contribute to climate change impacts, but the significance of this contribution cannot be determined.⁸⁶ However, most project impacts would not be significant or would be reduced to less-than-significant levels with the implementation of avoidance, minimization, and mitigation measures recommended in the final EIS and adopted by the Authorization Order.

27. Sierra Club, Natural Resources Defense Counsel, and Center For Biological Diversity (together, Sierra Club) provide an analysis using EPA's "CO-Benefits Risk Assessment Health Impacts Screening and Mapping Tool" (COBRA) to claim that health impacts weigh against the public interest, even if Commonwealth complies with its air permit.⁸⁷ Sierra Club argues 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.⁸⁸ Commission staff explained that 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.⁸⁹

⁸⁵ Authorization Order, 181 FERC ¶ 61,143 at PP 10, 12-18; Rehearing Order, 181 FERC ¶ 61,143 at PP 9-11.

⁸⁶ Final EIS at 4-387 to 4-388, 4-396, 5-419.

⁸⁷ Sierra Club April 7, 2025 Comments at 5-6.

⁸⁸ *Id.* at 2, 15. Sierra Club also states that the Commission should consider alternatives to reduce pollution. *Id.* at 2. We reject this argument as outside the scope of the court's remand and an impermissible collateral attack and note that the court has considered and upheld the Commission's alternatives analysis for the project. *Healthy Gulf*, 107 F.4th 1033 at 1044-47.

⁸⁹ Final supplemental EIS, app. D, tbl. D-2. 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);

As discussed above, staff did not recommend additional mitigation measures in the supplemental environmental analysis because the modeled potential NAAQS exceedances for 1-hour NO₂ would mostly occur even if the facility was not operating (i.e., are due to background concentrations) and the project contribution to exceedances would be minimal.⁹⁰ We agree with staff's explanation and conclude that, on balance, the claimed adverse impacts do not outweigh the fact of the project's required compliance with its PSD permit, which ensures compliance with the CAA, coupled with the benefits described below, and thus we find that the statutorily mandated presumption in favor of approval of the project is not overcome.⁹¹

28. With respect to the potential benefits of the project, we note that on February 14, 2025, the U.S. Department of Energy's Office of Fossil Energy (DOE/FE) conditionally granted Commonwealth authorization to export LNG to non-Free Trade Agreement countries, finding that LNG exports from the Commonwealth LNG Project are likely to yield economic benefits to the United States, diversify global LNG supplies, and improve energy security for U.S. allies and trading partners over the course of the export term through 2050.⁹² This approval follows DOE/FE's 2020 authorization allowing Commonwealth to export 9.5 MTPA (1.21 Bcf/d) of LNG to nations with which the United States has a Free Trade Agreement for a 25-year term.⁹³

29. For all of these reasons, we find that the Commonwealth LNG Project is not inconsistent with the public interest, as conditioned in the Authorization Order. Therefore, we continue to find that Commonwealth's application should be granted.

EPA, *NAAQS Table*, <https://www.epa.gov/criteria-air-pollutants/naaqs-table> (last accessed June 3, 2025). EPA must review and revise the NAAQS every five years "as may be appropriate." 42 U.S.C. § 7409(d)(1).

⁹⁰ Final supplemental EIS at 18-19.

⁹¹ See *supra* P 25; see generally Exec. Order No. 14154, 90 Fed. Reg. 8353, 8357 (Jan. 29, 2025) (directing the Secretary of Energy to assess the public interest of LNG project applications in consideration of the economic and employment impacts to the United States and the impact to the security of allies and partners that would result from granting the application).

⁹² See *Commonwealth LNG, LLC*, FE Docket No. 19-134-LNG, Order No. 5238 (Feb. 14, 2025).

⁹³ See *Commonwealth LNG, LLC*, FE Docket No. 19-134-LNG, Order No. 4521 (Apr. 17, 2020) (authorizing exports for a 25-year term, beginning on the earlier of the date of first exportation or seven years from the date of DOE/FE's authorization).

III. Conclusion

30. As stated above, we find that the Commonwealth LNG Project is an environmentally acceptable action and is not inconsistent with the public interest.

31. 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 applicant has 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 project, 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.

32. 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 Commonwealth 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.⁹⁴

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

The Commission orders:

(A) The Commission affirms its earlier determinations that approval of the project would be an environmentally acceptable action and that the Commonwealth LNG Project is not inconsistent with the public interest.

⁹⁴ 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).

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(B) The authorization in Ordering Paragraph (A) is conditioned on Commonwealth's compliance with the environmental conditions set forth in the appendix to the Authorization Order.

(C) Commonwealth 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 Commonwealth. Commonwealth shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.

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