

184 FERC ¶ 61,185  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;  
James P. Danly, Allison Clements,  
and Mark C. Christie.

Venture Global Calcasieu Pass, LLC

Docket No. CP22-25-000

ORDER AMENDING AUTHORIZATION UNDER SECTION 3  
OF THE NATURAL GAS ACT

(Issued September 22, 2023)

1. On December 3, 2021, Venture Global Calcasieu Pass, LLC (Calcasieu Pass) filed an application seeking to amend its authorization under section 3 of the Natural Gas Act (NGA)<sup>1</sup> and part 153 of the Commission's regulations<sup>2</sup> to site, construct, and operate a new liquified natural gas (LNG) export terminal and associated facilities in Cameron Parish, Louisiana. Specifically, Calcasieu Pass proposes to increase the project's authorized export capacity from 12.0 million metric tons per annum (MTPA) to 12.4 MTPA, or approximately 620 billion cubic feet per year (Bcf/y) to 640.7 Bcf/y, to reflect the project's actual capabilities under optimal conditions. Calcasieu Pass does not propose any new facilities or construction activities.<sup>3</sup> As discussed below, the Commission will approve Calcasieu Pass's proposal, subject to the conditions herein.

**I. Background and Proposal**

2. On February 21, 2019, the Commission authorized the siting, construction, and operation of Calcasieu Pass's LNG export terminal, enabling the company to liquefy and export up to 620 Bcf/y of domestically produced natural gas.<sup>4</sup> As currently authorized,

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<sup>1</sup> 15 U.S.C. § 717b(a).

<sup>2</sup> 18 C.F.R. pt. 153 (2022).

<sup>3</sup> Venture Global Calcasieu Pass, LLC December 3, 2021 Application at 2; Venture Global Calcasieu Pass, LLC Response to May 9, 2022 Engineering Information Request for the Cameron Parish, Louisiana Project under CP22-25 (May 20, 2022) (clarifying that "Venture Global is seeking authorization to increase the export capacity to 12.4 MTPA.").

<sup>4</sup> *Venture Global Calcasieu Pass, LLC*, 166 FERC ¶ 61,144 (2019) (Authorization

the LNG export terminal includes the following facilities: (1) one natural gas gate station; (2) three pretreatment blocks; (3) nine integrated pre-cooled single mixed refrigerant blocks (Liquefaction Blocks); (4) two full-containment, above-ground 200,000 cubic meter LNG storage tanks; (5) two LNG berthing docks, each designed to accommodate LNG carriers of 120,000 to 210,000 cubic meters; (6) a 720-megawatt electric power generation facility; and (7) other appurtenant facilities.<sup>5</sup> On May 13, 2022, Calcasieu Pass was authorized to place Liquefaction Blocks 1-4 into service.<sup>6</sup> In addition, on July 28, 2022, Calcasieu Pass was authorized to place Liquefaction Blocks 5-6 into service.<sup>7</sup>

3. Calcasieu Pass requests to amend its section 3 authorization in order to increase the total authorized export capacity of the project from 620 Bcf/y to 640.7 Bcf/y, i.e., an additional 20.7 Bcf/y in export capacity. Calcasieu Pass states that the proposed increase in the export capacity reflects refinements in the conditions and assumptions concerning maximum potential operations. Accordingly, Calcasieu Pass notes that the proposal requires no additional construction or modification of previously authorized facilities. Calcasieu Pass also asserts that the amended total LNG export capacity would not require modification of air or other environmental permits or authorizations,<sup>8</sup> or increase the annual number of LNG tankers previously reviewed and approved by the U.S. Coast Guard.<sup>9</sup>

## II. Notice, Interventions, and Protests

4. Notice of Calcasieu Pass's amendment application was published in the *Federal Register* on December 23, 2021,<sup>10</sup> establishing January 5, 2022, as the deadline for filing

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Order). The LNG export terminal is located in Louisiana on an approximately 828-acre site along the Calcasieu Ship Channel.

<sup>5</sup> *Id.* P 6.

<sup>6</sup> See *Venture Global Calcasieu Pass, LLC*, CP15-550-000 (May 13, 2022) (delegated order).

<sup>7</sup> See *Venture Global Calcasieu Pass, LLC*, CP15-550-000 (May 13, 2022) (delegated order).

<sup>8</sup> Application at 10.

<sup>9</sup> A maximum annual level of 200 port calls is authorized for the LNG export terminal.

<sup>10</sup> 86 Fed. Reg. 72,952 (Dec. 23, 2021).

protests, motions to intervene, and comments. No comments, motions to intervene, or protests were filed in response to the notice of application.

### III. Discussion

#### A. Public Interest Standard

5. Calcasieu Pass's proposal to operate its LNG terminal to liquefy for export natural gas at levels above those previously authorized requires Commission approval under section 3(a) of the NGA.<sup>11</sup> Under NGA section 3(a), the Commission "shall issue such order upon application" unless it finds that the proposal "will not be consistent with the public interest," subject to "such terms and conditions as the Commission may find necessary or appropriate."<sup>12</sup> When the Commission first evaluated and authorized the construction and operation of the LNG terminal, it determined that Calcasieu Pass's proposal was not inconsistent with the public interest.<sup>13</sup>

6. The Commission finds that Calcasieu Pass's amendment application and related filings contain adequate support to justify the proposed 20.7 Bcf/y increase to the authorized export capacity at the project. Based on the Commission's analyses, we conclude that the liquefaction facilities can accommodate the uprate.<sup>14</sup> The requested

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<sup>11</sup> The regulatory functions of NGA section 3 were transferred to the Secretary of Energy in 1977 pursuant to section 301(b) of the Department of Energy Organization Act, Pub. L. No. 95-91, 42 U.S.C. § 7101 *et seq.* The Secretary subsequently delegated to the Commission the authority to approve or disapprove the construction and operation of natural gas import and export facilities and the site at which such facilities shall be located. The most recent delegation is in U.S. Department of Energy (DOE) Delegation Order No, S1-DEL-FERC-2006, effective May 16, 2006. The Commission does not authorize importation or exportation of the commodity itself. Rather, application for authorization to import or export natural gas must be submitted to the DOE. *See EarthReports, Inc. v. FERC*, 828 F.3d 949, 952-53 (D.C. Cir. 2016) (detailing how regulatory oversight for the export of LNG and supporting facilities is divided between the Commission and DOE).

<sup>12</sup> 15 U.S.C. § 717b(a). For a discussion of the Commission's authority to condition its approvals of LNG facilities under section 3 of the NGA, *see, e.g., Distrigas Corporation v. FPC*, 495 F.2d 1057, 1063-64 (D.C. Cir. 1974), *cert. denied*, 419 U.S. 834 (1974); *Dynegy LNG Production Terminal, L.P.*, 97 FERC ¶ 61,231 (2001).

<sup>13</sup> *See* Authorization Order, 166 FERC ¶ 61,144 at P 18.

<sup>14</sup> We note that the proposed amendment would increase feed gas rates and refrigerant rates but not increase process pressures.

amendment will not involve modifying the existing terminal facilities or alter the project's authorized level of storage capacity. Rather, it will only increase the authorized export capacity at the LNG terminal from 620 to 640.7 Bcf/y.

7. Calcasieu Pass holds long-term LNG export authorizations from the U.S. Department of Energy, Office of Fossil Energy and Carbon Management (DOE/FE) for domestically produced LNG by vessel to Free Trade Agreement (FTA)<sup>15</sup> countries and non-FTA<sup>16</sup> countries.<sup>17</sup> On December 3, 2021, Calcasieu Pass filed a separate application with the DOE/FE, as corrected on December 10, 2021, seeking an increase of its total authorized export volumes to 640.7 Bcf/y of natural gas to both FTA and non-FTA countries on a non-additive basis, thus aligning the DOE/FE authorizations with the export capacity requested in this proceeding. On April 22, 2022, DOE/FE approved Calcasieu Pass's application.<sup>18</sup>

8. In accordance with the Memorandum of Understanding signed on August 31, 2018, by the Commission and the Pipeline and Hazardous Materials Safety Administration (PHMSA) within the U.S. Department of Transportation (DOT),<sup>19</sup>

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<sup>15</sup> *Venture Global Calcasieu Pass, LLC*, FE Docket No. 13-69-LNG, Order No. 3345 (Sept. 27, 2013); *Venture Global Calcasieu Pass, LLC*, FE Docket No. 14-88-LNG, Order No. 3520 (Oct. 10, 2014); *Venture Global Calcasieu Pass, LLC*, FE Docket No. 15-25-LNG, Order No. 3662 (June 17, 2015) (collectively authorizing exports by vessel to any country with which the United States currently has, or in the future will have, an FTA requiring national treatment for trade in natural gas for a twenty-year term).

<sup>16</sup> *Venture Global Calcasieu Pass, LLC*, DOE/FE Order No. 4346, Docket Nos. 13-69-LNG, 14-88-LNG, and 15-25-LNG (Mar. 5, 2019) (authorizing exports to any non-FTA nations).

<sup>17</sup> On October 21, 2020, DOE/FE extended the export term for all of its authorizations through December 31, 2050. See DOE/FE Order Nos. 3345-A, 3520-A, 3662-A, and 4346-A. Then DOE/FE issued a blanket order that had the effect of amending Calcasieu Pass's existing long-term authorizations to include short-term export authority, including to export commissioning volumes. See DOE/FE Order No. 4641 (Dec. 18, 2020).

<sup>18</sup> *Venture Global Calcasieu Pass, LLC*, DOE/FE Order No. 3662-B, Docket No. 15-25-LNG (Apr. 22, 2022). Calcasieu Pass's request to increase its authorization to export LNG to 640.7 Bcf/y to non-FTA countries is still pending.

<sup>19</sup> *Memorandum of Understanding Between the Department of Transportation and the Federal Energy Regulatory Commission Regarding Liquefied Natural Gas Transportation Facilities* (Aug. 31, 2018), <https://www.ferc.gov/legal/mou/2018/FERC->

PHMSA undertook a review of the facility's ability, at the revised export capacity, to comply with the federal safety standards contained in Part 193, Subpart B - Siting, of Title 49 of the Code of Federal Regulations.<sup>20</sup> On July 6, 2023, PHMSA provided a Letter of Determination to the Commission, concluding that, based on their review, the project complies with the siting requirements in Part 193, Subpart B.<sup>21</sup> If the project is subsequently modified so that it differs from the details provided in the documentation submitted to PHMSA, further review would be conducted by PHMSA.

9. For the reasons stated above, we find that Calcasieu Pass's proposal is not inconsistent with the public interest. Therefore, the Commission will grant Calcasieu Pass's request, subject to conditions herein, and authorize it to increase the export capacity at its LNG export terminal to 640.7 Bcf/y.<sup>22</sup>

### **B. Environmental Impacts**

10. On March 24, 2022, the Commission issued a Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Calcasieu Pass Uprate Amendment Project (NOS). The NOS was published in the *Federal Register*<sup>23</sup> and mailed to interested parties, including federal, state, and local officials; agency representatives; Native American tribes; environmental and public interest groups; local libraries and newspapers; and affected property owners. We received comments in response to the NOS from the U.S. Environmental Protection Agency (EPA), Restore Explicit Symmetry To Our Ravaged Earth (RESTORE), and the Deep South Center for Environmental Justice.

11. The primary issues raised in response to the NOS and during the scoping process included environmental justice, climate change and greenhouse gases (GHG), air quality, light pollution, noise pollution, cumulative impacts, and safety.

12. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), our staff prepared an Environmental Assessment (EA) for Calcasieu Pass's proposal. The EA was prepared with the cooperation of the DOE, PHMSA, and U.S.

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PHMSA-MOU.pdf.

<sup>20</sup> 49 C.F.R. pt. 193, subpt. B (2022).

<sup>21</sup> See Commission staff's July 7, 2023 Memo.

<sup>22</sup> See Calcasieu Pass June 3, 2022 Responses to the May 9, 2022 Engineering Information Request.

<sup>23</sup> 87 Fed. Reg. 18,365 (Mar. 30, 2022).

Coast Guard. The analysis in the EA addresses air emissions and impacts associated with those emissions, including impacts on environmental justice communities;<sup>24</sup> climate change; reliability and safety of the proposed engineering design; cumulative impacts; and alternatives. All substantive comments received in response to the NOS were addressed in the EA.

13. The EA was issued for a 30-day comment period and placed into the public record on August 5, 2022.<sup>25</sup> The Commission received comments on the EA from RESTORE and Calcasieu Pass, which are addressed below.

14. After Commission staff issued the EA, Congress enacted the *Fiscal Responsibility Act of 2023*.<sup>26</sup> A section titled “Builder Act” amended NEPA in several ways.<sup>27</sup> NEPA section 102(c), as amended, requires that agencies prepare NEPA documents on:

(i) reasonably foreseeable environmental effects of the proposed agency action;

(ii) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and

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<sup>24</sup> Under NEPA, the Commission considers impacts to all potentially affected communities. Consistent with Executive Order 12,898 and Executive Order 14,008, the Commission separately identifies and addresses “disproportionately high and adverse human health or environmental effects” on environmental justice communities. Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994); Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021). *See infra* PP 26-35.

<sup>25</sup> 87 Fed. Reg. 49,589 (Aug. 11, 2022).

<sup>26</sup> *See* FISCAL RESPONSIBILITY ACT OF 2023, PL 118-5, 137 Stat 10 (June 3, 2023). The Commission relied on the *Fiscal Responsibility Act of 2023* in a recent order. *See Mountain Valley Pipeline, LLC*, 183 FERC ¶ 61,221, at PP 7, 9, 11 n.20 (2023).

<sup>27</sup> *See* FISCAL RESPONSIBILITY ACT OF 2023, PL 118-5, 137 Stat 10, at § 321 (June 3, 2023) (providing the “Builder Act”).

economically feasible, and meet the purpose and need of the proposal;

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented.<sup>28</sup>

The Commission has complied with its NEPA responsibilities under both versions of the statute.<sup>29</sup>

### 1. Light and Noise Pollution Controls

15. RESTORE states that the EA should have addressed Calcasieu Pass's failure to control light and noise pollution during construction of its LNG terminal. Section A.3 of the EA<sup>30</sup> describes Calcasieu Pass's monthly construction status reports, additional abbreviated construction status reports, and Commission staff's construction inspections of the terminal. These reports and inspections were conducted to ensure compliance with Calcasieu Pass's proposed mitigation, and the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan. Commission staff has not found that Calcasieu Pass violated the light or noise pollution requirements of the Authorization Order during construction. Based on Commission staff's inspections and review of the status reports, Calcasieu Pass remains in compliance with the requirements of the Authorization Order. Further, we note that construction of the existing terminal is not part of the proposed action here, and Calcasieu Pass does not propose any additional lighting or noise producing facilities or activities as part of the proposed project.

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<sup>28</sup> 42 U.S.C. § 4332(c)(i).

<sup>29</sup> We note that the Council on Environmental Quality recently published a Notice of Proposed Rulemaking to revise its regulations implementing NEPA, including to implement the Builder Act amendments. 88 Fed. Reg. 49,924 (July 31, 2023). The Commission will monitor this proceeding to inform the Commission's practices going forward.

<sup>30</sup> EA at 4.

## 2. Regional Environmental Analysis

16. RESTORE states that a regional EA or environmental impact statement (EIS) should be developed, given several LNG projects in the Cameron, Louisiana area. We disagree.

17. The Supreme Court has held that a NEPA review covering an entire region (that is, a programmatic review) is required only if there has been a proposal for major federal action with respect to the region.<sup>31</sup> As the Commission acts on individual applications, our staff provides a project-specific analysis in each NEPA document, as here in the EA.

## 3. GHG Emissions and Climate Change

18. The CEQ defines effects or impacts as “changes to the human environment from the proposed action or alternatives that are reasonably foreseeable,” which include those effects that “occur at the same time and place” and those that “are later in time or farther removed in distance, but are still reasonably foreseeable.”<sup>32</sup> An impact is reasonably foreseeable if it is “sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.”<sup>33</sup>

19. For this project, we find that the operational emissions are reasonably foreseeable. Although the uprate would not result in changes to the existing emissions of the facility, under the air permit issued by the Louisiana Department of Environmental Quality (LDEQ), the current estimated GHG emissions differ from those estimated in the October 2018 final EIS for the Calcasieu Pass LNG terminal due to updated engineering and vendor data, process optimization, and changes to equipment including the backup warm/cold flare, acid gas thermal oxidizer, two firewater pumps,

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<sup>31</sup> See *Kleppe v. Sierra Club*, 427 U.S. 390, 414-15 (1976) (holding that a broad-based environmental document is not required regarding decisions by federal agencies to allow future private activity within a region).

<sup>32</sup> 40 C.F.R. § 1508.1(g) (2022).

<sup>33</sup> *Id.* § 1508.1(aa). See generally *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (explaining that “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause” and that “[t]he Court analogized this requirement to the ‘familiar doctrine of proximate cause from tort law’”) (citation omitted); *Food & Water Watch v. FERC*, 28 F.4th 277, 288 (D.C. Cir. 2022) (“Foreseeability depends on information about the ‘destination and end use of the gas in question.’”) (citation omitted); *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017) (*Sabal Trail*) (“FERC should have estimated the amount of power-plant carbon emissions that the pipelines will make possible.”).

and two emergency generators. The EA analyzes the change in emissions from the 2018 final EIS to the 2021 permitted operating conditions at the terminal. The EA estimates the increase in operational emissions to be 58,338 metric tons of carbon dioxide equivalents (CO<sub>2</sub>e) more than those estimated in the 2018 final EIS.<sup>34</sup> The EA estimates that the social cost of GHGs from the project is either \$14,971,703 (assuming a discount rate of 5%), \$55,961,583 (assuming a discount rate of 3%), \$84,442,342 (assuming a discount rate of 2.5%), or \$169,388,571 (using the 95th percentile of the social cost of GHGs with a discount rate of 3%).<sup>35</sup>

20. As we have done in prior orders, we compare the project's operational GHG emissions (*i.e.*, the change in emissions from the 2018 final EIS to the 2021 permitted operating conditions at the terminal) to the total GHG emissions of the United States as a whole and at the state level. This comparison allows us to contextualize the projected emissions of the project. At a national level, 5,586 million metric tons of CO<sub>2</sub>e were emitted in 2021 (inclusive of CO<sub>2</sub>e sources and sinks).<sup>36</sup> The change in emissions could potentially increase CO<sub>2</sub>e emissions based on the national 2021 levels by 0.001%. At the state level, we compare the project's GHG emissions to the Louisiana State fossil fuel inventory. Energy related CO<sub>2</sub> emissions in Louisiana were 183.3 million metric tons in 2020.<sup>37</sup> The change in emissions could potentially increase state emissions by 0.03%.

21. When states have GHG emissions reduction targets, we will compare the project's GHG emissions to those state goals to provide additional context. To evaluate the project's operational emissions in the context of Louisiana's GHG reduction goals, we compare the project's GHG emissions to Louisiana climate targets. The State of Louisiana established executive targets in 2020 to reduce net GHG emissions 26 to 28%

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<sup>34</sup> EA at 39.

<sup>35</sup> *Id.* at 41-42. The EA describes the method and assumptions staff used for calculating the social cost of GHGs. *Id.* The IWG draft guidance identifies costs in 2020 dollars. Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990*, at 5 (Table ES-1) (Feb. 2021).

<sup>36</sup> EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2021* at ES-5 (Table ES-2) (Apr. 13, 2023), <https://www.epa.gov/system/files/documents/2023-04/US-GHG-Inventory-2023-Main-Text.pdf>.

<sup>37</sup> U.S. Energy Information Administration, *Table 1, State Energy-Related Carbon Dioxide Emissions by Year*, <https://www.eia.gov/environment/emissions/state/> (Oct. 11, 2022).

by 2025 and 40 to 50% by 2030, compared to 2005 levels.<sup>38</sup> The targets also aim for net-zero GHG emissions by 2050. Direct GHG emissions from the operation of the project would represent 0.04% of Louisiana's 2025 and 0.05% of Louisiana's 2030 projected GHG emission levels, assuming the reductions from 2005 levels summarized above.<sup>39</sup>

22. Calcasieu Pass asserts that any reliance on the calculation of the social cost of GHGs in the EA would be misplaced, as social costs are estimates of worldwide harms beyond the scope of the Commission's jurisdiction.

23. We clarify that for informational purposes, Commission staff disclosed an estimate of the Social Cost of GHGs.<sup>40</sup> While we have recognized in some past orders that social cost of GHGs may have utility in certain contexts such as rulemakings,<sup>41</sup> we have also found that calculating the social cost of GHGs does not enable the Commission to determine credibly whether the reasonably foreseeable GHG emissions associated with a project are significant or not significant in terms of their impact on global climate change.<sup>42</sup> Currently, however, there are no criteria to identify what monetized values are significant for NEPA purposes, and we are currently unable to identify any such appropriate criteria.<sup>43</sup> Nor are we aware of any other currently

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<sup>38</sup> In 2005, Louisiana emitted 201.9 million metric tons of CO<sub>2</sub>. *Id.*

<sup>39</sup> We consider the 2025 GHG emission target to be 145.4 million metric tons (assuming a 28% reduction) and the 2030 target to be 100.95 million metric tons (assuming a 50% reduction).

<sup>40</sup> EA at 41. "Commission staff have not identified a methodology to attribute discrete, quantifiable, physical effects on the environment resulting from a project's incremental contribution to GHGs." *Id.* at 39.

<sup>41</sup> *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099, at PP 35-37 (2018).

<sup>42</sup> *See Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 at P 296, (2017), *aff'd sub nom.*, *Appalachian Voices v. FERC*, 2019 WL 847199 (D.C. Cir. 2019); *Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 111 (D.C. Cir. 2022). The Social Cost of GHGs tool merely converts GHG emissions estimates into a range of dollar-denominated figures; it does not, in itself, provide a mechanism or standard for judging "significance."

<sup>43</sup> *Tenn. Gas Pipeline Co., L.L.C.*, 181 FERC ¶ 61,051, at P 37 (2022); *see also Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 at P 296, *order on reh'g*, 163 FERC ¶ 61,197, at PP 275-297 (2018), *aff'd, Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at 2 (D.C. Cir. 2019) (unpublished) ("[The Commission] gave several reasons why it believed petitioners' preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance

scientifically accepted method that would enable the Commission to determine the significance of reasonably foreseeable GHG emissions.<sup>44</sup> The D.C. Circuit has repeatedly upheld the Commission's decisions not to use the social cost of carbon, including to assess significance.<sup>45</sup> In fact, the D.C. Circuit recently affirmed the Commission's decision to not analyze the social cost of carbon in its NEPA analysis,<sup>46</sup> rejected the suggestion that it was required to do so, found that the petitioner's

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under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes."); *EarthReports v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016) (accepting the Commission's explanation why the social cost of carbon tool would not be appropriate or informative for project-specific review, including because "there are no established criteria identifying the monetized values that are to be considered significant for NEPA purposes"); *Tenn. Gas Pipeline Co., L.L.C.*, 180 FERC ¶ 61,205, at P 75 (2022); *See, e.g., LA Storage, LLC*, 182 FERC ¶ 61,026, at P 14 (2023); *Columbia Gulf Transmission, LLC*, 180 FERC ¶ 61,206, at P 91 (2022).

<sup>44</sup> *See, e.g., LA Storage, LLC*, 182 FERC ¶ 61,026 at P 14 ("there are currently no criteria to identify what monetized values are significant for NEPA purposes, and we are currently unable to identify any such appropriate criteria").

<sup>45</sup> *See, e.g., Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1184 (D.C. Cir. 2023) (*Alaska LNG*) (explaining that "the Commission compared the Project's direct emissions with existing Alaskan and nationwide emissions," "declined to apply the social cost of carbon for the same reasons it had given in a previous order"; describing those reasons as (1) "the lack of consensus about how to apply the social cost of carbon on a long time horizon," (2) that "the social cost of carbon places a dollar value on carbon emissions but does not measure environmental impacts as such," and (3) "FERC has no established criteria for translating these dollar values into an assessment of environmental impacts"; and recognizing that the Commission's "approach was reasonable and mirrors analysis . . . previously upheld" and that the Commission "had no obligation in this case to consider the social cost of carbon") (citations omitted); *EarthReports*, 828 F.3d at 956 (upholding the Commission's decision not to use the social cost of carbon tool due to a lack of standardized criteria or methodologies, among other things); *Del. Riverkeeper Network v. FERC*, 45 F.4th 104 (also upholding the Commission's decision not to use the social cost of carbon); *Appalachian Voices v. FERC*, 2019 WL 847199 (D.C. Cir. 2019) (same).

<sup>46</sup> *Alaska LNG*, 67 F.4th at 1184 ("Rather than use the social cost of carbon, the Commission compared the Project's direct emissions with existing Alaskan and nationwide emissions. It declined to apply the social cost of carbon for the same reasons it had given in a previous order. . . FERC's approach was reasonable and mirrors analysis we have previously upheld.").

arguments “fare no better when framed as NGA challenges,” and then, in the very same paragraph, sustained the Commission’s public interest determination as “reasonable and lawful.”<sup>47</sup>

24. The EA states that “[t]he change in operational emissions disclosed in this EA would increase the atmospheric concentration of GHGs (CO<sub>2</sub>e would increase 1.6 percent from what was disclosed in the final EIS issuance), in combination with past and future emissions from all other sources and would contribute incrementally to future climate change impacts.”<sup>48</sup> We clarify that, assuming that the transported gas is not displacing equal- or higher-emitting sources, we recognize that the project’s contributions to GHG emissions globally contribute incrementally to future climate change impacts,<sup>49</sup> including impacts in the region.<sup>50</sup> We note that there currently are no accepted tools or methods for the Commission to use to determine significance, therefore the Commission is not herein characterizing these emissions as significant or insignificant.<sup>51</sup> Accordingly, we have taken the required “hard look” and have satisfied our obligations under NEPA.

25. RESTORE questions how a 3.3% increase in liquefaction could create a 17.6% increase in volatile organic compounds (VOCs), but only a 1.6% increase in CO<sub>2</sub>e. As stated in the EA, the EA reflected an analysis of the difference in emissions from the final EIS issuance in 2018 to the current operating conditions as authorized under the existing Title V and Prevention of Significant Deterioration Permits issued by the LDEQ in 2021. The EA covers and clarifies these changes, as well as the impacts of the proposed uprate itself. The EA states that the uprate itself would not result in a change

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

<sup>48</sup> EA at 39.

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

<sup>50</sup> *Id.* at 37-38 (discussing observations from the Fourth Assessment Report).

<sup>51</sup> The February 18, 2022 Interim GHG Policy Statement, *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,108 (2022) which proposed to establish a NEPA significance threshold of 100,000 tons per year of CO<sub>2</sub>e as a matter of policy, has been suspended, and opened to further public comment. *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197, at P 2 (2022).

in the emissions of the project, as provided under the air permit issued by the LDEQ.<sup>52</sup> We agree.

#### 4. Environmental Justice

26. In conducting NEPA reviews of proposed natural gas projects, the Commission follows Executive Order 12898, which directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority and low-income populations (i.e., environmental justice communities).<sup>53</sup> Executive Order 14008 also directs agencies to develop “programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”<sup>54</sup> Environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>55</sup>

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<sup>52</sup> EA at 21.

<sup>53</sup> Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). While the Commission is not one of the specified agencies in Executive Order 12898, the Commission nonetheless addresses environmental justice in its analysis, in accordance with our governing regulations and guidance, and statutory duties. *See* 15 U.S.C. § 717f; *see also* 18 C.F.R. § 380.12(g) (2022) (requiring applicants for projects involving significant aboveground facilities to submit information about the socioeconomic impact area of a project for the Commission’s consideration during NEPA review); FERC, *Guidance Manual for Environmental Report Preparation* at 4-76 to 4-80 (Feb. 2017), <https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf>.

<sup>54</sup> Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Feb. 1, 2021). The term “environmental justice community” includes disadvantaged communities that have been historically marginalized and overburdened by pollution. *Id.* at 7629. The term also includes, but may not be limited to minority populations, low-income populations, or indigenous peoples. *See* EPA, EJ 2020 Glossary (Aug. 18, 2022), <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

<sup>55</sup> EPA, *Learn About Environmental Justice* (Sept. 6, 2022), <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. *Id.* Meaningful involvement of potentially affected environmental justice community residents means: (1) people have an appropriate opportunity to participate in decisions about a proposed activity that may affect their

27. Consistent with CEQ<sup>56</sup> and EPA<sup>57</sup> guidance and recommendations, the Commission's methodology for assessing environmental justice impacts considers: (1) whether environmental justice communities (e.g., minority or low-income populations)<sup>58</sup> exist in the project area; (2) whether impacts on environmental justice communities are disproportionately high and adverse; and (3) possible mitigation measures. As recommended in *Promising Practices*, the Commission uses the 50% and the meaningfully greater analysis methods to identify minority populations.<sup>59</sup> Specifically, a minority population is present where either: (1) the aggregate minority population of the block groups in the affected area exceeds 50%; or (2) the aggregate minority population in the block group affected is 10% higher than the aggregate minority population percentage in the parish.<sup>60</sup>

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environment and/or health; (2) the public's contributions can influence the regulatory agency's decision; (3) community concerns will be considered in the decision-making process; and (4) decision makers will seek out and facilitate the involvement of those potentially affected. *Id.*

<sup>56</sup> CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* 4 (Dec. 1997) (CEQ's *Environmental Justice Guidance*), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>. CEQ offers recommendations on how federal agencies can provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices. There were opportunities for public involvement for environmental justice communities during the Commission's environmental review processes. EA at 10-12.

<sup>57</sup> See generally EPA's Federal Interagency Working Group for Environmental Justice and NEPA's Committee, *Promising Practices for EJ Methodologies in NEPA Reviews* (Mar. 2016) (*Promising Practices*), [https://www.epa.gov/sites/default/files/2016-08/documents/nepa\\_promising\\_practices\\_document\\_2016.pdf](https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf).

<sup>58</sup> See generally Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). Minority populations are those groups that include: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.

<sup>59</sup> See *Promising Practices* at 21-25.

<sup>60</sup> EA at 12. Here, Commission staff selected Cameron Parish, Louisiana as the reference community to ensure that affected environmental justice communities are properly identified. Because the proposed activities are located in Cameron Parish, Louisiana, and impacts on environmental justice communities could occur in that parish,

28. CEQ's *Environmental Justice Guidance* also directs low-income populations to be identified based on the annual statistical poverty thresholds from the U.S. Census Bureau. Using *Promising Practices*' low-income threshold criteria method, low-income populations are identified as block groups where the percent of a low-income population in the identified block group is equal to or greater than that of the parish.

29. To identify potential environmental justice communities during preparation of the EA, Commission staff used 2020 U.S. Census American Community Survey data<sup>61</sup> for the race, ethnicity, and poverty data at the state, parish, and block group level.<sup>62</sup> Additionally, in accordance with *Promising Practices*, staff used EJScreen, EPA's environmental justice mapping and screening tool, as an initial step to gather information regarding minority and low-income populations; potential environmental quality issues; environmental and demographic indicators; and other important factors.

30. Once staff collected the block group level data, as discussed in further detail below, staff conducted an impacts analysis for the identified environmental justice communities and evaluated health or environmental hazards, the natural physical environment, and associated social, economic, and cultural factors to determine whether impacts were disproportionately high and adverse on environmental justice communities and also whether those impacts were significant.<sup>63</sup> Commission staff assessed whether impacts on an environmental justice community were disproportionately high and adverse based on whether those impacts were predominately borne by that community, consistent with EPA's recommendations in *Promising Practices*.<sup>64</sup> Identified project impacts and Calcasieu Pass's proposed mitigation measures are discussed below.

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Cameron Parish is the appropriate reference community for the block group.

<sup>61</sup> U.S. Census Bureau, American Community Survey 2020 ACS 5-Year Estimates Detailed Tables, File# B17017, Poverty Status in the Past 12 Months by Household Type by Age of Householder, <https://data.census.gov/cedsci/table?q=B17017>; File #B03002 Hispanic or Latino Origin by Race, <https://data.census.gov/cedsci/table?q=b03002>.

<sup>62</sup> EA at 12-15.

<sup>63</sup> See *Promising Practices* at 33 (stating that "an agency may determine that impacts are disproportionately high and adverse, but not significant within the meaning of NEPA" and in other circumstances "an agency may determine that an impact is both disproportionately high and adverse and significant within the meaning of NEPA").

<sup>64</sup> *Id.* at 44-46 (explaining that there are various approaches to determining whether an action will cause a disproportionately high and adverse impact, and that one recommended approach is to consider whether an impact would be "predominantly borne by minority populations or low-income populations"). We recognize that EPA and CEQ

31. Staff identified six census block groups near the project facilities that exceed the defined thresholds for minority or low-income communities and are, therefore, environmental justice communities. The Calcasieu Pass LNG terminal is within Census Tract 9702.02, Block Group 2, which is an environmental justice community with a low-income population of 24.4%. Two of the block groups are identified as environmental justice populations based on the minority threshold; three are based on the low-income threshold; and one is based on both the minority and low-income thresholds.

32. Project work within the identified environmental justice community (Census Tract 9702.02, Block Group 2) includes a revised estimate of LNG export capacity based on updated engineering and vendor data, reflecting actual equipment performance. The amendment does not require the construction of new facilities or the modification of previously authorized facilities. Impacts from the amendment application that could affect environmental justice communities include operational air impacts and GHG emissions. Environmental justice concerns are not present for other resource areas such as geology, groundwater, surface water, wetlands, wildlife, threatened and endangered species, noise, visual, transportation, or cultural resources due to the minimal overall impact the amendment would have on these resources and the fact that the amendment does not require the construction of new facilities or the modification of previously authorized facilities.

33. The EA concluded the project would not result in significant impacts on regional air quality or result in a violation of the National Ambient Air Quality Standards (NAAQS). The EA concluded that the air quality impacts from operation of project facilities at the Calcasieu LNG Terminal would not result in a significant impact on local air quality, including air quality impacts on environmental justice communities.<sup>65</sup> We agree.

**a. Cumulative Impacts**

34. As described in the EA, the amendment itself would not result in increased air emissions; however, changes in operational emissions disclosed in the EA would result in permanent impacts on air quality (lasting the operational length of the Export Terminal). Project operation would contribute cumulatively to air pollutant levels in combination with three other projects (CP2 LNG Project, Commonwealth LNG Project, and Calcasieu River and Pass, LA Operations and Maintenance) and the inventory

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are in the process of updating their guidance regarding environmental justice and we will review and incorporate that anticipated guidance in our future analysis, as appropriate.

<sup>65</sup> EA at 19.

sources included in the 2018 cumulative modeling.<sup>66</sup> Air modeling results indicate that maximum concentrations from the Export Terminal, when combined with nearby inventory sources, would not result in an exceedance of the NAAQS.<sup>67</sup> Therefore, the Export Terminal would not result in significant cumulative impacts on air quality for nearby environmental justice populations.

**b. Environmental Justice Conclusion**

35. As described in the EA, certain emission estimates have increased or decreased from those previously analyzed by Commission staff in the October 2018 final EIS for the Calcasieu Pass LNG Export Project (Docket No. CP15-550-000) as a result of updated engineering data, and would have air quality impacts on the environment and individuals living in the vicinity of the project facilities, including environmental justice populations. Staff concluded that impacts on environmental justice populations would be disproportionately high and adverse because they would be predominately borne by environmental justice communities.<sup>68</sup> However, based on the foregoing discussion, we find that the impacts on the environmental justice communities would be less than significant.<sup>69</sup>

**5. Environmental Analysis Conclusion**

36. Based on the analysis in the EA, as supplemented or clarified herein, we conclude that if operated in accordance with Calcasieu Pass's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.<sup>70</sup> We note that the analysis in the EA provides substantial evidence for our conclusions in this order, but that it is the order itself that serves as the record of decision, consistent with the Commission's obligations under NEPA and the Administrative Procedure Act. For that reason, to the extent that any of the analysis in the EA is inconsistent with or modified by the Commission's analysis and

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<sup>66</sup> *Id.* at 30.

<sup>67</sup> *Id.* at 32.

<sup>68</sup> *Id.* at 19.

<sup>69</sup> *Id.*

<sup>70</sup> We note that we are not making a significance finding as to GHG emission impacts. *See supra* P 24.

findings in the order, it is the order that controls and we do not rely on or adopt any contrary analysis in the EA.

#### **IV. Conclusion**

37. For the reasons stated above, we find that Calcasieu Pass's proposal is not inconsistent with the public interest. Therefore, we will grant Calcasieu Pass's request and authorize it to increase the LNG export capacity at its Liquefaction Project to 640.7 Bcf/y.

38. 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 the ongoing construction and operation of the LNG terminal as amended in this proceeding, 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 construction and operation.

39. 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 holders of NGA authorizations 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 increased export capacity of the existing Calcasieu Pass Export Terminal approved by this Commission.<sup>71</sup>

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<sup>71</sup> See 15 U.S.C. § 717r(d) (clarifying that a state or federal agency's failure to act on a permit is considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (asserting that state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted); and *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).

Docket No. CP22-25-000

- 19 -

40. The Commission on its own motion received and made part of the record in this proceeding all evidence, including the application and exhibits thereto, and all comments and upon consideration of the record,

The Commission orders:

(A) The authorized maximum LNG export capacity of the Calcasieu Pass LNG terminal is increased from 620 billion cubic feet per year to 640.7 billion cubic feet per year as described and conditioned herein, and as more fully described in the application and supplements.

(B) In all other respects, the authorization granted in the order authorizing the Calcasieu Pass LNG terminal in CP15-550-000 shall remain in full force and effect.

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

By the Commission. Commissioner Danly concurring in part and dissenting in part with a separate statement attached.  
Commissioner Clements is dissenting in part with a separate statement attached.

( S E A L )

Debbie-Anne A. Reese,  
Deputy Secretary.

## Appendix

### Environmental Conditions

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Venture Global Calcasieu Pass, LLC (Calcasieu Pass) shall follow the procedures and mitigation measures described in its application and supplements and as identified in the EA, unless modified by the Order. Calcasieu Pass must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP), or the Director's designee, **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of life, health, property, and the environment during operation of the project. This authority shall allow:
  - a. the modification of conditions of the Order;
  - b. stop-work authority and authority to cease operation; and
  - c. the imposition of 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 impact resulting from project operation.
3. Calcasieu Pass shall continue to comply with all environmental and engineering conditions set forth in the Appendix of the February 21, 2019 Order issued in Docket No. CP15-550-000.
4. **Prior to implementation of an increase in export capacity above 12.0 million metric tons per annum (MTPA)**, Calcasieu Pass shall file with the Secretary for review and written approval by the Director of OEP, or the Director's designee, updated heat and material balances for the Rich Gas Cold Ambient, and Lean Gas Hot Ambient conditions and demonstrate no engineering designs or related safety systems are impacted.

5. **Prior to implementation of an increase in liquefaction rate above 12.4 MTPA,** Calcasieu Pass shall file the Secretary for review and written approval by the Director of OEP, or the Director's designee, an evaluation of dynamic pressure surge effects from valve opening and closure time, and pump operations, for liquid streams which will experience a higher flowrate because of the uprated performance. The analysis shall demonstrate the pressure surge remains within an acceptable range for the piping material for all heat and material balance cases.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Venture Global Calcasieu Pass, LLC

Docket No. CP22-25-000

(Issued September 22, 2023)

DANLY, Commissioner, *concurring in part and dissenting in part*:

1. I write separately to identify the specific aspects of today's order with which I concur and those elements from which I dissent.
2. I concur in the finding that "Calcasieu Pass's proposal is not inconsistent with the public interest"<sup>1</sup> and the decision to "grant Calcasieu Pass's request and authorize it to increase the [liquefied natural gas (LNG)] export capacity at its Liquefaction Project to 640.7 Bcf/y."<sup>2</sup>
3. I also concur in the explanations and findings in paragraphs 23 and 24: the social cost of greenhouse gases (GHG) is neither useful nor part of the Commission's decision making and the Commission has no means to determine the significance of GHG emissions.<sup>3</sup> Specifically, paragraphs 23 and 24 explain: (1) the disclosure of the social cost of GHG emissions is "for informational purposes"; (2) for the social cost of GHGs, "there are no criteria to identify what monetized values are significant for [National Environmental Policy Act (NEPA)] purposes"; the Commission is not "aware of any . . . method," including the social cost of GHGs, "that would enable the Commission to determine the significance of reasonably foreseeable GHG emissions"; and (3) therefore, there are "no accepted tools or methods for the Commission to use to determine significance."<sup>4</sup> This language made its first appearance in orders on the April 20, 2023 open meeting.<sup>5</sup> I voted for this language, as did two of my colleagues, Chairman Phillips and Commissioner Christie.

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<sup>1</sup> *Venture Global Calcasieu Pass, LLC*, 184 FERC ¶ 61,185, at P 37 (2023).

<sup>2</sup> *Id.*

<sup>3</sup> *See id.* PP 23-24.

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

<sup>5</sup> *See Driftwood Pipeline LLC*, 183 FERC ¶ 61,049, at PP 61, 63 (2023); *Tex. LNG Brownsville LLC*, 183 FERC ¶ 61,047, at PP 20-21, 25 (2023); *Rio Grande LNG, LLC*,

4. Finally, I concur in the Commission's explanation that it is the Commission's order that controls and therefore any language in the Environmental Assessment (EA) that is in tension with the Commission's order is not relied on or adopted by the Commission.<sup>6</sup> We have had to resort to this language due to inconsistencies between the environmental documents issued by staff and the contents of the Commission's orders.<sup>7</sup>

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183 FERC ¶ 61,046, at PP 92-94, 101 (2023); *see also Tex. LNG Brownsville LLC*, 183 FERC ¶ 61,047 at P 20 (“although we are including the social cost of GHG figures for informational purposes, we find that because the social cost of GHGs tool was not developed for project level review and, as discussed below, does not enable the Commission to credibly determine whether the GHG emissions are significant, section 1502.21 of the [Council on Environmental Quality (CEQ)] regulations does not require its use in this proceeding”); *Rio Grande LNG, LLC*, 183 FERC ¶ 61,046 at P 92 (same) (collectively, “April Orders”).

<sup>6</sup> *See Venture Global Calcasieu Pass, LLC*, 184 FERC ¶ 61,185 at P 36 (“We note that the analysis in the EA provides substantial evidence for our conclusions in this order, but that it is the order itself that serves as the record of decision, consistent with the Commission's obligations under NEPA and the Administrative Procedure Act. For that reason, to the extent that any of the analysis in the EA is inconsistent with or modified by the Commission's analysis and findings in the order, it is the order that controls and we do not rely on or adopt any contrary analysis in the EA.”).

<sup>7</sup> *See Transcon. Gas Pipe Line Co., LLC*, 184 FERC ¶ 61,066 (2023) (Danly, Comm'r, dissenting in part at P 14) (“We have witnessed environmental documents including language that runs contrary to Commission orders.”) (citations omitted). *Compare* WBI Energy Transmission, Inc. Wahpeton Expansion Project Final Environmental Impact Statement (EIS), Docket No. CP22-466-000, at 4-118 (Apr. 7, 2023) (“The Commission stated in a recent Order that a project's share of contribution to GHG emissions at the national level provides a reasoned basis to consider the significance of the Project's GHG emissions and their potential impact on climate change; and when states have GHG emissions reduction targets, the Commission will endeavor to consider the GHG emissions of a project on those state goals (or state inventories if the state does not have emissions targets.)” (citing *N. Nat. Gas Co.*, 174 FERC ¶ 61,189, at P 29 (2021) (*Northern Natural*)), *with Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022) (Danly, Comm'r, concurring in the judgment at PP 2-3) (disagreeing with *Northern Natural* and explaining that “there is no standard by which the Commission could, consistent with our obligations under the law, ascribe significance to a particular rate or volume of GHG emissions”) (citation omitted), *and with Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (Phillips & Christie, Comm'rs, concurring at P 2) (“depart[ing] from *Northern Natural*, where the Commission stated that emissions for a project were not significant,” explaining that “[i]n *Northern Natural*, the

5. Although I support the foregoing, I do not agree with the order in its entirety and would have addressed several parts of it differently.

6. I would not have included the calculations of the social cost of GHGs in the Commission's order.<sup>8</sup> As I explained in my separate statement in *Boardwalk*, that issuance marked a change in the Commission's approach to the social cost of GHGs in its orders.<sup>9</sup> In a break with this recent practice, *Boardwalk* and the orders voted on at the September 21, 2023 Commission meeting, while including language from the April

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Commission disclosed the yearly emissions volumes and the estimated contribution to national and state emissions estimates, and then stated that, based on this record, that the emissions were not significant," and stating that "[i]t is not clear how this determination was made or how a finding of 'significance' would have affected our duties and authority under the Natural Gas Act") (citations omitted). *Compare* Boardwalk Storage Co. LLC BSC Compression Replacement Project Environmental Assessment, Docket No. CP22-494-000, at 48 (Mar. 13, 2023) ("We include a disclosure of the social cost of GHGs (also referred to as the [']social cost of carbon' [SCC]) to assess climate impacts generated by each additional metric ton of GHGs emitted by the Project."), *with Golden Pass LNG Terminal LLC*, 180 FERC ¶ 61,058, at P 24 (2022) (rejecting an argument raised in a comment that "the EA should use the social cost of GHGs (also referred to as the 'social cost of carbon' [SCC]) to assess climate impacts generated by each additional ton of GHGs that would be emitted or saved as a result of authorizing the proposed amendment, and that all GHG emissions are significant" by explaining that "we are not relying on or using the social cost of GHGs estimates to make any finding or determination regarding either the impact of the project's GHG emissions or whether the project is in the public convenience and necessity") (citations omitted). Notably, the Commission does not review or approve the contents of the EAs and EISs issued by staff. Staff, for those documents, act under the supervision of the Chairman. But great care must be exercised to ensure that environmental documents adhere to Commission precedent. *Cf. Great River Hydropower, LLC*, 135 FERC ¶ 61,151, at P 44 (2011) (explaining that if a delegated order "is inconsistent with [Commission] precedent . . . , it was wrongly decided"). *See also* 42 U.S.C. § 7171(c) (explaining that "[t]he Chairman shall be responsible *on behalf of the Commission* for the executive and administrative operation of the Commission, including functions of the Commission with respect to . . . the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff . . . .") (emphasis added).

<sup>8</sup> *See Venture Global Calcasieu Pass, LLC*, 184 FERC ¶ 61,185 at P 19.

<sup>9</sup> *See generally Boardwalk Storage Co., LLC*, 184 FERC ¶ 61,062 (2023) (*Boardwalk*) (Danly, Comm'r, concurring at PP 1-7).

Orders, *also* include calculations for the social cost of GHGs.<sup>10</sup> I do not support their inclusion in this order both because their inclusion breaks with recent practice and because the calculations are meaningless in light of the very finding, stated explicitly in the text of the Commission's order, that the social cost of GHGs cannot be used for any meaningful purpose to inform project-level analysis, including the assessment of significance. That is why, to state it again, those calculations are being disclosed solely "for informational purposes." Though I object to their inclusion, surplusage, even when *specifically declared* to be irrelevant to the reasoning of an order, is not, in itself, unlawful. The Commission has acknowledged, time and again, that the inclusion of these calculations in an environmental document is "for informational purposes" only

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<sup>10</sup> *Boardwalk*, 184 FERC ¶ 61,062 at P 24. Following the Commission's adoption at the April open meeting of our new social cost of GHGs language, our orders have not included those calculations when they have appeared in the Commission staff's environmental documents. *See Equitrans, L.P.*, 183 FERC ¶ 61,200, at P 47 (2023) (explaining that "[f]or informational purposes, Commission staff estimated the social cost of GHGs associated with reasonably foreseeable emissions from the project.") (*Equitrans*). Even before the April 20, 2023 Commission meeting, the calculations were not included in several orders where the environmental document already contained the calculations. *See, e.g., Cameron LNG, LLC*, 182 FERC ¶ 61,173, at P 37 (2023) ("Further, the EA, for informational purposes, disclosed the social cost of GHGs associated with the project's reasonably foreseeable GHG emissions.") (footnote omitted); *Commonwealth LNG, LLC*, 181 FERC ¶ 61,143, at P 75 (2022) (stating that "the final EIS disclosed the social cost of GHGs associated with the project's reasonably foreseeable GHG emissions" and not including the calculations in the order) (citation omitted). I note that there are some inconsistencies in this prior to the issuance of the orders voted on at the April open meeting, with occasional orders including the calculations. In every circumstance, though, I have objected to the inclusion of the social cost of GHGs calculations in our orders and will continue to do so. Instead, the Commission has included the disclosure of the social cost of GHGs in its orders "for informational purposes" when those calculations were not included as part of the EAs or EISs or when the calculation in the staff's environmental document included (improperly) downstream emissions that are *not* reasonably foreseeable, *e.g.*, the downstream emissions from exports. *See Tex. LNG Brownsville LLC*, 183 FERC ¶ 61,047 at P 24 (including the calculations in the remand order because they were not in the environmental document); *Rio Grande LNG, LLC*, 183 FERC ¶ 61,046 at PP 98-99 (same); *Driftwood Pipeline LLC*, 183 FERC ¶ 61,049 at PP 57 nn.109 & 112, 61-62 (disclosing a "revised estimate of the social cost of GHGs associated with the reasonably foreseeable emissions" in the Commission's order because the calculation in the final EIS included in the calculation downstream GHG emissions from exports, which are not reasonably foreseeable).

and has not included the calculations in several orders when they already appear in the NEPA document.<sup>11</sup> The Commission should not have changed course.

7. As today's order notes, Congress recently made the first revisions to the text of NEPA since the statute's enactment in the portion of the Fiscal Responsibility Act of 2023 known as the "Builder Act."<sup>12</sup> Though I appreciate that the Commission is finally acknowledging these revisions in its order, the Commission should not be so reticent to pursue substantial changes to the process by which it discharges its duties under NEPA. The Builder Act does not include any sort of implementation period, so its provisions became effective when the President signed the Fiscal Responsibility Act into law. The order hints that the Commission will wait for CEQ to offer its interpretation of this text, but there is certainly no legal reason that it must (or can) do so. Whether CEQ's interpretations of NEPA in guidance documents or regulations bind independent agencies is a "thorny question,"<sup>13</sup> but there is reason to doubt that they do.

8. Among other revisions, the Builder Act changed the requirement that agencies include in environmental documents an analysis of the "environmental impact of the proposed action"<sup>14</sup> to an analysis of the "reasonably foreseeable environmental effects of the proposed *agency* action."<sup>15</sup> In my view, Congress' amendments reaffirm *Public Citizen*<sup>16</sup> which held that under NEPA, agencies are only obligated to consider environmental effects for which the *agency action itself* is the legal proximate cause.<sup>17</sup>

9. Given this new statutory language, FERC has an opportunity to clarify the appropriate metes and bounds of its obligations under NEPA in light of the jurisdictional limits of the Natural Gas Act (NGA). Such clarification is particularly called for given

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<sup>11</sup> *Equitrans, L.P.*, 183 FERC ¶ 61,200 at P 47.

<sup>12</sup> See Fiscal Responsibility Act of 2023, Pub. L. 118-5, 137 Stat 10, at § 321 (June 3, 2023) (providing the "Builder Act") (Fiscal Responsibility Act).

<sup>13</sup> *Oglala Sioux Tribe v. U.S. Nuclear Regulatory Comm'n*, 45 F.4th 291, 300 (D.C. Cir. 2022) (citing *Food & Water Watch v. U.S. Dep't of Agric.*, 1 F.4th 1112, 1119 (D.C. Cir. 2021) (Randolph, J., concurring) (questioning CEQ's authority to promulgate binding regulations)).

<sup>14</sup> 42 U.S.C. § 4332(c)(i) (1970).

<sup>15</sup> 42 U.S.C. § 4332(c)(i) (2023) (emphasis added).

<sup>16</sup> *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752 (2004) (*Public Citizen*).

<sup>17</sup> See 541 U.S. at 767.

the U.S. Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) mischaracterization of the scope of FERC's authority in *Sabal Trail*<sup>18</sup> and its progeny. *Sabal Trail* miscasts FERC's analysis of the public convenience and necessity under section 7 of the NGA<sup>19</sup> to hold that the Commission has an obligation to consider the GHG emissions from the end use of the gas transported by certificated pipelines.<sup>20</sup> The NGA, however, confers no authority upon FERC to regulate the end use or local distribution of natural gas.<sup>21</sup> Rather, when deciding whether to approve a pipeline, the Commission determines whether there is a demonstrated need for interstate natural gas

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<sup>18</sup> See *Sierra Club v. FERC*, 867 F.3d 1357 (*Sabal Trail*).

<sup>19</sup> 15 U.S.C. § 717f.

<sup>20</sup> See *Sabal Trail*, 867 F.3d at 1373 (“Because FERC could deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment, the agency is a ‘legally relevant cause’ of the direct and indirect environmental effects of pipelines it approves. *Public Citizen* thus did not excuse FERC from considering these indirect effects.”) (citation & footnote omitted). I note, however, that *National Cable & Telecommunications Association v. Brand X Internet Services* holds that even following a binding judicial issuance, agencies remain free in subsequent proceedings to offer reasonable interpretations of the jurisdiction conferred upon them by their organic statutes. 545 U.S. 967, 982-83 (2005) (*Brand X*). This proposition, for better or for worse, is now black letter administrative law. Far from flouting the authority of the courts, I suggest no more than that the Commission act within the remit confirmed in *Brand X* by offering a reasonable interpretation of our statute which would limit our jurisdiction consistent with the NGA's purpose and its plain text. See 15 U.S.C. § 717(b) (listing the exemptions from the Commission's jurisdiction). And we can do so secure in the knowledge that such an interpretation—again, for better or for worse—will be accorded the deference guaranteed by *Chevron*. See *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984) (*Chevron*) (“[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.”).

<sup>21</sup> See 15 U.S.C. § 717(b) (“The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation, *but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.*”) (emphasis added).

transportation capacity. Based on this misunderstanding of FERC's authority, the *Sabal Trail* court concludes that FERC must include estimates of the emissions from the end use of the gas and goes even further, in *dicta*, to assert, without any explanation, that FERC has "legal authority to mitigate" the environmental effects that result from that end use.<sup>22</sup>

This mistake provided one (albeit insufficient) rationale for the Commission's now-draft Updated Certificate Policy Statement<sup>23</sup> and Interim GHG Policy Statement,<sup>24</sup> which envisioned a mitigation scheme for the GHG emissions from the end use of gas transported on the interstate natural gas system.<sup>25</sup> The Builder Act offers the Commission a rare opportunity to clarify the limits of its authority and move beyond the shadow that the now "draft" policy statements continue to cast over the development of critically needed natural gas infrastructure.

For these reasons, I respectfully concur in part and dissent in part.

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James P. Danly  
Commissioner

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<sup>22</sup> *Sabal Trail*, 867 F.3d at 1374.

<sup>23</sup> *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Updated Certificate Policy Statement).

<sup>24</sup> *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,108 (2022) (Interim GHG Policy Statement).

<sup>25</sup> See *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197, at P 2 (2022) (converting the two policy statements issued on February 18, 2022, Updated Certificate Policy Statement, 178 FERC ¶ 61,107 and Interim GHG Policy Statement, 178 FERC ¶ 61,108 to "draft" policy statements).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Venture Global Calcasieu Pass, LLC

Docket No. CP22-25-000

(Issued September 22, 2023)

CLEMENTS, Commissioner, *dissenting in part*:

1. I concur with the result of today's Order, but dissent from its discussion regarding the Commission's inability to assess the significance of the impacts of greenhouse gas (GHG) emissions.<sup>1</sup> The majority's insistence that there are no acceptable tools for determining the significance of GHG emissions remains unsupported and gains nothing through reflexive repetition in virtually every recent Commission order issued under sections 3 and 7 of the Natural Gas Act.

2. In my recent concurrence in *Transco*, I explained the history of the language in Paragraphs 23 and 24 of the Order,<sup>2</sup> which is known in the Commission's esoteric parlance as the "*Driftwood* compromise."<sup>3</sup> In *Driftwood*, the majority adopted unheralded new language declaring that there are no methods for assessing the significance of GHG emissions, and particularly criticizing the Social Cost of GHGs protocol.<sup>4</sup> I have dissented from this language in *Driftwood* and subsequent orders for two reasons: (1) it reflects a final Commission decision that it cannot determine the significance of GHG emissions, despite the fact the Commission has never responded to comments in the GHG Policy Statement docket<sup>5</sup> addressing methods for doing so; and (2) the language departs from previous Commission precedent without reasoned

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<sup>1</sup> *Venture Glob. Calcasieu Pass*, 184 FERC ¶ 61,185, at PP 23-24 (2023) (Order).

<sup>2</sup> *See Transcon. Gas Pipe Line Co.*, 184 FERC ¶ 61,066 (2023) (Clements, Comm'r, concurring at PP 2-3) (*Transco*).

<sup>3</sup> *See id.* (Phillips, Chairman, and Christie, Comm'r, concurring at PP 1-2).

<sup>4</sup> *See Driftwood Pipeline LLC*, 183 FERC ¶ 61,049, at PP 61, 63 (2023) (*Driftwood*).

<sup>5</sup> Docket No. PL21-3.

explanation, thereby violating the Administrative Procedure Act.<sup>6</sup> I dissent from Paragraphs 23 and 24 of this Order for the same reasons.

3. The majority insists on including the misguided *Driftwood* compromise language in orders irrespective of whether any intervenor or commentor has argued that the Commission must use the Social Cost of GHGs protocol to assess the significance of GHG emissions. No one raised that argument in this docket, making inclusion of the *Driftwood* language in the Order unnecessary. The majority omitted the language in *Transco*, apparently reflecting its understanding that there would be no adverse legal consequences. Predictably, leaving the language out allowed me to concur in *Transco*.<sup>7</sup> The effect of inserting the gratuitous language in the Order here is equally predictable.

4. As I have said before, I do not know whether the Social Cost of GHGs protocol or another tool can or should be used to determine significance. That is because the Commission has not seriously studied the answer to that question. Rather, the majority simply decided there is no acceptable method, with no explanation of why the Commission departed from the approach taken in earlier certificate orders.<sup>8</sup> I reiterate that the Commission should decide the important unresolved issues relating to our assessment of GHG emissions through careful deliberation in a generic proceeding with full transparency.

For these reasons, I respectfully dissent in part.

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<sup>6</sup> See *Driftwood*, 183 FERC ¶ 61,049 (Clements, Comm'r, dissenting at PP 2-3 & n.161); see also *Equitrans, L.P.*, 183 FERC ¶ 61,200 (2023) (Clements, Comm'r dissenting at PP 2-3); *Commonwealth LNG, LLC*, 183 FERC ¶ 61,173 (2023) (Clements, Comm'r, dissenting at PP 5-8); *Rio Grande LNG, LLC and Rio Bravo Pipeline Co., LLC*, 183 FERC ¶ 61,046 (2023) (Clements, Comm'r, dissenting at PP 14-15); *Texas LNG Brownsville LLC*, 183 FERC ¶ 61,047 (2023) (Clements, Comm'r, dissenting at PP 14-15).

<sup>7</sup> See *Transco*, 184 FERC ¶ 61,066 (Clements, Comm'r, concurring at P 5).

<sup>8</sup> Before its decision in *Driftwood*, the Commission had explained that it was not determining the significance of GHG emissions because the issue of how to do so was under consideration in the GHG Policy Statement docket. See, e.g., *Transcon. Gas Pipe Line Co.*, 182 FERC ¶ 61,006, at P 73 & n.174 (2023); *Columbia Gas Transmission, LLC*, 182 FERC ¶ 61,171, at P 46 & n.93 (2023). To depart from prior precedent without explanation violates the Administrative Procedure Act. See, e.g., *West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 17 (D.C. Cir. 2014) (“[T]he Commission cannot depart from [prior] rulings without providing a reasoned analysis. . . .”) (citations omitted).

Docket No. CP22-25-000

- 3 -

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Allison Clements  
Commissioner

Document Content(s)

CP22-25-000.docx.....1