

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Driftwood LNG LLC
Driftwood Pipeline LLC

Docket Nos. CP17-117-001
CP17-118-001

MOTION TO INTERVENE AND PROTEST OF SIERRA CLUB

FERC approved the Driftwood LNG project on April 18, 2019. That order required the facilities to be fully completed and available for service within seven years. Four years later, Driftwood is still struggling to finance the project or pursue it to completion. Driftwood therefore requests a 36-month extension, with project completion and service in April 2029.¹

Driftwood provides only one reasons for its delay: the COVID-19 pandemic's impact on global LNG markets and supply chains. FERC should reject Driftwood's stale attempt to blame the pandemic because Driftwood's struggles are actually self-inflicted. As a result, FERC should reject Driftwood's claim that it has "good cause" for an extension, pursuant to 18 C.F.R. § 385.2008.

The pandemic has long subsided, as Driftwood acknowledges. And even if changed market demand made the project less desirable *three years ago*, it did not "prevent" construction in the way that a missing permit does. *Constitution Pipeline Co.*, 165 FERC ¶ 61,081 P14, P9 n.32 (2018). Yet, Driftwood fails to justify why it failed to start construction before the start of the pandemic or why it waited nearly a year and a half after the pandemic's impacts were subsiding to start site

¹ Driftwood LNG, LLC, Request for Extension of Time, Docket Nos. CP17-117-000 & CP17-118-000 (Oct. 4, 2023) [hereinafter "Extension Application"].

preparation work. Driftwood also fails to acknowledge that the pandemic was irrelevant to its struggle to attract customers and investors: Driftwood obtained and then lost multiple delivery contracts well after COVID-19. Driftwood also has yet to reach a final investment decision despite starting site preparation and construction over a year ago. Driftwood's inability to demonstrate a causal connection between its delay and COVID-19 demonstrates that the pandemic is a red herring. As a result, Driftwood's cursory application falls far short of establishing the "good cause" necessary to extend its in service date.

In the alternative, changes in the global energy market and expectations regarding future demand constitute a change in circumstances that requires FERC to revisit prior determinations about project consistency with the public interest. Notably, FERC cannot simply assume that the global LNG market is reverting to the pre-pandemic *status quo*. To the contrary, Russia's invasion of Ukraine has accelerated global efforts to transition off of fossil fuels entirely. Driftwood's suggestion that European demand demonstrates continuing need for the project is illogical: if FERC grants Driftwood's extension request, Driftwood will have at most a year before European commitments to cut gas use kick in. Longer term, these developments demonstrate that there will be no need for the incremental export capacity from Driftwood over the 20+ project lifespan.

For these reasons and the others described below, Sierra Club moves to intervene in this docket and protests the requested extension. The extension should

be denied, or in the alternative, cannot be granted without additional analysis and process.

Motion to Intervene

As explained in *Adelphia Gateway, LLC*, 178 FERC ¶ 61,030, P10 (2022), FERC's policy is to allow any entity to intervene in response to a request to extend a certificate or authorization deadline regardless of party status in original proceedings. Here, Sierra Club should be permitted to intervene because it readily satisfies the elements required for intervention.²

Sierra Club is the nation's largest grassroots environmental organization. It is dedicated to the protection of the natural environment and public health and has a longstanding interest and expertise in the development and use of natural gas resources in Louisiana and in or around the Gulf of Mexico. Accordingly, Sierra Club's intervention is in the public interest.³ Sierra Club has experience with FERC's obligations and authorities regarding greenhouse gas emissions and other environmental impacts of facilities that FERC regulates. As FERC works to develop its policy in these areas, FERC and the public will benefit from Sierra Club's participation. Moreover, Sierra Club provides an important perspective on FERC procedures and Sierra Club's participation will benefit the public as FERC develops post-*Algonquin* procedures for handling extension requests, interventions, *etc.*

² See 18 C.F.R. § 385.214.

³ 18 C.F.R. § 385.214(b)(2)(iii).

Separately and alternatively, Sierra Club should be granted intervention because its' members interests will be directly affected by this proceeding.⁴ As of September 30, 2023, Sierra Club has nearly 2,900 members in Louisiana including more than 50 members in Calcasieu Parish. Many of these members live, work, and recreate in areas that would be impacted by Driftwood. Unless FERC grants the instant extension request, the project will not be built. Building and operating the project would expose Sierra Club members to air pollution, visual and noise impacts, vessel traffic that interferes with Sierra Club members' marine recreation, and other impacts.

Sierra Club has demonstrated the vitality of these interests in many ways, including its participation in prior proceedings concerning the project. More broadly, Sierra Club runs national advocacy and organizing campaigns dedicated to reducing American dependence on fossil fuels, including natural gas, and to protecting public health. These campaigns, including its Beyond Coal and Beyond Dirty Fuels campaigns, are dedicated to promoting a swift transition away from fossil fuels and towards reducing global greenhouse gas emissions.

Sierra Club therefore satisfies the conditions for intervention both because it is in the public interest and as a representative for interested consumers.⁵

⁴ 18 C.F.R. § 385.214(b)(2)(ii).

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

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

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

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

Protest

A. Driftwood Has Not Demonstrated Good Cause for the Extension

“Good cause” for an extension requires an applicant to show that it “diligently pursu[ed] completion of the project” and made “good faith efforts to meet its deadline,” but could not do so due to circumstances outside the applicant’s control.⁶ For example, FERC has issued extensions where a permit was missing—because it either had not yet been issued despite the applicant’s diligent efforts, or because it

⁶ *Const. Pipeline Co., LLC*, 169 FERC ¶ 61,102, PP21-22 (Nov. 8, 2019).

had been vacated by litigation—and this missing permit meant the applicant was legally prohibited from completing the project.⁷ Conversely, there is not good cause for an extension where an applicant “set its certificate on a shelf and let it lie dormant,” rather than being “actively engaged in preparations in anticipation of commencing construction.”⁸

Here, Driftwood has not established that it made the requisite good faith effort to satisfy its deadline or that it was prevented from satisfying its deadline.

1. Driftwood Has Not Established It Made a Good Faith Effort to Complete the Project Within the Allotted Time

Driftwood has had ample opportunity to construct its project in time to satisfy its deadline. It first applied for FERC authorization on March 31, 2017.⁹ On November 10, 2017, Driftwood engaged Bechtel Energy Inc. as its engineering, procurement, and construction (“EPC”) contractor.¹⁰ After the environmental review process, FERC authorized the project on April 18, 2019.¹¹ Therein, FERC, as it does with every similar authorization order, set a construction deadline by determining

⁷ See, e.g., *Const. Pipeline Co., LLC*, 165 FERC ¶ 61,081, P9 & n.32 (Nov. 5, 2018) (collecting cases).

⁸ *Chestnut Ridge Storage*, 139 FERC ¶ 61,149, P8 (May 23, 2012).

⁹ *Driftwood LNG, LLC*, Application for Authorizations Under the Natural Gas Act, Docket Nos. CP17-117-000, CP17-118-000, Accession 20170331-5055 (Mar. 31, 2017) [hereinafter “Initial Application”].

¹⁰ Extension Application at 1.

¹¹ *Driftwood LNG LLC & Driftwood Pipeline LLC*, 167 FERC ¶ 61,054 (2019) [hereinafter “Authorization Order”].

“a reasonable period of time” based on project specific factors.¹² This deadline is April 18, 2026 or seven years from the authorization order.¹³ Driftwood initially estimated that construction would take 86 months,¹⁴ requiring Driftwood to commence construction shortly after receiving its authorization—well before the COVID-19 pandemic that Driftwood now blames for its delay. Driftwood provides no explanation for why it did not start construction in 2019, before the pandemic.

Driftwood now requests a 36-month extension of its in-service deadline, without justifying the duration of that extension. Driftwood notes that it has secured long lead time equipment,¹⁵ but fails to provide *any details* regarding the delivery schedule or how long installation will take. The only information Driftwood does provide is that it “anticipates that it will need an additional 36 months to complete construction.” If Driftwood only requires an additional 36 months from now, it could have met its April 2026 deadline by commencing site preparation in December 2021.¹⁶ Yet, Driftwood did not purport to begin construction until April 4, 2022, five months too late. Driftwood provides no explanation for this delay.

¹² Freeport LNG Development, L.P. & FLNG Liquefaction 4, LLC, 181 FERC ¶ 61,023, P7 (Oct. 13, 2022).

¹³ *Id.* P122(B)(1).

¹⁴ *See* Authorization Order P110.

¹⁵ Extension Application at 4.

¹⁶ Extension Application at 2 (“Over the past 17 months, construction has progressed continuously.”), 4 (“Driftwood anticipates that it will need an additional 36 months to complete construction of ... and place the [p]roject in service.”). With a total construction timeline of 53 months, commencing site preparation and construction by December 2021 would have allowed Driftwood to meet its April 2026 in-service deadline.

There is no reason to think that beginning construction by December 2021 was unreasonable. Driftwood vaguely references the COVID-19 pandemic's impact on logistics and supply chains as justifying its delay in starting construction.¹⁷ But Driftwood secured its EPC contractor roughly *two and a half years* before the pandemic began. And that contractor was available to perform “a wide variety of responsibilities, including the duties to provide for the design, engineering, procurement, and construction of the facility; to prepare start up procedures; to conduct performance tests; to create operating manuals; and to train people to operate the facility.”¹⁸ Driftwood provides no explanation for why it failed to utilize those services between receiving its FERC authorization in April 2019 and the start of the COVID-19 pandemic in March 2020. Nor does Driftwood assert that supply-chain conditions prevented it from obtaining any specific materials before December 2021, let alone explain what changed to five months later. Moreover, Driftwood fails to address why other developers were able to proceed with construction during the pandemic but Driftwood was not.

Driftwood similarly fails to justify its supposedly long-lead-time contracts for certain equipment: while Driftwood notes that the contract for refrigeration units sets a long lead time for delivery, it does not assert that COVID-19 caused that long lead time, let alone explain why it failed to pursue obtaining those units earlier, or

¹⁷ Extension Application at 3.

¹⁸ Contract Definition, *Black's Law Dictionary* (11th ed. 2011), available at Westlaw.

describe any steps it took to secure alternative supplies on a faster schedule.¹⁹ If the pandemic did in fact cause the longer lead times, Driftwood does not explain why it failed to anticipate those lead times several years into the pandemic. Without these explanations, Driftwood cannot demonstrate that it made a good faith effort to *satisfy its deadline*, rather than to simply complete the project at an indefinite point in the future.²⁰

For the same reason, Driftwood’s other purported efforts—*e.g.*, receiving and maintaining permits, investing in the project, making progress on commercialization—are irrelevant to FERC’s good cause inquiry here.²¹ When FERC determines that a developer made good faith efforts to satisfy its deadline, it does so on the basis that the developer pursued all available avenues for progress.²² Again, FERC’s good cause standard requires the developer to make a good faith attempt to meet the deadline rather than a good faith attempt to complete the

¹⁹ Although we lack details about the negotiation to purchase this equipment or the contract terms, it is possible that Driftwood had options to secure a faster timeline and/or that Driftwood intentionally sought out a longer timeline, with cancellation options, in order to provide itself more time to decide whether to pursue the project.

²⁰ *Const. Pipeline Co., LLC*, 169 FERC ¶ 61,102, PP21-22 (Nov. 8, 2019); *accord* Extension Application at 4.

²¹ Extension Application at 3-4.

²² *See Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,026, PP13-14 (Oct. 9, 2020) (explaining that the developer had “actively worked to restore *all* permits necessary for construction.”); *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,138, P13 (Feb. 20, 2020) (explaining that the developer worked to obtain “all necessary approvals”); *Const. Pipeline Co., LLC*, 165 FERC P 61,081, P25 (Nov. 5, 2018) (same); *Arlington Storage Co., LLC*, 155 FERC ¶ 61,165, PP11, 13 (May 16, 2016) (explaining that the developer was working to remove the only remaining barrier to construction). Notably, FERC took a different approach with Freeport Train 4, which is currently being litigated. *Sierra Club v. FERC*, Nos. 23-1031 & 23-1059 (consolidated) (D.C. Cir.) (pending oral argument).

project at some indefinite point. Thus, these other purported actions do not establish good faith efforts where Driftwood simply failed, without any explanation, to begin construction early enough to satisfy its deadline.

2. Driftwood Has Not Established That It Was Prevented from Satisfying Its Deadline

Insofar as the two elements of FERC's good cause formulation are analytically distinct, even if FERC could properly find that Driftwood made a good faith effort to satisfy its deadline, FERC still cannot determine that Driftwood demonstrated good cause for an extension because Driftwood has not demonstrated it was prevented from satisfying its deadline.²³ Driftwood solely blames "[g]lobal upheaval stemming from the COVID-19 pandemic [that] caused cascading market and logistical impacts on workforce, safety, supply chain, and investment in infrastructure projects."²⁴ This argument is meritless.

At the threshold, Driftwood's vague allegations fail to identify a causal chain between the COVID-19 pandemic and its inability to satisfy its deadline. Generally, a developer must identify specific impacts from a given circumstance and explain how those impacts relate to the delay. For example, in *In re NTE Conn., LLC*, the D.C. Circuit stayed FERC's revocation of a developer's authorization to sell

²³ See *Mountain Valley Pipeline*, 173 FERC ¶ 61,026, P11 (Oct. 9, 2020).

²⁴ Extension Application at 3. In a brief footnote, Driftwood also argues that it experienced "headwinds with respect to Driftwood's ability to secure commercial and financial commitments for the Project" from a legal challenge to its Clean Water Act Section 404 Permit. *Id.* at 3 n.11. But Driftwood continued construction while that lawsuit was pending, so Driftwood's assertion that the litigation hampered its ability to proceed with the project is a red herring.

electricity premised on the developer's inability to satisfy its construction deadline.²⁵ The court only did so because of the case-specific impacts that COVID-19 had on the developers efforts to bring the project on line:

[T]he arrival of the COVID-19 pandemic in early 2020 caused further complications. Disruptions to supply chains and labor markets required NTE and its potential investors to frequently recalculate that the project's shifting costs, while pandemic related delays slowed NTE's ability to secure necessary construction permits. Because of these obstacles, NTE was repeatedly forced to revise its timeline for the Killingly plant's construction.²⁶

Driftwood provides no such specifics here. Without knowing how Driftwood was impacted, it is impossible to determine that Driftwood was prevented from satisfying its deadline.

Rather than providing specifics, Driftwood vaguely asserts that COVID-19 caused market-related impacts that are now easing.²⁷ But Driftwood's argument is well past its expiration date: any COVID-19 related market impacts began waning *over two and a half years ago*, in early 2021.²⁸ Even if it wasn't stale, Driftwood

²⁵ 26 F.4th 980, 986 (D.C. 2022).

²⁶ *Id.* See also *ISO New England, Inc.*, 178 FERC ¶ 61,001, P13 (2022) (providing more specific COVID-19 related impacts, *e.g.*, COVID-19 "affected NTE's schedule due to the inability to access the site during legally imposed stay-at-home orders ... [and] key ... employees becoming ill.").

²⁷ Extension Application at 3-4.

²⁸ International Energy Agency, *World Energy Outlook 2021* at 88, 90-91, available at <https://iea.blob.core.windows.net/assets/4ed140c1-c3f3-4fd9-acae-789a4e14a23c/WorldEnergyOutlook2021.pdf> (attached) ("Worldwide energy demand in 2021 is set to recover the ground that was lost the previous year, with a 4% increase returning global energy demand to pre-pandemic levels.").

began developing the project and FERC approved it well before COVID-19 had *any impacts* on relevant markets.²⁹ Even if market conditions may have impacted the wisdom of proceeding with the project *in 2020*, those concerns are irrelevant to Driftwood's inaction before the pandemic, between April 2019 and March 2020. And Driftwood does not identify when it believes the pandemic's impacts abated or explain why it could begin construction in April 2022 but not earlier.

Regardless, nothing in the application demonstrates that the pandemic impacted Driftwood's *ability* to proceed with the project, even if it impacted the *wisdom* of doing so.³⁰ In fact, Driftwood began construction without reaching a final investment decision, demonstrating that it was capable of progressing the project without financial certainty.³¹

Driftwood now claims that it is making progress on commercializing the project and securing offtake agreements.³² Yet, Driftwood fails to acknowledge that after 2020, Driftwood obtained four offtake contracts but, for reasons unexplained here, its customers canceled those contracts in 2022 and 2023. For example, Driftwood entered into an agreement with Gunvor Singapore Pte Ltd in May 2021,

²⁹ Authorization Order at 1.

³⁰ Driftwood also moved from site preparation to construction activities despite pending litigation, demonstrating that the litigation had no bearing on Driftwood's construction activities.

³¹ Tellurian starts Driftwood LNG construction, Bechtel (Mar. 28, 2022) (attached) ("Beginning construction now allows Tellurian to deliver upon our robust schedule for first LNG in 2026 while we complete the project financing.")

³² Extension Application at 4.

but lost that contract in August 2023.³³ Driftwood's other export contracts terminated in 2022.³⁴ These post-COVID-19 developments undermine Driftwood's argument that COVID-19 was responsible for its lack of progress.

Driftwood's argument is also undermined by the progress that other developers made during Driftwood's long period of inaction. Other U.S. LNG facilities announced numerous offtake agreements from December 2020 through 2021.³⁵ And other developers constructed their projects through COVID-19 by creating COVID-19 safety procedures. For example, in March 2020, Golden Pass LNG explained to FERC that it was creating a COVID-19 response plan and continue with project construction.³⁶ Golden Pass LNG continued implementing the

³³ <https://www.energy.gov/sites/default/files/2023-09/DWLNG%20Contract%20Status%20Update.pdf> (attached) (Sept. 5, 2023).

³⁴ <https://www.energy.gov/fecm/articles/driftwood-lng-terminal> (attached).

³⁵ *See, e.g.*, <https://www.energy.gov/sites/default/files/2023-05/13.%20NFE%2012.20.2020.pdf> (attached) (contract dated Dec. 20, 2020); <https://www.energy.gov/sites/default/files/2021-07/Engie%20DOE%20LNG%20submission%20for%20CM%20%20CCL.pdf> (attached) (July 23, 2021); https://www.energy.gov/sites/default/files/2021-08/NFE%20SPA%20-%20DOE%20LNG%20submission%20for%20SPL%20Amended_0.pdf (attached) (Aug. 11, 2021); <https://www.energy.gov/sites/default/files/2022-11/VG%20Plaquemines%20-%20Sinopec%20SPAs%20filing%20-%20Separated%201.pdf> (attached) (contract dated Sept. 1, 2021); https://www.energy.gov/sites/default/files/2022-11/VG%20Plaquemines%20-%20VG%20Commodities%20SPAs%20Filing_0%20-%20Separated%201.pdf (attached) (contract Sept. 14, 2021); <https://www.energy.gov/sites/default/files/2021-12/Sinochem%20SPA%20-%20DOE%20LNG%20submission%20for%20SPL.pdf> (attached) (contract Dec. 1, 2021). *See also, e.g.*, <https://venturegloballng.com/press/venture-global-lng-and-cnooc-gas-power-announce-lng-sales-and-purchase-agreements> (attached) (Dec. 21, 2021).

³⁶ Golden Pass LNG Terminal LLC and Golden Pass Pipeline LLC submit GPX Monthly Status Report No. 38 for March, 2020, Accession 20200408-5002, Docket Nos. CP14-517-000 & CP14-518-000 (Apr. 7, 2020).

COVID-19 response plan and constructing the project through the end of 2021.³⁷

Driftwood does not explain why these other projects were able to make such progress notwithstanding COVID-19 while it could not.

3. Driftwood Is to Blame for Its Own Lack of Progress

Because it is clear that COVID-19 did not cause the project to stall, the obvious question is what *did* cause Driftwood's failure to satisfy its deadline? The answer appears to be that the delay is self-inflicted by Driftwood's a bad business model and poor management.³⁸

As noted, Driftwood currently has no buyers for its LNG exports after losing its five long-term export contracts.³⁹ Driftwood does not assert—nor could it—that the COVID-19 pandemic caused it to lose these contracts: Driftwood lost four of its contracts in 2022 and the final contract in August 2023.⁴⁰ Long-term delivery

³⁷ Golden Pass LNG Terminal LLC et al submits Monthly Export Terminal Project Status Report No. 78 for reporting period December 1 through 15, 2021, Accession 20211220-5094, Docket Nos. CP14-517-000 & CP14-518-000 (Dec. 20, 2020); Golden Pass LNG Terminal LLC et. al. submits Export Terminal Project Status Report No. 79 for the period of December 15 through 31, 2021, Accession 20220105-5055, Docket Nos. CP14-517-000 & CP14-518-000 (Jan. 5, 2022).

³⁸ Justin Jacobs, *US Gas Export Pioneer's Venture Flounders Amid Ravenous Demand*, FINANCIAL TIMES (Sep. 25, 2022), <https://www.ft.com/content/689c3e6e-a529-49a1-a0f0-820f4f7d6830> (attached).

³⁹ Robert Stewart, *Driftwood LNG's last export contract craters, leaving \$25 billion project's future in doubt*, THE ADVOCATE (Aug. 10, 2023), https://www.theadvocate.com/baton_rouge/news/business/driftwood-lng-has-lost-its-last-export-contract/article_b201915a-36d0-11ee-968d-ff3450e9a713.html (attached).

⁴⁰ Department of Energy, Driftwood LNG Terminal Long-Term Contract Information and Registrations at U.S. LNG Export Facilities, <https://www.energy.gov/fecm/articles/driftwood-lng-terminal> (attached); *Tellurian Says Driftwood LNG Deals with Shell, Vitol Scrapped*, REUTERS (Sept. 23, 2022), <https://www.reuters.com/business/energy/tellurian-says-driftwood-lng-deals-with-shell-vitol-scrapped-2022-09-23/> (attached); Robert Stewart, *Driftwood LNG's last export contract*

contracts are foundational to securing financing and investors, so Driftwood's current lack of contracts raises serious questions about the project's viability.

Given this lack of export contracts, Tellurian is pursuing a novel financing strategy.⁴¹ Tellurian is looking for equity partners to invest up to 55% of the capital, a much higher percentage than Driftwood's peer companies.⁴² This is challenging in light of Tellurian's risk profile: at least one investor withdrew from its Tellurian stock holdings in February 2023 due to concerns about risk and governance in light of board member departures, a stretched balance sheet, and contract terminations.⁴³ Last year, Entami Corp., a Driftwood shareholder that "specializes in event-driven and distressed-debt investing," also demanded that Tellurian put itself up for sale, claiming that the company lacks the expertise, financial resources, and "institutional credibility" to complete the LNG facility.⁴⁴ And according to at least one recent report, the co-founder and executive chairman of Driftwood's corporate parent, Tellurian, Inc., intermingled personal and corporate loans, raising

craters, leaving \$25 billion project's future in doubt, THE ADVOCATE (Aug. 10, 2023), https://www.theadvocate.com/baton_rouge/news/business/driftwood-lng-has-lost-its-last-export-contract/article_b201915a-36d0-11ee-968d-ff3450e9a713.html (attached).

⁴¹ Geert De Lombaerde, *Tellurian drops Driftwood financing plan, contracts canceled*, OIL & GAS JOURNAL (Sept. 23, 2022), <https://www.ogj.com/pipelines-transportation/lng/article/14283232/tellurian-drops-driftwood-financing-plan> (attached).

⁴² Ruth Liao, *Onetime Gas Billionaire Now Mired in Court Over His Personal Finances*, BLOOMBERG (June 22, 2023), <https://www.bloomberg.com/news/articles/2023-06-22/gas-tycoon-s-28-billion-bet-is-on-thin-ice-as-clash-over-personal-loans-simmers> (attached).

⁴³ *Id.*

⁴⁴ Jill R. Shah, *Tellurian Investor Demands Sale of LNG Developer, Cites Nepotism*, BLOOMBERG LAW (Sept. 16, 2022), <https://news.bloomberglaw.com/esg/tellurian-investor-demands-sale-of-lng-developer-cites-nepotism> (attached).

concerns about conflicts of interest.⁴⁵ In 2022, Driftwood also withdrew a \$1 billion high-yield bond sale, “put[ting] in jeopardy the financial ability to deliver gas on the schedule that we were hoping to stick to.”⁴⁶

This extensive list of Driftwood’s financial and governance woes demonstrate that Driftwood’s inability to meet its 2026 in-service deadline is self-inflicted. FERC should therefore reject Driftwood’s attempt to blame the COVID-19 pandemic.

B. In the Alternative, Even If FERC Concludes That Driftwood Has Shown Good Cause, FERC Must Still Revisit Numerous Findings Underlying Its Authorization

1. Review of An Extension Requires Compliance With NEPA

NEPA applies to all major federal actions with the potential to significantly affect the environment. The decision to grant an extension request is such an action.⁴⁷ If the extension request is denied, many of the adverse impacts caused by the project will not occur.

This does not mean that FERC must start with an entirely blank slate when reviewing the extension request. FERC can “tier” off the prior environmental assessment.⁴⁸ However, when tiering off a prior document, agencies must affirm the

⁴⁵ *Onetime Gas Billionaire Now Mired in Court Over His Personal Finances*, BLOOMBERG, *supra* note 42.

⁴⁶ Jill R. Shah, *Tellurian Plunges After Axing \$1 Billion Bond for LNG Plant*, BLOOMBERG (Sept. 19, 2022), <https://www.bloomberg.com/news/articles/2022-09-19/tellurian-pulls-1-billion-bond-deal-leaving-lng-site-in-limbo> (attached).

⁴⁷ See *Pitt River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 784 (9th Cir. 2006) (extension of leases that would otherwise have expired was major federal action requiring NEPA analysis).

⁴⁸ 40 C.F.R. § 1501.11(a).

validity of that document—an agency cannot uncritically or unquestioningly adopt it, and that affirmation is not limited to issues where circumstances may have changed.⁴⁹ Here, the prior EIS contains assertions that FERC has elsewhere acknowledged are no longer valid, including the conclusion that FERC cannot determine the significance of the project’s direct greenhouse gas emissions.⁵⁰

In the alternative, even if granting an extension request would not be a major federal action under NEPA, FERC would still be required to determine whether FERC’s prior NEPA analysis required supplementation.⁵¹ That analysis would focus on new information or changed circumstances both of which are present here. Supplementation would be required to address impacts on the newly listed Rice’s whale⁵² and this species’ ability to withstand the project’s impacts. Supplementation would also be required to address the fact that the federal government has adopted or affirmed tools that can illustrate the significance of greenhouse gas emissions that FERC dismissed or were unavailable when it performed its initial NEPA analysis. These tools include federal greenhouse gas

⁴⁹ See *N. Alaska Env’t Ctr. v. U.S. Dep’t of the Interior*, 983 F.3d 1077, 1091 (9th Cir. 2020) (“*Pitt River Tribe* illustrates that the adequacy of analysis in previous NEPA documents for the present action may influence whether we construe those NEPA documents as covering the present action. Relatedly, *Pitt River Tribe* shows that adequacy may remain relevant even after the statute of limitations has run.”).

⁵⁰ Driftwood LNG Project, Final Environmental Impact Statement, FERC/FEIS-0284F at 5-16 (Jan. 2019).

⁵¹ *N. Alaska Env’t Ctr.*, 983 F.3d at 1093.

⁵² 86 Fed. Reg. 47,022 (Aug. 23, 2021).

emission targets⁵³ and reinstatement of the interagency working group on the social cost of carbon.⁵⁴

An additional source of new information FERC must consider is new information concerning climate change and the total greenhouse gas emissions (*i.e.*, upstream, downstream, and direct emissions) of LNG projects. One recent report, for example, estimates the lifecycle methane emissions from LNG exports and climate damages stemming from US fossil fuel exports.⁵⁵ Similarly, three documents from the International Panel on Climate Change’s (“IPCC”) 6th Assessment Report emphasize the inevitability of a climate-destabilized future absent urgent and aggressive carbon emission reductions, highlighting the need to curb GHG emissions *now*.⁵⁶ Evidence demonstrating the link between human GHG

⁵³ The United States has joined the Glasgow Pact which calls for net-zero emissions by 2050 and a 45% reduction in emissions by 2030—the type of target that FERC claimed was missing before. Similarly, the Biden administration has rejoined the Paris Agreement and committed to reduce U.S. greenhouse gas emissions by 50-52% from 2005 levels by 2030. Executive Order 14,008, “Tackling the Climate Crisis at Home and Abroad,” 86 Fed. Reg. 7619 (Jan. 27, 2021); FACT SHEET: Renewed U.S. Leadership in Glasgow Raises Ambition to Tackle Climate Crisis (Nov. 13, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/13/fact-sheet-renewed-u-s-leadership-in-glasgow-raises-ambition-to-tackle-climate-crisis/> (attached) [hereinafter “Glasgow Fact Sheet”].

⁵⁴ Executive Order 13,990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 Fed. Reg. 7,037, 7,040 (Jan. 25, 2021). The Environmental Protection Agency has repeatedly called on FERC to use the readopted tool in the evaluation of individual natural gas infrastructure projects. *E.g.*, Comment on Iroquois Gas Transmission System FEIS, CP20-48 (Dec. 20, 2021) (Accession 20211220-5086).

⁵⁵ Jeremy Symons, Exporting Carbon at 7-16 (Sept. 2023) (attached).

⁵⁶ See Climate Change 2021: The Physical Science Basis, Summary for Policymakers, IPCC, available at <https://www.ipcc.ch/report/ar6/wg1/> (Oct. 2021) (attached) [hereinafter “IPCC Physical Science Summary”]; IPCC, Climate Change 2022 Impacts, Adaptation and Vulnerability, Summary for Policy Makers at 8, A.3, available at https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicy_makers.pdf (Feb. 2022) (attached) [hereinafter “IPCC Impacts Summary”]; IPCC, Climate

emissions and extreme weather “has strengthened since” the prior IPCC report.⁵⁷ Because “[c]limate change impacts and risks are becoming increasingly complex and more difficult to manage,” it is increasingly likely that “multiple climate hazards will occur simultaneously” and “compounding overall risk.”⁵⁸ Moreover, “[u]navoidable sea level rise will bring cascading and compounding impacts resulting in losses of coastal ecosystems and ecosystem services, groundwater salinisation, flooding and damages to coastal infrastructure that cascade into risks to livelihoods, settlements, health, well-being, food and water security, and cultural values in the near to long term (high confidence).”⁵⁹ In short, the IPCC’s AR6 reports add to the mounting evidence demonstrating the dual climate risks associated with the Driftwood LNG facility: (1) that the facility’s staggering GHG emissions will fuel climate change, and (2) that the climate-driven hazards at the project site will increase the risk of significant contamination being released into the surrounding communities and ecosystems.

FERC must evaluate these new tools and information in a supplemental NEPA analysis.

Change 2022: Mitigation of Climate Change, Summary for Policy Makers, available at https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SPM.pdf (Apr. 2022) (attached).

⁵⁷ IPCC Physical Science Summary at 8, A.3.

⁵⁸ IPCC Impacts Summary at 8, A.3

⁵⁹ *Id.* at SPM.B.5.2.

2. *FERC Has the Authority and Obligation to Revisit Prior Determinations in Deciding Whether to Grant an Extension Request*

In deciding whether to grant the requested extension, nothing prohibits FERC from revisiting determinations made in the initial authorization order or environmental impact statement, whether or not circumstances have changed or those determinations have otherwise gone stale. No one is entitled to an extension request. FERC “may” extend a deadline upon a showing of good cause, but FERC is not required to do so.⁶⁰ Accordingly, in deciding whether to grant an extension request, FERC should and must consider whether such a request is in the public interest.

If FERC agrees with its prior determinations and their bases such consideration would be straightforward. But if FERC disagrees with those prior conclusions—as FERC must given the D.C. Circuit’s invalidation of FERC’s prior approach to analyzing greenhouse gas emissions⁶¹—there is no justification for compounding the error now.

Reconsidering prior determinations *in response to an extension request* is not a collateral or out-of-time attack on the initial authorization. The initial authorization is still there. Insofar as Driftwood, or any developer, wants to claim the benefit of the initial authorization, they may continue to do so, provided that they meet the corresponding obligations, including the deadline. But where a

⁶⁰ 18 C.F.R. § 385.2008.

⁶¹ *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321 (D.C. Cir. 2021).

developer asks that the initial authorization be reopened for purposes of changing the deadline, it is appropriate to reopen it for other purposes as well. FERC has broad authority to “amend ... orders ... as it may find necessary or appropriate.”⁶² And if FERC were to deny an extension request after reconsidering one or more conclusions from a prior order or analysis, this would not amend the prior order at all.

Commissioner Danly, in several separate statements, has questioned FERC’s authority to revisit prior determinations even where there are changed circumstances. As noted above, FERC has broad authority to amend prior orders. We are not aware of any principle that would permit FERC to extend a certificate deadline but would not permit (or, indeed, *require*) FERC to consider the validity of the certificate’s underlying findings in deciding whether to do so. Commissioner Danly has cited *United States v. Seatrain Lines*, 329 U.S. 424, 427 (1947), but consideration of an applicant’s request for extension (including denial thereof) is far removed from the situation there, an agency’s *sua sponte* decision to reopen and vacate a final order.

At a minimum, FERC’s willingness to reconsider prior findings should correlate (inversely) with the strength of the good cause showing. If FERC were to hold to a strict interpretation of good cause, wherein the applicant would have to show that they were truly prevented from meeting the deadline despite good faith efforts to take all available steps to do so—a standard that Driftwood fails to meet

⁶² 15 U.S.C. § 717o.

here—applicants might have a stronger claim to a reliance interest that weighs on FERC’s willingness to revisit past findings (although FERC would still have authority to do so). But if, as here, the “good cause” is simply the applicant’s self-inflicted financial struggles or purported uncertainty as to whether, in light of changing market conditions, the project was in fact desirable, then FERC and the public must have the same ability to reassess.

3. The Changes in Global Energy Markets That Driftwood Argues Constitute Good Cause Also Constitute a Changed Circumstance FERC Must Consider

As explained above, Driftwood’s argument for good cause rests on changes to the present and future global energy market after emergence of the COVID-19 pandemic. Regardless of whether these changes constitute good cause for an extension (although especially if they do), these changes are a changed circumstance that requires reconsideration of whether the Driftwood project is in the public interest.

In claiming there is a post-COVID renewal of global LNG demand, Driftwood points to the United States-European Task Force to Reduce Europe’s Dependence on Russian Fossil Fuels,⁶³ but Driftwood ignores the fact that this task force agreement only calls for European demand for LNG through 2030, *i.e.*, for less than a year of Driftwood’s planned in-service date.⁶⁴

⁶³ Extension Application at 4 n.15.

⁶⁴ Compare Extension Application at 5 with Fact Sheet: United States and European Union Commission Announce Task Force to Reduce Europe’s Dependence on Russian Fossil Fuels, March 25, 2022, <https://www.whitehouse.gov/briefing-room/statements->

More broadly, rather than reverting to the pre-COVID *status quo*, global energy markets are now working to transition away from fossil fuels, including LNG, as quickly as possible. The International Energy Agency has concluded that heat pumps, building efficiency, and similar measures can significantly reduce European gas use in the next few years.⁶⁵ Some analyses conclude that the EU can entirely eliminate reliance on Russian gas by 2025, with efficiency and renewable energy making up for two thirds of the former Russian supply.⁶⁶ Similarly, the United Kingdom's Energy & Climate Intelligence Unit has concluded that *all* of the UK's gas demand that was recently met by Russian gas could be eliminated through installation of heat pumps and better installation within five years.⁶⁷ European Energy Commissioner Kadri Simson has emphasized that Europe remains committed to renewable energy goals, and is looking to additional gas imports only for the short term.⁶⁸ Members of the U.S. Congress and the European Parliament

releases/2022/03/25/fact-sheet-united-states-and-european-commission-announce-task-force-to-reduce-europes-dependence-on-russian-fossil-fuels/ (attached).

⁶⁵ International Energy Agency, *A 10-Point Plan to Reduce the European Union's Reliance on Russian Natural Gas* (March 3, 2022), available at <https://www.iea.org/reports/a-10-point-plan-to-reduce-the-european-unions-reliance-on-russian-natural-gas> (attached).

⁶⁶ Briefing: EU Can Stop Russian Gas Imports by 2025, <https://www.energy.gov/sites/default/files/2023-04/30.%20EU%20Can%20Stop%20Russian%20Gas.pdf> (attached).

⁶⁷ Harry Cockburn, *Heat Pumps and Insulation 'Fastest Way to End Reliance on Russian Gas*, THE INDEPENDENT, March 9, 2022, available at <https://www.independent.co.uk/climate-change/news/heat-pumps-russian-gas-north-sea-b2032017.html> (attached); see also Energy & Climate Intelligence Unit, *Ukraine Conflict and Impacts on UK Energy*, <https://eciu.net/analysis/briefings/uk-energy-policies-and-prices/briefing-ukraine-conflict-and-impacts-on-uk-energy> (last accessed Mar. 10, 2022 and attached).

⁶⁸ See, e.g., Ben Lefebvre, POLITICO, *DOE Declares an Energy War* (Apr. 28, 2022), <https://www.politico.com/newsletters/morning-energy/2022/04/28/doe-declares-an-energy->

have emphasized that, notwithstanding the need to assist Europe in transitioning off of Russian gas, no new gas infrastructure or exports should be approved.⁶⁹

Driftwood's application fails to address any of these developments as reasons why the post-pandemic market will not simply rebound to the pre-pandemic *status quo*.

Driftwood also fails to acknowledge that, as noted above, it has no offtake contracts after losing all five of its long-term export contracts as recently as this August.⁷⁰ If the Russian invasion of Ukraine were really driving the type of durable long-term demand for LNG that Driftwood claims, it would have more contracts than it did before the invasion, not less. FERC cannot ignore this blatant lack of demand for the Driftwood project.

Since FERC's initial approval, the U.S.'s own commitments to reduce greenhouse gas emissions increase the likelihood that other countries will also reduce their emissions, including through drastically reducing demand for U.S. LNG.⁷¹ Independent of the Department of Energy's evaluation of exports, these

war-00028380 (attached) (quoting Sec. Granholm's statement that "Perhaps renewable energy is the greatest peace plan this world will ever know.").

⁶⁹ Jared Huffman et al., Letter to U.S. President Biden and E.C. President Von der Leyen (May 19, 2022), https://huffman.house.gov/imo/media/doc/Letter%20Regarding%20the%20EU-US%20Joint%20Energy%20Security%20Statement_5.19.22.pdf (attached).

⁷⁰ *See supra* Section A.3.

⁷¹ President Biden issued Executive Order 14,008, "Tackling the Climate Crisis at Home and Abroad," 86 Fed. Reg. 7619 (Jan. 27, 2021). This order reaffirmed that the United States would "rejoin the Paris Agreement" on reducing greenhouse gas emissions and develop a target for reducing domestic greenhouse gas emissions (a "nationally determined contribution," in the parlance of the Paris Agreement). *Id.* at 7619-20. Then, on November 13, 2021, President Biden announced a "commitment to reduce U.S. emissions by 50-52% from 2005 levels in 2030," in connection with the U.N. Framework Convention on Climate Change Conference of the Parties 26 summit in Glasgow. Glasgow Fact Sheet, *supra* note

changes implicate FERC's evaluation of Driftwood's export infrastructure. In light of the accelerated effort to transition from fossil fuels, FERC must consider the real possibility that the project will be idle or operate below capacity for much of the authorization period. If this occurs, the purported benefits of the project will be greatly diminished, but there will be no corresponding reduction in the harms caused by construction of the project. Thus, this information calls into question FERC's prior balancing of project benefits and costs, and FERC's overall public interest determinations.

Conclusion

For the foregoing reasons, Sierra Club hereby moves to intervene in the above dockets regarding Driftwood's request for an extension and hereby protests that extension request. Driftwood's request for an extension should be denied, or in the alternative, cannot be granted without additional analysis far beyond that presented by Driftwood's cursory application.

Respectfully submitted October 26, 2023,

/s/ Louisa Eberle

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53. Beyond this interim step, Executive Order 14,008 concluded that “[r]esponding to the climate crisis will require . . . net-zero global emissions by mid-century or before.” 86 Fed. Reg. at 7619.

CERTIFICATE OF SERVICE

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

Dated at Arvada, Colorado on October 26, 2023.

/s/ Louisa Eberle

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