

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
FEDERAL ENERGY REGULATORY COMMISSION

IN THE MATTER OF ) Docket Nos. CP14-120-000  
Lake Charles LNG Company, LLC ) CP14-119-000  
Lake Charles LNG Export Company, LLC )  
Trunkline Gas Company, LLC )

**Motion to Intervene by Sierra Club, Healthy Gulf,  
and Louisiana Bucket Brigade, and Protest and Comments  
in Opposition to Request for Extension of Time of  
Lake Charles LNG Company, Lake Charles LNG Export Company,  
and Trunkline Gas Company**

Pursuant to Rules 211, 212, and 214 of the Federal Energy Regulatory Commission (“Commission” or “FERC”) Rules of Practice and Procedure,<sup>1</sup> Sierra Club, Healthy Gulf, and Louisiana Bucket Brigade (“Intervenors”) move to intervene in the above-captioned dockets and submit comments in opposition to the request by Lake Charles LNG Company, LLC, Lake Charles LNG Export, LLC, and Trunkline Gas Company, LLC (collectively, “the Applicants”) for an extension of time, until December 16, 2028, to complete construction of the Liquefaction Project and the Pipeline Modifications Project (collectively, “the Project” or “the Lake Charles LNG Project”).<sup>2</sup> FERC should deny the Applicants’ request because: (1) the Applicant has failed to demonstrate “good cause” for the extension; (2) significant developments since the issuance of the Order undermine FERC’s prior findings; and (3) FERC must conduct new environmental analyses including Endangered Species Act and environmental justice analyses.

**I. INTRODUCTION**

As discussed below, the proposed intervenor organizations and their members will be harmed by an extension to the construction timeline for the Project and they have good cause for intervening. The circumstances surrounding the Project, including the environmental baseline, have changed significantly since FERC’s December 17, 2015 Order Granting Section 3 and Section 7 Authorizations and Approving Abandonment; and these developments raise new and

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<sup>1</sup> 18 C.F.R. §§ 385.211, 385.212, 385.214

<sup>2</sup> *Notice of Request for Extension of Time*, Dkt. No. CP14-120 (Feb. 3, 2022) (eLibrary No. 20220207-3023); *see also Notice of Request for Extension of Time*, Dkt. No. CP14-119 (Feb. 3, 2022) (eLibrary No. 20220207-3023).

separate issues from those identified in connection with the Commission’s original approval of the Project.

FERC’s certificate deadlines for construction are important and help ensure that FERC’s public interest determination is not “compromised by significant changes occurring between issuance of the certificate and commencement of the project.”<sup>3</sup> Where projects are long-delayed, developers must seek extensions of their certificate deadlines that demonstrate “good cause” exists to grant such extensions, requiring FERC to assess whether its public interest determination remains valid.<sup>4</sup>

Nevertheless, in the six years since FERC granted the Applicants’ Section 3 and Section 7 Authorizations, significant new information has arisen that drastically alters the picture surrounding the Project. The environmental baseline against which this Project must be measured has changed. The market conditions underpinning the Project have changed and the Project is no longer economically viable. The Project will cause a significant net increase in air emissions. Significant new information regarding threatened and endangered species impacted by the Project has developed. Granting an extension – which would allow construction and operation of the Project to proceed on a new schedule over a longer period of time – is a major federal action requiring review under the National Environmental Policy Act (“NEPA”) or a supplemental environmental impact statement; as well as new analysis under the Endangered Species Act (“ESA”).

## **II. MOTION TO INTERVENE**

### **A. Contact Information**

Sierra Club identifies the following persons for service of correspondence and communications regarding this Motion and Comments:

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<sup>3</sup> *Constitution Pipeline Co.*, 165 FERC ¶ 61,081, at ¶ 9 (Nov. 5, 2018); *see also* 18 C.F.R. § 157.20(b).

<sup>4</sup> *See Iroquois Gas Transmission Sys., L.P.*, 104 FERC ¶ 61,307, at ¶ 14 (Sept. 17, 2003) (explaining that construction deadlines are necessary to “ensure that the facts, analysis, and rationale regarding a particular proposal do not grow stale.”).

Healthy Gulf identifies the following persons for service of correspondence and communications regarding this application:

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Louisiana Bucket Brigade identifies the following persons for service of correspondence and communications regarding this application:

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**B. Statement of Interest for Motion to Intervene**

Intervenors Sierra Club, Healthy Gulf, and Louisiana Bucket Brigade are nonprofit membership organizations dedicated to preserving and enhancing the resources of the Gulf Coast, which the Project threatens to significantly degrade. Importantly, new information demonstrates that environmental degradation resulting from the Project would be more substantial than the Commission originally considered. The degradation would harm Intervenors' respective interests and directly impact the public resources the organizations work to protect. Accordingly, participation by Sierra Club, Healthy Gulf, and Louisiana Bucket Brigade as Intervenors to this proceeding is in the public interest.

FERC regulations permit intervention upon a showing that “the movant has or represents an interest which may be directly affected by the outcome of the proceeding” or that “the movant’s intervention is in the public interest.”<sup>5</sup> These low hurdles rightly reflect FERC’s Natural Gas Act responsibilities: FERC seeks to determine the public interest on matters which have weighty implications for the country, and so naturally benefits from hearing views from many perspectives

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<sup>5</sup> FERC Rule 214, 18 C.F.R. § 385.214(b)(2).

as it weighs export applications. Here, the proposed Intervenor easily satisfy both intervention standards.

### **1. Description of Sierra Club and History of Involvement**

Sierra Club states the exact name of the movant is the Sierra Club, and the movant's principal place of business is 2101 Webster Street, Suite 1300, Oakland, CA 94612.

Sierra Club and its members have interests that will be affected by the Applicants' Project, and the environmental degradation that will result from this extension. Sierra Club has approximately 3,500 members in Louisiana, and its Delta Chapter has numerous members who use, recreate, work, and reside near, as well as derive aesthetic enjoyment from, the lands, lakes, wetlands, and aquatic and wildlife habitat in the Calcasieu Lake area where the Lake Charles LNG project and associated infrastructure are proposed. The proposed Lake Charles LNG project will directly and irreparably harm the Sierra Club's and its members' recreational, aesthetic, and economic interests in southeast Louisiana where the LNG export terminal and associated infrastructure is proposed to be built.

Sierra Club and its members are not newcomers to this proceeding. Since the spring of 2014, Sierra Club has engaged in comment opportunities for this Project, at the time known as the Trunkline LNG project. The Sierra Club filed formal comments with FERC previously detailing the expected negative impacts from the Project and associated Project infrastructure on the Sierra Club's and its members' interests —ranging from damage to endangered species and other wildlife, wetlands, climate impacts, and air and water pollution, as well as negative impacts on the local communities surrounding the Project.<sup>6</sup> In addition, Sierra Club recently filed technical comments before the Louisiana Department of Environmental Quality in opposition to Trunkline's request for an extension of its state air permit.<sup>7</sup> These submissions are hereby incorporated into this Motion to Intervene and protest and comments.

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<sup>6</sup> Sierra Club Comments on Trunkline Gas Company, LLC, Trunkline LNG Export, LLC, & Trunkline LNG Company, LLC; FERC Docket Nos. CP14-119, CP14-120, CP14-122, & PF12-8 (Apr. 24, 2014), FERC Accession No. 20140424-5116.

<sup>7</sup> Letter from Sierra Club to Louisiana Dep't of Environmental Quality, RE: Proposed Part 70 Air Operating Permit Renewal/Modification for the Lake Charles LNG Receiving Terminal/Lake Charles LNG Company, AI Number 3351, Permit No. 0520-00098-V9, Activity Number PER20180003; and Proposed Part 70 Air Operating Permit Renewal/Modification for Trunkline Gas Company, LLC/Iowa Compressor Station, AI Number 191783, Permit Number 0520-00486-V1, and Activity Number PER20200002 (May 27, 2021), attached as **Exhibit A**. And see especially pp. 35-36 discussing the lack of justification for Trunkline's application for an extension of the construction date for the Iowa Compressor Station component of the Project. Also see pp. 31-34 discussing the

## **2. Description of Healthy Gulf**

Healthy Gulf states that the exact name of the movant is Healthy Gulf, and the movant's principal place of business is 935 Gravier Street, Suite 700, New Orleans, LA 70119.

Healthy Gulf is a 501(c)(3) organization with several hundred members in Louisiana, including members in the Lake Charles area who will be impacted by the Project. Healthy Gulf also employs staff members, primarily based in Louisiana, who work to protect the integrity of wetlands, waters, wildlife, and other ecological resources throughout Louisiana and the Gulf Region. This work will be directly affected by the construction and operation of the proposed facilities.

## **3. Description of Louisiana Bucket Brigade**

Louisiana Bucket Brigade states that the exact name of the movant is Louisiana Bucket Brigade, and the movant's principal place of business is 3416 B Canal Street, New Orleans, LA 70119.

Louisiana Bucket Brigade is a 501(c)(3) organization with several hundred members in Louisiana. Louisiana Bucket Brigade, including members in the Lake Charles area who will be impacted by the Project. It also employs staff members, primarily based in Louisiana, who work to inform Louisiana residents on the adverse environmental impacts of the petrochemical and oil and gas industry. Louisiana Bucket Brigade also supports communities in Louisiana whose health and homes are devastated by the petrochemical industry as well as the oil and gas industry. This work is directly affected by the construction and operation of the Project.

## **4. Impacts on Proposed Intervenors**

Members of Intervenor organizations will be affected by, among other things:

- Air pollution emitted by Project construction and operating emissions, including emissions from heavy machinery used in construction, fugitive emissions from the pipelines and meter station, and operational emissions from the compressor station;
- Impacts of the Project on sensitive wildlife in the region, including the Eastern Black Rail and the Rice's whale;
- Impacts of the Project on waterbodies and wetlands;

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potential for the Iowa Compressor Station to cause or contribute to violations of National Ambient Air Quality Standards.

- Impacts to recreational fishing, as well as impacts to boating and nature watching;
- Nuisance impacts from the Project, including noise, light, and aesthetic impacts from Project construction and operation.

Accordingly, for the reasons stated above, as well as in the following Protest and Comments, Sierra Club, Healthy Gulf, and Louisiana Bucket Brigade request that FERC grant their Motion to Intervene in this proceeding.

### **III. PROTEST AND COMMENTS IN OPPOSITION TO EXTENSION**

This is the second extension request submitted by the Applicants. On August 30, 2019, the Applicants requested an extension until December 16, 2025, to construct and place into service the Project.<sup>8</sup> FERC granted this extension request on December 5, 2019.<sup>9</sup> At no time since that extension request have Applicants provided information to justify that “good cause” exists to grant another extension.

To the contrary, since certifying the Project, many LNG terminals have been proposed and certified by FERC in the Gulf region, including along the coast of Calcasieu Lake. Overbuilding of oil and gas infrastructure is already occurring without demand for the exported product, as explained below. Furthermore, new environmental information has come to light that, in conjunction with LNG market changes, demonstrate the project will cause unnecessary disruptions to the environment. Thus, “good cause” does not exist to grant an extension, and any action on the request must be accompanied by supplemental analyses to justify FERC’s decision.

#### **A. NEPA and the ESA Create Ongoing Obligations for FERC**

NEPA is America’s “basic national charter for protection of the environment.”<sup>10</sup> NEPA requires federal agencies to take a “hard look” at the environmental consequences of their actions before taking action.<sup>11</sup> In this way, NEPA ensures that federal agencies “will have available, and will carefully consider, detailed information concerning significant environmental impacts” and that such information “will be made available to the larger [public] audience that may play a role

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<sup>8</sup> *Trunkline Gas Company, LLC, Lake Charles LNG Company, LLC, and Lake Charles LNG Export Company, LLC submit a Request for Extension of Time, under CP14-119, et al.*, Dkt. No. CP14-119 (Aug. 30, 2019) (eLibrary No. 20190830-5193). The Project’s original construction deadlines were December 16, 2020 for the completion of the LNG export terminal facility and December 16, 2019 for the completion of the pipeline modifications. *Id.*

<sup>9</sup> *Letter order granting Trunkline Gas Company, LLC’s et al 08/30/2019 request for an extension of time until and including 12/16/2025 to complete construction etc. of the Pipeline Modifications Project et al under CP14-119 et al.*, Dkt No. CP14-119 (Dec. 5, 2019) (eLibrary No. 20191205-3025).

<sup>10</sup> *Ctr. For Biological Diversity v. Bernhardt*, 982 F.3d 723, 734 (9th Cir. 2020) (citation omitted).

<sup>11</sup> *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n.21 (1976); 40 C.F.R. § 1500.1(a).

in both the decision making process and the implementation of that decision.”<sup>12</sup> To that end, NEPA requires federal agencies to prepare a detailed environmental impact statement (“EIS”) for any “major federal action significantly affecting the quality of the human environment.”<sup>13</sup> Under NEPA, a “major federal action” is “an activity or decision subject to Federal control and responsibility” including “approval of specific projects, such as construction or management activities” and encompassing “new and continuing activities.”<sup>14</sup> Extension of the Project’s construction and operational start date is a major Federal Action subject to NEPA.

The agency’s NEPA obligations do not end with the preparation of an initial EIS. In particular, NEPA requires agencies to prepare a supplemental analysis if a major Federal action remains to occur,<sup>15</sup> and “(i) the agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”<sup>16</sup> An agency may also prepare “supplements when [it] determines that the purposes of the Act will be furthered by doing so.”<sup>17</sup> An agency must prepare, circulate, and file a supplemental environmental impact statement (“SEIS”) “in the same fashion (exclusive of scoping) as a draft and final statement.”<sup>18</sup> Extending the construction period is a substantial change to the project and, therefore, FERC has a duty to ensure that an SEIS is completed prior to taking action on the Applicants’ extension request.

Furthermore, Congress enacted the Endangered Species Act (“ESA”) in 1973 “to provide a program for the conservation of . . . endangered species and threatened species.”<sup>19</sup> Federal agencies play the central role in species protection under the act. Section 7— which courts have described as the “heart of the ESA”— contains both substantive and procedural provisions with which all federal agencies must comply.<sup>20</sup> Substantively, Section 7(a)(2) requires that “[e]ach Federal agency shall . . . insure that any action authorized, funded, or carried out by such agency.

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<sup>12</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 322, 349 (1989).

<sup>13</sup> 42 U.S.C. § 4332(2)(C).

<sup>14</sup> 40 C.F.R. §§ 1508.1(q), 1508.1(q)(3)(iv).

<sup>15</sup> *Id.* § 1502.9(d).

<sup>16</sup> 40 C.F.R. § 1502.9(c)(1).

<sup>17</sup> *Id.* § 1502.9(c)(2).

<sup>18</sup> *Id.* § 1502.9(c)(4).

<sup>19</sup> 16 U.S.C. § 1531(b).

<sup>20</sup> *Karuk Tribe of Cal. V. U.S. Forest Serv.*, 681 F.3d 1006, 1019 (9th Cir. 2012); *Forest Guardians v. Johanns*, 450 F.3d 455, 457 (9th Cir. 2006).

. . . is not likely to jeopardize the continued existence of any endangered species or threatened species” or adversely modify their designated critical habitat.<sup>21</sup>

To meet these substantive obligations, the ESA and its implementing regulations have several procedural requirements. Fulfillment of each stage of this process is the only means by which an agency ensures that its substantive duty to ensure against species jeopardy under Section 7(a)(2) is satisfied. Specifically, the ESA requires each agency, referred to as the “action agency,” to “consult” with the Fish and Wildlife Service (“FWS”) or the National Marine Fisheries Service (“NMFS,” collectively, “Services”) to obtain the Services’ “expert opinion” on species impacts.<sup>22</sup> Under these procedural obligations, the action agency “shall . . . request” information from the Services regarding whether any listed species “may be present” in the area, and if so, the action agency must prepare a “biological assessment” or engage in “informal consultation” with the Services to determine whether listed species will be adversely affected by the proposed action.<sup>23</sup> If the biological assessment or informal consultation concludes that a proposed action “may affect” any listed species or critical habitat, the agency must engage in formal consultation with the Services.<sup>24</sup> The “may affect” standard is a low one: “[a]ny possible effect, whether beneficial, benign, adverse, or of an undetermined character, triggers the formal consultation requirement.”<sup>25</sup>

Formal consultation is not required, however, if through a biological assessment or informal consultation, the action agency determines its action is “not likely to adversely affect” any listed species and the Services issue a written concurrence in that determination.<sup>26</sup> If the Services do not agree that the agency action is not likely to adversely affect the protected species, formal consultation must occur.<sup>27</sup>

The action agency’s ESA duties do not end with the completion of the initial consultation. The agency must review the ongoing impacts of the action and reinitiate consultation when: (a) the amount or extent of taking specified in the incidental take statement is exceeded; (b) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a

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<sup>21</sup> *Karuk Tribe*, 681 F.3d at 1020 (quoting 16 U.S.C. § 1536(a)(2)).

<sup>22</sup> 16 U.S.C § 1536(a)(2). Generally, the FWS is responsible for terrestrial species, and NMFS is responsible for marine species. See 50 C.F.R. § 402.01(b).

<sup>23</sup> *Id.* § 1536(c); 50 C.F.R. §§ 402.12(c), (d), 402.13(a).

<sup>24</sup> 50 C.F.R. § 402.14.

<sup>25</sup> *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 496 (9th Cir. 2011) (citation omitted).

<sup>26</sup> 50 C.F.R. § 402.14(b).

<sup>27</sup> *Id.* § 402.14(a).



manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (d) if a new species is listed or critical habitat designated that may be affected by the identified action.<sup>28</sup> When reinitiation is required, “the original opinion loses its validity” and the action agency can no longer rely on it to satisfy its substantive duty to ensure its actions do not jeopardize listed species.<sup>29</sup>

In this case, since FERC’s previous consideration of impacts on ESA-listed species, and since its previous extension, the Eastern Black Rail and the Rice Whale have been listed under the ESA. This requires a re-evaluation of the impacts of this project and re-initiation of consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

### **1. FERC Must Use the Soon-to-be Reinstated NEPA Rules**

When reviewing the impacts from this extension request, FERC should apply the NEPA regulations that the Council on Environmental Quality (“CEQ”) has proposed,<sup>30</sup> and expects to finalize by February 2022,<sup>31</sup> which essentially rescind rule changes adopted by the Trump administration in 2020. Indeed, the 2020 regulations are arbitrary because, *inter alia*, they contravene the text of the NEPA statute in many regards, as is argued by numerous lawsuits challenging the 2020 rules,<sup>32</sup> and by CEQ itself in the proposed rule.<sup>33</sup> In accordance with the statutory text, CEQ proposes to again explicitly require consideration of indirect and cumulative effects,<sup>34</sup> and affirms that agencies can and must consider factors beyond the applicant’s own goals when determining the purpose and need of the project.<sup>35</sup> Accordingly, to ensure compliance with the forthcoming NEPA regulations and to avoid violating the underlying statute, FERC’s NEPA

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<sup>28</sup> 50 C.F.R. § 402.16.

<sup>29</sup> *Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 698 F.3d 1101, 1108 (9th Cir. 2012). During the consultation process and until the requirements of section 7(a)(2) are satisfied, section 7(d) provides that an agency “shall not make any irreversible or irretrievable commitment of resources” toward an action that would foreclose “the formulation or implementation of any reasonable and prudent alternative measures.” 16 U.S.C. § 1536(d).

<sup>30</sup> Council on Environmental Quality, Proposed Rule: National Environmental Policy Act Implementing Regulations Revisions, 86 Fed. Reg. 55,757 (Oct. 7, 2021).

<sup>31</sup> Council on Environmental Quality, Regulatory Agenda: RIN 0331-AA05, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=0331-AA05> (last visited Feb. 11, 2022), attached as **Exhibit B**.

<sup>32</sup> See 86 Fed. Reg. at 55,758 (noting these lawsuits).

<sup>33</sup> *E.g.*, *id.* at 55,759.

<sup>34</sup> *Id.* at 55,763–65 (proposed 40 C.F.R. § 1508.1); see also *City of Davis v. Coleman*, 521 F.2d 661, 676–77 (9th Cir. 1975) (holding, prior to promulgation of CEQ regulations, that NEPA’s statutory text requires consideration of indirect effects), *Kleppe v. Sierra Club*, 427 U.S. 390, 409–10 (1976) (same, for cumulative effects).

<sup>35</sup> 86 Fed. Reg. at 55,760 (proposed 40 C.F.R. § 1502.13).

analysis must conform to the once-and-future NEPA regulations, rather than those adopted in 2020.

## **B. Applicants Have Not Demonstrated Good Cause Exists to Warrant This Extension**

Construction deadlines may be extended only for good cause.<sup>36</sup> FERC has articulated that good cause can be shown by a project sponsor demonstrating that it made good faith efforts to meet its deadline but encountered unforeseeable circumstances.<sup>37</sup> However, as noted throughout these comments, this Project has not demonstrated that good cause exists to further extend the construction timeline. The rationale given by the Applicants for yet another extension is that “global market conditions have impacted its ability to reach a final investment decision and secure long-term offtake contracts,” which warrants an additional three years to complete construction of the Project.<sup>38</sup> However, this request lacks information that is relevant to this extension.

### **1. Applicants’ Request for an Extension of Time Lacks Critical Information on the Project**

In its February 16, 2022 Fourth Quarter 2021 Earnings Call, Energy Transfer, the parent company responsible for Lake Charles LNG, announced its intentions to pursue construction of a natural gas pipeline from the Permian Basin to several pipeline hubs in Texas and Louisiana.<sup>39</sup> This project would supposedly utilize existing Partnership assets, as well as require the construction of a new 260-mile pipeline to connect Permian supply to markets along the Gulf Coast, including the Houston Ship Channel, Katy, Carthage, and Henry Hub.<sup>40</sup> This proposed pipeline project would bring natural gas to the Gulf Coast for the many export projects that are being developed. During the call, this proposed pipeline was considered in connection with Lake Charles LNG, with Energy Transfer’s Group Chief Operating Officer and Chief Commercial

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<sup>36</sup> 18 C.F.R. § 385.2008(a) (2021) (allowing the relevant decisional authority to extend for good cause the time by which any person is required or allowed to act under any statute rule or order).

<sup>37</sup> See, e.g., *Chestnut Ridge Storage LLC*, 139 FERC ¶ 61,149, at P 11 (2012) (denying request for extension of time).

<sup>38</sup> *Notice of Request for Extension of Time*, Dkt. No. CP14-120 (Feb. 3, 2022) (eLibrary No. 20220207-3023); see also *Notice of Request for Extension of Time*, Dkt. No. CP14-119 (Feb. 3, 2022) (eLibrary No. 20220207-3023).

<sup>39</sup> Energy Transfer Reports Fourth Quarter 2021 Results, Business Wire (Feb. 16, 2022), <https://www.businesswire.com/news/home/20220216006056/en/Energy-Transfer-Reports-Fourth-Quarter-2021-Results>, attached as **Exhibit C**.

<sup>40</sup> *Id.*

Officer noting that the proposed pipeline would deliver natural gas to the Henry Hub, *which will be connected to Lake Charles LNG*.<sup>41</sup>

Good cause does not exist to extend the construction timeline for this Project if the Applicants are doing so to construct an *additional* project not considered by the original FERC certificate as a necessary element to the Lake Charles LNG and associated pipeline. Given this new information, which was only announced after the instant request for an extension was submitted and only days before comments on its extension request were due, it appears the final investment decision that Lake Charles LNG is seeking is tied to this proposed new project, and this extension is sought at least in part to enable construction and use of the new pipeline, which is not a valid purpose for an extension. Rather, the Applicant should reinitiate and reapply for a new FERC Certificate to address the new pipeline that would supply Lake Charles LNG.

**2. Significant New Information Since Issuance of the Certificate Demonstrates the Project is not in the Public Interest**

**a. The Environmental Baseline has Changed**

In the six years since the Project was approved and the last environmental analysis for the Project was conducted, significant development has occurred in the surrounding region. The environmental baseline considered by FERC when assessing impacts from this Project is no longer the same. Extending the construction timeline does not simply move the exact harms identified by FERC in 2015 from one point in time to another. FERC must analyze how the new environmental baseline will be impacted by construction if this extension is granted and FERC's cumulative impacts analysis must account for this change.

Numerous polluting fossil fuel infrastructure projects have been proposed, permitted, and some even constructed during this time period. In addition, the population of Calcasieu Parish, where the Project is located, has increased from 194,323 in 2015<sup>42</sup> to 216,785 in 2020,<sup>43</sup> increasing air pollution and population density in the region. Additional air, water, and wetland impacts have occurred during the last six years due to these changes, and will continue to occur during this proposed extension. With more and more time passing, sensitive species that rely on these

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<sup>41</sup> Energy Transfer LP (ET) Q4 2021 Earnings Call Transcript, The Motley Fool (Feb. 17, 2022), <https://www.fool.com/earnings/call-transcripts/2022/02/17/energy-transfer-lp-et-q4-2021-earnings-call-transc/>, attached as **Exhibit D**.

<sup>42</sup> Lake Charles Liquefaction Project Final Environmental Impact Statement, FERC Docket Nos. CP14-119-000, CP14-120-000, and CP14-122-000 DOE Docket Nos. 11-59-LNG and 13-04-LNG (Aug. 2015), 4-96.

<sup>43</sup> QuickFacts Calcasieu Parish, Louisiana, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/calcasieuparishlouisiana/POP010220#POP010220>.

resources, many whose numbers are already steadily declining, will be forced to migrate towards the shrinking remaining suitable habitat. With so many projects impacting the same resources, the impacts from this Project will be significantly greater than they were when originally permitted. Therefore, the additional environmental impacts from this facility, when analyzed against this new baseline, may render approval of this facility against the public interest, regardless of the original public interest finding, and the extension should be denied accordingly.

**b. The Project is not Commercially Viable**

The LNG market has substantially changed since FERC issued the Order Granting Section 3 and Section 7 Authorizations for the Applicants making the completion of this Project no longer commercially viable. The reason for the Applicants requested extension is “that global market conditions have impacted [their] ability to reach a final investment decision and secure long-term offtake contracts[.]”<sup>44</sup> However, the need for LNG proposed for export to meet global market demands no longer exists at the rate anticipated nearly six years ago.

The LNG market no longer supports the increasing number of proposed LNG projects. The Projects purpose as stated by the Applicant was to “transport and liquefy domestic natural gas into LNG for export to foreign markets.”<sup>45</sup>

Moreover, European buyers recognize that LNG, long touted as a climate solution, is in fact a climate problem.<sup>46</sup> Aggressive expansion of capacity in low-production-cost Qatar and the Russian Arctic has increased risks to higher cost U.S. LNG export developers.<sup>47</sup> Five terminals are now proposed along Russia’s northern coast within the Arctic Circle and Russia is expected to remain the dominant gas supplier to Europe until 2040, which will further increase LNG trade with China.<sup>48</sup> Furthermore, a recent study by Global Energy Monitor notes that 21 export terminals totaling 265 million tonnes per annum (“MTPA”) of capacity continue to report Final Investment

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<sup>44</sup> *Notice of Request for Extension of Time*, Dkt. No. CP14-120 (Feb. 3, 2022) (eLibrary No. 20220207-3023); *see also Notice of Request for Extension of Time*, Dkt. No. CP14-119 (Feb. 3, 2022) (eLibrary No. 20220207-3023).

<sup>45</sup> Final Environmental Impact Statement for Trunkline Gas Company, LLC’s et al Lake Charles Liquefaction Project under CP14-119 et al., 1-3, available at [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20150814-4001&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20150814-4001&optimized=false) (hereinafter “FEIS”).

<sup>46</sup> Lydia Plante and Ted Nace, *Nervous Money*, *Global Energy Monitor*, 4 (June 2021), <https://globalenergymonitor.org/report/nervous-money/>, attached as **Exhibit E**.

<sup>47</sup> *Id.* at 13.

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

Decision (“FID”) delays or other serious setbacks amid an uncertain market.<sup>49</sup> Those terminals represent 38 percent of the 700 MTPA export capacity under development worldwide.<sup>50</sup>

With increased delays in FIDs<sup>51</sup> and project construction, the probability increases that these projects, including that proposed by the Applicant, will become obsolete long before the end of its intended lifespan.<sup>52</sup> These market changes underscore the absence of and/or rapidly declining need and demand for construction of U.S. LNG export terminals making these projects no longer commercially viable. At a minimum, FERC must account for these changed circumstances in considering the Applicants’ request.

**c. The Project is no longer in the Public Interest in Light of New Information on Climate Change**

There is growing international recognition that avoiding the worst impacts of climate change requires abandoning large fossil fuel expansion or developments such as the Lake Charles LNG Project. For example, in 2018, the Intergovernmental Panel on Climate Change (“IPCC”) issued a Special Report on Global Warming of 1.5°C that quantified the devastating harms that would occur at 2°C warming, highlighting the necessity of limiting warming to 1.5°C to avoid catastrophic impacts to people and life on Earth.<sup>53</sup> The report provides overwhelming evidence that climate hazards are more urgent and more severe than previously thought, and that aggressive reductions in emissions within the next decade are essential to avoiding the most devastating climate change harms. The IPCC report concludes that pathways to limit warming to 1.5°C with little or no overshoot require “a rapid phase out of CO<sub>2</sub> emissions and deep emissions reductions in other GHGs and climate forcers.”<sup>54</sup> In pathways consistent with limiting warming to 1.5°C, global net anthropogenic CO<sub>2</sub> emissions must decline by about 45 percent from 2010 levels by

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<sup>49</sup> *Id.* at 3.

<sup>50</sup> The Applicant is approved to export 15 MTPA of LNG to countries that currently have or will have a free trade agreement with the United States. FEIS at 1-3.

<sup>51</sup> 6 Multiple LNG projects, including Port Arthur LNG and Cameron LNG have delayed making final investment decisions due to changes in the global LNG market, including decreased demand from LNG market oversaturation. Sempra likely to delay Texas Port Arthur LNG decision to 2022, Reuters (May 5, 2021), <https://www.reuters.com/business/energy/sempra-likely-delay-texas-port-arthur-lng-decision-2022-2021-05-05/>, attached as **Exhibit F**.

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

<sup>53</sup> Intergovernmental Panel on Climate Change, Global Warming of 1.5°C, An IPCC special report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty (Oct. 6, 2018), <http://www.ipcc.ch/report/sr15/>, attached as **Exhibit G**.

<sup>54</sup> *Id.* at 2-28.

2030, reaching net zero around 2050; for a two-thirds chance of limiting warming to 1.5°C, CO<sub>2</sub> emissions must reach net zero in 25 years.<sup>55</sup>

Additionally, President Biden has acknowledged that we are facing a “profound climate crisis” and have only a little time to pursue bold actions to avoid the most catastrophic impacts of climate change.<sup>56</sup> As such, his administration has prioritized tackling the climate crisis head on through the actions and decision of all federal agencies.<sup>57</sup> President Biden has also reinstated the United States’ commitment to the Paris Agreement<sup>58</sup> and made additional commitments in Glasgow, assuring world leaders that the United States “would fulfill its promise to slash greenhouse gas emissions in half by the end of the decade.”<sup>59</sup> This administrations pledge to tackling the climate crisis is critical as a recent report by the International Energy Agency concluded that “hav[ing] a fighting chance of . . . limiting the rise in global temperatures to 1.5°C. . . requires nothing short of a total transformation of the energy systems that underpin our economies.”<sup>60</sup> The study articulates a pathway for the global energy sector to reach net zero emissions by 2050 under which many of the LNG facilities currently under construction or at the planning stage are not needed.<sup>61</sup> It notes that from 2020 to 2050, natural gas traded as LNG falls by 60 percent and global demand decreases by more than five percent on average in the 2030s.

In sum, given the significant changed economic, political and scientific circumstances that have developed since FERC certified the Project, FERC must reevaluate its original *public interest* finding. This new information also “constitutes significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” and therefore triggers FERC’s obligation to conduct supplemental NEPA review as set forth above.

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<sup>55</sup> *Id.* at SPM-15.

<sup>56</sup> Exec. Order 14008, Tackling the Climate Crisis at Home and Abroad (Jan. 27, 2021), 86 Fed. Reg. 7619 (Feb. 1, 2021).

<sup>57</sup> See *id.*; Exec. Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan. 25, 2021).

<sup>58</sup> Anthony Blinken, *The United States Officially Rejoins the Paris Agreement*, U.S. Department of State (Feb. 19, 2021), available at <https://www.state.gov/the-united-states-officially-rejoins-the-paris-agreement/>.

<sup>59</sup> Jeff Mason and Valerie Volcovici, *Biden tells leaders U.S. will meet climate goals, while his agenda falters at home*, Reuters (Nov. 2, 2021), available at <https://www.reuters.com/business/sustainable-business/biden-tout-largest-investment-climate-glasgow-2021-11-01/>.

<sup>60</sup> International Energy Agency. 2021. Net Zero by 2050: A roadmap for the global energy system, available at: <https://www.iea.org/reports/net-zero-by-2050>, attached as **Exhibit H**.

<sup>61</sup> *Id.* at 102–03.

**C. Additional Factors Requiring an Updated Environmental Analysis Before Granting an Extension**

**1. FERC Must Reinitiate Section 7 Consultation Due to New Developments Regarding Endangered Species**

FERC must reinitiate ESA Section 7 consultation to analyze the impacts of the Project on the and Eastern Black Rail, a recently listed threatened species, and the Rice's whale, a recently listed endangered species, as well as the West Indian Manatee, an endangered species which has been spotted near the location of the proposed Project.

The Eastern Black Rail, a “small, secretive marsh bird,”<sup>62</sup> was listed as threatened in 2020.<sup>63</sup> The species is also considered critically imperiled in Louisiana. Populations have declined by more than 75 percent over the last 10 to 20 years.<sup>64</sup> Warming temperatures and sea level rise, both effects of climate change, will worsen the bird's chances of recovery. Given the elusive nature of the Eastern Black Rail, as well as potential habitat within the Project area, FERC should wait on approving the requested construction extension and consult with the FWS, who should issue a Biological Opinion.

In addition to the Eastern Black Rail, this Project also has the potential to adversely affect the Rice's whale, which is “one of the most endangered whales in the world” with “fewer than 100 individuals remaining.”<sup>65</sup> Rice's whales have been consistently located in the northeastern Gulf of Mexico along the continental shelf.<sup>66</sup> However, occasionally the species has been observed in the western Gulf of Mexico.<sup>67</sup> The extension of this Project will place the Rice's whale in further danger of extinction as this Project has the potential to increase ship traffic in the Gulf of Mexico which will result in added noise to the whale's environment as well as a increase the risk of a vessel strike. FERC must therefore analyze the effects of increased ship traffic on the Rice's whale and consult with the National Marine Fisheries Service.

Lastly, this Project has the potential to affect the West Indian Manatee. FERC's FEIS stated that the Project would have no effect on the manatee because “no suitable habitat would be

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<sup>62</sup> Eastern black rail, FWS, <https://www.fws.gov/southeast/wildlife/birds/eastern-black-rail/> (last visited Feb. 10, 2022).

<sup>63</sup> 85 Fed. Reg. 63, 764 (Oct. 8, 2020).

<sup>64</sup> Travis Loller, Elusive eastern black rail threatened by rising sea level, AP News, <https://apnews.com/article/habitat-destruction-wildlife-climate-change-rising-sea-levels-climate-5a8ea861445582c2625d93ba82069c70> (last visited Feb. 11, 2022), attached as **Exhibit I**.

<sup>65</sup> Rice's Whale, NOAA Fisheries, available at <https://www.fisheries.noaa.gov/species/rices-whale>.

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

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



impacted by the project.”<sup>68</sup> However, manatees have been spotted in Big Lake and in the Calcasieu River.<sup>69</sup> Due to the occurrence of the West Indian Manatee in the Project’s vicinity FERC must initiate ESA Section 7 consultation with the National Marine Fisheries Service.

## **2. FERC Must Adequately Consider the Environmental Justice Impacts of the Project and the Impacts that Prolonged Construction will Have on the Community**

FERC must reevaluate environmental justice impacts, which include the human health, economic, and social effects of the proposed action on minority and low-income communities. FERC’s FEIS stated that the “liquefaction facility would be located adjacent to the existing LNG terminal site and would not be located near any low-income or minority population areas. Therefore, there would not be any disproportionately high or adverse environmental and human health impacts on low-income and minority populations.”<sup>70</sup> However, recent reports state that “[n]early 50 percent of the residents of Lake Charles are African American, and the poverty rate hovers at 23 percent[, which is] twice the national average.”<sup>71</sup> This Project will increase the disparate impact that these African American and low-income communities already face as a result of the petrochemical, oil, and gas industries in the area. Because this Project may impact environmental justice communities near the Lake Charles area, FERC must conduct an environmental justice analysis which analyzes the cumulative impacts of pollution on these communities.

Additionally, Executive Order 14008 directs federal 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>72</sup> Moreover, since FERC’s 2015 Order Granting Section 3 and Section 7 Authorizations, FERC has made consideration of

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<sup>68</sup> FEIS at 4-72.

<sup>69</sup> *Wildlife official: Big Lake manatee likely headed back to warmer waters*, KPLCTV (Nov. 29, 2012), <https://www.kplctv.com/story/20222467/manatee-sighting-in-big-lake/>, attached as **Exhibit J**; see *Manatee sighting in Calcasieu River*, KPLCTV (Nov. 13, 2014), <https://www.kplctv.com/story/27371003/manatee-sighting-in-calcasieu-river/>, attached as **Exhibit K**.

<sup>70</sup> FEIS at 4-104.

<sup>71</sup> *Climate change’s uneven impact on communities of color compounded by uneven flow of aid*, PBS, available at <https://www.pbs.org/newshour/show/climate-changes-uneven-impact-on-communities-of-color-compounded-by-uneven-flow-of-aid> (Oct. 7, 2021).

<sup>72</sup> 86 Fed. Reg. 7619 (Feb. 1, 2021); “[E]ach Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by [NEPA].” 59 Fed. Reg. 7629 (1994).



environmental justice a priority. In 2021, FERC Chairman Richard Glick announced plans to better incorporate environmental justice and equity concerns by creating a new senior position to coordinate that work.<sup>73</sup> Chairman Glick stated that “the Commission should more aggressively fulfill its responsibilities to ensure [that] decisions don’t unfairly impact historically marginalized communities.”<sup>74</sup> Following Executive Order 14008, FERC opened a Notice of Inquiry to take a fresh look at FERC’s Certificate Policy Statement, seeking public input on identification of “any disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on environmental justice communities and the mitigation of those adverse impacts and burdens.”<sup>75</sup>

The request to extend construction constitutes a “major Federal action,” which will significantly affect the quality of the human environment because of the prolonged exposure to air pollution, light pollution, and traffic. Therefore, FERC must conduct a new EIS or SEIS to analyze the effect that the Project will have on the community as well as the cumulative effects including but not limited to the proposed LNG export terminals facilities but the various other oil, petrochemical, and gas related facilities in the area.

### **3. FERC Must Analyze the Effects of Increased Traffic on the Community**

The FEIS states that “[t]raffic [will] increase substantially during construction in the vicinity of the proposed liquefaction facility due to the presence of worker vehicles, construction vehicles, and trucks taking material and equipment to and from the site.”<sup>76</sup> Extending the construction schedule will result in increased traffic in the area for a longer period of time, which will adversely affect air pollution in the vicinity of the Project. Additionally, the prolonged use of parking lots by vehicles during construction will be detrimental to water quality in the Project area since they are prone to stormwater runoff that “carries pollutants such as oil, dirt, chemicals, and lawn fertilizers directly to streams and rivers, where they seriously harm water quality.”<sup>77</sup> Stormwater runoff also carries “sediment loads from construction sites” and “often carr[ies] higher

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<sup>73</sup> *FERC Chairman Acts to Ensure Prominent FERC Role for Environmental Justice*, FERC (Feb. 11, 2021), available at <https://www.ferc.gov/news-events/news/ferc-chairman-acts-ensure-prominent-ferc-role-environmental-justice>.

<sup>74</sup> *Id.*

<sup>75</sup> 174 FERC ¶ 61,125.

<sup>76</sup> FEIS at 4-101.

<sup>77</sup> *Protecting Water Quality from Urban Runoff*, United States Environmental Protection Agency, [https://www3.epa.gov/npdes/pubs/nps\\_urban-facts\\_final.pdf](https://www3.epa.gov/npdes/pubs/nps_urban-facts_final.pdf), attached as **Exhibit L**.

water temperatures from streets, roof tops, and parking lots, which are harmful to the health and reproduction of aquatic life.”<sup>78</sup> FERC must analyze these factors in a new EIS or a SEIS.

#### **4. FERC Must Analyze the Nuisance Effects of Air, Noise, and Light Pollution on the Community**

FERC’s 2015 FEIS for the Project is outdated and the nuisance impacts of the project, including air, noise, and light pollution effects must be reanalyzed through a new EIS or SEIS. Since FERC’s environmental assessment various industrial facilities have been approved in Southwest Louisiana near the vicinity of the Project such as the Hackberry CCS facility and the LA Storage Hackberry Storage Project. The emissions from these facilities were not previously evaluated in the FEIS and therefore need to be analyzed to ensure that the Project’s air emissions will not place the area out of attainment with the National Ambient Air Quality Standards.

Additionally, FERC must analyze the cumulative impact of noise in this area to ensure that the additional noise from the construction of the Project will not exceed the 55 decibels on the A-weighted scale (“dBA”) as noise above that standard will negatively impact residential communities and interfere with the community’s ability to recreate outdoors. FERC must also analyze the cumulative impacts of light pollution in the vicinity of the Project. Additionally, FERC must consider the impacts that increased lighting and noise have on wildlife in the area, as this area is an incredibly popular viewing region. Studies have demonstrated that “artificial light can disorient flying birds, affect stopover selection, and cause their death through collision with infrastructure.”<sup>79</sup> Artificial light can also “disrupt daily or photoperiodic activities,” altering cues such as “causing birds to wake earlier.”<sup>80</sup> This change in behavior can affect “predator-prey interactions and mating.”<sup>81</sup> Due to the increase in industrial facilities in the area, the EIS’s prior noise and light analysis should be reevaluated to ensure that the noise and light pollution created by this facility does not adversely affect the community or the natural environment.

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<sup>78</sup> *Id.*

<sup>79</sup> Nunny L., *Impact of Light Pollution on Different Taxa of Migratory Species*, UNEP Convention on the Conservation of Migratory Species of Wild Animals (June 2021), [https://www.cms.int/sites/default/files/document/cms\\_scc-sc5\\_inf.7\\_impact-of-light-pollution-on-migratory-species\\_e.pdf](https://www.cms.int/sites/default/files/document/cms_scc-sc5_inf.7_impact-of-light-pollution-on-migratory-species_e.pdf), attached as **Exhibit M**.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

## 5. FERC Must Analyze the Economic Impact that Would Result from Further Extension of the Construction Timeline

Another delay to this Project will further hinder economic gain to the directly impacted community. The Applicants touted numerous benefits to the surrounding community for this Project, including helping to stimulate the local and regional economy, creating an increase in economic activity and tax revenues, and contributing to a rising job market.<sup>82</sup> In addition to failing to contribute to the local economy as expected, the Lake Charles LNG project received multiple subsidies from local and state sources, including industrial tax exemptions and property tax abatements.<sup>83</sup>

Sierra Club does not support the construction of this Project. However, failing to deliver on the economic benefits promised to the region in a timely manner while spending six years tinkering with project design and timing hurts the local community, and hinders actual development from projects that will contribute to the public soon rather than six more years from now. Another extension for this project will only further hinder new development in Calcasieu Parish, which is not in the public interest.

## IV. CONCLUSION

For the foregoing reasons, the Motion to Intervene should be granted. FERC should deny the Applicants' request for extension of time, until December 16, 2028, to complete construction of the Project. In addition, FERC should not take action on the extension request until after preparing a NEPA analysis or supplemental environmental impact statement and new ESA Section 7 consultation.

Respectfully submitted February 18, 2022.

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<sup>82</sup> FEIS at 1-3.

<sup>83</sup> Subsidy Tracker: State Summary of State and Local Awards, Good Jobs First, <https://subsidytracker.goodjobsfirst.org/state/LA>.

## CERTIFICATE OF SERVICE

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

Dated in New Orleans, LA this 18<sup>th</sup> day of February, 2022.

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