

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

Rio Grande LNG, LLC)	Docket Nos.	CP16-454-000
Rio Bravo Pipeline Company, LLC)		CP16-454-003
)		CP16-455-000
)		CP16-455-002

Comments on Responses to Information Requests

I. Introduction

The United States Court of Appeals for the District of Columbia determined that the Federal Energy Regulatory Commission (“FERC”) inadequately analyzed the impacts to environmental justice communities of the Rio Grande and Rio Bravo projects (collectively “Project”).¹ The *Vecinos* court remanded to FERC without vacatur and ordered FERC to adequately analyze impacts to environmental justice communities. FERC has now begun that process by requesting information from Rio Grande and Rio Bravo and has requested public comment on the responses provided.

As explained in more detail below, the beginning of FERC’s new analysis suggests that FERC will continue to improperly analyze the impacts of the Project to environmental justice communities. FERC has asked the wrong questions and received inadequate information in response to its requests. FERC has, so far, created a public participation process that systematically excludes the environmental justice communities that it is supposed to be protecting through this process. The undersigned commenters urge FERC to course correct in order to ensure a legally adequate environmental justice analysis that protects the health, wellbeing, and safety of the environmental justice communities that are in the vicinity of the Project.

¹ See *Vecinos para el Bienestar de la Comunidad Costera v. Federal Energy Regulatory Commission*, 6 F.4th 1321, 1331 (D.C. Cir. 2021).

II. To Date, Outreach to Environmental Justice Communities Has Been Inadequate

To properly analyze environmental justice, FERC must obtain “meaningful community representation in the process.”² FERC must “be aware of the diverse constituencies within any particular community” and “have complete representation of the community as a whole.”³ “[C]ommunity participation must occur as early as possible if it is to be meaningful.”⁴ Among the constituencies that must be included in the process is tribal representation of any impacted tribes.⁵

To do this, FERC must go beyond its typical public outreach practices. Instead, FERC must determine the necessary “adaptive or innovative approaches to overcome linguistic, institutional, cultural, economic, historical, or other potential barriers to effective participation” in its decisionmaking process.⁶ These approaches can include translation of major documents, opportunities to comment through other means than written communication, and creating materials specifically designed to garner the involvement of different constituencies.⁷

Here, the proposed project will have significant impacts on environmental justice communities.⁸ The City of Port Isabel, the closest city to the project area is 82.7% Hispanic/Latino and 30.3% of the population lives below the poverty line.⁹ Similarly, the population of Cameron County, where the project site is located, is

² Council on Environmental Quality, Environmental Justice: Guidance Under The National Environmental Policy Act 9 (1997) [*hereinafter* “CEQ 1997 Guidance”] (attached).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 13. *Accord* EPA, Guidance on Considering Environmental Justice During the Development of Regulatory Actions 32-35 (2015) [*hereinafter* “EPA 2015 Guidance”]

⁷ CEQ 1997 Guidance.

⁸ An area may contain an environmental justice population (1) if more than 50% of the population is in a potentially affected area are people of color or the percentage of people of color in a specific area exceed the percentage of the general population, or (2) if there are affected populations with incomes below the statistical poverty thresholds. CEQ 1997 Guidance at 25.

⁹ U.S. Census Bureau, *Quick Facts: Cameron County, Port Isabel, Texas*, available at <https://www.census.gov/quickfacts/fact/table/cameroncountytexas,TX,portisabelcitytexas/PST045221>. (Last accessed Sept. 28, 2022) (attached).

90% Hispanic/Latino and 24.4% live below the poverty line.¹⁰ By comparison, less than 15% of the entire population of Texas lives below the poverty line and only 40.2% of the State's population is Hispanic/Latino.¹¹

Accordingly, as explained in more detail below, FERC has, so far, failed to utilize the public outreach and engagement practices necessary to ensure adequate participation of the impacted environmental justice communities.

a. FERC Has Not Provided Translated Versions of the Underlying Documents

If the Project were to go forward, it would be constructed in an area where a majority of the population speaks Spanish at home and 25.2% speak English less than very well.¹² Despite this, FERC has not provided translated versions of the Applicants' responses to the information requests underlying this request for public comment. This has the obvious effect of cutting the 25.2% of people in the project area that speak English less than very well out of FERC's decisionmaking process.

This isn't only a problem because it is plainly wrong to cut an entire population out of decisionmaking that will affect them, it is wrong because it will inevitably lead to bad decisionmaking.¹³ Longstanding guidance recognizes that it is crucial for agencies to analyze environmental and health data "in light of any additional qualitative or quantitative information gathered through the public participation process."¹⁴ This is because "background data" on environmental justice communities, including "empirical data, based on verifiable observations or

¹⁰ *Id.*

¹¹ *Id.*

¹² U.S. Census Bureau, American Community Surveys: DP02 Selected Social Characteristics, Port Isabel, *available at* https://data.census.gov/cedsci/table?tid=ACSDP5Y2020.DP02&g=0400000US48_1600000US4858892&hidePreview=true (Last viewed Sept. 28, 2022) (attached). *See also* U.S. Census Bureau, American Community Surveys: DP02 Selected Social Characteristics, Cameron County, *available at* https://data.census.gov/cedsci/table?tid=ACSDP5Y2020.DP02&g=0400000US48_0500000US48061&hidePreview=true. (Last viewed Sept. 28, 2022) (attached).

¹³ *See* EPA, Final Guidance For Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses at pdf 46 (1998) [*hereinafter* EPA 1998 Guidance] (attached) ("Adequate public participation is crucial to incorporating environmental justice considerations into EPA's NEPA actions, both to enhance the quality of the analyses and to ensure that potentially affected parties are not overlooked and excluded from the process.").

¹⁴ CEQ 1997 Guidance at 14.

experience” is crucial to an agency’s environmental justice analysis.¹⁵ Additionally, environmental justice populations “in the affected environment may hold an opposing technical or scientific view (which can be based on several sources, including the community) from agencies regarding specific impacts and/or methods of analysis,” which “may warrant discussion in a NEPA document.”¹⁶

Ultimately, by excluding people that speak English less than very well, FERC will ensure that it misses all of these data points concerning this affected population. FERC, for example, will have no way whether this population “may be differently affected by past, present, or reasonably foreseeable future impacts than the general population.”¹⁷ Or, whether the effects of the Project on this population would be amplified by “past exposure histories, and social factors.”¹⁸ FERC is in essence, deciding to deny itself the opportunity to be educated and to have the community “help identify the means to identify alternatives and/or mitigate the impacts.”¹⁹

FERC must ensure that this population is not systemically excluded from FERC’s decisionmaking. FERC must, at least, provide translated documents to allow for meaningful participation. And FERC must go beyond limiting participation to written comments. It must provide public meetings that allow for meaningful participation from people who speak English less than well and other environmental justice communities. Without taking these steps, FERC will not be able to perform an adequate environmental justice analysis.

b. FERC Must Consult With the Carrizo Comecrudo Tribe of Texas

Longstanding guidance affirms the importance of working with tribes that will be impacted by projects. The Carrizo Comecrudo Tribe of Texas will be impacted here because the Project will occupy and impact lands sacred to the Tribe. For example, the Garcia Pasture Site is a sacred site to the Tribe and features human burial sites, village ruins, rock art, and shell working areas.²⁰ The Project site is adjacent to the Garcia Pasture Site and would impact the ability of the

¹⁵ Interagency Working Group on Environmental Justice & NEPA Committee, Promising Practices for EJ Methodologies in NEPA Reviews 29 (2016) [*hereinafter* “Promising Practices”] (attached).

¹⁶ *Id.* at 30.

¹⁷ *Id.*

¹⁸ *Id.* at 31.

¹⁹ EPA 1998 Guidance at pdf 54.

²⁰ Garcia Pasture, WMF.Org, <https://www.wmf.org/project/garcia-pasture> (Last Visited October 11, 2022) (attached).

Carrizo Comecrudo Tribe of Texas to use the site for its traditional purposes. Additionally, the Project site would occupy additional sacred lands of the Carrizo Comecrudo Tribe of Texas. However, despite the impact the Project will have on the Carrizo Comecrudo Tribe of Texas, FERC has not consulted or engaged with the Carrizo Comecrudo Tribe of Texas.

None of this satisfies FERC's environmental justice obligations. FERC is specifically required to seek input from impacted tribal populations whether or not a particular tribe is federally recognized.²¹ By not engaging with the Carrizo Comecrudo Tribe of Texas, FERC has failed to satisfy its environmental justice obligations or to perform an adequate environmental justice analysis. FERC must immediately consult with the Carrizo Comecrudo Tribe of Texas concerning the impacts that the Project will have on sacred sites.

c. FERC Must Provide Additional Time to Comment on Texas LNG's Responses, Do More Public Outreach, and Provide Additional Means for the Public to Comment

In addition to the more specific issues discussed above, the overall issue here is that FERC has not tailored this comment period to ensure the meaningful participation of any of the environmental justice communities that would be impacted by the Project if it went forward. FERC issued this notice on September 30, 2022 with comments due on October 21, 2022, a 21-day comment deadline. On the same day, FERC issued a parallel notice in docket nos. CP16-116-000 and CP16-116-002, requesting public comment on similar issues but concerning the nearby Texas LNG project. Those comments are due the same day as these comments. Additionally, when both of these notices were issued, the deadline for scoping comments concerning Rio Grande LNG's carbon capture and storage proposal was ongoing.

The subject matter of these comments is highly technical in nature. The Applicants' responses are jargon laden and concern subject matter such as air emissions and emergency response planning. Clearly, the responses were not written for a general audience, they were written for subject matter experts.

²¹ See EPA 1998 Guidance at pdf 75 (Agencies must work with federally recognized tribes on a government-to-government basis "as well as with any affected or interested indigenous person(s) as public stakeholders"). *Contra* Final EIS at 4-160. *Accord* Promising Practices at 10 ("[A]gencies should conduct meaningful engagement efforts ... specifically designed to reach indigenous tribal populations and organizations.")

Accordingly, FERC has created a public participation structure tailor made to leave out the environmental justice communities that will be impacted. FERC is supposed to use “adaptive and innovative approaches both to public outreach ... and participation” but instead of doing that, FERC has buried these environmental justice communities under multiple deadlines seeking comment on several complex issues rendering meaningful participation impossible.²² FERC has not provided the information it seeks comment on in a format that is concise, understandable, and readily accessible to the public.²³ As a result, FERC is not likely to be able to perform an adequate environmental justice analysis, contradicting the D.C. Circuit’s *Vecinos* decision.

That alone renders FERC’s apparent attempt to comply with *Vecinos* insufficient, but the infirmities of FERC’s process so far does not stop there. FERC has not so much as suggested that it is going to provide these environmental justice communities any opportunity to participate outside the opportunity to provide written comments. As explained in several guidance documents and by common sense, this decision by FERC is not going to lead to adequate participation of members of environmental justice communities.²⁴ And, in turn, will inevitably lead to FERC not properly analyzing the impacts to these environmental justice communities. FERC should course correct now, rather than when it is already too late. FERC should provide alternative methods of public participation including multiple town hall style public hearings held at various locations tailored for access by environmental justice communities and at several different times to allow people with different work and life schedules to attend.

Ultimately, environmental justice analysis is as much a process as it is a way to ensure substantive policy ends. As the Federal Interagency Working Group on Environmental Justice & NEPA Committee recently explained, structuring the environmental review process to ensure meaningful participation of members of environmental justice communities is an end in itself.²⁵ FERC is currently failing to ensure an adequate process.

²² Promising Practices at 8.

²³ *Cf.* CEQ 1997 Guidance at 33.

²⁴ *See, e.g., Id.* at 13.

²⁵ *See* Promising Practices at 8-11.

III. Rio Grande LNG Has Not Responded to FERC’s Request for Environmental Information Regarding Air Emissions Modeling and the Information it has Provided is Insufficient

FERC asked that Rio Grande LNG provide an updated table that showed the “Radius of Impact, the maximum modeled concentrations of each criteria pollutant within each census block group within 50 kilometers of the Rio Grande LNG Terminal fence line, and the maximum impact for each NAAQS averaging period outside the fence line.”²⁶ That modeling was required to include “impacts for Rio Grande LNG Terminal sources only (including mobile sources); and impacts of Rio Grande LNG Terminal sources plus ambient background concentrations combined with industrial sources within 50 kilometers at that location (excluding the Texas LNG facility).”²⁷ The modeling is also supposed to include a narrative explaining how the modeling was performed, as well as all assumptions, and inputs.²⁸

Rio Grande LNG did not provide the requested information. It only provided expected emissions from its facility and concluded that because all but one criteria pollutant did not exceed a significant impact level (“SIL”), no further impacts analysis was needed for those pollutants.²⁹ Rio Grande then, without producing any modeling or explanation to back up its assertion, concludes that there will be no violation of the 1-hr NO₂ NAAQS (the only criteria pollutant it models to exceed the SIL) in census blocks within 50 miles of the facility.³⁰

The information that Rio Grande produced is not responsive to FERC’s request and is directly contradicted by modeling produced by Texas LNG. FERC cannot evaluate the full impacts of the project without the requested information and should not proceed with an environmental impact statement until Rio Grande LNG provides the requested information.

a. Rio Grande LNG Has Not Provided Background Concentrations of Criteria Air Pollutants

FERC specifically requested that Rio Grande LNG provide a table of background concentrations of criteria air pollutants in census blocks within a 50-mile radius of the facility.³¹ Rio Grande does not provide this for any criteria pollutant. It provides no explanation why it cannot provide these background concentrations for all but one of the remaining pollutants. For NO₂ Rio Grande LNG claims that because the modeling is “discontinuous” it does not lend itself to being

²⁶ FERC Environmental Information Request, No. 2 (Aug. 16, 2022).

²⁷ *Id.*

²⁸ *Id.*

²⁹ Rio Grande LNG, Part 1 Response to August 16, 2022 Environmental Information Request, 7 (Aug. 22, 2022).

³⁰ *Id.*

³¹ FERC Environmental Information Request, No. 2 (Aug. 16, 2022).

represented in a table by census block group.³² But, FERC did not ask Rio Grande LNG to explain why it wouldn't do what it was asked. It sought specific information. This information was provided by Texas LNG's in response to a similar request from FERC.³³ FERC should not proceed with an analysis of impacts until Rio Grande LNG produces the requested modeling.

b. Rio Grande LNG Should Explain its Maximum Modeled Concentration Tables

Even though Rio Grande LNG has not produced all the information requested by FERC, it did produce a maximum modeled concentration table for criteria pollutants that extends to census block groups within 50 kilometers of the facility.³⁴ Although there is no legend for the table, the concentration quantities are so low, that these could figures could not be mistaken for the background concentrations and so must be the predicted concentration from Rio Grande LNG's emissions.³⁵ FERC should ask Rio Grande to update this table with both background emissions from the full inventory of sources within 50 kilometers of the facility and to provide a legend describing what is included in its modeled predicted maximum concentrations.

FERC should also ask for an explanation of Rio Grande LNG's assumptions in modeling its predicted maximum concentrations. While this information is important to understanding what the modeling demonstrates, in this instance it is also necessary to explain why Rio Grande's maximum concentrations are significantly less than Texas LNG's modeled maximum concentrations despite Rio

³² Rio Grande uses the term "isopeths" instead of referencing the geographical boundaries set by FERC. *See* Rio Grande LNG, Part 1 Response to August 16, 2022 Environmental Information Request, 7 (Aug. 22, 2022).

³³ *See* Texas LNG, Supplemental Response to Aug. 16, 2022 Environmental Information Request, Attachment 9-1: Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: September 2022 Update. (Attached). To be clear, while Texas LNG did provide this requested information, there are significant issues with Texas LNG's responses to FERC's similar environmental information requests in those dockets that are addressed in separate comments concerning Texas LNG's responses.

³⁴ Rio Grande LNG, Response to the May 2, 2022 EIR, Attachment 3 (May 20, 2022). Accession # 20220520-5124.

³⁵ *Compare* Rio Grande LNG, Response to the May 2, 2022 EIR, Attachment 3 (May 20, 2022). Accession # 20220520-5124, *with* Texas LNG, Supplemental Response to FERC's Environmental Information Request, Attachment 9-1 Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: September 2022 Update. (Attached). (Texas LNG's modeling includes both predicted background concentrations and concentrations from its own emissions. A comparison with Rio Grande LNG's maximum background concentrations demonstrates the predicted figures must be Rio Grande's own contribution.)

Grande being a larger source of emissions. Table 1 below shows the expected emissions of CO and NO₂, from each facility from 2026 to 2029.

Table 1. Predicted Emissions of CO and NO₂, for Rio Grande LNG and Texas LNG 2026-2029			
<i>Pollutant</i>	<i>Year</i>	<i>Rio Grande LNG Total Emissions in tons per year³⁶</i>	<i>Texas LNG Total Emissions in tons per year³⁷</i>
CO	2026	1,299.7	169.38
	2027	1,677.5	221.41
	2028	4,846.3	330.07
	2029	4,852.3	276.76
NO₂	2026	3,103.4	329.88
	2027	3,390.8	270.75
	2028	3,806.4	250.37
	2029	4,023.7	207.97

Rio Grande LNG has substantially higher emissions estimates than Texas LNG for CO and NO₂. Despite the overwhelmingly higher estimated emissions from the Rio Grande facility demonstrated in Table 1, Rio Grande LNG has modeled substantially lower maximum concentration levels for the census block groups within 50 kilometers of the facility fence line. Table 2 shows the predicted emissions concentrations from each source for four of the census block groups nearest the facilities.

³⁶ Rio Grande LNG, Part 1 Response to August 16, 2022 Environmental Information Request, Attachment 1, Table 9-1 (Aug. 22, 2022) Accession # 20220822-5167.

³⁷ Texas LNG, Supplemental Response to Feb. 3, 2022 Environmental Information Request, Table 9-1 (Apr. 29, 2022) Accession # 20220502-5075. (Attached)

Table 2. Maximum Modeled Concentrations of CO and NO₂, for Rio Grande LNG and Texas LNG in Select Block Groups within 50 Kilometers of each facility				
<i>Census Tract and Block Group³⁸</i>	<i>Pollutant & Time Period</i>	<i>Rio Grande LNG Maximum Modeled Emissions in µg/m³³⁹</i>	<i>Texas LNG Total Maximum Modeled Emissions during hoteling in µg/m³⁴⁰</i>	<i>Texas LNG Total Maximum Modeled Emissions during maneuvering in µg/m³⁴¹</i>
CT 012700 BG 2	CO – 1Hr	22.07	172.2	147.2
	CO – 8-Hr	7.64	61.7	27.1
	NO ₂ – 1Hr	6.03	125	37
	NO ₂ – Annual	.128	1.25	.136
CT 012304 BG 1	CO – 1Hr	15.21	62.8	70
	CO – 8-Hr	2.37	4.8	4.3
	NO ₂ – 1Hr	4.87	10.3	7.5
	NO ₂ – Annual	.0153	.025	.0117
CT 012304 BG 2	CO – 1Hr	14.26	135.8	157.7
	CO – 8-Hr	2.17	58.1	11.9
	NO ₂ – 1Hr	4.81	135.9	39.8
	NO ₂ – Annual	.013	.322	.131

³⁸ We would have liked to compare the emissions concentrations modeled for Census Tract 14200, Block Group 1. This is the block group where each facility is located. However, it does not seem that Rio Grande LNG modeled that Census Tract, or if it did, it is mislabeled. FERC should ask Rio Grande LNG to correct that oversight.

³⁹ Rio Grande LNG, Response to May 2, 2022 EIR, Attachment 3: Maximum Modeled Concentration Tables (May 20, 2022) Accession # 20220520-5124.

⁴⁰ Texas LNG, Supplemental Response to Aug. 16, 2022 Environmental Information Request, Attachment 9-1: Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: September 2022 Update. (Attached).

⁴¹ Texas LNG, Supplemental Response to Aug. 16, 2022 Environmental Information Request, Attachment 9-1: Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: September 2022 Update. (Attached).

CT 012304 BG 3	CO – 1Hr	20.04	55.7	58.3
	CO – 8-Hr	2.8	4.8	4.2
	NO ₂ , – 1Hr	5.31	11	6.8
	NO ₂ , – Annual	.01797	.0171	.00831

In almost every instance, save the occasional NO₂ annual emissions, Rio Grande LNG models that its maximum concentration contributions to the census block groups closest to the facility will be significantly less than Texas LNG’s. This defies logic given the vast difference in the quantity of emissions predicted from the facilities. FERC must demand an explanation of the modeling.

c. Rio Grande LNG Improperly Relies on SILs to Justify its Failure to Respond to FERC’s Request

Instead of providing background concentrations for all criteria pollutants as requested by FERC, Rio Grande LNG concluded that because emissions of CO, annual NO₂, PM_{2.5}, and PM₁₀ would not exceed significant impact levels “the project is deemed not to cause or contribute to any exceedances of the corresponding [NAAQS], and no further analyses are required for these pollutants and averaging periods.”⁴²

Using Significant Impact Levels (“SIL”) to determine whether this project causes or contributes to exceedances of the NAAQS is improper. The Clean Air Act unambiguously prohibits the use of SILs to demonstrate that a project would not cause or contribute to a NAAQS exceedance.⁴³ FERC must still review Rio Grande

⁴² Rio Grande LNG, Response to Aug. 16, 2022 Environmental Information Request, 7 (Aug. 22, 2022) Accession # 20220822-5167.

⁴³ See, e.g., *Alabama Power Co. v. Costle*, 636 F.2d 323, 362 (D.C. Cir. 1979) (Congress specifically used the terms “cause” and “contribute” together to ensure that the Prevention of Significant Deterioration program would prevent increments and the NAAQS from being exceeded by considering all possible violations or contributions to violations); *Bluewater Network v. EPA*, 370 F.3d 1, 13 (D.C. Cir. 2004) (interpreting nearly identical language in the Clean Air Act to mean that the term “contribute” “has no inherent connotation as to magnitude or importance of the relevant ‘share’ in the effect; certainly it does not incorporate any ‘significance’ requirement.”); *Sierra Club v. EPA*, 705 F.3d 458, 465-66 (D.C. Cir. 2013) (vacating EPA’s PM 2.5 SILs regulation because EPA lacks “authority to exempt sources from the requirements of the” Clean Air Act and the regulation “simply states that the demonstration required under [section] 165(a)(3) is deemed to have been made if a proposed source or modification’s air quality impact is below the SIL.”). See also *Sierra Club v. EPA*, 955 F.3d 56, 63-64 (D.C. Cir. 2020) (Affirming that the Court lacks jurisdiction to vacate a non-binding policy document as part of a facial challenge but explaining that “[t]he SILs Guidance is not

LNG’s contribution to declining air quality in the region, regardless of whether Rio Grande’s projected emissions exceed a SIL. That is the only way for FERC to fulfill its duties under NEPA to disclose the full impacts of this project to the public and to determine whether this project is in the public interest as is required by the Natural Gas Act.

d. Rio Grande LNG’s Conclusion That There Will Be No 1-hour NO₂ NAAQS Exceedances is Contradicted by Filings Made by Texas LNG

Although Rio Grande LNG did not provide any modeled background concentrations of for 1-hr NO₂,⁴⁴ it concluded that “the 1-hour NO₂ NAAQS will not be exceeded in any census block.”⁴⁵ This conclusion is directly contradicted by modeling produced by Texas LNG which demonstrates NAAQS exceedances in multiple census block groups for both the 1-hour NO₂ and the 1-hour PM₁₀.⁴⁶ Texas LNG’s modeling also demonstrates exceedances of the 1-hour PM NAAQS.⁴⁷ Rio Grande LNG must explain why its conclusions are inconsistent with other modeling provided to FERC.

e. Rio Grande LNG’s Emissions Will Have Disproportionately High and Adverse Impacts on Environmental Justice Communities

Rio Grande LNG’s maximum modeled concentrations and modeled predictions concentrations for 1-hour NO demonstrate that impacts from emissions from its facility will extend throughout the region and at least 50 kilometers from

sufficient to support a permitting decision—simply quoting the SILs Guidance is not enough to justify a permitting decision without more evidence in the record, including technical and legal documents.”).

⁴⁴ Rio Grande did produce a map showing predicted NO dispersion and concentrations over the region. Rio Grande LNG, Response to Aug. 16, 2022 Environmental Information Request, Attachment 2: Model-Predicted Concentration Figure (Aug. 22, 2022) Accession # 20220822-5167.

⁴⁵ Rio Grande LNG, Response to Aug. 16, 2022 Environmental Information Request, 7 (Aug. 22, 2022) Accession # 20220822-5167.

⁴⁶ Texas LNG, Supplemental Response to Aug. 16, 2022 Environmental Information Request, Attachment 9-1: Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: September 2022 Update. (Attached) (Texas LNG’s modeling shows exceedances of the 1-hour NO₂ NAAQS in CT 10800 BG 4, CT 12304 BG 2, CT 12401 BG 1, CT 126.07 BG 1, CT 12700 BG 2, and CT 14200 BG 1 and exceedances of the 1-hour PM₁₀ NAAQS in CT 10100 BG 2, CT 010800 BG 4, CT 011400 BG 4, CT 12700 BG 2, and CT 14200 BG 1.

⁴⁷ *Id.*

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the facility.⁴⁸ The impacts of these emissions should be highly scrutinized as they will be concentrated on Environmental Justice communities; of all the census block groups within 50 kilometers of the facility, only eight do not qualify as Environmental Justice communities.⁴⁹ Criteria pollutants, including particulate matter and nitrogen dioxide are recognized as pollutants for which there is no threshold of exposure that adequately protects human health.⁵⁰ As discussed above, there is evidence that in several census block groups, there are predicted exceedances of the 1-hour NAAQS for three criteria pollutants and that Rio Grande LNG's emissions will contribute to those exceedances. However, given that these pollutants are recognized as causing harm even below the NAAQS, impacts of from an increased concentration of each will increase the risk of harm to exposed populations, regardless of whether the emission concentrations exceed the NAAQS.

In the case of Rio Grande LNG these emissions will have disproportionately high and adverse impacts on environmental justice communities because all but eight of the census block groups (which have people living in them) which were included in the within 50 kilometers of the facility, and thus will be exposed to emissions from the facility, have either a higher rate of Hispanic/Latino individuals or low-income people than the general population of the State of Texas, or both. This alone demonstrates there will be disproportionately high and adverse impact on environmental justice communities from Texas LNG's air emissions.⁵¹

Moreover, as a general matter, projects that cause or contribute to exceedances of the NAAQS are not in the public interest. The NAAQS is "based on such criteria and allowing an adequate margin of safety, are requisite to protect public health."⁵² Exceedances of the NAAQS will contribute to worsening respiratory and cardiovascular health of exposed populations.⁵³ The health of local communities should not be jeopardized for the expansion of liquefied natural gas exports.

⁴⁸ See Rio Grande LNG, Response to May 2, 2022 EIR, Attachment 3: Maximum Modeled Concentration Tables (May 20, 2022) Accession # 20220520-5124; see also Rio Grande LNG, Response to Aug. 16, 2022 Environmental Information Request, Attachment 2: Model-Predicted Concentration Figure (Aug. 22, 2022) Accession # 20220822-5167.

⁴⁹ See Rio Grande LNG, Response to May 2, 2022 Environmental Information Request, Table 5.1: Minority Populations by Race and Low-Income Populations within 50 kilometers of RGLNG Terminal.

⁵⁰ See *Am. Trucking Ass'n, Inc. v. EPA*, 283 F.3d 355, 359-360 (D.C. Cir. 2002); 75 Fed. Reg. 6474 at 6500 (Feb. 9, 2010)

⁵¹ See e.g. CEQ, *Environmental Justice Guidelines Under the National Environmental Policy Act*, 25 (Dec. 1, 1997).

⁵² 42 CFR 7409(b)(1).

⁵³ While an exceedance of the NAAQS would certainly have an adverse impact on environmental justice communities, an exceedance of the NAAQS is not a necessary condition for the presence of a disproportionate impact on environmental justice communities. See CEQ 1997 Guidance at 10.

Texas LNG's modeling also demonstrates that many these census block groups are already exposed to NAAQS exceedances for NO₂, PM_{2.5}, and PM₁₀ even before the construction and operation of Texas LNG and Rio Grande LNG.⁵⁴ Moreover, the two census block groups closest to the Rio Grande LNG facility, Tract 12700, Block Group 2, and Tract 14200, Block Group 1 are in the 99th percentile for the environmental justice index for PM_{2.5}, and in the 93rd and 96th percentile (respectively) in the State.⁵⁵ The construction and operation of an additional pollution source in areas that are populated by environmental justice communities that are already exposed to emissions levels that exceed the standard set to protect human health is a serious environmental justice concern and at a minimum demands the consideration of alternative sites.

Finally, the risks of exposure on EJ populations can also be heightened by factors specific to those populations.⁵⁶ As previously raised in this docket, the EJ populations in this area are less likely to have access to medical infrastructure including hospitals and insurance, have high concentrations of young and elderly populations, and low-income populations may likely have worse respiratory health than the general population of Texas. FERC should consider these factors before determining whether the impacts of air emissions are significant.⁵⁷

IV. Rio Grande LNG Has Not Provided Sufficient Information for FERC To Analyze the Impacts of Offsite Parking Locations on Environmental Justice Communities

FERC will not be able to properly analyze impacts caused by Rio Grande LNG's offsite locations to environmental justice communities. FERC requested data on census block groups within one mile of "offsite parking locations from which

⁵⁴ Texas LNG, Supplemental Response to Aug. 16, 2022 Environmental Information Request, Attachment 9-1: Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: September 2022 Update. (Attached)

⁵⁵ EJ Screen Report Blockgroup 480610127002 (Attached); EJ Screen Report Blockgroup 480610142021 (Attached) (Please note that EPA's EJ Screen mistakenly labels blockgroup 480610142021 as 480610142022. Compare Texas Education Agency, Census Block Group Map, available at <https://hub.arcgis.com/datasets/TEA-Texas::census-block-group-map/explore?location=26.031312%2C-97.291719%2C11.96>. (Screen shot attached).

⁵⁶ CEQ, *Environmental Justice Guidelines Under the National Environmental Policy Act*, 9 (Dec. 1. 1997).

⁵⁷ "Agency consideration of impacts on low-income populations, minority populations, or Indian tribes may lead to the identification of disproportionately high and adverse human health or environmental effects that are significant and that otherwise would be overlooked." CEQ, *Environmental Justice Guidelines Under the National Environmental Policy Act*, 10 (Dec. 1. 1997).

workers would be transported.”⁵⁸ There is no basis for limiting the analysis of these impacts on environmental justice communities to a one-mile radius. Instead, by limiting the analysis in this manner, FERC is ensuring that it will run headlong into one of the issues that rendered its environmental justice analysis inadequate in *Vecinos*. There, the D.C. Circuit determined that FERC analyzed environmental justice impacts within an arbitrarily determined geographic radius and, therefore, FERC’s environmental justice analysis was inadequate.⁵⁹ FERC appears to be doing the same thing here. Instead, FERC must analyze impacts within a rationally determined geographic radius.

In addition to asking the wrong question, FERC also does not have sufficient data to perform an adequate analysis of these impacts. Rio Grande LNG provided almost no helpful information. For example, when asked to discuss impacts to environmental justice communities from the use of Rio Grande LNG’s offsite locations, Rio Grande LNG provided a non-answer. Rio Grande did acknowledge that environmental justice communities would experience impacts,⁶⁰ but failed to seriously discuss those impacts or assess whether environmental justice communities will experience disproportionate impacts from the offsite locations. Instead, Rio Grande LNG claimed that the nearest residence to one offsite location is more than three miles away, which does not mean that environmental justice communities will not be impacted by the offsite location, and explained that individuals traveling on SH-48 will experience impacts from the offsite location, which is not an analysis of impacts to environmental justice communities.⁶¹ Similarly, with respect to the other offsite location, Rio Grande LNG noted that the nearest residence is about .3 miles away but claims that the offsite location is “located in an industrial area” and, therefore concludes, that use of the offsite location will be consistent with current usage.⁶² However, again, Rio Grande LNG has not analyzed impacts to environmental justice communities with respect to this offsite location. It is plainly irrelevant whether the offsite area is located in an area where industrial uses are occurring. Use of that offsite location can still cause impacts to environmental justice communities by causing, *e.g.*, increased traffic,

⁵⁸ Rio Grande LNG, LLC, Rio Grande LNG Project Docket No. CP16-454-000 Part 1 Response to August 16, 2022 Environmental Information Request at 16, Accession 20220822-5167.

⁵⁹ *Vecinos*, 6 F.4th at 1330-31.

⁶⁰ Rio Grande LNG, LLC, Rio Grande LNG Project Docket No. CP16-454-000 Part 1 Response to August 16, 2022 Environmental Information Request at 16, Accession 20220822-5167.

⁶¹ *Id.*

⁶² *Id.*

noise, and pollution. Unfortunately, because Rio Grande LNG only provided FERC with a non-responsive answer to FERC's question, FERC cannot yet properly analyze these impacts to environmental justice communities.⁶³

Along with providing a telling non-answer, Rio Grande LNG urged FERC to rely on stale information while assessing these impacts to environmental justice communities. When asked to provide the average daily traffic of the roads that would provide primary access to the offsite locations, Rio Grande LNG pointed to data from a three-year-old traffic survey of SH-48.⁶⁴ The traffic survey itself is now stale and FERC must ensure that adequate, current information is acquired. Moreover, Rio Grande LNG's response ignores the primary access road to the Port Isabel Temporary Storage Area, which according to the map provided by Rio Grande LNG in these responses, is not on SH-48.⁶⁵ Without current and complete data, FERC also cannot yet properly analyze these impacts.

Finally, upon request, Rio Grande LNG explained that it would utilize certain mitigation measures to "minimize traffic impacts on local roadways."⁶⁶ However, there is no indication that any of these mitigation measures will be effective.⁶⁷ Nor is there any analysis of whether these mitigation measures will be effective at blunting any disproportionate impacts that will be experienced by environmental justice communities. FERC cannot just assume that these measures will be effective in general or effective at mitigating disproportionate impacts to environmental justice communities and, instead, must analyze their effectiveness.

⁶³ What little relevant information Rio Grande LNG *did* provide FERC indicates that these impacts will indeed occur to environmental justice communities. *See id.* at 20.

⁶⁴ *Id.* at 24.

⁶⁵ *Id.* at 20.

⁶⁶ *Id.* at 26.

⁶⁷ *Cf. O'Reilly v. U.S. Army Corps of Eng'rs*, 477 F.3d 225, 231-34 (5th Cir. 2007) (Corps violated NEPA by concluding that mitigation measures would reduce impacts to wildlife habitat and wetland function to insignificance, where Corps provided only cursory details of how those mitigation measures would work); *Nat'l Audubon Soc. v. Hoffman*, 132 F.3d 7, 16-17 (2d Cir. 1997). Additionally, the mitigation measures provided by Rio Grande LNG seem to concern only traffic impacts on SH-48. Rio Grande LNG, LLC, Rio Grande LNG Project Docket No. CP16-454-000 Part 1 Response to August 16, 2022 Environmental Information Request at 26, Accession 20220822-5167. FERC must ensure that mitigation measures are designed to mitigate *all* traffic impacts, not just those that will occur at SH-48.

V. Rio Grande LNG Has Not Provided Enough Information to Analyze the Sufficiency of its Emergency Response Plan

Rio Grande LNG has not provided enough information to analyze the sufficiency of its emergency response plan. As Rio Grande LNG acknowledged in its response to FERC's request, it has not yet developed an emergency management plan.⁶⁸ Therefore, there is no plan to comment on.

However, the information provided by Rio Grande LNG does paint a worrisome picture. For example, Rio Grande LNG acknowledges that provision must be made for persons in the project area that speak English less than well by claiming it will develop "a community outreach and emergency response pamphlet" in both English and Spanish.⁶⁹ However, Rio Grande LNG provides no information so much as suggesting that its emergency response plan will include any further measures ensuring the safety of Spanish speakers or those who speak English less than very well. This is unacceptable. While Rio Grande LNG should certainly formulate a pamphlet in both English and Spanish, a pamphlet alone is not enough. FERC must ensure that the emergency response itself is conducted in both languages and that people impacted by any emergency that speak Spanish or English less than well are safe. This means, *inter alia*, disaster response personnel are prepared to engage with people in Spanish and emergency response messaging is provided in Spanish. Anything less obviously creates an extremely dangerous situation for this population and for emergency response personnel.

More broadly, despite the clear impacts of the Project on environmental justice communities, there is no indication of any plans to ensure that the emergency response plan would mitigate any disproportionately high and adverse effects of the project experienced by project area environmental justice communities. Nor is there any indication that appropriate outreach and engagement measures will be used to ensure the involvement of environmental justice communities in the development of the emergency management plan.⁷⁰ As explained above, failure to ensure the meaningful participation of environmental justice communities will ensure an emergency response plan that places

⁶⁸ Rio Grande LNG, LLC, Rio Grande LNG Project Docket CP16-454-000 Part 2 Response to August 16, 2022 Environmental Information Request at 26, Accession 20220915-5122.

⁶⁹ *Id.* at 26.

⁷⁰ *See supra* § II.

disproportionate risk on environmental justice communities.⁷¹ FERC must act to prevent this failure.

VI. The Information Requested by FERC is Inadequate to Ensure an Adequate Environmental Justice Analysis of the Impacts of the Rio Bravo Pipeline System

FERC has not requested the right information to assess the impacts of the Rio Bravo pipeline system on Environmental Justice Communities. Credit where it's due, FERC's request did elicit information showing that 95.2% of the census block groups impacted by the pipeline system are environmental justice communities.⁷² However, none of FERC's subsequent requests elicited useful information on how these communities will be impacted by the Rio Bravo pipeline system.

FERC requested information on visual impacts, but limited the request to “visual impacts ... on sensitive receptors ... *from the meter stations*.”⁷³ The Rio Bravo pipeline system will cause visual impacts beyond those that will occur at the meter stations. For example, construction of the Rio Bravo pipeline system will cause visual impacts “by vegetation clearing along the right-of-way and construction of the pipeline facilities.”⁷⁴ These impacts would be most prominent “where the pipeline parallels or crosses roads, trails, or prominent offsite observation points and other places where the right-of-way may be seen by passing motorists or recreationists.”⁷⁵ Such areas include the Lower Rio Grande Valley National Wildlife Refuge and the Laguna Atascosa National Wildlife Refuge. The pipeline system crosses within .25 miles of both.⁷⁶ Accordingly, requesting visual impact information only for the areas immediately surrounding metering sites, renders FERC's analysis of visual impacts on environmental justice communities inadequate. FERC must cast a much wider net, inclusive of all visual impacts on environmental justice communities.

Additionally, while FERC requested updated air emissions information from Rio Grande LNG to analyze environmental justice impacts,⁷⁷ FERC did not make a

⁷¹ For example, FERC must ensure that any emergency response plan is effective despite the presence of a significant number of people that live below the poverty line.

⁷² Rio Bravo Pipeline Company, LLC, Rio Bravo Pipeline Project, Docket Nos. CP16-455-000 and CP20-481-000 Response to May 2, 2022 and May 10, 2022 Environmental Information Requests at pdf 12, Accession 20220601-5340 (Response 5).

⁷³ *Id.* at pdf 15 (Response 7) (emphasis added).

⁷⁴ Final Environmental Impact Statement at 5-12.

⁷⁵ *Id.*

⁷⁶ *Id.* at 4-193.

⁷⁷ *See supra* § III.

similar request of Rio Bravo. Instead, FERC merely requested demographic information of census block groups within 50 kilometers of the compressor station.⁷⁸ FERC must actually analyze how the air emissions from the compressor station will impact environmental justice communities and whether those impacts will be disproportionately high and adverse.⁷⁹

Ultimately, FERC simply has not asked enough of Rio Bravo. And FERC's requests suggest that its subsequent analysis of Rio Bravo's environmental justice impacts will be too narrow and inadequate.

VII. FERC Cannot Credit Rio Grande LNG's Carbon Capture and Storage Proposal in its NEPA Analysis or Natural Gas Act Public Interest Determination

While Rio Grande LNG's Carbon Capture and Storage ("CCS") proposal has its own FERC docket,⁸⁰ it is important to note here that FERC cannot credit Rio Grande LNG's CCS proposal in its NEPA analysis or any Natural Gas Act public interest determinations. Rio Grande LNG has made no commitment to install or ultimately operate CCS equipment, a point that it has underscored in its response to FERC's recent environmental information request.⁸¹ Nor has Rio Grande LNG committed to capturing any given fraction of carbon dioxide emissions. Thus, FERC cannot credit CCS in its NEPA analysis or Natural Gas Act public interest determination.

All that Rio Grande states is that it "intends" to operate CCS equipment most of the time.⁸² Rio Grande gives startup, shutdown, or malfunction events as an example of when CCS might not be operated.⁸³ But Rio Grande does not assert that startup, shutdown, or malfunction are the *only* times that CCS might not be operated, and, here, Rio Grande explains that it can simply decide not to operate

⁷⁸ Rio Bravo Pipeline Company, LLC, Rio Bravo Pipeline Project, Docket Nos. CP16-455-000 and CP20-481-000 Response to May 2, 2022 and May 10, 2022 Environmental Information Requests at pdf 11 (Response 4).

⁷⁹ Similarly, FERC requested demographic information of census blocks within 1 mile of other aboveground facilities. *See id.* There is no reason to think impacts from the other aboveground facilities will only be felt within one mile. FERC must ensure that it analyzes impacts within the appropriate geographic range and must consider broader ranges with respect to Request 4. *See supra* note 59.

⁸⁰ *See* Docket No. CP22-17-000.

⁸¹ *See* Rio Grande LNG, LLC, Rio Grande LNG Project Docket No. CP16-454-000 Part 1 Response to August 16, 2022 Environmental Information Request at 4, Accession 20220822-5167.

⁸² *E.g.*, Resource Report 1-8, 9-8, *in* Docket No. CP22-17 (attached).

⁸³ *Id.*

CCS for any reason that it wants.⁸⁴ And the considerable operating cost of running CCS (in energy, amine sorbent, etc.) provides a powerful financial incentive to deactivate the system outside of startup, shutdown, and malfunction contexts. Other facilities, such as coal fired power plants in the northeast, have routinely installed pollution control equipment but then deactivated that equipment when they were financially incentivized to do so.⁸⁵

Moreover, Rio Grande is incorrect in previously suggesting that there may be circumstances in which it is *required* to operate liquefaction equipment despite non-operation of CCS. Specifically, Rio Grande argued that it may operate CCS “in order to meet its legally binding, contractual commitments to its liquefaction customers.”⁸⁶ As a threshold matter, Rio Grande has not reached a final investment decision and has few contracts or customers; Rio Grande has not presented evidence of any such agreements. And the terms of any contracts Rio Grande does enter can, of course, be specified by Rio Grande. For example, utility contracts routinely include provisions that relieve a part of obligations due to *force majeure*, malfunction, or other similar circumstance.

Accordingly, because of Rio Grande’s past statements in CP22-17 and its statements in response to FERC’s August 16, 2022 Environmental Information Request, FERC cannot credit Rio Grande LNG’s CCS proposal as it analyzes the impacts of the Project.⁸⁷

⁸⁴ See Rio Grande LNG, LLC, Rio Grande LNG Project Docket No. CP16-454-000 Part 1 Response to August 16, 2022 Environmental Information Request at 4, Accession 20220822-5167.

⁸⁵ See Ozone Transport Commission Stationary and Area Source Committee, Largest Contributors Working Group, *Comparison of CSAPR Allowance Prices to Cost of Operating SCR controls* (Apr. 15, 2015), available at <https://otcair.org/upload/Documents/Reports/Draft%20Final%20Allowance%20v%20SCR%20operating%20costs%2004-15-15.pdf> (attached).

⁸⁶ Application at 8 in Docket No. CP22-17-000 (attached).

⁸⁷ See, e.g., *New York v. Nuclear Regulatory Comm’n*, 681 F.3d 471, 478-79 (D.C. Cir. 2012), *O’Reilly*, 477 F.3d at 231-34 (5th Cir. 2007), *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1381 (9th Cir. 1998).

VIII. Conclusion

The undersigned commenters appreciate the opportunity to submit these comments and urge FERC to make the necessary changes to properly analyze the impacts to environmental justice communities. Ultimately, FERC must deny any outstanding applications and vacate any existing approvals. This project cannot go forward.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

Dated at Bexar County, Texas this 19th Day of October, 2022.

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