



constituencies within any particular community” and “have complete representation of the community as a whole.”<sup>3</sup> “[C]ommunity participation must occur as early as possible if it is to be meaningful.”<sup>4</sup> Among the constituencies that must be included in the process is tribal representation of any impacted tribes.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

Here, the proposed project will have significant impacts on environmental justice communities.<sup>8</sup> 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.<sup>9</sup> Similarly, the population of Cameron County, where the project site is located, is 90% Hispanic/Latino and 24.4% live below the poverty line.<sup>10</sup> 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.<sup>11</sup>

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.

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

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

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

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

<sup>7</sup> CEQ 1997 Guidance.

<sup>8</sup> 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.

<sup>9</sup> U.S. Census Bureau, *Quick Facts: Cameron County, Port Isabel, Texas*, available at

<https://www.census.gov/quickfacts/fact/table/cameroncountytexas,TX,portisabelcityexas/PST045221>. (Last accessed Sept. 28, 2022) (attached).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

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

If Texas LNG 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.<sup>12</sup> Despite this, FERC has not provided translated versions of the Texas LNG's responses to the information requests underlying this request for public comment. This has the obvious effect of cutting at least 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.<sup>13</sup> 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."<sup>14</sup> This is because "background data" on environmental justice communities, including "empirical data, based on verifiable observations or experience" is crucial to an agency's environmental justice analysis.<sup>15</sup> Additionally, environmental justice populations "in the affected environment may hold an opposing technical or scientific view (which can be based on several sources,

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<sup>12</sup> 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](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](https://data.census.gov/cedsci/table?tid=ACSDP5Y2020.DP02&g=0400000US48_0500000US48061&hidePreview=true). (Last viewed Sept. 28, 2022) (attached).

<sup>13</sup> *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.").

<sup>14</sup> CEQ 1997 Guidance at 14.

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

including the community) from agencies regarding specific impacts and/or methods of analysis,” which “may warrant discussion in a NEPA document.”<sup>16</sup>

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 to know whether this population “may be differently affected by past, present, or reasonably foreseeable future impacts than the general population.”<sup>17</sup> Or, whether the effects of the Texas LNG project on this population would be amplified by “past exposure histories, and social factors.”<sup>18</sup> 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.”<sup>19</sup>

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 Texas LNG 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.<sup>20</sup> FERC has already acknowledged that the Texas LNG project will adversely impact the Garcia Pasture Site as the Garcia Pasture Site is within the Texas LNG project footprint.<sup>21</sup> However, despite the destruction of Garcia Pasture, FERC has not consulted with the Carrizo Comecrudo Tribe of Texas and Texas LNG merely sent a single email to the Tribe providing some information.<sup>22</sup>

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<sup>16</sup> *Id.* at 30.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 31.

<sup>19</sup> EPA 1998 Guidance at pdf 54.

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

<sup>21</sup> Final EIS at 4-334.

<sup>22</sup> *Id.* at 4-160 - 4-161.

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.<sup>23</sup> 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 Texas LNG 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 Texas LNG 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. CP16-454-000, CP16-454-003, CP16-455-000, and CP16-455-002, requesting public comment on similar issues but concerning the nearby Rio Grande LNG and Rio Bravo Pipeline projects. 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. For example, FERC requested and Texas LNG provided significant amounts of air emissions data, including air emissions modeling data.<sup>24</sup> Similarly, Texas LNG

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<sup>23</sup> 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.")

<sup>24</sup> See Texas LNG Brownsville LLC, FERC Docket No. CP16-116-000 Texas LNG Project Supplemental Response to August 16, 2022 Environmental Information Request at Attachment 9-1, Accession 20220921-5053.

included a jargon laden discussion of an emergency response plan.<sup>25</sup> Clearly, Texas LNG's responses were not written for a general audience, they were written for subject matter experts.

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.<sup>26</sup> FERC has not provided the information it seeks comment on in a format that is concise, understandable, and readily accessible to the public.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> FERC is currently failing to ensure an adequate process

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<sup>25</sup> See Texas LNG Brownsville, LLC, FERC Docket No. CP16-116-000 Texas LNG Project Response to August 16, 2022 Environmental Information Request at 21-23, Accession 20220915-5265.

<sup>26</sup> Promising Practices at 8.

<sup>27</sup> Cf. CEQ 1997 Guidance at 33.

<sup>28</sup> See, e.g., *Id.* at 13.

<sup>29</sup> See Promising Practices at 8-11.

### **III. The Air Emissions Data Provided by Texas LNG is Inadequate and Requires Significant Explanation and Clarification**

FERC should ask Texas LNG to explain its assumptions and clarify some of the information provided in Tables 9-3-1 and 9-3-2. However, even without that clarification, it is clear from Texas LNG's modeling that the cumulative air emissions associated with this project pose significant risks to environmental justice communities living near the terminal, particularly in those census block groups where Texas LNG anticipates an exceedance of the NAAQS.

#### *a. Texas LNG's Assumptions Should Be Explained*

FERC should ask Texas LNG to explain the assumptions it used to model its own contributions in Tables 9-3-1 and 9-3-2. It is unexpected that the hourly concentration contributions for hoteling would be higher than the hourly concentration contributions for NO<sub>2</sub>, PM<sub>2.5</sub>, and PM<sub>10</sub>. Yet, for many of the census blocks, the hourly concentration contributions for Texas LNG during hoteling are higher than during maneuvering.

Similarly, FERC should ask Texas LNG to explain its assumptions regarding it and Rio Grande LNG's contributions to the concentration of CO. For many block groups, Texas LNG alone contributes several micrograms per cubic meter, but when both Texas LNG and Rio Grande LNG's emissions are removed from the full inventory of sources, the total concentrations only decline by a few decimal points. For example, in Census Tract 014200, Block Group 1 Texas LNG projects that its contributions of CO during hoteling are 951.2 µg/m<sup>3</sup> and during maneuvering are 973.3 µg/m<sup>3</sup>. It further models that the total inventory during hoteling is 25216.3 µg/m<sup>3</sup> and during maneuvering is 25216.4 µg/m<sup>3</sup>. Yet, when both Texas LNG and Rio Grande LNG's contributions are removed from the modeling the CO background concentrations only decline to 25216.2 µg/m<sup>3</sup>, despite Texas LNG's own contribution exceeding 900 µg/m<sup>3</sup>.<sup>30</sup>

Given that Texas LNG's modeling does not conform with reasonable expectations of the impacts of emissions in various scenarios, FERC should request an explanation of the assumptions used for each scenario and criteria pollutant analyzed.

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<sup>30</sup> Texas LNG, Supplemental Response to August 16, 2022 EIR, Attachment 9-1: Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: Sept. 2002 Update at 7. (Sept. 21, 2022).

Table 9-3-2 also appears to contain a significant typo as all Census Tracts are labeled 010100. FERC should ask Texas LNG to submit a table with the proper Census Tract labeling.

*b. Texas LNG's Emissions Will Have Disproportionately High and Adverse Impacts on Environmental Justice Communities*

Tables 9-3-1 and 9-3-2 demonstrate that air emissions from the Texas LNG facility will extend as far as 50 km away from the facility's fence line. There is a modeled concentration of criteria pollutants from Texas LNG's facility during both hoteling and maneuvering in every single census tract and block group modeled.<sup>31</sup> 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.<sup>32</sup> As discussed further below, there are several census blocks where NO<sub>2</sub>, PM<sub>2.5</sub>, and PM<sub>10</sub> are expected to exceed the NAAQS. 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.<sup>33</sup>

In the case of Texas LNG these emissions will have disproportionately high and adverse impacts on environmental justice communities because all but three of the census block groups (which have people living in them) which were included in the modeling, have either a higher rate of Hispanic/Latino individuals or low-income people than the general population of the State of Texas, or both.<sup>34</sup> This alone demonstrates there will be disproportionately high and adverse impact on environmental justice communities from Texas LNG's air emissions.<sup>35</sup>

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<sup>31</sup> See Texas LNG, Supplemental Response to August 16, 2022 EIR, Attachment 9-1: Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: Sept. 2002 Update. (Sept. 21, 2022).

<sup>32</sup> 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)

<sup>33</sup> To be clear, just because a criteria pollutant is not present in concentrations that exceed the NAAQS does not mean that it is not causing a disproportionately high and adverse impacts on environmental justice communities. See CEQ 1997 Guidance at 10.

<sup>34</sup> The three census block groups that do not meet the EJ criteria are CT 101, BG 4, CT 121.01, BG 1, and CT 123.05, BG 1. Texas LNG, Response to Feb. 3, 2022 EIR., Table 5-1. (Mar. 4, 2022).

<sup>35</sup> See *e.g.* CEQ, *Environmental Justice Guidelines Under the National Environmental Policy Act*, 25 (Dec. 1. 1997).



The risks of exposure on EJ populations can also be heightened by factors specific to those populations.<sup>36</sup> 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.<sup>37</sup>

*c. Texas LNG's Modeling Shows Texas LNG & Rio Grande LNG Will Cause or Contribute to NAAQS Violations in Multiple Census Block Groups that Contain Environmental Justice Populations*

Tables 9-3-1 and 9-3-2 demonstrate that emissions from Texas LNG and Rio Grande LNG will cause or contribute to violations of the NAAQS for NO<sub>2</sub>, PM<sub>2.5</sub>, and PM<sub>10</sub>. These are undoubtedly significant impacts, as the NAAQS are intended to reduce the risk to “sufficiently protect human health.”<sup>38</sup> These NAAQS violations only occur in census blocks populated by EJ communities. (See Tables 1-2).<sup>39</sup> This only heightens the severity of their impacts.

<p><b>Table 1 – Demographics of Census Block Groups Where Texas LNG has Modeled Violations of the 1-hr NAAQS of NO<sub>2</sub>.</b></p>
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<sup>36</sup> CEQ, *Environmental Justice Guidelines Under the National Environmental Policy Act*, 9 (Dec. 1. 1997).

<sup>37</sup> “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).

<sup>38</sup> See *Am. Trucking Ass’n, Inc. v. EPA*, 283 F.3d 355, 359-360 (D.C. Cir. 2002).

<sup>39</sup> A similar table cannot be made for PM<sub>2.5</sub> because of the aforementioned typo. There are several places where Texas LNG has modeled an exceedance of the PM<sub>2.5</sub> NAAQS and Texas LNG should clarify which census blocks groups these are. See Texas LNG, Attachment 9-1, Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: Sept. 2002 Update at 9, 12, and 15.

<i>Census Tract and Block</i>	<i>Modeled Inventory During Texas LNG Hoteling<sup>40</sup></i>	<i>Modeled Inventory During Texas LNG Maneuvering<sup>41</sup></i>	<i>Modeled Inventory Without Texas or Rio Grande LNG<sup>42</sup></i>	<i>% Racial or Ethnic Minority<sup>43</sup></i>	<i>% Low-income<sup>44</sup></i>
CT 10800 BG 4	273.1 µg/m <sup>3</sup>	273.1 µg/m <sup>3</sup>	149.5 µg/m <sup>3</sup>	80	49
CT 12304 BG 2	209.1 µg/m <sup>3</sup>	125.2 µg/m <sup>3</sup>	97.5 µg/m <sup>3</sup>	68	12
CT 12401 BG 1	194.6 µg/m <sup>3</sup>	194.6 µg/m <sup>3</sup>	125.5 µg/m <sup>3</sup>	93	25
CT 126.07 BG 1	797.6 µg/m <sup>3</sup>	797.6 µg/m <sup>3</sup>	775.1 µg/m <sup>3</sup>	99	34
CT 12700 BG 2	1993.7 µg/m <sup>3</sup>	1993.8 µg/m <sup>3</sup>	828.4 µg/m <sup>3</sup>	87	40
CT 14200 BG 1	5218.4 µg/m <sup>3</sup>	5218.4 µg/m <sup>3</sup>	2171.3 µg/m <sup>3</sup>	99	34

<sup>40</sup> Texas LNG, Attachment 9-1, Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: Sept. 2002 Update. (Sept. 21, 2022).

<sup>41</sup> Texas LNG, Attachment 9-1, Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: Sept. 2002 Update. (Sept. 21, 2022).

<sup>42</sup> Texas LNG, Attachment 9-1, Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: Sept. 2002 Update. (Sept. 21, 2022).

<sup>43</sup> Texas LNG, Response to Feb. 3, 2022 EIR., Table 5-1. (Mar. 4, 2022).

<sup>44</sup> Texas LNG, Response to Feb. 3, 2022 EIR., Table 5-1. (Mar. 4, 2022).

<b>Table 2 – Demographics of Census Block Groups Where Texas LNG has Modeled Violations of the 1-hr NAAQS of PM<sub>10</sub>.</b>					
<i>Census Tract and Block</i>	<i>Modeled Inventory During Texas LNG Hoteling<sup>45</sup></i>	<i>Modeled Inventory During Texas LNG Maneuvering<sup>46</sup></i>	<i>Modeled Inventory Without Texas or Rio Grande LNG<sup>47</sup></i>	<i>% Racial or Ethnic Minority<sup>48</sup></i>	<i>% Low-income<sup>49</sup></i>
CT 10100 BG 2	264.8 µg/m <sup>3</sup>	264.8 µg/m <sup>3</sup>	264.89 µg/m <sup>3</sup>	87	24
CT 010800 BG 4	1346.2 µg/m <sup>3</sup>	1346.2 µg/m <sup>3</sup>	1346.2 µg/m <sup>3</sup>	80	49
CT 011400 BG 4	608.6 µg/m <sup>3</sup>	608.6 µg/m <sup>3</sup>	6.08.6 µg/m <sup>3</sup>	87	22
CT 12700 BG 2	520.5 µg/m <sup>3</sup>	520.5 µg/m <sup>3</sup>	520.5 µg/m <sup>3</sup>	87	40
CT 14200 BG 1	408.7 µg/m <sup>3</sup>	408.7 µg/m <sup>3</sup>	408.7 µg/m <sup>3</sup>	99	34

As a general matter, projects that cause or contribute to exceedances of the NAAQS are not in the public interest.<sup>50</sup> The NAAQS, “based on such criteria and

<sup>45</sup> Texas LNG, Supplemental Response to August 16, 2022 EIR, Attachment 9-1: Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: Sept. 2002 Update. (Sept. 21, 2022).

<sup>46</sup> Texas LNG, Supplemental Response to August 16, 2022 EIR, Attachment 9-1: Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: Sept. 2002 Update. (Sept. 21, 2022).

<sup>47</sup> Texas LNG, Supplemental Response to August 16, 2022 EIR, Attachment 9-1: Maximum Modeled Concentrations of Criteria Pollutants within Census Block Groups: Sept. 2002 Update. (Sept. 21, 2022).

<sup>48</sup> Texas LNG, Response to Feb. 3, 2022 EIR., Table 5-1. (Mar. 4, 2022).

<sup>49</sup> Texas LNG, Response to Feb. 3, 2022 EIR., Table 5-1. (Mar. 4, 2022).

<sup>50</sup> And, despite Texas LNG’s suggestion to the contrary, *see* Texas LNG Brownsville, LLC, FERC Docket No. CP16-116-000 Texas LNG Project Response to August 16, 2022 Environmental Information Request at 10, Accession 20220915-5265, 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. *See, e.g., Alabama Power Co. v. Costle,*

allowing an adequate margin of safety, are requisite to protect public health.”<sup>51</sup> Exceedances of the NAAQS will contribute to worsening respiratory and cardiovascular health of exposed populations. The health of local communities should not be jeopardized for the expansion of liquified natural gas exports.

Moreover, this modeling demonstrates that many these census block groups are exposed to NAAQS exceedances for NO<sub>2</sub>, PM<sub>2.5</sub>, and PM<sub>10</sub> before the construction and operation of Texas LNG and Rio Grande LNG. Moreover, the two census block groups closest to the Texas LNG facility, Tract 12700, Block Group 2, and Tract 14200, Block Group 1 are in the 99<sup>th</sup> percentile for the environmental justice index for PM<sub>2.5</sub>, and in the 93<sup>rd</sup> and 96<sup>th</sup> percentile (respectively) in the State.<sup>52</sup> 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.

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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 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 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.”).

<sup>51</sup> 42 CFR 7409(b)(1).

<sup>52</sup> 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).

#### IV. The Offsite Parking Locations Impacts Data Provided by Texas LNG is Inadequate

FERC will not be able to properly analyze impacts to environmental justice communities from offsite parking locations. FERC requested data on census block groups within one mile of “offsite parking locations from which workers would be transported.”<sup>53</sup> 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 range and, therefore, FERC’s environmental justice analysis was inadequate.<sup>54</sup> FERC appears to be doing the same thing here.

Instead, FERC must analyze impacts within a rationally determined geographic radius. There is good reason to think that a one-mile radius is, indeed, inappropriate. For example, the final environmental impact statement suggests that some traffic impacts will be felt well outside a one-mile radius and will impact environmental justice communities.<sup>55</sup> Whatever geographic radius FERC determines must be supported by the record and be adequately explained.<sup>56</sup>

In addition to asking the wrong question, FERC also does not have sufficient data to perform an adequate analysis of traffic impacts on environmental justice communities. Texas LNG indicated that it has not yet determined where it will place offsite parking lots and, therefore, cannot provide FERC with actionable data yet. Accordingly, Texas LNG provided almost no information on these impacts.<sup>57</sup>

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<sup>53</sup> Texas LNG Brownsville, LLC, FERC Docket No. CP16-116-000 Texas LNG Project Response to August 16, 2022 Environmental Information Request at 3, Accession 20220915-5265.

<sup>54</sup> *Vecinos*, 6 F.4th at 1330-31.

<sup>55</sup> Final EIS at 4-333.

<sup>56</sup> *Vecinos*, 6 F.4th at 1330-31.

<sup>57</sup> Texas LNG Brownsville, LLC, FERC Docket No. CP16-116-000 Texas LNG Project Resposnet to August 16, 2022 Environmental Information Request at 3-9, Accession 20220915-5265. Additionally, what little information Texas LNG did provide, suggests that its ultimate analysis of traffic impacts will rely on a traffic impact analysis prepared in 2016. *See id.* at 5. Irrespective of the merits of this data in 2016, it is plainly stale now and Texas LNG must provide updated data. Likewise, Texas LNG provides two mitigation measures it claims will reduce “traffic impact on local roadways.” *Id.* at 9. But there is no assessment of either the overall effectiveness of these mitigation measures or the effectiveness of these mitigation

Because FERC does not have enough data to perform this analysis, it goes without saying that the public does not have enough information to provide meaningful comment on these impacts. FERC must provide for additional opportunities to comment on this issue. Otherwise, FERC is not ensuring the meaningful involvement of environmental justice communities that could be impacted in this manner.<sup>58</sup>

## **V. The Emergency Management Plan Information Provided by Texas LNG Is Inadequate**

Texas LNG has not provided enough information to analyze the sufficiency of the emergency management plan. As Texas LNG acknowledged in its response to FERC's request that it has not yet developed an emergency management plan.<sup>59</sup> Therefore, there is no plan to comment on.

However, the information provided by Texas LNG does paint a worrisome picture. For example, in the information provided by Texas LNG, there is no mention of providing emergency response services in any languages other than English. This is unacceptable given the amount of people in the project area that are bilingual or speak English less than very well.<sup>60</sup> This obviously creates an extremely dangerous situation for the large portion of the project area population that would not be given information in a language that they understand and emergency response personnel operating in the inevitable chaos that would result from this confusion.

Additionally, despite the clear impacts of the Texas LNG project on environmental justice communities, Texas LNG has not indicated that it has any plans to ensure that its emergency response plan would mitigate any disproportionately high and adverse effects of the project experienced by project area environmental justice communities. FERC must ensure that the emergency management plan mitigates such effects.

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measures to remedy any disproportionate impacts on environmental justice communities. FERC must perform these analyses with the most recent available data. Otherwise, FERC will not be able to perform an adequate analysis of the traffic impacts on environmental justice communities.

<sup>58</sup> See Promising Practices at 8-11.

<sup>59</sup> Texas LNG Brownsville, LLC, FERC Docket No. CP16-116-000 Texas LNG Project Response to August 16, 2022 Environmental Information Request at 21, Accession 20220915-5265.

<sup>60</sup> See *supra* note 12.

## VI. FERC Has Not Requested Sufficient Information To Analyze the Visual Impacts of the Texas LNG Project

As FERC is already aware, development of LNG infrastructure in the relatively undeveloped project area will entirely alter the character of the project area. Despite the likelihood of significant visible impacts, FERC has not requested enough information here to properly analyze the full extent of visual impacts that would be caused by the Texas LNG project or the cumulative visual impacts caused by the Texas LNG project and the Rio Grande LNG project.

FERC only requested information on “visual impacts on nearby residences from the LNG Terminal.”<sup>61</sup> But this information request is plainly not inclusive of the many vantage points from which visual impacts can occur—*e.g.* recreational pursuits and driving.<sup>62</sup> Clearly, people may be able to see the Texas LNG terminal from places that are not residences and experience adverse visual impacts from those viewings. FERC must obtain the relevant data to analyze the full extent of the visual impacts that the Texas LNG facility will cause.

FERC’s request is also not adequate to determine whether environmental justice communities will experience disproportionate levels of visual impacts. Cabining the request to impacts viewable from the residence nearest to the facility of course eliminates analyzing any visual impacts that may be uniquely felt by environmental justice communities because of the unique activities of those communities.<sup>63</sup> This underscores the importance of ensuring adequate participation of impacted environmental justice communities. Ensuring such participation allows FERC to analyze invaluable qualitative data as it considers these impacts.<sup>64</sup> The absence of this data renders FERC’s analysis necessarily inadequate.

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<sup>61</sup> Texas LNG Brownsville, LLC, FERC Docket No. CP16-116-000 Texas LNG Project Response to August 16, 2022 Environmental Information Request at 1, Accession 20220915-5265.

<sup>62</sup> Of course, while FERC’s request is not inclusive of *all* possible visual impacts, visual impacts to people at residences are one aspect of visual impacts and must be studied by FERC along with other visual impacts. But FERC must evaluate residential visual impacts at residences outside the one closest to the facility. Other residences may be further away but may have, *e.g.*, less obstructed views of the facility.

<sup>63</sup> *E.g.* members of the Carrizo Comicrudo Tribe of Texas may be experience unique adverse visual impacts because the lands impacted by the Texas LNG facility are sacred to the tribe. *See supra* § IIb.

<sup>64</sup> *See supra* note 14.

## VII. 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 the Secretary in this proceeding.

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

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