

157 FERC ¶ 61,195
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Elba Liquefaction Company, L.L.C.
Southern LNG Company, L.L.C.
Elba Express Company, L.L.C.

Docket Nos. CP14-103-001
CP14-115-001

ORDER ON REHEARING

(Issued December 9, 2016)

1. In a June 1, 2016 order, the Commission granted: (1) Elba Liquefaction Company, L.L.C. (ELC) and Southern LNG Company, L.L.C. (Southern LNG) authority under section 3 of the Natural Gas Act (NGA)¹ to site, construct, and operate new natural gas liquefaction and export facilities at Southern LNG's existing liquefied natural gas (LNG) terminal located on Elba Island, Chatham County, Georgia (Elba Liquefaction Project); and (2) Elba Express Company, L.L.C. (Elba Express) a certificate of public convenience and necessity under NGA section 7(c)² to construct and operate compression facilities in Hart, Jefferson, and Effingham Counties, Georgia (Elba Express Modification Project) to enable the existing Elba Express pipeline system to provide additional north-to-south transportation capacity.³

2. Timely requests for rehearing were filed by (1) Sierra Club; (2) Karen Grainey and Joseph Bonds; and (3) Stacey Kronquest and Alfred Kritter, all of whom contend that the Commission's environmental review violated the National Environmental Policy Act of 1969 (NEPA).⁴ For the reasons discussed below, we deny the requests for rehearing.

¹ 15 U.S.C. § 717b(a) (2012).

² 15 U.S.C. § 717f.

³ *Elba Liquefaction Co., L.L.C.*, 155 FERC ¶ 61,219 (2016) (June 2016 Order).

⁴ 42 U.S.C. §§ 4321-4370f.

I. Background

3. In 1979, Southern LNG began operating an LNG import terminal on Elba Island on the Savannah River. After market demand slowed, Southern LNG operated the terminal on standby mode between 1982 and 2000. Beginning in 1999, the Commission issued a series of orders that authorized the recommissioning and expansion of the Elba Island terminal. Currently, Southern LNG imports LNG for storage and revaporization using two LNG carrier berths, five LNG storage tanks, and other facilities. The terminal's current storage capacity is 11.5 billion cubic feet (Bcf), with 1,755 million cubic feet per day (MMcf/day) of peak vaporization and sendout capacity.⁵

4. The June 2016 Order authorized ELC and Southern LNG to add liquefaction capacity at the Elba Island terminal site that would permit natural gas received from an interconnection with the Twin 30s Pipeline to be treated, liquefied, and sent to Southern LNG's existing storage tanks.⁶ The LNG would ultimately be loaded onto LNG carriers berthed at Southern LNG's existing marine berth for international export. The Elba Liquefaction Project will primarily consist of the installation of Movable Modular Liquefaction System units and ancillary facilities to be completed in two phases. Upon full completion of both phases, ELC would have the capability to liquefy a total of approximately 2.5 million metric tons per annum of natural gas.⁷

5. The Department of Energy/Office of Fossil Energy authorized Southern LNG to export LNG to countries with which the United States has a Free Trade Agreement (FTA). Southern LNG's request for authorization to export to non-FTA countries remains pending before Department of Energy/Office of Fossil Energy.⁸

6. The June 2016 Order also authorized the Elba Express Modification Project, which includes the segregation of the Twin 30s Pipeline so that one of the lines would take gas to the Elba Island terminal, while the other would take gas away from the terminal. The Modification Project would also include the construction and operation of

⁵ See June 2016 Order, 155 FERC ¶ 61,219 at PP 4-6.

⁶ The Twin 30s Pipeline consists of two parallel 30-inch-diameter pipelines that run from Elba Island to Port Wentworth, Georgia. The Pipeline is jointly owned by Elba Express, Southern Natural Gas Company, L.L.C., Magnolia Enterprise Holdings, Inc., and Dominion Carolina Gas Transmission Corporation. *See id.* P 8.

⁷ For additional details of the proposed facilities, *see id.* PP 4-12.

⁸ *See id.* P 27 n.19.

additional compression at the existing Hartwell Compressor Station in Hart County, Georgia, along with two new compressor stations in Jefferson and Effingham Counties, Georgia.⁹

7. In the June 2016 Order, the Commission also approved, pursuant to section 7(b) of the NGA, Southern LNG's proposed abandonment by removal of its LNG truck loading facilities. The facilities were constructed when the LNG terminal was initially authorized in 1982, but were not recommissioned at the time of the LNG's terminal reactivation in 2001.¹⁰

8. The Commission's environmental review of the Elba Liquefaction Project and the Elba Express Modification Project included the issuance of an Environmental Assessment (EA) on February 5, 2016. The June 2016 Order concluded that the Elba Liquefaction Project and the Elba Express Modification Project are environmentally acceptable actions if constructed and operated in accordance with the applications and supplements and the 92 environmental conditions (many with multiple subparts) imposed by the Commission.¹¹

II. Requests for Rehearing

A. Sierra Club

9. On rehearing, Sierra Club asserts the Commission too narrowly confined the scope of its NEPA analysis by ignoring indirect effects related to: (1) upstream natural gas production; (2) increased foreign use of natural gas, including greenhouse gas (GHG) emissions and their secondary effects; and (3) domestic gas-to-coal switching. Sierra Club also asserts the Commission's cumulative effects analysis was flawed because it lacked analysis of these effects (natural gas production, GHG emissions, and domestic gas-to-coal switching) when combined with effects from other past, present, and reasonably foreseeable LNG export facilities.

10. In its rehearing request, Sierra Club "recognizes that on June 29, 2016, the D.C. Circuit Court rejected Sierra Club's similar arguments in two cases regarding FERC

⁹ *See id.* PP 16-22.

¹⁰ *See id.* P 38.

¹¹ *See id.* P 136.

approval of other liquefaction and export facilities.”¹² Sierra Club explains that it filed “this FERC request for rehearing to preserve Sierra Club’s rights in the event that those decisions are modified or reversed.”¹³ No party has sought rehearing of, or filed a petition for a writ of certiorari regarding, the relevant D.C. Circuit opinions. Given Sierra Club’s acknowledgment of the repetitive nature of its arguments and the prophylactic nature of its rehearing request, the Commission will not address herein those arguments previously rejected by the D.C. Circuit.

11. Sierra Club’s now raises for the first time in this proceeding a claim that the Commission’s approval of the siting, construction, and operation of the Elba Expansion Project and the Department of Energy’s authorization of LNG exports from the project are “connected actions” for purposes of NEPA review. Sierra Club thus contends that the Commission cannot approve the Elba Liquefaction Project, or allow construction to proceed, until the Department of Energy has completed its assessment of exports from the project.¹⁴

12. We dismiss this argument as it was raised for the first time on rehearing.¹⁵ The Commission looks with disfavor on parties raising issues for the first time on rehearing

¹² Sierra Club Request for Rehearing at 2 (citing *Sierra Club v. FERC*, 827 F.3d 59 (D.C. Cir. 2016) (*Sierra Club (Sabine Pass)*); *Sierra Club v. FERC*, 827 F.3d 36 (D.C. Cir. 2016) (*Sierra Club (Freeport)*)).

¹³ *Id.*

¹⁴ *Id.* at 17.

¹⁵ “Persons challenging an agency’s compliance with NEPA must ‘structure their participation so that it ... alerts the agency to the [parties’] position and contentions,’ in order to allow the agency to give the issue meaningful consideration.” *Dept. of Transportation v. Public Citizen*, 541 U.S. 752, 764 (2004) (citing *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 553 (1978)).

that should have been raised earlier, particularly during NEPA scoping,¹⁶ in part, because other parties are not permitted to respond to requests for rehearing.¹⁷

13. In any event, Sierra Club’s argument distorts the concept of the “connected actions.” The requirement that an agency consider connected actions in a single environmental document is to “prevent agencies from dividing one project into multiple individual actions” with less significant environmental effects¹⁸ and “to prevent the government from ‘segmenting’ its *own* ‘federal actions into separate projects and thereby failing to address the true scope and impact of the activities that should be under consideration.’”¹⁹ The connected action regulation requires an agency to review the

¹⁶ *Baltimore Gas & Electric Co.*, 91 FERC ¶ 61,270, at 61,922 (2000) (“we look with disfavor on parties raising issues that should have been raised earlier. Such behavior is disruptive to the administrative process because it has the effect of a moving target for parties seeking a final administrative decision.”).

¹⁷ *See, e.g., Nw. Pipeline, LLC*, 157 FERC ¶ 61,093, at P 27 (2016) (dismissing argument raised for the first time on rehearing and noting that the “Commission looks with disfavor on parties raising issues for the first time on rehearing that should have been raised earlier, particularly during NEPA scoping, in part, because other parties are not permitted to respond to requests for rehearing”); *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 and n.10 (2009) (“The Commission has held that raising issues for the first time on rehearing is disruptive to the administrative process and denies parties the opportunity to respond.”); *Allegheny Energy Supply Co., L.L.C.*, 122 FERC ¶ 61,104, at P 6 (2008) (same); 18 C.F.R. § 385.713(d) (“The Commission will not permit answers to requests for rehearing.”).

¹⁸ *Myersville Citizens for a Rural Community, Inc. v. FERC*, 783 F.3d 1301, 1326 (D.C. Cir. 2015) (Court approved Commission’s determination that, although a Dominion-owned pipeline project’s excess capacity may be used to move gas to the Cove Point terminal for export, the projects are “unrelated” for purposes of NEPA); *see also City of W. Chicago, Ill. v. U.S. Nuclear Regulatory Comm’n*, 701 F.2d 632, 650 (7th Cir. 1983) (citing *City of Rochester v. United States Postal Serv.*, 541 F.2d 967, 972 (2d Cir. 1976)).

¹⁹ *Sierra Club v. U.S. Army Corps of Eng’rs*, 803 F.3d 31, 49-50 (D.C. Cir. 2015) (emphasis added) (quoting *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014)).

whole picture resulting from a proposal before it, “rather than conduct separate NEPA reviews on pieces of an agency-action jigsaw puzzle.”²⁰

14. Here, the proposals pending before the Commission are related to the construction and operation of the Elba Liquefaction Project and Elba Express Modification Project. Those projects were considered together in a single environmental analysis. The export of natural gas from the Elba facility, by contrast, was not a proposal before the Commission. “That is because the Department of Energy, not the Commission, has sole authority to license the export of any natural gas going through the [Elba] facilities.”²¹

15. Further, in arguing that the Natural Gas Act “recognizes the connected nature” of the Department of Energy’s (DOE) export authorization and the Commission’s jurisdiction over export facilities because the Act calls for the Commission to serve as “lead agency” for a coordinated NEPA review, Sierra Club erroneously conflates the Council on Environmental Quality (CEQ) regulations on “connected actions”²² and “lead agencies.”²³ In the Energy Policy Act of 2005, Congress designated the Commission as “the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act” for LNG-related authorizations required under section 3 of the NGA.²⁴ While the lead agency supervises the preparation of the environmental document where more than one federal agency is involved, the “lead agency” designation does not alter the scope of the project before the Commission either for approval or environmental review.²⁵ Nor does the lead agency role make the Commission responsible for ensuring a cooperating federal

²⁰ *Id.* at 50.

²¹ *Sierra Club (Freeport)*, 827 F.3d at 47.

²² 40 C.F.R. § 1508.25(a)(1) (2016).

²³ *Id.* § 1501.5.

²⁴ *See* 15 U.S.C. § 717n(b)(1); *see also Columbia Riverkeeper v. U.S. Coast Guard*, 761 F.3d 1084, 1087-88 (9th Cir. 2014) (discussing FERC’s role as lead agency under the Energy Policy Act of 2005).

²⁵ *See* 40 C.F.R. § 1501.5(a) (detailing a lead agency’s role).

agency's compliance with its own NEPA responsibilities.²⁶ Thus, the Commission did not impermissibly segment its environmental review.

16. In any event, Sierra Club's argument ignores the fact that the Department of Energy has already authorized exports from the project. Section 3(c) of the NGA provides that natural gas exports "to a nation with which there is in effect a free trade agreement . . . , shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay."²⁷ Pursuant to that statutory directive, in 2012 – years before ELC and Southern LNG filed its application with the Commission – the Department of Energy/Office of Fossil Energy authorized Southern LNG to "export domestically produced LNG by vessel from its Elba Island Terminal in Savannah, Georgia up to the equivalent of 182.5 Bcf per year of natural gas for a 25-year term, beginning on the earlier of the date of first export or 10 years from the date the authorization is issued (June 22, 2022)."²⁸ The amount of LNG authorized for export by the Department of Energy/Office of Fossil Energy exceeds the capacity authorized by the Commission in the June 2016 Order.²⁹ Accordingly, because ELC and Southern LNG already obtained export authorization for 100 percent of the Elba Liquefaction Project capacity the criteria for determining whether this proceeding and the DOE proceeding for additional export authorization to non-free trade countries are connected actions cannot be met.³⁰ Specifically, the liquefaction project can proceed without obtaining export authorization to non-free trade countries and the liquefaction project does not depend on obtaining export authorization to non-free trade countries.³¹

²⁶ *See id.* § 1503.3 (cooperating agency required to specify what additional information it needs to fulfill its own environmental review); *see also id.* § 1506.3 (allowing a cooperating agency to adopt the lead agency's environmental document to fulfill its own NEPA responsibilities if independently satisfied that the environmental document adheres to the cooperating agency's comments and recommendations).

²⁷ 15 U.S.C. § 717b(c).

²⁸ *Southern LNG Company, L.L.C.*, FE Docket No. 12-54-LNG, Order No. 3106 (2012). Southern's application for authorization to export natural gas to non-Free Trade Agreement nations remains under review by the Department of Energy. *See* June 2016 Order, 155 FERC ¶ 61,219 at P 27 n.19.

²⁹ *See* EA at 1-1 n.2.

³⁰ *See* 40 C.F.R. § 1508.25(a)(1)(i)-(iii) (defining "connected actions").

³¹ *Id.*

17. For the reasons discussed above, Sierra Club's request for rehearing is denied.

B. Ms. Graine and Mr. Bonds

18. In their rehearing request, Ms. Graine and Mr. Bonds contend that the Commission erred by: (1) preparing an EA, rather than an environmental impact statement (EIS) for the Elba Liquefaction Project and Elba Express Modification Project; (2) failing to fully account for the projects' greenhouse gas impacts; and (3) relying upon an EIS from an earlier Elba import terminal expansion project to inform its decisionmaking in this case.

1. EA vs. EIS

19. Ms. Graine and Mr. Bonds contend that the projects' impacts meet the CEQ's threshold test of "significance," thereby triggering the need for an EIS.³² They cite to CEQ's regulations, which provide criteria for determining significance, including consideration of the proposal's "intensity." The CEQ regulations identify ten factors that agencies should consider in determining the "intensity" of the project, including, as relevant here, the degree to which the proposed action affects public safety (factor two), the proximity of the project to historic or cultural resources or park land (factor three), and whether the action is "highly controversial" (factor four).³³

a. Public Safety

20. Ms. Graine and Mr. Bonds assert that an EIS is warranted because the Elba Liquefaction Project poses safety risks. In particular, they point to the project's proximity to shipping channels and populated areas.³⁴ The EA, however, sets forth an extensive analysis of the Elba Liquefaction Project's potential safety impacts and concludes that the proposed design, coupled with Commission staff's proposed measures,

³² Graine/Bonds Request for Rehearing at 2-3. *See* 18 C.F.R. § 380.6(b) ("If the Commission believes that a proposed action identified in paragraph (a) of this section may not be a major Federal action significantly affecting the quality of the human environment, an environmental assessment, rather than an environmental impact statement, will be prepared first. Depending on the outcome of the environmental assessment, an environmental impact statement may or may not be prepared.").

³³ *See* 40 C.F.R. § 1508.27.

³⁴ Graine/Bonds Request for Rehearing at 2.

contained sufficient layers of safeguards to mitigate the potential for an incident that could impact the safety of the off-site public.³⁵ The Commission agreed.³⁶

21. Ms. Grainey and Mr. Bonds contend the Commission understated the Project's safety risks by failing to analyze the possibility for spills over water.³⁷ Spills over water were comprehensively analyzed in connection with the 2007 expansion of the Elba Island facility, which included significant modifications to the LNG terminal's unloading docks (the Elba III Project).³⁸ That analysis was not recreated in the EA for the Elba Liquefaction Project because the proposed activities did not materially affect the previously-analyzed safety risks associated with spills over water. As explained in the EA, the Elba Liquefaction Project involves only minor modifications to the existing piping system used for ship loading.³⁹ The Project would not involve any increase in the accepted size or number of vessels, nor any change to shipping routes, mooring, connection, and disconnection of the LNG tankers.⁴⁰ The Coast Guard, which exercises regulatory authority over LNG facilities that affect the safety and security of port areas and navigable waterways, confirmed that the Elba Liquefaction Project would not require any modification of the previously-issued Letter of Recommendation as to the suitability of the waterway for LNG marine traffic.⁴¹

22. Ms. Grainey and Mr. Bonds also assert that the Commission failed to review cascading worst-case scenarios.⁴² The EA, however, sets forth a detailed analysis of cascading failure scenarios. As explained in the June 2016 Order, ELC and Southern LNG reviewed over 500 piping segments using the Department of Transportation's failure frequency criteria.⁴³ For the design spills determined from this review, the EA

³⁵ See EA at 2-92 to 2-137.

³⁶ See June 2016 Order, 155 FERC ¶ 61,219 at P 135.

³⁷ Grainey/Bonds Request for Rehearing at 3.

³⁸ See Elba III Expansion Project, Docket No. CP06-470-000, Final Environmental Impact Statement, at 4-210 to 4-219.

³⁹ See EA at 2-137.

⁴⁰ *Id.*; see also June 2016 Order, 155 FERC ¶ 61,219 at P 125.

⁴¹ See EA at 1-3, 2-137.

⁴² Grainey/Bonds Request for Rehearing at 3.

⁴³ See June 2016 Order, 155 FERC ¶ 71,219 at P 130.

discussed modeling of vapor dispersion from flammable and toxic releases, overpressures from explosions, and radiant heat from pool fires, and jet fires. Cascading events from these hazards were also evaluated and discussed in the EA, including vapor dispersion into confined areas, such as buildings and underneath the existing LNG storage tanks; overpressure effects from vapor cloud ignition on existing equipment, such as on the existing storage tanks; and radiant heat effects on equipment and the potential for boiling-liquid-expanding-vapor explosion (BLEVE).⁴⁴ Based on this review and the proposed mitigation by ELC and Southern LNG as well as recommendations made in the EA, the EA concluded that the preliminary engineering design submitted by ELC and Southern LNG adequately “mitigated the risk for cascading event hazards for the Project.”⁴⁵ Based on the analysis in the EA and the further discussion in the June 2016 Order, the Commission concluded that there “would not be a significant public safety impact resulting from the project.”⁴⁶

23. Ms. Grainey and Mr. Bonds also suggest that the Commission failed to adequately examine the risks associated with the storage of flammable refrigerants.⁴⁷ We disagree. The EA identified the principal properties and hazards associated with flammable refrigerants and discussed the design spill modeling and vapor dispersion and thermal radiation analyses relating to flammable refrigerants. In addition, the EA analyzed cascading events including overpressure effects from vapor cloud ignition and BLEVEs from radiant heat. The BLEVE analysis evaluated the extent of overpressures, fireball radiant heat, and fragment travel distances.⁴⁸ The EA concluded that the siting of the Elba Liquefaction Project would not have a significant impact on public safety with respect to flammable vapor dispersion from refrigerants and other flammable releases.⁴⁹

24. Finally, Ms. Grainey and Mr. Bonds point to testimony submitted by Professor Jerry Havens in FERC Docket No. CP13-492. That testimony focused on the draft EIS for the Jordan Cove Liquefaction Project and was addressed in the final EIS for that

⁴⁴ See EA at 2-97 to 2-103; 2-121 to 2-136.

⁴⁵ *Id.* at 2-103.

⁴⁶ June 2016 Order, 155 FERC ¶ 61,219 at P 130.

⁴⁷ Grainey/Bonds Request for Rehearing at 3.

⁴⁸ See EA at 2-96 to 2-103, 2-121 to 2-136.

⁴⁹ *Id.* at 2-129.

project.⁵⁰ Professors Havens' submission in Docket No. CP13-492 did not discuss the Commission's review of the Elba Liquefaction Project and the Commission has addressed Professor Havens' comments regarding the Commission's safety analysis in a number of LNG facility proceedings.⁵¹

25. In short, nothing in Ms. Grainey's and Mr. Bond's rehearing request causes us to conclude that the Project's potential safety impacts warrant further examination in an EIS.

b. Proximity to Fort Pulaski National Park

26. Ms. Grainey and Mr. Bonds contend that an EIS is warranted to further study of the Elba Liquefaction Project's potential light and noise pollution upon Fort Pulaski National Park.⁵² With respect to lighting impacts, the EA explained that "additional nighttime lighting installed for the liquefaction facilities would be negligible compared to that already at the existing terminal which is fully illuminated at night."⁵³ Moreover, design and operational steps would be taken to minimize nighttime visual impacts of this additional nighttime lighting.⁵⁴ Ms. Grainey and Mr. Bonds do not dispute these findings.

27. Ms. Grainey and Mr. Bonds assert that the Commission "trivialized" concerns regarding noise impacts to Fort Pulaski National Park by noting that "[t]he park has not been officially designated as wilderness, and thus is not subject to more rigorous noise

⁵⁰ See Jordan Cove Liquefaction and Pacific Connector Pipeline Projects, Docket Nos. CP13-483-000 and CP13-492-000, Final Environmental Impact Statement, Appendix W at W-699-725.

⁵¹ See, e.g., *AES Sparrows Point LNG, LLC*, 129 FERC ¶ 61,245, at PP 87-115 (2009); *Bradwood Landing, LLC*, 126 FERC ¶ 61,035, at PP 99-110 (2009); *Weaver's Cove Energy, LLC*, 114 FERC ¶ 61,058, at PP 75-84 (2006).

⁵² Grainey/Bonds Request for Rehearing at 3. Ms. Grainey's and Mr. Bond's argument in this regard largely reiterates the comments submitted by the National Park Service and addressed in the June 2016 Order. See June 2016 Order, 155 FERC ¶ 61,219 at PP 99-108.

⁵³ EA at 2-53.

⁵⁴ *Id.*

standards.”⁵⁵ We disagree. Initially, as the Commission explained, the LNG terminal is currently in operation and in compliance with applicable noise standards. In addition, the waters surrounding Fort Pulaski National Park are extensively used for recreational and commercial purposes.⁵⁶ Nonetheless, in response to comments from the National Park Service, the EA modeled noise predictions at various locations within the Park.⁵⁷ This modeling indicated that only the western park boundary would exceed the Commission’s requirement that facilities be managed in a manner that limits noise levels to 55 A-weighted decibels (dBA) at noise sensitive areas.⁵⁸ The western boundary can only be reached by boat and is not accessible by the general public. Accordingly, the EA concluded that “the noise attributable to the LNG Terminal operation at this location would not likely impact a visitor’s experience.”⁵⁹ The EA recommended, however, that the terminus of the McQueen’s Island Trail be deemed a Noise Sensitive Area (and thus designated for management with reduced noise levels) as visitors would most likely frequent this location.⁶⁰ In addition, the Commission required a post-construction noise survey to confirm that noise requirements are being met and park visitors to the McQueen Island Trail, the nearest location to the LNG terminal, would not be adversely impacted by the operational noise. We recognize that the Commission did not agree with the National Park Service’s request that the entirety of Fort Pulaski National Park be designated as a noise-sensitive area.⁶¹ However, the Commission closely examined the Elba Liquefaction Project’s noise impacts on Fort Pulaski National Park.⁶² Thus, we conclude that further examination of such impacts in an EIS is unwarranted.

⁵⁵ Grainey/Bonds Request for Rehearing at 3 (quoting June 2016 Order, 155 FERC ¶ 61,219 at P 104).

⁵⁶ June 2016 Order, 155 FERC ¶ 61,219 at P 104.

⁵⁷ EA at 2-91.

⁵⁸ *Id.* at 2-92. As explained in the EA, the “EPA has indicated that [a day/night average sound level] of 55 dBA protects the public from indoor and outdoor activity interference.” *Id.* at 2-81

⁵⁹ *Id.* at 2-92. *See also* June 2016 Order, 155 FERC ¶ 61,219 at P 102.

⁶⁰ EA at 2-93.

⁶¹ *See* June 2016 Order, 155 FERC ¶ 61,219 at PP 102-105.

⁶² EA at 2-91 to 2-93 (Table 2.7.2-7).

c. **Highly Controversial**

28. Ms. Grainey and Mr. Bonds contend that an EIS is warranted because a substantial controversy exists with respect to the Elba Liquefaction Project and Elba Express Modification Project. They contend that the projects will likely stimulate the “widely excoriated method of extracting from unconventional deposits known as fracking.”⁶³ Ms. Grainey and Mr. Bonds also assert that there is “considerable public discussion concerning methane leakage from the nation’s immense natural gas infrastructure.”⁶⁴ Ms. Gainey and Mr. Bonds further note that the Commission has received numerous public comments regarding the need for a life cycle environmental analysis for all natural gas infrastructure projects.⁶⁵

29. We have previously concluded in other LNG export proceedings that the environmental effects resulting from additional production of natural gas and end use emissions from natural gas consumption are generally neither caused by, nor the reasonably foreseeable consequences of, our approval of such projects, as contemplated by CEQ regulations.⁶⁶ And as detailed below, no substantial question relating to the impacts of air emissions from the Project exists.⁶⁷ In any event, “[f]or an action to qualify as ‘highly controversial’ for NEPA purposes, there must be a ‘dispute over the size, nature, or effect of the action, rather than the existence of opposition to it.’”⁶⁸ A controversy does not exist merely because individuals or groups vigorously oppose, or have raised questions about, an action.⁶⁹ We do not find that our action here meets the standard of “controversial” so as to require the preparation of an EIS.

⁶³ Grainey/Bonds Request for Rehearing at 2.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See e.g., *Sabine Pass Liquefaction Expansion, LLC*, 151 FERC ¶ 61,253, at PP 6-38 (2015).

⁶⁷ See *infra* PP 30-32.

⁶⁸ See *Dominion Cove Point LNG, LP*, 151 FERC ¶ 61,095, at P 82 (2015) (citing *Cheniere Creole Trail Pipeline, L.P.*, 145 FERC ¶ 61,074, at P 23 (2013); *Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1557 (2d Cir. 1992)).

⁶⁹ *Id.*

2. Greenhouse Gas Impacts

30. Ms. Graine and Mr. Bonds allege that the EA “understates the Project’s direct GHG emissions” by “misleadingly present[ing] the GHGs from the export terminal, separately from the GHG emissions from the pipeline.”⁷⁰ We disagree. The EA presents, on a single page, the GHG emissions from currently operating equipment at the LNG terminal and the Hartwell compressor station, along with the emissions from the proposed actions at the terminal and the existing and greenfield compressor sites.⁷¹ Ms. Graine and Ms. Bonds next assert that CEQ’s 2010 Draft Guidance on Consideration of Effect of Climate Change “suggests 25,000 [tons per year] as a threshold of significance which should trigger further scrutiny.”⁷² That draft guidance, however, made clear that the suggested threshold was not an indicator of “significance,” but rather an indicator that a quantitative or qualitative discussion of GHG emissions may be meaningful to decisionmakers.⁷³ Here, the EA included quantitative descriptions of GHG emission estimates, a discussion of potential and/or reasonable alternatives or mitigation measures to improve efficiency and/or emissions, a discussion of climate change impacts in the project region, and a conclusion that the estimated emissions from

⁷⁰ Graine/Bonds Request for Rehearing at 4.

⁷¹ See EA at 2-78 (Tables 2.7.1-4 and 2.7.1-5).

⁷² Graine/Bonds Request for Rehearing at 4 (citing CEQ, *Draft Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions* (Feb. 18, 2010), available at <https://www.whitehouse.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf>).

⁷³ 2010 Draft Guidance at 2 (“CEQ does not propose this as an indicator of a threshold of significant effects, but rather as an indicator of a minimum level of GHG emissions that may warrant some description in the appropriate NEPA analysis for agency actions involving direct emissions of GHGs”). See also *Dominion Cove Point LNG, LP*, 151 FERC ¶ 61,095 at P 50 (“The CEQ has clearly stated that its recommended threshold is not a significance criterion, but rather an indicator of when GHG emissions should be discussed in a NEPA document.”). We note that the Final Guidance, issued on August 1, 2016, eliminated the reference to 25,000 metric tons of carbon emissions. CEQ, *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews* (Aug. 1, 2016), available at <https://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance>.

the Project would increase the atmospheric concentration of GHGs.⁷⁴ Ms. Grainey and Mr. Bonds also take issue with the Commission's observation that state authorities have issued air quality permits for aspects of the Elba Liquefaction Project and Elba Express Modification Project, noting that "[a]ir quality permits do not serve as a guarantee of insignificant impacts and do not absolve the Commission of its obligation to investigate."⁷⁵ But the Commission did not forego a GHG analysis in reliance upon state air quality permits. Rather, as discussed above, the EA sets forth a detailed analysis of the Project's air quality impacts.

31. In the June 2016 Order, the Commission explained that "the potential increase of GHG emissions associated with the production, non-project transport, and non-project combustion are [not] causally related to our action in approving this project, nor are the potential environment effects reasonably foreseeable as contemplated by the [CEQ] regulations."⁷⁶ Ms. Grainey and Mr. Bonds assert that this conflicts with the Commission's "admission" in the EIS for the Cameron LNG project that it is "reasonable to assume that export of natural could result in increased natural gas production."⁷⁷ There is no conflict. As Commission staff explained in the Cameron LNG EIS, the source of gas to be exported from that project was unknown and likely to change over time.⁷⁸ The Commission made a similar observation in the June 2016 Order.⁷⁹ Moreover, the D.C. Circuit has found that the Commission's NEPA analysis

⁷⁴ See EA at 2-75 to 2-80, 2-142 to 2-143

⁷⁵ Grainey/Bonds Request for Rehearing at 4.

⁷⁶ June 2016 Order, 155 FERC ¶ 61,219 at P 77.

⁷⁷ Grainey/Bonds Request for Rehearing at 5 (quoting Final Environmental Impact Statement on Cameron LNG Project (Docket No. CP13-27-000) at L-36)).

⁷⁸ See Cameron Liquefaction Project, Docket Nos. CP13-25-000 and CP13-27-000, Final Environmental Impact Statement, Appendix L at L-36 ("While it is reasonable to assume that export of natural gas could result in increased natural gas production, where this gas would come from is speculative and would likely change throughout the operation of the project.").

⁷⁹ See June 2016 Order, 155 FERC ¶ 61,219 at P 77 ("The specific source of the natural gas to be exported via the project is currently unknown and will likely change throughout the operation of the project.").

need not include an analysis of the indirect effect of increased exports on upstream natural gas production.⁸⁰

32. Ms. Grainey and Mr. Bonds also take issue with the Commission's observation that, because "there is currently no standard methodology to determine that the project's incremental contribution to GHGs will result in physical effect on the environment ... any conclusions with respect to the project's impact on global climate change would be speculative."⁸¹ They assert that the Commission should have considered the DOE's "Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States" and "Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States."⁸² But as explained in the June 2016 Order, the DOE studies "are not specific to the proposal before us" and acknowledge that "in the absence of information regarding where and when additional gas production will arise, the environmental impacts of such production 'are not reasonably foreseeable within the meaning of the CEQ NEPA regulations' and 'cannot [be] meaningfully analyze[d].'"⁸³ Nonetheless, Ms. Grainey and Mr. Bonds note that the referenced DOE documents provide a conceptual analysis of the types of impacts arising from increased production. In prior orders, the Commission has acknowledged the conceptual analyses conducted by other federal agencies: Although not directly relevant to the proposal before the Commission, and not required by NEPA, the Commission notes the DOE Addendum's conclusion that natural gas development leads to both short-and long-term increases in local and regional air emissions. It also found that such emissions may contribute to climate change. But to the extent that natural gas production replaces the use of other carbon-based energy sources, DOE found there may be a net positive impact in terms of climate change. The Life Cycle Report concludes that U.S. LNG exports for power production in European and Asian markets will not increase life-cycle GHG emissions, when compared to regional coal extraction and consumption for power

⁸⁰ See, e.g., *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955-56 (D.C. Cir. 2016); *Sierra Club (Sabine Pass)*, 827 F.3d at 68-69; *Sierra Club (Freeport)*, 827 F.3d 46-49; *Sierra Club v. FERC*, No. 15-1133 (D.C. Cir. Nov. 4, 2016) (unpublished opinion).

⁸¹ June 2016 Order, 155 FERC ¶ 61,219 at P 75.

⁸² Grainey/Bonds Request for Rehearing at 5.

⁸³ June 2016 Order, 115 FERC ¶ 61,219 at P 78 (quoting DOE Addendum at 2) (alterations in original). See also *Dominion Cove Point LNG, LP*, 151 FERC ¶ 61,095 at P 39 ("We affirm the conclusion made in the September 29 Order that the existence of the DOE Draft Addendum provides no basis to alter the conclusions of the EA with regard to whether our environmental review should analyze shale gas.").

production.⁸⁴ In their rehearing request, Ms. Grainey and Mr. Bonds also identify four protocols or models relating to GHGs.⁸⁵ We are not persuaded that these four protocols or models relating to GHGs will assist in consideration of GHG emissions in this proceeding.⁸⁶

3. Reliance Upon The Elba III Project EIS

33. Ms. Grainey and Mr. Bonds assert that, “[t]o justify foregoing an EIS,” the Commission improperly relied upon the EIS issued in 2007 regarding the Elba III Expansion.⁸⁷ But the EIS for the Elba III Expansion did not play a role in the Commission’s determination that an EIS was not warranted in this case. Rather, it was Commission staff’s analysis, the extent and content of comments received during the scoping period, and the collocation of the proposed facilities with existing facilities that led to the conclusion “that the impact associated with this Project can be sufficiently mitigated to support a finding of no significant impact and thus, an EA is warranted.”⁸⁸

34. Relatedly, Ms. Grainey and Mr. Bonds point out that the EA’s cumulative impacts analysis failed to consider the Jasper Ocean Terminal (JOT) Project. They allege that, in

⁸⁴ *Gulf South Pipeline Co.*, 155 FERC ¶ 61,287, at P 82 (2016). *See also Trunkline Gas Co., LLC*, 153 FERC ¶ 61,300, at P 137 (2015) (noting that “DOE has concluded [unconventional natural gas] production, when conforming to regulatory requirements, implementing best management practices, and administering pollution prevention concepts may have temporary minor impacts to water resources. The [Environmental Protection Agency] has reached a similar conclusion”); *id.* P 119 (discussing Life Cycle Report); *Freeport LNG Dev., L.P.*, 156 FERC ¶ 61,019, at P 33 (2016) (discussing DOE Addendum); *Dominion Transmission, Inc.*, 153 FERC ¶ 61,203, at P 26 (2015) (discussing DOE Addendum).

⁸⁵ Grainey/Bonds Request for Rehearing at 6 (citing World Resources Institute and World Business Council on Sustainable Development, *Greenhouse Gas Protocol*; The Climate Registry, *Oil and Gas Production Protocol*; Argonne National Laboratory, *Greet Model*; Deloitte Marketplace LLC, *Natural Gas Models*).

⁸⁶ *See, e.g., Constitution Pipeline Co., LLC*, 154 FERC ¶ 61,046, at P 130 (2016).

⁸⁷ Grainey/Bonds Request for Rehearing at 6.

⁸⁸ EA at 1-19. *See also* June 2016 Order, 155 FERC ¶ 61,219 at P 136 (“our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment”).

the June 2016 Order, the Commission “dismiss[e]d JOT as ‘speculative’ in response to public comments pointing the omission,” even though Georgia and South Carolina recently invested in the JOT Project.⁸⁹ This argument mischaracterizes the June 2016 Order. The Commission did not dismiss the JOT Project as speculative. In fact, the Commission acknowledged that Georgia and South Carolina Port Authorities had signed a joint venture agreement relating to the permitting, planning, and financing of the JOT Project, and that the South Carolina Port Authority was preparing for an environmental analysis of the Project. The Commission went on to identify the potential cumulative impacts relating to the construction and operation of the JOT Project.⁹⁰ What the Commission found to be speculative was not the JOT Project itself, but rather a quantitative assessment of the project’s impacts based on what is currently known about the facility.⁹¹ Ms. Graine and Mr. Bond do not challenge this conclusion.⁹²

C. Ms. Kronquest and Mr. Ritter

1. Storage Tank Compliance with PHMSA Regulations

35. Ms. Kronquest and Mr. Ritter argue the June 2016 Order did not respond to safety issues surrounding the existing LNG storage tanks at the Elba Island terminal.⁹³ In particular, they are concerned that the impoundment systems for the three original storage tanks⁹⁴ do not meet the standards for impoundment capacity set forth in the current

⁸⁹ Graine/Bonds Request for Rehearing at 7.

⁹⁰ See June 2016 Order, 155 FERC ¶ 61,219 at P 116-118.

⁹¹ See *id.* P 118 (identifying likely impacts from the JOT Project and explaining that “[i]t would be speculative for us to quantify these impacts based on what is currently known about the JOT facility”).

⁹² Ms. Graine and Mr. Bonds also assert that Table 2.9.1-1 incorrectly lists the Savannah Harbor Expansion Project as “pending approval” and “scheduled for completion in 2016.” They do not explain how these purported errors impacted the EA’s cumulative impact analysis.

⁹³ Kronquest/Ritter Rehearing Request at 1-3.

⁹⁴ The Elba Island terminal has five storage tanks. The largest two tanks, D-4 and D-5, are not at issue here. The original tanks referred to by Ms. Kronquest and Mr. Ritter, D-1, D-2, D-3, were authorized in 1972.

version of regulations promulgated by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA).⁹⁵

36. Ms. Kronquest and Mr. Kritter assert these storage tank safety issues were raised in Erik Nordenhaug's October 19, 2015 comments. Mr. Nordenhaug's broad comments, however, referred to safety generally and made no mention of PHMSA regulations, let alone any specific PHMSA regulation pertaining to LNG storage tanks or the required capacity of LNG storage tank impoundment systems. As a rule, we reject requests for rehearing that raise a new issue, unless the issue could not have been previously presented, e.g., claims based on information that only recently became available or concerns prompted by a change in material circumstances.⁹⁶ Ms. Kronquest and Mr. Kritter do not explain why they could not have raised the impoundment system issue earlier, and we find no reason that they could not have raised this argument before we issued the June 2016 Order. For these reasons, we dismiss Ms. Kronquest and Mr. Kritter's request for rehearing on this issue. For clarity, however, we also explain below why the arguments in Ms. Kronquest and Mr. Kritter's rehearing request would have been unavailing in any event.

37. Public safety is a critical component of the Commission's review of a request for NGA section 3 approval.⁹⁷ As discussed in the EA, the June 2016 Order and herein, the Commission conducted an extensive analysis of the facility's public safety impacts, including those relating to the existing storage tanks.⁹⁸ PHMSA, which is responsible for establishing and enforcing safety standards for onshore LNG facilities, participated as a cooperating agency in that review and for purposes of preparing the EA.⁹⁹

⁹⁵ PHMSA has authority to promulgate and enforce safety regulations and standards for the transportation and storage of LNG in or affecting interstate or foreign commerce under the pipeline safety laws, 49 U.S.C. Chapter 601. PHMSA's LNG regulations are at 49 C.F.R. pt. 193.

⁹⁶ See *Texas Eastern Transmission, LP*, 141 FERC ¶ 61,043, at P 19 (2012), *petition for review dismissed, NO Gas Pipeline v. FERC*, 756 F.3d 764 (D.C. Cir. 2014).

⁹⁷ 15 U.S.C. § 717b.

⁹⁸ See, e.g., EA at 2-116 to 2-137; June 2016 Order, 155 FERC ¶ 61,219 at P 135.

⁹⁹ See EA at 2-95 ("As a cooperating agency, the DOT assists FERC staff in evaluating whether an applicant's proposed siting meets the DOT requirements."). In the EA, Commission staff explained PHMSA's role in LNG proceedings generally, and its role in this case in particular:

(continued...)

38. The original storage tank facilities and impoundment systems, which are unchanged by the current authorizations, impound in excess of 105 percent of the storage tank's maximum liquid capacity. The current PHMSA regulations relating to storage tank impoundment system capacity state that, for a single storage tank,¹⁰⁰ the impounding system must have a minimum volumetric liquid impoundment capacity of 110 percent of the LNG tank's maximum liquid capacity.¹⁰¹ In promulgating those regulations, however, PHMSA determined that it was unnecessary to extend the revised impoundment standard to existing facilities and thus expressly exempted "LNG facilities in existence or under construction when the regulations go into effect."¹⁰² Thus, although the original storage tanks at the Elba Island terminal would not comply with PHMSA regulations if

In accordance with the 1985 Memorandum of Understanding on LNG Facilities and the 2004 Interagency Agreement on the safety and security review of waterfront LNG import/export facilities, the DOT participates as a cooperating agency and assists in assessing any mitigation measures that may become conditions of approval for any project. DOT staff have reviewed FERC staff's analysis *and provided comments on our conclusions regarding compliance with Part 193 regulations*. In a July 30, 2015 letter [filed July 31, 2015] to FERC, the DOT Pipeline and Hazardous Materials Safety Administration stated that it had reviewed the criteria used by ELC and SLNG to identify design spill scenarios and establish siting for the LNG storage facility to confirm compliance with 49 CFR Part 193, and it had no objections to ELC and SLNG's methodologies. The DOT would also monitor the construction and operation of the natural gas facilities to determine compliance with its design and safety standards.

Id. at 1-16 (emphasis added).

¹⁰⁰ In the case of the Elba Island terminal, each storage tank has its own impoundment system and therefore qualifies as a single storage tank.

¹⁰¹ 49 C.F.R. § 193.2181(a).

¹⁰² 49 C.F.R. § 193.2005(a). *See* 49 U.S.C. § 60103.

the original tanks were built today,¹⁰³ they comply with the requirement PHMSA chose to impose on existing facilities.

39. ELC and Southern LNG examined over 500 piping segments, using the Department of Transportation's failure frequency criteria.¹⁰⁴ As noted above, for the design spills determined from this review, the EA discussed modeling of vapor dispersion from flammable and toxic releases, overpressures from explosions, and radiant heat from pool fires and jet fires. The potential for cascading events involving the tanks was also evaluated and discussed in the EA, including vapor dispersion underneath the existing LNG storage tanks; overpressure effects from vapor cloud ignition on the existing storage tanks; and radiant heat effects on adjacent equipment and the potential for BLEVEs.¹⁰⁵ Based on this review and the proposed mitigation by ELC and Southern LNG as well as additional recommendations made in the EA, the EA concluded that the preliminary engineering design submitted by ELC and Southern LNG would adequately "mitigate the potential for an incident that could impact the safety of the off-site public."¹⁰⁶

40. PHMSA participated in this analysis that led to this conclusion. Commission staff, assisted by PHMSA, used design information submitted by ELC and Southern LNG to assess whether the facility would have public safety impacts. The EA concluded that the siting of the proposed facility would not have a significant impact on public safety. The EA further noted that the facility will be subject to the Department of Transportation's inspection and enforcement program.¹⁰⁷ That inspection program will include a final

¹⁰³ EA at 2-95 ("Final determination of whether a facility is in compliance with the requirements of 49 CFR 193 would be made by DOT staff."). See PHMSA July 31, 2015 Letter ("We have also reviewed the compliance with other provisions of 49 CFR Part 193 which can be evaluated at this stage of the project."); *id.* ("PHMSA will continue to work with FERC and ELC to confirm compliance with the siting requirements of Part 193 as needed.").

¹⁰⁴ See June 2016 Order, 155 FERC ¶ 61,219 at P 130.

¹⁰⁵ See EA at 2-97 to 2-103; *id.* at 2-121 to 2-136.

¹⁰⁶ *Id.* at 2-137.

¹⁰⁷ See EA at 2-95. See also 49 U.S.C. § 60112 (authorizing the Department of Transportation to determine that a pipeline facility is hazardous and order the operator of the facility to take corrective action); *EarthReports, Inc. v. FERC*, 828 F.3d at 959 (the "opinions and standards of – and [LNG operator's] future coordination with – federal and local authorities" were a reasonable component of the Commission's public safety evaluation).

determination of whether the facility complies with PHMSA's siting regulations.¹⁰⁸ In their rehearing request, Ms. Kronquest and Mr. Kritter do not challenge any of these substantive conclusions regarding public safety.

41. Rather, in support of their position that the ELC and Southern LNG section 3 proposals should be rejected, Ms. Kronquest and Mr. Kritter cite *KeySpan LNG, L.P.*, where the Commission stated that it "will not authorize a new LNG import terminal that does not meet current federal safety standards because of our belief that new import terminals should meet the full array of safety requirements."¹⁰⁹

42. The *KeySpan* decision does not control the outcome here for several reasons. First, *KeySpan* involved a major modification to the historic operation of the existing storage tank. *KeySpan* proposed to "construct facilities and operate as an LNG import terminal"¹¹⁰ although the existing facilities had been "initially reviewed and authorized to operate as an LNG storage facility."¹¹¹ In its environmental analysis, Commission staff recognized that *KeySpan's* proposal represented "a significant modification to the historical mode of operation, [thus] providing the opportunity to re-evaluate the existing facility and to raise the level of safety to that required for new LNG import terminals."¹¹²

43. As the Commission noted, the "unique facts" of *KeySpan's* proposal differentiated that case from others where the Commission had not required compliance with the current version of PHMSA regulations.¹¹³ Here, by contrast, the Elba Island terminal

¹⁰⁸ *See id.* at 2-138.

¹⁰⁹ 112 FERC ¶ 61,028, at P 61 (2005) (emphasis added) (*KeySpan I*), *reh'g denied*, 114 FERC ¶ 61,054 (2006) (*KeySpan II*).

¹¹⁰ *KeySpan I*, 112 FERC ¶ 61,028 at P 65.

¹¹¹ *Id.* *See also KeySpan II*, 114 FERC ¶ 61,054 at P 25.

¹¹² *See* May 20, 2005 Environmental Impact Study, Docket Nos. CP04-223-000, CP04-293-000, and Docket No. CP04-358-000, Executive Summary at ES-11 (*KeySpan EIS*).

¹¹³ *KeySpan I*, 112 FERC ¶ 61,028 at P 59. Like Elba Island, three of the cases referenced in the *KeySpan* order had been originally authorized by the Commission to import LNG. *Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043, *order on reh'g and clarification*, 97 FERC ¶ 61,276 (2001), *order on reh'g and clarification*, 98 FERC ¶ 61,270 (2002); *Southern LNG, Inc.*, 103 FERC ¶ 61,029 (2003); and *Trunkline Gas Company, LLC*, 108 FERC ¶ 61,251 (2004), *order amending certificate*, 110 FERC

(continued...)

was originally evaluated and approved as an import terminal. ELC and Southern LNG's proposal to convert from imports to exports does not amount to the level of a "significant modification to the historical mode of operation"¹¹⁴ of the existing storage tanks. Indeed, the only modification will be installation of passive mitigation in the form of an impermeable vapor barrier (skirt) designed to prevent flammable vapors from dispersing underneath the LNG storage tanks. This modification was a direct result of the detailed hazard analysis performed as discussed above.¹¹⁵

44. Second, the potential consequences of the existing tank failure in *KeySpan* also counseled in favor of requiring compliance with then-current PHMSA regulations. For instance, the thermal radiation and flammable vapor exclusion zones for the LNG storage tank in *KeySpan* extended offsite and over multiple adjacent properties and thus failed to comply with additional PHMSA regulations.¹¹⁶ In contrast, the thermal radiation and flammable vapor exclusion zones for the original storage tanks at the Elba Island terminal would not reach a property line that can be built upon and would, therefore, not have a significant impact on public safety.¹¹⁷

45. The determination in *KeySpan* was based on the entirety of the Commission's safety review, which considered not merely the failure to meet the then-current PHMSA regulations, but also considered the various layers of protection proposed and

¶ 61,131 (2005). See *KeySpan I*, 112 FERC ¶ 61,028 at P 64. The fourth, *Algonquin LNG, Inc.*, 79 FERC ¶ 61,139 (1997), *order on reh'g*, 83 FERC ¶ 61,133 (1998), authorized the construction of a liquefaction plant, but there was no proposal to commence operating an LNG import terminal. As the Commission explained, Algonquin LNG did not accept the certificate "due to changes in market conditions." *KeySpan I*, 112 FERC ¶ 61,028 at P 59 n.24. See also *KeySpan II*, 114 FERC ¶ 61,054 at P 26 ("With these variations in mind, we believe that there are significant differences between the cases cited by *KeySpan* and BGLS and the situation presented here.").

¹¹⁴ See *KeySpan EIS* at ES-11.

¹¹⁵ See *supra* P 39.

¹¹⁶ *KeySpan I*, 112 FERC ¶ 61,028 at P 49. See *KeySpan EIS* at 4-114.

¹¹⁷ See *EA* at 2-121 to 2-136.

recommended at the time, including compliance with the exclusion zone requirements based on its configuration at the time, and the potential consequences.¹¹⁸

Notwithstanding their broad language, the *KeySpan* orders do not stand for the rule that in all proceedings involving any LNG facilities the Commission will require compliance with current PHMSA regulations. Public safety will always be of paramount concern in reviewing LNG proposal.¹¹⁹ But in a case such as this, where the facilities were originally reviewed as import facilities, where the PHMSA has played a significant role in reviewing the applicants' proposal, and where the Commission's independent analysis has not identified any significant safety concerns, we do not believe it is necessary to require the existing Elba Island tanks to meet the current PHMSA impoundment capacity requirements under NGA section 3 to determine whether the project is acceptable. Accordingly, we reject the argument that we failed to consider safety of the storage tanks.

2. Groundwater Usage

46. Based on a comparison to water usage at other LNG facilities, Ms. Kronquest and Mr. Kritter assert that the applicants' have underestimated the Elba Liquefaction Project's water usage. The June 2016 Order acknowledged that the estimates of water use are lower than for other LNG liquefaction facilities, but explained that the unique technology proposed for use by ELC and Southern LNG, the Moveable Modular Liquefaction System, accounted for that difference.¹²⁰ Ms. Kronquest and Mr. Kritter do not specifically address the lower water use requirements of the Moveable Modular Liquefaction System.

47. Ms. Kronquest and Mr. Kritter also argue that the EA underestimated the risk of saltwater intrusion because the EA failed to recognize that there are numerous high-capacity wells operating nearby, not just four as stated in the EA. Ms. Kronquest and Mr. Kritter state that the Floridian Aquifer, the primary drinking water source for Chatham County, is already highly threatened by saltwater intrusion. As their sole example of wells overlooked in the EA, Ms. Kronquest and Mr. Critter cite a well operating at the Savannah Acid Plant.

¹¹⁸ See *KeySpan* EIS at ES-16 (“The most frequently raised concerns about the project have focused on the safety of operating an LNG facility in a populated urban setting.”).

¹¹⁹ *KeySpan II*, 114 FERC ¶ 61,054 at P 19 (“In examining LNG proposals, our most important duty is ensuring that the project that is authorized is safe and secure.”).

¹²⁰ June 2016 Order, 155 FERC ¶ 61,219 at P 81.

48. The June 2016 Order addressed the risk posed by saltwater intrusion.¹²¹ We have also reviewed United States Geological Survey data,¹²² which show that wells recorded on the Tronox property (Savannah Acid Plant) are approximately 1.8 miles from the wells on Elba Island. This is consistent with the findings in the June 2016 Order that there may be other wells in the area; they would likely be at least a mile from the liquefaction site; “and if saltwater intrusion was induced by those wells, it would be focused around the high-capacity pumping centers and away from the liquefaction site.”¹²³

49. Ms. Kronquest and Mr. Kritter also assert the Commission should have required ELC and Southern LNG to conduct hydrostatic testing using water pumped from the Savannah River.¹²⁴ We disagree that the ELC and Southern LNG proposal will significantly impact groundwater such that pumping from the Savannah River is necessary. The hydrostatic test water would be pumped from the ground at a rate not to exceed 30,000 gallons per day (gpd) on a monthly rolling average, which is below the permitting threshold of 100,000 gpd on a monthly rolling average.¹²⁵ These uses would not significantly impact the groundwater supply of the Floridian Aquifer; thus, no additional mitigation measures are called for.¹²⁶

3. Trucking

50. Ms. Kronquest and Mr. Kritter state the June 2016 Order failed to use concrete language committing ELC and Southern LNG to mitigate impacts from construction trucking. We disagree. The EA and the June 2016 Order thoroughly addressed impacts from trucking.¹²⁷ Subsequent to issuance of the EA, ELC and Southern LNG committed to “not carry any of the aggregate fill through the Savannah Historic District and either barge-in the aggregate fill or to use one of the two alternative routes [not traversing the

¹²¹ *Id.* P 82.

¹²² See <http://maps.waterdata.usgs.gov/mapper/>

¹²³ June 2016 Order, 155 FERC ¶ 61,219 at P 84.

¹²⁴ Kronquest/Kritter Rehearing Request at 5.

¹²⁵ EA at 2-18.

¹²⁶ *Id.*

¹²⁷ June 2016 Order, 155 FERC ¶ 61,219 at PP 94-98; EA 2-58 through 2-60.

historical district] discussed in the Project EA.”¹²⁸ The June 2016 Order acknowledged that commitment and adopted a condition requiring ELC and Southern LNG to follow through with their commitment.¹²⁹ We find these commitments to be sufficient. Finally, the EA also addressed operations trucking and impacts related to marine traffic.¹³⁰

4. Cumulative Impacts of Jasper Ocean Terminal

51. Ms. Kronquest and Mr. Kritter argue the Commission violated NEPA by failing to consider potential cumulative impacts resulting from the JOT Project. We disagree. The June 2016 Order explained that the JOT Project is in the early stages of planning and would take up to 10 years before it is operational, leaving no chance for construction overlap between it and the Elba Liquefaction Project.¹³¹ Nevertheless, the June 2016 Order acknowledged the impacts of the JOT Project.¹³² As explained above in context of the Grainey/Bonds Rehearing Request, the June 2016 Order found that a quantitative assessment of the project’s impacts would be speculative based on what is currently known about the facility.¹³³ Ms. Kronquest and Mr. Kritter do not challenge this conclusion.

5. No Action Alternative

52. Ms. Kronquest and Mr. Kritter argue the EA ignored the benefits of the no action alternative. They state that continuing with the status quo would have environmental benefits such as “significantly reducing the potential for accidents from LNG ships and the associated environmental impacts, including air emissions (GHGs) from these vessels and the discharge of ballast water into the Savannah River Basin.”¹³⁴ The purpose of the

¹²⁸ ELC and Southern LNG March 14, 2016 Comments.

¹²⁹ June 2016 Order, 155 FERC ¶ 61,219 at P 98. *See also id.*, Appendix B at P 21 (“Prior to construction, ELC and Southern LNG shall file with the Secretary, for review and written approval of the Director of OEP, its proposed truck route or whether barges will be used to transport aggregate fill.”).

¹³⁰ EA at 2-60.

¹³¹ June 2016 Order, 155 FERC ¶ 61,219 at P 116.

¹³² *Id.* P 118.

¹³³ *See supra* P 34.

¹³⁴ Kronquest/Kritter Rehearing Request at 7.

no-action alternative is to “provide a baseline against which the action alternatives are evaluated.”¹³⁵ While some scenarios present challenges in defining this baseline,¹³⁶ there is no assertion here that the EA misidentified the baseline. As such, what Ms. Kronquest and Mr. Kritter describe as benefits of the status quo are merely the flip side of the costs of the proposed action, i.e. the direct, indirect, and cumulative impacts of the proposed action. Because the Commission fully analyzed those impacts, including the particular impacts raised by Ms. Kronquest and Mr. Kritter in their rehearing request, and compared those impacts against an appropriate baseline, the EA’s consideration of the no-action alternative was appropriate.¹³⁷

The Commission orders:

The requests for rehearing are denied as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹³⁵ *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 623 F.3d 633, 642 (9th Cir. 2010) (“A no action alternative in an EIS allows policymakers and the public to compare the environmental consequences of the status quo to the consequences of the proposed action. The no action alternative is meant to ‘provide a baseline against which the action alternatives’ ... [are] evaluated.”) (quoting *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998)).

¹³⁶ See, for example, the case cited by Ms. Kronquest and Mr. Kritter, *Pac. Coast Fed'n of Fishermen's Associations v. U.S. Dep't of the Interior*, 929 F. Supp. 2d 1039 (E.D. Cal. 2013).

¹³⁷ See *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998) (“However, as this court has recognized on a number of occasions, ‘merely because a “no action” proposal is given a brief discussion does not suggest that it has been insufficiently addressed.’”) (quoting *Headwaters, Inc. v. Bureau of Land Management*, 914 F.2d 1174, 1181 (9th Cir. 1990)).