



STATEMENT

**Concurrence of
Commissioner Cheryl A. LaFleur on
Port Arthur LNG, LLC and PALNG Common Facilities Company, LLC**

Date: April 18, 2019

Docket Nos.: CP17-20-000,
CP17-21-000, CP17-21-001, CP18-7-000
Item No.: C-3

Today's order grants authorization to Port Arthur LNG, LLC and PALNG Common Facilities Company, LLC (collectively Port Arthur LNG) pursuant to section 3 of the Natural Gas Act (NGA),¹ to site, construct and operate a new liquefied natural gas (LNG) export terminal (Port Arthur LNG Project) in Port Arthur, Texas.² The Commission also authorizes Port Arthur Pipeline, LLC (Port Arthur Pipeline), pursuant to section 7 of the NGA,³ to construct and operate both, the Texas Connector Project to provide up to 2,000,000 dekatherms per day (Dth/day) of natural gas transportation service to the proposed export terminal and the Louisiana Connector Project to provide 2,000,000 Dth/day to the proposed export terminal. For the reasons discussed below, I concur.

Under section 3 of the NGA, oversight for LNG export is divided between the Commission and the U.S. Department of Energy (DOE). Specifically, it is the DOE, not the Commission, which retains the exclusive authority over the export of the natural gas as a commodity, including the responsibility to consider whether the exportation of that gas is in the public interest.⁴ If the export will be sent to a free trade country, the NGA automatically "deems" the export "to be consistent with the public interest."⁵

This framework leaves the Commission with the limited authority to approve or deny an application for the siting, construction, expansion, or operation of the LNG terminal facilities. In exercising its section 3 authority, the Commission's responsibility includes conducting a public interest analysis to consider the technical and environmental aspects of the LNG facilities themselves. Our environmental review is

¹ 15 U.S.C. § 717b (2012).

² *Port Arthur LNG, LLC*, 167 FERC ¶ 61,052 (2019) (Certificate Order).

³ 15 U.S.C. § 717f(c) (2012).

⁴ 15 U.S.C. § 717b(a)-(c) (2012).

⁵ 15 U.S.C. § 717b(c) (2012).



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governed by the National Environmental Policy Act⁶ (NEPA) which, as relevant here, requires the Commission to take a “hard look” at the potential environmental impacts that could result from the Port Arthur LNG Project, including the climate change impacts of the proposed project.

The U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) has made clear that the DOE, rather than the Commission, has the responsibility to assess upstream and downstream indirect GHG emission impacts of LNG exports as part of the DOE’s determination of the public interest in exporting the natural gas.⁷ However, the Commission still has the clear responsibility to disclose and consider the direct and cumulative GHG impacts of the proposed LNG export facility, and make significance determinations regarding such impacts, in order to satisfy our obligations under NEPA and section 3 of the NGA.

I appreciate that the Commission has disclosed in the Certificate Order the direct GHG emissions of the Port Arthur LNG Project and the Texas and Louisiana Connector pipeline projects, and has provided important context by comparing them to the national GHG emissions inventory.⁸ We have included this comparison in the past to provide context to the indirect emissions of pipeline projects, and the D.C. Circuit has taken note of the Commission’s efforts to use available national, regional, and state emissions inventories as part of our climate change analysis.⁹

I recognize that the disclosure of the data, and the context provided, is only the first step to assist the Commission in determining the significance of a given rate or volume of GHG emissions as part of our climate change analysis. As a second step, NEPA requires that we analyze that information to determine

⁶ National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*

⁷ *Sierra Club v. FERC*, 827 F.3d 36, 47 (D.C. Cir. 2016) (*Freeport*) (“[T]he Commission’s NEPA analysis did not have to address the indirect effects of the anticipated *export* of natural gas. That is because the Department of Energy, not the Commission, has the sole authority to license the export of any natural gas going through the Freeport facilities.”). *See also Sierra Club v. FERC*, 827 F.3d 59 (D.C. Cir. 2016) (*Sabine Pass*); *EarthReports, Inc. v. FERC*, 823 F.3d 949 (D.C. Cir. 2016).

⁸ Certificate Order, 167 FERC ¶ 61,052 at P 137. Final Environmental Impact Statement (EIS) at Table 4.11.1-7. The Final EIS also discloses the direct GHG emissions from the construction of the LNG terminal and the pipelines: 197,714 metric tons during the multiple years of construction. Table 4.11.1-4, 4.11.1-5 and 4.11.1-6. *See Sierra Club v. FERC*, 867 F.3d 1357 at 1374 (D.C. Cir. 2017) (*Sabal Trail*) (“Quantification would permit the agency to compare the emissions from this project to emissions from other projects, to total emissions from the state or the region, or to regional or national emissions-control goals.”)

⁹ *E.g., Town of Weymouth, Mass. v. FERC*, No. 17-1135, 2018 WL 6921213 (D.C. Cir. Dec. 27, 2018)(per curiam) (speaking approvingly of the Commission’s quantification of the project’s expected GHG emissions, which included a comparison of the Atlantic Bridge Project against state and regional climate change goals.); *Appalachian Voices v. FERC*, No. 17-1721 (D.C. Cir. Feb. 19, 2019) (per curiam) (dismissing claims that FERC failed to adequately consider downstream climate impacts of the Mountain Valley Pipeline project by noting, among other things, that “FERC provided an estimate of the upper bound of emissions resulting from end-use combustion...”). By comparison, in *Sabal Trail*, the D.C. Circuit vacated and remanded the Commission’s authorization of the Southeast Market Pipeline Project and directed the Commission to both quantify and consider the project’s downstream GHG emissions or explain in more detail why it cannot do so. In response to the Court order, the Commission quantified the net, gross, and full-burn of downstream GHG emissions and compared them to the state and national GHG emissions inventories.



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whether a specific impact is, in fact, significant.¹⁰ Unfortunately, to date, the Commission has not established a framework for making a significance determination. However, the magnitude of the direct GHG emission from the Port Arthur LNG Project are substantial and certainly appear to be significant as contemplated by NEPA.

I remain frustrated by the Commission's continued refusal to even consider how we might develop a framework for assessing the potential significance of GHG emissions.¹¹ While it might be easier to assess significance if we had national emissions reduction targets, like EPA's Clean Power Plan or the Paris Climate Accord,¹² to use as part of our framework, the lack of such targets does not prevent the Commission from making a significance determination in this or in any other case. In fact, the Commission makes challenging determinations on quantitative and qualitative issues in many other areas of our work.¹³

¹⁰ Under NEPA, when evaluating the significance of a particular impact, the Commission must consider both context and intensity. 40 C.F.R. § 1508.27(a) (2017) (Context means "that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests and the locality."). 40 C.F.R. § 1508.27(b) (2017) (Intensity refers to "the severity of the impact").

¹¹ In my concurrence on the Driftwood LNG Project, I explain that finding the GHG emissions to be significant does not mean the Commission cannot approve a proposed project. NEPA requires the Commission to disclose and consider all environmental impacts of a proposed action, but NEPA does not mandate particular results, it simply prescribes the necessary process for considering each impact. Once a significant impact has been identified then the next logical step is to think about ways to mitigate that impact. *Driftwood LNG LLC*, 167 FERC ¶ 61,054 (2019) (LaFleur, Comm'r, *concurring* at PP 9-10) (citing *KN Wattenberg Transmission LLC*, 90 FERC ¶ 61,322, at 62,083 (2000) (citing and quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989))).

¹² As noted in the Certificate Order, the EPA's Clean Power Plan and the Paris climate account are pending repeal and withdrawal, respectively. Certificate Order, 167 FERC ¶ 61,052 at P 137, nt. 194.

¹³ Many of the core areas of the Commission's work have required the development of analytical frameworks, often a combination of quantitative measurements and qualitative assessments, to fulfill the Commission's responsibilities under its broad authorizing statutes. This work regularly requires that the Commission exercise judgment, based on its expertise, precedent, and the record before it. For example, to help determine just and reasonable returns on equity (ROEs) under the Federal Power Act, Natural Gas Act, and Interstate Commerce Act, the Commission identifies a proxy group of comparably risky companies, applies a method or methods to determine a range of potentially reasonable ROEs (i.e., the zone of reasonableness), and then considers various factors to determine the just and reasonable ROE within that range. *See also, e.g., Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007) (establishing Commission regulations and policy for reviewing requests for transmission incentives); *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (requiring, among other things, the development of regional cost allocation methods subject to certain general cost allocation principles); *BP Pipelines (Alaska) Inc.*, Opinion No. 544, 153 FERC ¶ 61,233 (2015) (conducting a prudence review of a significant expansion of the Trans Alaska Pipeline System). I also note that the Commission is currently actively considering a broad topic - resilience - whose scope and complexity might similarly require the development of new analytical frameworks for conducting the Commission's work.



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I do not believe it is beyond the capability of this Commission to determine whether a given rate or volume of GHG emissions should be considered significant. The Commission has grappled with every other identifiable and measurable environmental impact; for example, we quantify, consider, and mitigate impacts to land, water, and species, and we make determinations on whether the impacts to wetlands or mussels are significant.¹⁴ For reasons that I do not find persuasive, the Commission treats climate impacts differently than all other environmental impacts in our environmental review, and refuses to make such determinations regarding climate change impacts. Instead, the Commission summarily finds that because it cannot decide how to conduct a meaningful analysis of climate change impacts, it is not required to conduct *any* analysis of significance. I disagree.

With regards to cumulative impacts analysis, I appreciate that the analysis in the final EIS addresses a range of resources impacted within the identified geographic scope of the Port Arthur LNG Project. However, as I highlighted in my concurrence in Calcasieu Pass LNG,¹⁵ I disagree with the decision to exclude GHG emissions from the cumulative impacts analysis.¹⁶

As I have stated before, it takes minimal effort to disclose the GHG emissions for the other FERC projects identified in the final EIS's cumulative impacts air region, and include an estimate of the total annual potential GHG emissions associated with a proposed project and other nearby projects as part of our environmental review. I am disappointed that the final EIS does not do so. I recognize that using the 50 km air region is a rudimentary proxy for assessing the cumulative impacts of GHG emissions because those emissions are not typically measured on a local or regional basis.¹⁷ But disclosing that minimal information would at least be a start, and I believe that failure to do so creates added legal risk.¹⁸

¹⁴ In the Final EIS, the Commission made a significance determination on: geology, soils, water resources, wildlife, aquatic resources, wetlands, vegetation, wildlife resources, land use, recreation, and visual impacts, socioeconomics, air quality, noise, and reliability and safety. The Commission also determined that adverse environmental impacts to geology, water, wetlands, vegetation, wildlife, and air quality would not be significant with the proposed mitigation measures. Moreover, in making such determinations, the Commission has frequently relied solely on a qualitative assessment and Commission staff discretion, rather than quantitative analysis, as it did with the vegetation impacts in this case. Certificate Order, 167 FERC ¶ 61,052 at PP 110-112. I reject the view that the difficulty of quantifying GHG emissions impacts is an excuse for failing to evaluate the significance of those impacts.

¹⁵ *Venture Global Calcasieu Pass, LLC*, 166 FERC ¶ 61,144 (2019) (LaFleur, Comm'r, *concurring*).

¹⁶ Final EIS at 4-330-4-337, Table 4.13.1-1.

¹⁷ 50 kilometers is the distance used in the final EIS and by the EPA for cumulative modeling of large sources of air pollutants (nitrogen oxides [NO_x], sulfur oxides [SO_x], particulate matter [PM], etc.), volatile organic compounds, and hazardous air pollutants. GHGs are not included. Final EIS at 4-324- 4-325, Table 4.13-1.

¹⁸ Recently, the U.S. District Court for D.C. criticized the Bureau of Land Management (BLM) for failing to disclose the cumulative impacts of GHG emissions in sufficient detail. The court found that NEPA requires "BLM quantify the emissions from each leasing decision—past, present or reasonably foreseeable—and compare those emissions to regional and national emissions, setting



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Since the Commission fails to disclose the cumulative GHG emissions numbers, I have included an estimate of them in Table 1 attached to my concurrence. I believe that, consistent with our NEPA obligations, at a minimum, the GHG emissions must be disclosed and considered, both cumulatively and with respect to individual facilities.

I will continue to consider and evaluate these issues as they arise in individual proceedings, however, I believe the Commission should proactively address these issues. If we do not, further guidance from the courts on our NEPA responsibility to consider climate change will likely require us to do so. Such guidance could create additional legal risk and add additional complexities to our reviews under both Section 3 and Section 7 of the NGA. Thus, I believe that proactive solutions to this challenging problem must be explored. Given my review of the record including climate impacts, I find the Port Arthur LNG Project is not inconsistent with the public interest.¹⁹ As for Port Arthur Pipeline's Texas Connector and Louisiana Connector Projects, which is solely serving the Port Arthur LNG Project, I find the pipeline is in the public convenience and necessity. The D.C. Circuit has recognized that, as with the appended LNG export facility, the downstream indirect GHG emissions for the pipeline are not part of the Commission's environmental review and consideration.²⁰ Therefore, my public interest determination is based on a review of the rest of the environmental review of the pipeline project. After carefully balancing the need for the project and its environmental impacts, I find the project is in the public interest.

For these reasons, I respectfully concur.

forth with reasonable specificity the cumulative effect of the leasing decision at issue." *WildEarth Guardians v. Zinke*, No. CV 16-1724 (RC), 2019 WL 1273181, at *46 (D.D.C. Mar. 19, 2019). By comparison, the U.S. District Court for Colorado, upheld BLM, finding they took an appropriately hard look at cumulative climate change impacts where, the agency: (1) looked at statewide emissions levels from emitting coal-fired power plants in Colorado and provided a comparative assessment; (2) provided a qualitative analysis of climate change and the role played by GHG emissions; (3) performed a regional cumulative impacts analysis for the future mineral development in the region for ten years; and (4) quantified the GHG emissions from both projects. *Citizens for a Healthy Cmty. v. Bureau of Land Mgmt.*, No. 1:17-CV-02519-LTB-GPG, 2019 WL 1382785, at *20-21 (D. Colo. Mar. 27, 2019).

¹⁹ I recognize that it is difficult to balance the GHG impacts with the potential public benefits of export, since the latter are part of DOE's responsibility, and the Commission is working under a presumption of public interest. I have considered the information provided by the 2014 National Energy Technology Lab (NETL), *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States*, to provide some context to benefits. This analysis calculates the life cycle GHG emissions for regional coal and imported natural gas power in Europe and Asia. The approach includes GHG impacts of liquefaction and finds, on balance that export of US LNG has less climate impacts than some alternatives. As I have stated before, that analysis should be updated based on more recent information and proposed projects.

²⁰ See *Sabine Pass*, 827 F.3d at 68.

Table 1: Annual Direct CO₂e Emissions from FERC Projects within about 50km Port Arthur LNG						
	Port Arthur Liquefaction	Sabine Pass LNG	Golden Pass LNG Liquefaction	South Texas Expansion Project	Total	National Inventory for 2016
GHG in CO ₂ e (tpy)	5,190,000	10,220,000	5,330,000	5.2	20,740,005	6,395,700,000
Percent of National Inventory	0.08%	0.16%	0.08%	0.00%	0.32%	--
Notes:	Includes LNG terminal; North, South, and Louisiana Connector Compressor Stations	Includes trains 1-6	Includes terminal expansion, MP 1 Compressor Station, and MP 66 Compressor Station; does not include LNG import terminal	Piping modifications to the existing launcher/receiver at MP 412.73 on Line 16 within Texas Eastern's Vidor Compressor Station. This only shows the increase in emissions based on the modifications.	N/A	Table ES-2: Net GHG Emissions, inclusive of sources and sinks converted to english tons. https://www.epa.gov/sites/pr oduction/files/2018-01/documents/2018_complete_report.pdf