

187 FERC ¶ 61,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Allison Clements and Mark C. Christie.

Rio Bravo Pipeline Company, LLC

Docket No. CP23-519-000

ORDER AMENDING CERTIFICATE

(Issued May 23, 2024)

1. On July 20, 2023, Rio Bravo Pipeline Company, LLC (Rio Bravo) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² to amend its certificate of public convenience and necessity issued in Docket No. CP16-455-000, as amended in Docket No. CP20-481-000, which authorized the construction and operation of the Rio Bravo Pipeline Project.³ As more fully described below, Rio Bravo proposes to adjust the certificated pipeline route at four discrete locations and to modify the design of the mainline pipelines by using an alternative maximum allowable operating pressure (MAOP) calculation (Route Amendment Project). For the reasons discussed below, we grant the requested amendment, subject to certain conditions.

I. Background and Proposal

2. Rio Bravo is a Texas limited liability company and a direct subsidiary of Spectra Energy Partners, LP (Spectra Energy), which is an indirect, wholly-owned subsidiary of Enbridge Inc.⁴ Upon commencing operations of its Rio Bravo Pipeline Project, Rio

¹ 15 U.S.C. § 717f(c).

² 18 C.F.R. pt. 157 (2023).

³ *Rio Grande LNG, LLC*, 169 FERC ¶ 61,131 (2019) (Authorization Order), *order on reh'g*, 170 FERC ¶ 61,046 (2020) (Rehearing Order).

⁴ At the time the Authorization Order issued granting Rio Bravo its requested certificate, Rio Bravo was a wholly-owned subsidiary of NextDecade LNG, LLC. On March 2, 2020, Spectra Energy acquired Rio Bravo.

Bravo will become a natural gas company within the meaning of section 2(6) of the NGA.⁵

3. On November 22, 2019, the Commission issued Rio Bravo a certificate of public convenience and necessity that authorized the construction and operation of the Rio Bravo Pipeline Project, a new interstate natural gas pipeline system designed to provide up to 4.5 billion cubic feet per day of firm natural gas transportation capacity from several interconnects in the vicinity of the Agua Dulce Hub in Nueces County, Texas, to Rio Grande LNG, LLC's (Rio Grande) proposed liquified natural gas (LNG) export terminal (Rio Grande LNG Terminal) on the northern embankment of the Brownsville Ship Channel in Cameron County, Texas (Authorization Order).⁶

4. On December 23, 2019, Vecinos para el Bienestar de la Comunidad Costera, Sierra Club, and City of Port Isabel (together, Sierra Club) and several other parties jointly requested rehearing of the Authorization Order. On January 23, 2020, the Commission denied rehearing.⁷ Sierra Club petitioned for review of the Authorization and Rehearing Orders in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit).

5. On June 16, 2020, while Sierra Club's petition for review was pending before the court, Rio Bravo filed an application under NGA section 7 to amend its certificate for the Rio Bravo Pipeline Project.⁸ Rio Bravo proposed to reduce the number of authorized compressor stations from three to one, increase the horsepower at the remaining compressor station (Compressor Station 1),⁹ eliminate certain measurement facilities,

⁵ 15 U.S.C. § 717a(6).

⁶ Authorization Order, 169 FERC ¶ 61,131. In the same order, the Commission also authorized Rio Grande, under NGA section 3, to construct and operate the Rio Grande LNG Terminal. The Rio Grande LNG Terminal is designed to produce up to 27 million metric tonnes per annum (MTPA) of LNG for export and will include five natural gas liquefaction trains, each with a nominal capacity of 5.4 MTPA; four full-containment LNG storage tanks; two LNG carrier loading berths; one 1,500-foot-diameter turning basin; facilities for loading and unloading trucks; and other support facilities.

⁷ Rehearing Order, 170 FERC ¶ 61,046.

⁸ Rio Bravo, Application to Amend Certificate of Public Convenience and Necessity, Docket No. CP20-481-000 (filed June 16, 2020).

⁹ Specifically, Rio Bravo's application proposed to increase the horsepower (hp) of Compressor Station 1 from 180,000 hp to 282,000 hp to allow for the proposed

extend both parallel pipelines by 0.2 mile, change the operating pressure of the pipelines and header system, and increase the diameter of one of the two pipelines from 42 inches to 48 inches.¹⁰

6. On August 3, 2021, the D.C. Circuit remanded the Commission's orders authorizing the Rio Grande LNG Terminal and the Rio Bravo Pipeline Project, holding that the Commission's environmental analyses of the projects' impacts on climate change and environmental justice communities were deficient under the Administrative Procedure Act and directing the Commission to revisit its public interest determinations under NGA sections 3 and 7.¹¹

7. On April 21, 2023, the Commission issued an order addressing the issues remanded by the court and amending Rio Bravo's section 7 certificate (Remand Order).¹² As amended, the Rio Bravo Pipeline Project's authorized facilities include: a 2.4-mile-long header system, which includes four metering sites; 135.7 miles of parallel 48- and 42-inch-diameter mainline pipelines (referred to as Pipeline 1 and 2, respectively); one compressor station; and other appurtenant facilities. Rio Bravo plans to construct the pipeline system in two phases,¹³ with the in-service date of first phase coinciding with the commencement of the Rio Grande LNG Terminal operations.¹⁴

elimination of Compressor Station 2 (180,000 hp) and Compressor Station 3 (180,000 hp).

¹⁰ Rio Bravo, Application to Amend Certificate of Public Convenience and Necessity, Docket No. CP20-481-000 (filed June 16, 2020).

¹¹ *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321 (D.C. Cir. 2021).

¹² See *Rio Grande, LNG, LLC*, 183 FERC ¶ 61,046 (2023) (Remand Order). On May 22, 2023, Sierra Club filed a timely rehearing of the Remand Order and on August 17, 2023, Sierra Club petitioned for review of the same order in the D.C. Circuit. On October 27, 2023, the Commission issued an order addressing the arguments raised on rehearing of the Remand Order, *Rio Grande LNG, LLC*, 185 FERC ¶ 61,080 (2023), and filed with the D.C. Circuit the certified index to the record.

¹³ Pursuant to the Authorization Order, the Rio Bravo Pipeline Project is required to be made available for service by November 22, 2026. Construction has not commenced for the pipeline project and Rio Bravo has not sought an extension of time.

¹⁴ On March 6, 2020, Commission staff issued a notice to proceed for limited site preparation activities for the Rio Grande LNG facilities. Additionally, on October 14, 2022, in Docket No. CP16-454-004, the Commission granted Rio Grande a two-year

8. Under the Commission's orders summarized above, Rio Bravo was required to implement certain measures – including a pipeline route realignment – proposed by Rio Bravo and incorporated by the U.S. Fish and Wildlife Service (FWS) as conditions of its October 2, 2019 Biological Opinion for the purpose of minimizing the impact of incidental take on the ocelot and jaguarundi.¹⁵ Specifically, the FWS condition requires Rio Bravo to re-route the pipeline between milepost (MP) 69.9 and MP 79.2, to avoid 62.6 acres of ocelot and jaguarundi habitat. The Commission's orders require that Rio Bravo submit for Commission approval either a variance request or an amendment, as appropriate, for the route realignment it agreed to with FWS, prior to receiving authorization to commence construction of the pipeline project.¹⁶

9. In its July 20, 2023 amendment application, Rio Bravo requests four discrete adjustments to the certificated pipeline route in order to minimize impacts to potential ocelot habitat, address FWS and landowner concerns, avoid recently constructed infrastructure, and align the Rio Bravo Pipeline Project with the currently approved design of the Rio Grande LNG Terminal to which it will interconnect. A map providing an overview of the proposed route amendments is appended at Appendix B. Rio Bravo also seeks to modify the mainline pipeline design by using an alternative MAOP

extension of time, to November 22, 2028, to construct and make available for service the Rio Grande LNG Terminal. *Rio Grande LNG, LLC*, 181 FERC ¶ 61,032 (2022), *order on reh'g*, 182 FERC ¶ 61,027 (2023).

¹⁵ 2020 Rehearing Order, 170 FERC ¶ 61,046 at P 32.

¹⁶ Authorization Order, 169 FERC ¶ 61,131 at P 85, P 91, envtl. condition 6; 2020 Rehearing Order, 170 FERC ¶ 61,046 at P 32; Remand Order, 183 FERC ¶ 61,046 at P 14 n.38, P 109 n.247. The dissent states that if the amendment were not approved, the project could not be built, and on that basis the dissent argues that the Commission should treat the Route Amendment Project as a direct cause of all impacts from the Rio Bravo Pipeline and should evaluate all of those impacts in assessing the no action alternative and comparing it to the alternative of approving the amendment. Dissent at P 2. We disagree. The route realignment is neither the actual nor the legal cause of any impacts from the underlying project itself. If the Commission were to disapprove the route realignment, this would not invalidate Rio Bravo's certificate of public convenience and necessity for the Rio Bravo Pipeline Project. Rather, Rio Bravo would be unable to proceed with project construction until it found a way to satisfy FWS's conservation concerns regarding ocelot and jaguarundi habitat.

calculation, consistent with regulations established by the Pipeline and Hazardous Materials Safety Administration (PHMSA).¹⁷ Specifically, Rio Bravo proposes to:

- adjust the certificated route between milepost (MP) 69.8 and MP 79.4 in Willacy County, Texas, to minimize impacts to potential ocelot habitat (FWS Route Adjustment);
- adjust the certificated route between MP 92.4 and MP 93.0 in Willacy County, Texas, to accommodate International Boundary and Water Commission (IBWC) requirements and landowner requests (North Floodway Route Adjustment);
- adjust the certificated route between MP 99.7 and MP 100.5 in Willacy and Cameron Counties, Texas, to accommodate a landowner request (Arroyo Colorado Route Adjustment);
- relocate a meter station and extend by 0.6 mile the pipeline route from the currently-certificated terminus to the meter station within the fence line of the LNG Terminal, including related modifications to the pipeline alignment and locations of horizontal directional drilling (HDD) activities for installation of the pipeline under wetlands adjacent to the LNG Terminal and new pipeline terminus (Terminus Adjustment); and
- modify the design of the 48-inch and 42-inch mainline pipelines on a majority of the route located in Class 1 areas¹⁸ to use an alternative MAOP calculation.

10. Rio Bravo states that none of the proposed modifications described above will result in any change to the pipeline system's design capacity, the remainder of the certificated route, or other aspects of the project as certificated.¹⁹ Regarding the proposed use of an alternative MAOP calculation, Rio Bravo explains that this modification will not change the currently authorized MAOP of 1,825 pounds per square inch gauge (psig), but will decrease the wall thickness of Pipeline 1 (48-inch-diameter pipe) from 0.87 inch to 0.78 inch, decrease the wall thickness of Pipeline 2 (42-inch-diameter pipe) from 0.761

¹⁷ Rio Bravo states that its use of an alternative MAOP calculation in class 1 areas is consistent with PHMSA regulations, results in the same level of safety, and will not result in any change to the design capacity of the pipeline system or any other aspect of the project as currently certificated.

¹⁸ PHMSA regulations provide that a Class 1 location is an offshore area or any class location unit that has 10 or fewer buildings intended for human occupancy. 49 C.F.R. § 192.5(b)(1) (2023).

¹⁹ Amendment Application at 4.

inch to 0.682 inch, and change the pipeline design factor from 0.72 to 0.80.²⁰ Rio Bravo further notes that these proposed MAOP calculations are consistent with PHMSA regulations and will give it additional options for obtaining pipe from domestic suppliers. Rio Bravo does not propose any amendments to the approved cost of the pipeline nor changes to the initial recourse rates that the Commission approved in the Remand Order.²¹

II. Notice, Interventions, and Comments

11. Notice of Rio Bravo's amendment application was issued on August 1, 2023, and published in the *Federal Register* on August 7, 2023.²² The notice established August 22, 2023, as the deadline for filing comments and interventions. Timely, unopposed motions to intervene were filed by: John Young; Mary A. Branch; Public Citizen, Inc.; and Rio Grande.²³ No late motions to intervene were filed.

12. Several individuals and entities filed comments that generally fall within the following categories: (1) general opposition to the Rio Bravo Pipeline Project and the Rio Grande LNG Terminal and the Commission's approval of both projects; (2) questions regarding the status of permits and federal authorizations required for construction of both projects; and (3) environmental impacts associated with the proposed amendment and the pipeline and associated with LNG terminal projects generally. Comments specific to the proposed amendment (i.e., the proposed route adjustments and use of an alternative MAOP calculation) are addressed either in the environmental assessment (EA) that Commission staff prepared for the proposal or in this order, as appropriate. Comments that generally oppose the pipeline and LNG terminal or that discuss the environmental impacts of the already authorized projects are beyond the scope of this amendment proceeding.²⁴

²⁰ *Id.* at 6.

²¹ *Id.* at 17 (citing Remand Order, 183 FERC ¶ 61,046 at P 39).

²² 88 Fed. Reg. 52,151 (Aug. 7, 2023).

²³ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1) (2023).

²⁴ The Commission will not consider arguments that relitigate the Authorization Order, including whether the Commission properly found the Rio Bravo Pipeline Project to be required by the public convenience and necessity. Nor will we consider whether the Commission properly analyzed the environmental impacts associated with the previously approved pipeline and LNG terminal projects. These types of comments are improper collateral attacks on the Authorization Order and Remand Order and need not be

III. Discussion

13. Because Rio Bravo's requested changes require amending the Authorization Order, as amended, the requests are subject to the Commission's jurisdiction and requirements of NGA sections 7(c) and (e).²⁵

A. Certificate Policy Statement

14. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.²⁶ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that, in deciding whether to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

15. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the construction of the new natural gas facilities. If residual adverse effects on these interest groups are

considered further. *See, e.g.*, Remand Order, 183 FERC ¶ 61,046 at P 42 n.80 (declining to consider arguments that relitigate the Authorization order), P 88 (declining to consider issues that fell outside the scope of the court's mandate); *Fla. Se. Connection*, 162 FERC ¶ 61,233, at P 16 (2018) (declining to consider issues that fell outside the scope of the court's mandate).

²⁵ 15 U.S.C. §§ 717f(c), (e).

²⁶ *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227, *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement). On March 24, 2022, the Commission issued an order converting the policy statements issued in February 2022 to draft policy statements. *Certification of New Interstate Nat. Gas Facilities Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,197 (2022) (Order on Draft Policy Statements).

identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis where other interests are considered.

16. In the Authorization Order, the Commission found that the Rio Bravo Pipeline Project was required by the public convenience and necessity.²⁷ Because Rio Bravo had no existing customers, there was no potential for subsidization by, or adverse effects on, existing customers as a result of the project.²⁸ There would also be no adverse impacts on existing pipelines and their captive customers.²⁹ The Commission further found that Rio Bravo had taken appropriate steps to minimize impacts on landowners.³⁰ In the Remand Order, the Commission reaffirmed its previous findings of the project's benefits and that the Rio Bravo Project, as amended, was required by the public convenience and necessity.³¹

17. The Route Amendment Project does not change the Commission's prior findings on need, impacts to existing customers, and impacts on other pipelines and their captive customers. The Route Amendment Project proposes four adjustments to the certificated pipeline route to reduce impacts on the ocelot habitat and species, address IBWC requirements and landowner concerns, avoid recently constructed infrastructure, and align the terminus of the pipeline with the approved design of the LNG Terminal. Although the FWS Route Adjustment would affect 12 additional landowners, none of which commented or raised objections, it minimizes impacts on ocelot habitat and would affect fewer wetlands, forested habitat, and prime farmland soils. The three other route adjustments would not affect additional landowners. The proposed use of an alternative MAOP in Class 1 areas is consistent with PHMSA regulations, will not result in additional ground disturbance or other impacts, and provides an equivalent level of safety. Thus, we find that Rio Bravo has taken appropriate steps to minimize impacts of the Route Amendment Project on landowners and surrounding communities.

18. Accordingly, we find that the proposed amendment does not alter the Commission's previous finding that the Rio Bravo Pipeline Project's benefits will

²⁷ Authorization Order, 169 FERC ¶ 61,131 at P 32.

²⁸ *Id.* at P 29.

²⁹ *Id.* at P 30.

³⁰ *Id.* at P 31.

³¹ Remand Order, 183 FERC ¶ 61,046 at PP 25-30, 208.

outweigh any adverse economic effects on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities. Therefore, we conclude that the proposal is consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the proposal below.³²

B. Environmental Analysis

19. On August 23, 2023, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Rio Bravo Pipeline Route Amendment* (Scoping Notice). The Scoping Notice was published in the *Federal Register* and opened a 30-day public comment period, with comments due on September 22, 2023.³³ The Scoping Notice was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American Tribes; local libraries and newspapers; and affected property owners (i.e., project stakeholders). We received nine comments in response to the Scoping Notice from individuals, non-governmental organizations (NGOs), the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), and the Texas Historical Commission. Rio Bravo also filed comments in response to the scoping comments.

20. The primary issues raised during the scoping process included requests to extend the scoping comment period, consult with the Carrizo Comecrudo Tribe of Texas, and hold a public hearing that includes Spanish translation; impacts on endangered species (e.g., ocelot habitat), wetlands, wildlife, air and water quality, climate change, cultural resources, and environmental justice communities; and impacts related to construction noise and light, hazardous materials, reliability, and safety.

21. On October 13, 2023, the Commission issued a *Notice of Schedule for the Preparation of an Environmental Assessment for the Rio Bravo Pipeline Route Amendment*. The notice was also published in the *Federal Register* on October 19,

³² See Certificate Policy Statement, 88 FERC at 61,745-46 (explaining that only when the project benefits outweigh the adverse effects on the economic interests will the Commission then complete the environmental analysis).

³³ 88 Fed. Reg. 59,896 (Aug. 30, 2023).

2023,³⁴ and mailed to project stakeholders. The Commission did not receive any comments on the notice.³⁵

22. Pursuant to the National Environmental Policy Act of 1969 (NEPA),³⁶ Commission staff prepared an EA for Rio Bravo's proposal, which was issued on November 14, 2023. A Notice of Availability of the EA was published in the *Federal Register* on November 21, 2023, establishing a 30-day comment period.³⁷ The notice was also mailed to project stakeholders. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, environmental justice,³⁸ cumulative impacts, and alternatives. All substantive environmental comments raised during the scoping process were addressed in the EA. With regard to climate change impacts, the EA concludes that the pipeline route adjustments would not alter the project's greenhouse gas (GHG) emissions as previously identified and addressed in the 2019 final Environmental Impact Statement for the Rio Grande LNG Project (final EIS);³⁹ the 2020 Rio Bravo Pipeline Project Amendment Environmental Assessment (2020 EA);⁴⁰ the Authorization Order;⁴¹ and

³⁴ 88 Fed. Reg. 72,057 (Oct. 19, 2023).

³⁵ On October 20, 2023, Rio Bravo submitted a supplemental response to its October 11, 2023 scoping comments.

³⁶ 42 U.S.C. §§ 4321 *et seq.* See also 18 C.F.R. pt. 380 (2023) (Commission's regulations implementing NEPA).

³⁷ 88 Fed. Reg. 81,068 (Nov. 21, 2023).

³⁸ Under NEPA, the Commission considers impacts to all potentially affected communities. Consistent with Executive Order 12,898 and Executive Order 14,008, the Commission separately identifies and addresses "disproportionately high and adverse human health or environmental effects" on environmental justice communities. Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994); Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021). See *infra* PP 56-71.

³⁹ Final EIS at 4-245, 4-252, 4-261, 4-270, 4-478, 4-481 to 4-482, 5-22.

⁴⁰ 2020 EA at 25, 44-47.

⁴¹ Authorization Order, 169 FERC ¶ 61,131 at PP 107-109.

Remand Order.⁴² For the remainder of resources assessed, the EA concludes that with the recommended mitigation measures, project impacts would be reduced to less than significant levels.⁴³ As discussed in detail below, with regard to environmental justice communities, impacts from the pipeline route adjustments, including those associated with visual resources, socioeconomics, road traffic, noise, and air quality impacts, would be temporary and less than significant.⁴⁴

23. In response to the EA, the Commission received 19 comments from individuals,⁴⁵ Rio Bravo, and NGOs, including Save RGV from LNG, the South Texas Environmental Justice Network,⁴⁶ and New Liberty Road Community Development Corporation. The comments raised concerns regarding public participation; the cumulative impact analysis; noise, vibration, and light impacts; water contamination; GHG emissions and climate change; cultural resources and Tribal consultation; vegetation and right-of-way restoration; reliability and safety; and environmental justice communities.

1. Public Participation

24. Some commentors state that the Route Amendment Project's environmental stakeholder list was inadequate because the list did not include any individuals from Port Isabel, South Padre Island, Laguna Heights, or Laguna Vista.

25. The stakeholder list is consistent with the Commission's regulations at 18 C.F.R. § 157.6(d)(2) (2023), which requires notification to all affected landowners whose property:

(i) is directly affected (i.e., crossed or used) by the proposed activity, including all facility sites (including compressor stations, well sites, and all above-ground facilities), rights of way, access roads, pipe and contractor yards, and temporary workspace;

⁴² Remand Order, 183 FERC ¶ 61,046 at PP 60-61, 90-101; *Rio Grande LNG, LLC*, 185 FERC ¶ 61,080, at P 53-61, 64.

⁴³ EA at 19, 21, 22, 25, 26, 27, 28, 31, 33, 53.

⁴⁴ *Id.* at 48-51, 55.

⁴⁵ Several individuals filed very similar comments.

⁴⁶ South Texas Environmental Justice Network filed comments on behalf of itself and 48 other NGOs. South Texas Environmental Justice Network also separately filed form comments on behalf of 247 individuals.

(ii) abuts either side of an existing right-of-way or facility site owned in fee by any utility company, or abuts the edge of a proposed facility site or right-of-way which runs along a property line in the area in which the facilities would be constructed, or contains a residence within 50 feet of the proposed construction work area;

(iii) is within one-half mile of proposed compressors or their enclosures or LNG facilities.

26. The communities listed by commenters are between approximately six and ten miles from the nearest proposed route adjustment location (the Terminus Adjustment), thus their residents are not affected landowners as that term is defined in section 157.6(d)(2) of the Commission's regulations.⁴⁷ Additionally, even if a landowner was not required to be notified under 18 C.F.R. § 157.6(d)(2) (2023), any person who commented on the environmental review of the project was placed on the Commission's stakeholder list for the project as explained in the *Notice of Amendment of Authorization and Establishing Intervention Deadline*.

27. A number of commenters request an extension of the EA's 30-day comment period and that the Commission hold a public hearing with Spanish translation, which request South Texas Environmental Justice Network echoes. It is the Commission's practice to consider all comments filed in natural gas infrastructure proceedings, even those filed after established deadlines, to the extent practicable without delaying Commission action. This order addresses all comments, including late-filed comments, therefore we find no reason to extend the comment period. Regarding the request for a public hearing, stakeholders were provided an opportunity to submit written comments on the EA, as is typical Commission practice for projects with a scope similar to this amendment. No commenter alleges that they were denied an opportunity to comment on the EA or were unable to submit their comments in writing. Therefore, we conclude that the public was afforded an adequate opportunity to review and comment on the EA and on the proposed amendment.⁴⁸

⁴⁷ 18 C.F.R. § 157.6(d)(2).

⁴⁸ See *Transcon. Gas Pipe Line Co., LLC*, 165 FERC ¶ 61,221, at P 51 (2018) (finding a 30-day comment period allowed adequate review time for the public to comment on an EA).

2. Cumulative Impacts

28. Some individuals and NGOs allege that the EA's cumulative impacts analysis is deficient because it did not consider SpaceX⁴⁹ operations, which have expanded since initially analyzed in the final EIS, or other facilities at the Port of Brownsville.⁵⁰ Commenters also assert that the Commission and the Federal Aviation Administration (FAA) need to coordinate all decisions, including those related to the Route Amendment Project. Lastly, Save RGV from LNG cites a November 14, 2023 tanker truck fire at the Port of Brownsville to support its claim that the EA's cumulative impacts analysis related to emergency response is deficient.

29. With respect to potential cumulative impacts from SpaceX operations, as noted in the final EIS, the SpaceX facility will launch commercial spacecraft from a location about 5 miles southeast of the proposed LNG Terminal site.⁵¹ The final EIS analyzed the potential impacts from SpaceX operations, specifically launches, finding that the launches could have safety impacts on the LNG Terminal site.⁵² No operational impacts from SpaceX were identified with respect to the pipeline in the final EIS.⁵³ The 2020 EA supplemented this analysis by addressing cumulative impacts on air quality related to compressor station modifications.⁵⁴ The Remand Order also provided an updated cumulative impacts analysis for environmental justice communities.⁵⁵ As stated in the EA, Commission staff identified no unexamined past, present, or reasonably foreseeable projects within the geographic scope of the proposed route amendment locations since

⁴⁹ Space Exploration Technologies Corp., commonly referred to as SpaceX, is an American spacecraft manufacturer, launch service provider, defense contractor and satellite communications company.

⁵⁰ Other facilities that commenters believe should have been analyzed in the cumulative impacts analysis include: the Rio Grande LNG Project, Texas LNG Project, Jupiter MLP refiner, Sunoco tank farm, and Motus Energy.

⁵¹ Final EIS at 1-9.

⁵² *Id.* at 4-357.

⁵³ *See id.* at 4-392 – 4-495.

⁵⁴ 2020 EA at 41-44.

⁵⁵ Remand Order, 183 FERC ¶ 61,046 at PP 121-206.

issuance of the Remand Order.⁵⁶ The revised Rio Bravo pipeline route would not move more than approximately 2,000 feet (approximately 0.38 mile) from the certificated route,⁵⁷ and the SpaceX launch facility is located about 10 miles southeast of the nearest route adjustment associated with the Route Amendment Project (the Terminus Adjustment).⁵⁸ Therefore, with the exception of how the Terminal Adjustment would potentially change impacts on environmental justice communities,⁵⁹ there were no other changes or new activities that could contribute to cumulative impacts.

30. Regarding commenters' assertion that there should have been greater coordination with the FAA for the proposed amendment, we find that unnecessary given the scope of the amendment. As a cooperating agency for the final EIS, the FAA assisted the Commission in evaluating impacts on and from the SpaceX rocket launch facility in Cameron County.⁶⁰ The final EIS provided a basis for coordinated federal decision making in a single document.⁶¹ Although the cooperating agencies provided input regarding the conclusions and recommendations presented in the final EIS, agencies will also present their own conclusions and recommendations in their respective Records of Decision. As for the EA for the Route Amendment Project, the FAA did not request to be a cooperating agency, and the Commission is not required to coordinate all decisions related to the project with the FAA, especially given the lack of impacts associated with the SpaceX facility on the certificated pipeline or the proposed pipeline reroutes.

31. With regard to Save RGV from LNG's comment, emergency response protocols were considered in the previous reviews of the Rio Bravo Pipeline and Rio Grande LNG

⁵⁶ Commission staff applied a resource-specific geographic boundary for air quality of 0.5 mile from pipeline construction. Final EIS at 4-394; Remand Order, 183 FERC ¶ 61,046 at n.139; EA at 54.

⁵⁷ EA at 8.

⁵⁸ The SpaceX facility is located in the far southeastern corner of Cameron County, approximately 0.25 mile from the Gulf of Mexico shoreline. The proposed USFWS Route Adjustment, North Floodway Route Adjustment, and Arroyo Colorado Route Adjustment are all 25 miles or greater from the SpaceX facility. *See generally id.* at 9 (Rio Bravo Pipeline Route Amendment Overview Map).

⁵⁹ The EA found that the Rio Grande LNG Terminal is within the same geographic scope for cumulative impacts for environmental justice communities as the Terminus Adjustment and Meter Station Relocation. *Id.* at 54.

⁶⁰ Final EIS at ES-15.

⁶¹ *Id.* at 1-6.

Terminal projects.⁶² As noted above, this amendment comprises four discrete adjustments to the pipeline route and the proposed use of a different method to calculate the MAOP that is consistent with PHMSA regulations. Nothing related to these changes would require the Commission to reassess emergency response requirements for the pipeline's construction or operation.

3. Noise, Vibration, and Light Impacts

32. Commenters assert that the fishing and recreational areas along the pipeline near its terminus should be considered noise sensitive areas (NSAs) and that the EA should have included a discussion of how noise and vibration from project construction and operation will impact fish populations and other wildlife. Other commenters more generally express concern about impacts on fishing and birding at recreational areas, like the Restoration Channel⁶³ and the Jaime J. Zapata Memorial boat ramp (Zapata boat ramp),⁶⁴ and call for mitigation. Save RGV from LNG asserts that no sound mitigation has been outlined for the area along Highway 48 and raises the issue of light pollution. Save RGV from LNG also notes that there will be a minimum of 60 days of 24/7 HDD along the pipeline route, but the EA does not take into account potential delays from weather, emergencies, and supply disruptions.

a. Noise Impacts on Recreational Areas and Wildlife

33. While commenters do not specify the exact locations they think should be considered NSAs, the final EIS did evaluate noise impacts to recreational areas near the LNG terminal site where the Terminus Adjustment of the Route Amendment Project is located.⁶⁵ The Terminus Adjustment includes an HDD, extending the pipeline 0.6 mile, and relocating Rio Bravo's meter station. The final EIS discusses "check point" locations that do not meet the definition of an NSA, but are potentially sensitive to sound level impacts, such as cultural sites and wildlife areas in the project vicinity (i.e., Palmito Ranch Battlefield, Palo Alto Battlefield, piping plover critical habitat, the wildlife

⁶² *Id.* at 2-59 – 2-61; 2020 EA at 31-41; Remand Order, 183 FERC ¶ 61,046 at PP 156-160.

⁶³ The Bahia Grande Channel is located 0.2 mile west-southwest of the LNG Terminal site's property boundary. Final EIS at 4-200.

⁶⁴ The Zapata boat ramp is located off Highway 48, about 1.7 miles west of the LNG Terminal site. *Id.* at 4-195 – 4-196.

⁶⁵ *Id.* at 4-281.

corridor crossing Highway 48, and the Laguna Atascosa National Wildlife Refuge).⁶⁶ Rio Grande LNG conducted noise surveys in July 2015 and September 2016 to characterize the existing noise environment at both NSAs and other sensitive sites nearest to the LNG Terminal site.⁶⁷

34. As stated in the final EIS, although construction noise levels could deter wildlife in the area, especially in close proximity to the terminal site, most wildlife would be separated from the terminal site by Highway 48 on the north and the Brownsville Ship Channel on the south, which see regular vehicle or marine vessel traffic.⁶⁸ Noise produced by high-speed vehicles on highways and recreational marine vessels would be comparable to that produced by activity related to construction of the LNG Terminal, indicating that local wildlife may be accustomed to regular increases in noise.⁶⁹ Although the increased sound levels throughout construction may deter some wildlife from the areas adjacent to the terminal site, the increase in noise during construction is not anticipated to result in significant changes in wildlife behaviors.⁷⁰

35. The final EIS also describes the potential construction-related impacts of the Rio Grande LNG Project and Rio Bravo Pipeline Project, in general, on tourism at points along Highway 48 and portions of South Bay, Bahia Grande, and the Zapata boat ramp. The final EIS ultimately concludes that these areas would likely experience moderate increases in ambient noise during certain construction activities at the LNG Terminal, potentially changing visitation patterns immediately adjacent to the LNG Terminal but likely not the total number of visits to the general project area.⁷¹ Such impacts related to the projects would remain unchanged as a result of the Route Amendment Project. The EA found that, overall, impacts on aquatic resources, wildlife habitat, and migratory birds from the route adjustment would be less than the original certificated route, thus additional mitigation is not warranted.⁷²

⁶⁶ *Id.*

⁶⁷ *Id.* at 4-282.

⁶⁸ *Id.* at 4-88.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at ES-11.

⁷² EA at 21-28.

36. Rio Bravo's September 22, 2023 Noise Impact Assessment also included an analysis of the existing day-night average noise level (L_{dn}) at a nearby hunting lodge,⁷³ a non-NSA location in potential low-quality ocelot and jaguarundi habitat.⁷⁴ The assessment estimated noise impacts during HDD activities and found that noise levels would not exceed an L_{dn} of 55 decibels on the A-weighted scale (dBA) with implementation of noise mitigation measures.⁷⁵ For example, Rio Bravo proposes to install a 15-foot-tall sound barrier during the U.S. Highway 77 drilling activity to reduce noise impacts at the hunting lodge.⁷⁶ The assessment also shows that noise impacts quickly attenuate in the areas of potential low-quality ocelot habitat, and the associated work would be temporary, lasting no more than 10 weeks at each HDD location.⁷⁷ Based on the information in the record and considering both the temporary nature of the work activities and the low level of sound impacts in areas of potential low-quality ocelot and jaguarundi habitat, FWS concurred with Rio Bravo's determination that the potential noise and lighting impacts associated with the HDD activity in the area may affect, but is not likely to adversely affect, the ocelot and jaguarundi.⁷⁸

37. The Terminus Adjustment will reduce the length of the HDD planned at the pipeline's southern terminus by half, from a little over one mile in length to approximately 0.5 mile in length. Additionally, the Terminus Adjustment will move the associated meter station approximately 0.6 mile from its certificated location to a point within the Rio Grande LNG Terminal site boundary.⁷⁹ These modifications may serve to shorten the duration of active HDD drilling as compared to the certificated pipeline, as well as aid in the consolidation of the meter station's construction equipment and activities within the overall terminal's construction footprint. Following construction, the noise and light impacts resulting from the operation of the proposed meter station will be subsumed by the overall noise and light impacts attributable to the terminal's operation.

⁷³ A hunting lodge with limited, intermittent occupancy is approximately 776 feet north of the drill entry at approximate MP 70.45. Rio Bravo Sept. 27, 2023 Response to Sept. 7, 2023 Environmental Information Request at 6.

⁷⁴ *Id.* at Attach. 3-d.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Rio Bravo Nov. 16, 2023 Supplemental Response to Oct. 4, 2023 Environmental Information Request at attach. 7-1.

⁷⁹ EA at 7.

Therefore, noise,⁸⁰ vibration,⁸¹ and light⁸² impacts that will result from the Terminus Adjustment may be less than the impacts that would have occurred from the construction and operation of the original certificated route as analyzed in the final EIS.

38. Given that construction of the HDD crossing would be temporary,⁸³ the impacts of the HDD on wildlife would be short-term and minor, and fish and other aquatic species would generally avoid the area during construction. As stated in the final EIS, sea turtles may be present in the Brownsville Ship Channel, but no nesting beaches are in the Route Amendment Project area.⁸⁴ Therefore, Commission staff does not expect significant light and noise impacts on aquatic species as a result of the Route Amendment Project. We agree.

b. Noise and Light Impacts Along Highway 48

39. Save RGV from LNG points to Rio Bravo's commitment to install a noise barrier to mitigate noise impacts at the hunting lodge and questions why similar mitigation is not proposed to mitigate noise impacts along Highway 48. Highway 48 currently experiences traffic-related noise and light impacts on a regular, continuous basis. The HDD along Highway 48 associated with the Terminus Adjustment would incrementally add to the noise and light impacts in the vicinity of Highway 48; however, these impacts would be confined to the HDD's entry and exit locations, over 100 feet from the edge of the roadway, and would last only for the duration of the drilling (up to 10 weeks). The HDD's noise and light impacts along Highway 48 would be temporary and minor and would not worsen impacts attributable to ongoing, permanent traffic volumes served by the highway. As stated in the EA, Rio Bravo would comply with the avoidance,

⁸⁰ Final EIS at 5-17 ("No NSAs are within 1 mile of the stand-alone meter stations proposed for the project; therefore operation of these facilities is not expected to result in perceptible noise impacts at any NSAs"); EA at 52 ("The conclusions within the final EIS and [2020] EA regarding the potential for this meter station to contribute noise at nearby NSAs would not change as a result of this relocation.").

⁸¹ Final EIS at 4-302 (Rio Bravo "would use centrifugal rotating equipment, rather than reciprocating engines, to ensure that operation of the compressor and booster stations would not result in increased perceptible vibration at nearby NSAs.").

⁸² *Id.* at 4-100 ("Facility lighting is not anticipated to result in significant impacts on local wildlife.").

⁸³ HDD construction could occur for up to 10 weeks at each HDD site. *Id.* at 4-297.

⁸⁴ *Id.* at 4-133.

minimization, and mitigation measures that are fully described in the final EIS⁸⁵ and required by the Remand Order.⁸⁶

c. Light Mitigation

40. Potential impacts associated with nighttime work will be further mitigated by down-shielding lighting to illuminate facility and parking areas associated with the project, including HDD areas, and not shining light on surrounding vegetated areas, as the ocelot and jaguarundi are usually active at night or at dawn and dusk.⁸⁷ Furthermore, the Texas Parks and Wildlife Department and FWS approved the nighttime lighting plan required by condition 22 of the Authorization Order.

d. Potential HDD Delay

41. As for Save RGV from LNG's comment regarding potential delays to the HDD, it is always possible that factors related to weather, emergencies, and supply disruptions may adversely impact a project's proposed schedule; however, Commission staff assesses impacts based on the applicant's best-known estimate of construction duration at the time of the EA's issuance. In general, unforeseeable circumstances may result in delays in a project's schedule or alternatively, the project's construction schedule may shorten over time. It is not Commission practice to evaluate worst- or best-case hypothetical scenarios regarding a project's construction schedule.

4. Water Contamination

42. Commenters express concerns about waterbody contamination related to the construction and operation of the Rio Bravo Pipeline Project. More specifically, Save RGV from LNG notes that drilling fluids from HDDs could contaminate water sensitive

⁸⁵ *Id.* at 4-300 (recommending a HDD noise mitigation plan to be approved by the Commission's Director of the Office of Energy Projects), 4-303 (recommending that Rio Bravo file a noise survey after each set of compressor units at Compressor Stations 1 and 2 and Booster Stations 1 and 2 are placed in service).

⁸⁶ Remand Order, 183 FERC ¶ 61,046 at P 194 (Rio Bravo will implement the following mitigation at HDD locations that will exceed our noise criterion of an L_{dn} of 55 dBA at NSAs: use of temporary sound barriers around the HDD workspace; use of sound barriers or an acoustical enclosure around the drilling mud cleaning system; and offer temporary housing to residents in the vicinity of HDD operation.).

⁸⁷ Final EIS at 2-57, 4-88 – 4-89, 4-96, 4-147; Rio Bravo Nov. 16, 2023 Supplemental Response to Oct. 4, 2023 Environmental Information Request at attach. 7-1.

areas, and Mr. Chapman recommends that herbicide not be used to control Carrizo Cane due to the risk of poisoning aquatic organisms.

43. As stated in the final EIS, only water and bentonite clay will be used for HDD fluid.⁸⁸ Therefore, HDD fluid would not contain any potentially toxic additives. Rio Bravo's HDD Contingency Plan addresses contingencies for failed HDD attempts, as well as methods for detecting and responding to inadvertent returns of HDD fluid.⁸⁹

44. The Commission's *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures) require that no applicant use herbicides in or within 100 feet of a wetland, except as allowed by the appropriate federal or state agency. Therefore, impacts from herbicides would be sufficiently minimized.

5. Greenhouse Gas Emissions and Climate Change

45. Commenters raise general issues with the GHG emissions and potential climate-related impacts that may result from operation of the Rio Bravo Pipeline Project and Rio Grande LNG Project. Some commenters also argue that the project will increase fracking, the impact of which should be evaluated.

46. The proposed Route Amendment Project will not result in additional air quality impacts (including GHG emissions) compared to the construction and operation of the already approved Rio Bravo Pipeline Project.⁹⁰ Commenters did not disagree with this conclusion. As for commenters' concerns regarding climate-related impacts from the overall construction and operation of the Rio Bravo Pipeline and Rio Grande LNG Terminal, those impacts were evaluated in the final EIS,⁹¹ as well as the Authorization Order⁹² and Remand Order⁹³ and are outside the scope of this amendment proceeding.

⁸⁸ Final EIS at 2-51 (Bentonite clay is a naturally occurring, non-toxic substance).

⁸⁹ *Id.* at 4-117.

⁹⁰ Any nominal increase in construction emissions would not affect the analysis or conclusions as assessed in the final EIS, Authorization Order, or Remand Order. EA at 12.

⁹¹ Final EIS at 4-243 – 4-279.

⁹² Authorization Order, 169 FERC ¶ 61,131 at PP 107-109.

⁹³ Remand Order, 183 FERC ¶ 61,046 at PP 60-61, 90-101, 172-175, 196-198.

47. Similarly, arguments regarding the pipeline and LNG Terminal inducing an increase in fracking and any resulting environmental impacts are outside the scope of the amendment and are a collateral attack on the Authorization Order.⁹⁴

6. Cultural Resources and Tribal Consultation

48. Some commenters contend that the Commission needs to conduct a “thorough examination” for, and avoidance of, Native American ancestral sites and that the Carrizo Comecrudo Tribe of Texas should be consulted.⁹⁵ Commenter Dr. John Keller cites concerns that the cultural resources survey methodology should have included backhoe trenching and recording of profiles for evidence of archeological artifacts.⁹⁶

49. As stated in the EA, Rio Bravo completed cultural resources surveys for the Route Amendment Project and provided the resulting report to the Texas State Historic Preservation Office (SHPO).⁹⁷ The survey consisted of an intensive pedestrian survey covering approximately 43 acres, augmented by excavation of 69 shovel test units.⁹⁸ The survey methods were designed to meet the standards set forth by the Texas SHPO and the Council of Texas Archaeologists. No archeological materials, structures, or buildings were identified.⁹⁹ Rio Bravo recommended that the Route Amendment Project would

⁹⁴ Authorization Order, 169 FERC ¶ 61,131 at P 59 (“Because the U.S. Department of Energy authorizes commodity exports of LNG, the Commission’s authorization of the siting, construction and operation of LNG export facilities is not the legally relevant cause of increased natural gas production.”).

⁹⁵ See e.g., South Texas Environmental Justice Network Dec. 14, 2023 Comment at 1 (Signees, including the Carrizo Comecrudo Tribe of Texas, noted that the applicant did not consult with the Tribe); Terence M. Garrett Dec. 7, 2023 Comment at 1 (requesting a thorough examination for and avoidance of Native American ancestral sites and consultation with the Carrizo Comecrudo Tribe of Texas); Jaime Lawson Dec. 14, 2023 Comment at 1 (stating that the pipeline will likely cause harm to historical sites of the Carrizo Comecrudo Tribe of Texas).

⁹⁶ Dr. John Keller Dec. 13, 2023 Comments.

⁹⁷ EA at 34. The Terminus Adjustment was covered by the original review for the Rio Grande LNG Terminal, as documented in the final EIS. Final EIS at 4-240 to 4-241.

⁹⁸ EA at 34.

⁹⁹ *Id.*

have “no adverse effect” on historic properties.¹⁰⁰ Both the SHPO and Commission staff concurred with the recommendation and survey results.¹⁰¹ In the event of a discovery during construction, Rio Bravo will implement the Unanticipated Discoveries Plan.¹⁰²

50. Rio Bravo contacted the following federally recognized Tribes: Alabama-Coushatta Tribe of Texas; Apache Tribe of Oklahoma; Comanche Nation of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Oklahoma; and Tonkawa Tribe of Oklahoma.¹⁰³ The Commission’s Scoping Notice was also sent to the same federally recognized Tribes.¹⁰⁴ Rio Bravo also contacted the non-federally recognized Lipan Apache Tribe of Texas and Tap Pilam Coahuiltecan Nation.¹⁰⁵ No state or federally recognized Tribe has filed comments in response to the EA or otherwise contacted the Commission.¹⁰⁶

51. Concerns related to consultation and potential impacts to ancestral sites of the Carrizo Comecrudo Tribe of Texas were addressed in the EA.¹⁰⁷ While the Carrizo Comecrudo Tribe of Texas is a non-profit organization and is neither federally nor state recognized, it has been afforded the same opportunities to comment on the Route Amendment Project as other stakeholders.¹⁰⁸

7. Vegetation and Right-of-Way Restoration

52. Mr. Jim Chapman is concerned that the permanent right-of-way may not fully recover, citing the Valley Crossing Pipeline, which he claims has not recovered in three

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 34-35; Final EIS at 4-241.

¹⁰³ EA at 34.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 34-35.

¹⁰⁶ The Carrizo Comecrudo Tribe of Texas was a signee of the comments filed by South Texas Environmental Justice Network.

¹⁰⁷ EA at 35.

¹⁰⁸ *Id.* The Tribe did not file independent comments.

years.¹⁰⁹ He also asserts that, because there are 123.3 additional acres impacted by the Route Amendment Project, this acreage should be mitigated at the U.S. Army Corps of Engineers (USACE)-recommended 4 to 1 ratio, such as through the purchasing of 500 acres of nearby land to be incorporated into the Laguna Atascosa National Wildlife Refuge. Two other commenters assert that Rio Bravo has destroyed several Yucca plants that were growing along Highway 48, which they claim are federally protected.¹¹⁰ Ms. Vargas contends that construction has disturbed wildlife habitats and animals could be lost.

53. The final EIS found that construction of the Rio Bravo Pipeline Project would affect 1,255.4 acres of soils with poor revegetation potential.¹¹¹ The route amendment modifications would decrease the construction impacts on poor revegetation soils by 24.7 acres.¹¹² During construction and restoration of the workspaces associated with the Route Amendment Project, Rio Bravo will implement all applicable measures discussed throughout the final EIS,¹¹³ Authorization Order,¹¹⁴ 2020 EA,¹¹⁵ and the Remand Order¹¹⁶ intended to ensure successful revegetation of disturbed soils and mitigation for problem areas. For example, as stated in the final EIS, in non-saturated wetlands Rio Bravo will segregate up to 12 inches of topsoil over the trenchline, and in cultivated or rotated cropland areas or other areas if requested by landowners Rio Bravo will segregate up to 12 inches of topsoil over the trenchline and spoil side of the right-of-way.¹¹⁷ In addition, where applicable and in accordance with written recommendations obtained from the Natural Resources Conservation Service, land management agencies, or a landowner, Rio Bravo will add fertilizer and soil pH modifiers into the top 2 inches of

¹⁰⁹ Jim Chapman, Dec. 14, 2023 Comments.

¹¹⁰ Commenters did not cite any federal law or listing regarding Yucca plants and we are not aware of any Yucca species that are federally protected.

¹¹¹ *Id.* at 20.

¹¹² *Id.*

¹¹³ Final EIS at 2-34 to 2-57, 4-13 to 4-22, 4-59 to 4-68, 4-76 to 4-84.

¹¹⁴ Authorization Order, 169 FERC ¶ 61,131 at P 127.

¹¹⁵ 2020 EA at 9-10.

¹¹⁶ Remand Order, 183 FERC ¶ 61,046 at P 201.

¹¹⁷ Final EIS at 2-44.

soil.¹¹⁸ Rio Bravo will also follow the same construction and operation procedures for the Route Amendment Project as those described in the final EIS.¹¹⁹ This includes adoption of the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan) and Procedures.¹²⁰ Rio Bravo would employ at least two environmental inspectors per pipeline spread to monitor construction activities, oversee and document environmental compliance, and prepare inspection reports for submission to the Commission.¹²¹ Commission inspectors and Rio Bravo's environmental inspectors will inspect the site on a regular basis to ensure Rio Bravo conforms to the requirements of the Plan and that impacts on vegetation are minimized.¹²² Given the minimization and mitigation measures described in the project-specific Plan, Procedures, and draft Pipeline System Fugitive Dust Control Plan, the final EIS concluded that impacts on soils due to construction and operation of the pipeline system would be temporary and minor.¹²³

54. The USACE Section 404 permit for the project states that Rio Bravo shall provide compensatory mitigation at two sites – the Miradores Mitigation Site and the Loma Ecological Preserve.¹²⁴ This includes establishment of 350 acres of Texas coastal prairie palustrine emergent wetlands, enhancement of 21.9 acres of coastal prairie emergent wetlands, preservation of 3.15 acres of freshwater ponds, and restoration of 1,155.3 acres of thorn scrub upland habitat at the Miradores Mitigation Site.¹²⁵ Additionally, Rio Bravo would preserve the Loma Ecological Preserve 1,500-acre site consisting of intertidal mudflat, estuarine scrub-shrub wetlands, estuarine emergent wetlands, and

¹¹⁸ *Id.* at 4-17. Soil additives would not be used in wetlands without written documentation of approval from the appropriate state or federal agency.

¹¹⁹ EA at 10; Final EIS at 2-35 to 2-60.

¹²⁰ EA at 10.

¹²¹ *Id.*

¹²² Final EIS at 2-34 to 2-35.

¹²³ *Id.* at 4-18.

¹²⁴ USACE Section 404 Permit, Special Condition 13 (NextDecade, Filing, Docket No. CP16-454-000 (filed Sept. 27, 2021)). EA at 25 (USACE Section 404 permit issued in September 2021 for the Rio Bravo Pipeline Project is still valid for the Route Amendment Project).

¹²⁵ USACE Section 404 Permit, Special Condition 13 (NextDecade, Filing, Docket No. CP16-454-000 (filed Sept. 27, 2021)).

South Texas loma grassland/loma evergreen shrubland.¹²⁶ Given that Rio Bravo would implement measures required in its USACE Section 404 Permit, and that the impacts on soils, wetlands, waterbodies, and upland vegetation would be reduced in the Route Amendment Project,¹²⁷ we agree with the EA's conclusion that impacts on land use would be sufficiently minimized.

55. As for commenters concerns regarding wildlife habitat and loss of animals, the Route Amendment Project would result in a net reduction of impacts on potential wildlife habitat compared to the original certificated route and, in turn, would reduce the potential for loss of wildlife.¹²⁸

8. Reliability and Safety

56. Several commenters raise concerns about the Rio Bravo Pipeline Project's proximity to the Valley Crossing Pipeline and SpaceX operations, citing safety hazards. Other commenters assert generalized concerns that the Rio Bravo Pipeline Project and LNG, more generally, is not safe, citing pipeline leaks, methane releases, and explosions.

57. As stated in the EA, the Rio Bravo Pipeline Project, as modified by the Route Amendment Project, would be subject to the same safety design considerations as discussed in the final EIS¹²⁹ and the 2020 EA,¹³⁰ including compliance with PHMSA's safety standards prescribed in 49 C.F.R. Part 192.¹³¹ PHMSA's safety requirements would also apply to the Valley Crossing Pipeline that crosses the LNG Terminal site outside the boundary of the facility.¹³² In the final EIS, Commission staff, in consultation with U.S. Department of Transportation, evaluated the potential risk and impact from an incident on the Valley Crossing Pipeline and concluded that the likelihood of a Valley Crossing Pipeline incident or failure would be low and a worst-case pipeline rupture

¹²⁶ *Id.*

¹²⁷ EA at 17.

¹²⁸ *Id.* at 27.

¹²⁹ Final EIS at 4-382 to 4-392.

¹³⁰ 2020 EA at 31-37.

¹³¹ Pursuant to Subpart L of 49 C.F.R. pt. 192 (2023), Rio Bravo must develop an operations and maintenance plan which will include procedures regarding responses to emergency incidents, including gas leaks, fires, explosions, and natural disasters.

¹³² Final EIS at 4-380.

scenario would be even less likely.¹³³ The conclusions in the final EIS regarding safety and proximity to the Valley Crossing Pipeline are not impacted by the proposed route adjustments to the Rio Bravo Pipeline because Rio Bravo does not propose to deviate from the certificated route by more than 0.4 mile at the most; and in several instances, much less than that. As stated above, the SpaceX launch facility is located about 10 miles southeast of the nearest route adjustment associated with the Route Amendment Project and no operational impacts were identified with respect to the pipeline in the final EIS.¹³⁴

58. Mr. Chapman asserts that the proposed decrease in the pipeline's wall thickness would result in a weaker pipe. Rio Bravo proposes to decrease the pipe wall thickness of the 48-inch-diameter pipeline from 0.87 inch to 0.78 inch and the 42-inch-diameter pipeline from 0.761 inch to 0.682 inch. This will change the pipeline design factor¹³⁵ from 0.72 to 0.80, while maintaining the currently authorized MAOP of 1,825 pounds per square inch gauge.¹³⁶ Rio Bravo's alternative MAOP calculation is consistent with PHMSA's regulations,¹³⁷ and Rio Bravo would continue to be responsible for complying with all of PHMSA's design, construction, operation, and maintenance requirements as specified in 49 C.F.R. Part 192.¹³⁸ Rio Bravo will also increase the proposed wall thickness of the Rio Bravo Pipeline Project's pipeline system for certain Class 2 areas and bore locations, consistent with PHMSA regulations.¹³⁹ Commission staff considered and determined that its previous conclusions in the final EIS and 2020 EA that the Rio Bravo Pipeline Project would represent a slight increase in risk to the safety of the nearby public, that the risk would be considered low,¹⁴⁰ and that the Rio Bravo Pipeline Project

¹³³ *Id.* at ES-14 to ES-15.

¹³⁴ *Id.* at 4-392 to 4-495; EA at 8.

¹³⁵ Pipeline design factors are derating factors that ensure pipelines are operated below 100 percent of the maximum pipe yield strength. These factors are used along with pipe characteristics in engineering calculations to calculate the design pressure and MAOP of a steel pipeline.

¹³⁶ EA at 7.

¹³⁷ EA at 7; 49 C.F.R. § 192.620 (2023).

¹³⁸ EA at 53.

¹³⁹ *Id.* at 7-8.

¹⁴⁰ Final EIS at 4-391; 2020 EA at 41.

would not have a significant impact on public safety,¹⁴¹ have not changed as a result of the proposed Route Amendment Project.¹⁴² We agree.

9. Environmental Justice

59. In conducting NEPA reviews of proposed natural gas projects, the Commission follows Executive Orders 12898 and 14096, which direct federal agencies to identify and address disproportionate and adverse human health or environmental effects of their actions environmental justice communities.¹⁴³ EO 14008 also directs agencies to develop programs, policies, and activities to address the disproportionately and adverse “human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”¹⁴⁴ Environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹⁴⁵

¹⁴¹ Final EIS at ES-15.

¹⁴² EA at 53.

¹⁴³ Exec. Order No. 12,898, 59 Fed. Reg. 7,629; Exec. Order No. 14,096, 88 Fed. Reg. 25,251 (Apr. 21, 2023).

¹⁴⁴ Exec. Order No. 14,008, 86 Fed. Reg. 7,619. The term “environmental justice community” includes communities that have been historically marginalized and overburdened by pollution. *Id.* at 7,629. The term also includes, but may not be limited to minority populations, low-income populations, or indigenous peoples. *See* EPA, EJ 2020 Glossary (Feb. 2024), <https://www.epa.gov/system/files/documents/2024-02/ej-2020-glossary.pdf>.

¹⁴⁵ *See* EPA, EJ 2020 Glossary (Feb. 2024), <https://www.epa.gov/system/files/documents/2024-02/ej-2020-glossary.pdf>. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. *Id.* Meaningful involvement of potentially affected environmental justice community residents means: (1) people have an appropriate opportunity to participate in decisions about a proposed activity that may affect their environment and/or health; (2) the public’s contributions can influence the regulatory agency’s decision; (3) community concerns will be considered in the decision-making process; and (4) decisionmakers will seek out and facilitate the involvement of those potentially affected. *Id.*

60. Consistent with CEQ¹⁴⁶ and EPA¹⁴⁷ guidance and recommendations, the Commission's methodology for assessing environmental justice impacts considers: (1) whether environmental justice communities (e.g., minority or low-income populations)¹⁴⁸ exist in the project area; (2) whether impacts on environmental justice communities are disproportionate and adverse; and (3) possible mitigation measures. As recommended in *Promising Practices*, the Commission uses the 50% and the meaningfully greater analysis methods to identify minority populations.¹⁴⁹ Specifically, a minority population is present where either: (1) the aggregate minority population of the block groups in the affected area exceeds 50%; or (2) the aggregate minority population

¹⁴⁶ CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* 4 (Dec. 1997) (CEQ's *Environmental Justice Guidance*), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>. CEQ offers recommendations on how federal agencies can provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices. There were multiple opportunities for public involvement during the Commission's environmental review processes. FERC issued the Notice of Application and the NOS, which were published in the *Federal Register* on August 4, 2023, and August 15, 2023, respectively, and the NOS was mailed to the environmental mailing list. 88 Fed. Reg. 51,805 (Aug. 4, 2023); 88 Fed. Reg. 55,445 (Aug. 15, 2023). A Notice of Availability of the EA was published in the *Federal Register* (89 Fed. Reg. 8,670 (Feb. 8, 2024) and was also mailed to the environmental mailing list, specifically seeking comments on the EA. PAPL continues to identify and hold meetings with local associations, affected public groups and other non-governmental organizations concerning the Project and Amendment. PAPL also established a publicly available website about the Project and Amendment. Port Arthur Pipeline Louisiana Connector, <https://semprainfrastructure.com/what-we-do/energy-networks/port-arthur-pipeline-louisiana-connector>.

¹⁴⁷ See generally EPA, *Promising Practices for EJ Methodologies in NEPA Reviews* (Mar. 2016) (*Promising Practices*), https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

¹⁴⁸ See generally Exec. Order No. 12,898, 59 Fed. Reg. 7,629. Minority populations are those groups that include: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.

¹⁴⁹ See *Promising Practices* at 21-25.

in the block group affected is 10% higher than the aggregate minority population percentage in the county.¹⁵⁰

61. CEQ's *Environmental Justice Guidance* also directs low-income populations to be identified based on the annual statistical poverty thresholds from the U.S. Census Bureau. Using *Promising Practices*' low-income threshold criteria method, low-income populations are identified as block groups where the percent of a low-income population in the identified block group is equal to or greater than that of the county.

62. To identify potential environmental justice communities during preparation of the EA, Commission staff used 2017-2021 5-year Estimates U.S. Census American Community Survey data¹⁵¹ for the race, ethnicity, and poverty data at the state, county, and block group level.¹⁵² Additionally, in accordance with *Promising Practices*, staff used EJScreen, EPA's environmental justice mapping and screening tool, as an initial step to gather information regarding minority and low-income populations; potential environmental quality issues; environmental and demographic indicators; and other important factors.¹⁵³

63. Once staff collected the block group level data, as discussed in further detail below, staff conducted an impacts analysis for the identified environmental justice

¹⁵⁰ Here, Commission staff selected Cameron and Willacy County, Texas as the reference communities to ensure that affected environmental justice communities are properly identified.

¹⁵¹ U.S. Census Bureau, American Community Survey 2017-2021 ACS 5-Year Estimates Detailed Tables, File# B17017, Poverty Status in the Past 12 Months by Household Type by Age of Householder, [https://data.census.gov/cedsci/table?q=B17017;](https://data.census.gov/cedsci/table?q=B17017;File#B03002) File #B03002 Hispanic or Latino Origin By Race, [https://data.census.gov/cedsci/table?q=B03002.](https://data.census.gov/cedsci/table?q=B03002)

¹⁵² For this project, Commission staff determined that the appropriate units of geographic analysis for assessing project impacts on the environmental justice communities was environmental justice block groups within a 1-mile radius of the meter station realignment at the Terminus Adjustment and crossed by the Route Amendment Project areas of the Rio Bravo Pipeline Project right-of-way. This distance is sufficiently broad to assess visual impacts, construction air emissions, and construction noise impacts on environmental justice communities.

¹⁵³ EPA, *Purposes and Uses of EJScreen* (Jan. 9, 2024) <https://www.epa.gov/ejscreen/purposes-and-uses-ejscreen> ("Screening tools should be used for a 'screening-level' look. Screening is a useful first step in understanding or highlighting locations that may be candidates for further review.").

communities and evaluated health or environmental hazards, the natural physical environment, and associated social, economic, and cultural factors to determine whether impacts were disproportionate and adverse on environmental justice communities and also whether those impacts were significant.¹⁵⁴ Commission staff assessed whether impacts to an environmental justice community were disproportionate and adverse based on whether those impacts were predominately borne by that community, consistent with EPA's recommendations in *Promising Practices*.¹⁵⁵ Identified project impacts and proposed mitigation measures are discussed below.

64. The Commission's environmental staff identified seven block groups within the geographic scope of analysis, of which six census block groups exceeded the defined threshold for minority or low-income communities and are therefore environmental justice communities.¹⁵⁶ Project work within environmental justice communities include the FWS Route Adjustment; Arroyo Colorado Route Adjustment; the Terminus Adjustment and the meter station realignment; and the North Floodway Route Adjustment.¹⁵⁷

65. The EA discussed the project's potential socioeconomic, road traffic, visual resources, noise, and air quality impacts on the identified environmental justice communities.¹⁵⁸ Commission staff concluded that environmental justice concerns are not present for other resource areas.¹⁵⁹ We concur with this determination.

¹⁵⁴ An agency may determine that impacts are disproportionate and adverse but not significant within the meaning of NEPA, and in other circumstances an agency may determine that an impact is *both* disproportionate and adverse *and* significant within the meaning of NEPA. See *Promising Practices* at 33.

¹⁵⁵ There are various approaches to determining whether an action will cause a disproportionate and adverse impact. One recommended approach is to consider whether an impact would be "predominantly borne by minority populations or low-income populations". See *id.* at 44-46.

¹⁵⁶ EA at 41.

¹⁵⁷ *Id.* at 47.

¹⁵⁸ *Id.* at 47-51.

¹⁵⁹ *Id.* at 48.

a. Socioeconomic and Traffic Impacts

66. Socioeconomic impacts on environmental justice populations as described in the EA would result in a negligible increase in the local population.¹⁶⁰ Both a temporary and permanent influx of workers/contractors moving into the area would increase the use of local roads during construction.¹⁶¹ This increase in local road usage would not result in any additional socioeconomic impacts on environmental justice communities beyond what was analyzed in the Remand Order.¹⁶² As a result, the EA concludes that socioeconomic and traffic impacts on environmental justice communities associated with the construction and operation of the Route Amendment Project would be less than significant.¹⁶³ We agree.

b. Visual Impacts

67. Visual impacts on environmental justice populations, as described in the EA, are expected to result in a permanent change in the existing viewshed for nearby visual receptors.¹⁶⁴ The Route Amendment Project would result in a slight shift in visual impacts as the routes are adjusted; with the closest visual receptor to any of the route adjustments at about 800 feet.¹⁶⁵ The route adjustments cross uplands and active agricultural land.¹⁶⁶ The nearest resident is 3.8 miles from the relocated meter station.¹⁶⁷ The meter station relocation and pipeline segments of the Route Amendment Project would not result in any additional visual impacts on environmental justice communities beyond what was analyzed in the Remand Order.¹⁶⁸ The EA concludes that visual

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 48-49; Remand Order, 183 FERC ¶ 61,046 at PP 188-192.

¹⁶³ EA at 49.

¹⁶⁴ *Id.* at 48.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

impacts on environmental justice communities from the meter station relocation and route amendments would be less than significant.¹⁶⁹ We agree.

c. Noise

68. Noise would be generated during construction of the pipeline segments of the Route Amendment Project and relocation of the meter station. The relocation of the meter station would be about 3.8 miles from the nearest NSA, and noise from the meter station would not be perceptible at this distance.¹⁷⁰ Sound from construction activities near environmental justice communities along the pipeline system routes could be either intermittent or continuous, but would take place over a limited duration at any one location.¹⁷¹ No residences are within 50 feet of construction workspaces associated with the Route Amendment Project.¹⁷² The nearest potential noise receptor to any of the pipeline route adjustments is a hunting lodge that has limited, intermittent occupancy and is about 800 feet north of the entry site for the HDD crossing for the FWS Route Adjustment.¹⁷³ As evaluated in the EA, the meter station relocation and route adjustments would not result in any noise impacts beyond those evaluated in the Remand Order.¹⁷⁴ As concluded in the EA, construction or operational noise impacts on residences within environmental justice communities are not anticipated from the Route Amendment Project, as any noise impacts would not likely be perceptible at these distances.¹⁷⁵ We agree.

d. Air Quality

69. Construction emissions from the Route Amendment Project would not result in any additional air quality impacts on environmental justice communities beyond what was analyzed in the Remand Order for the Rio Bravo Pipeline Project.¹⁷⁶ Construction

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 49.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 50; Remand Order, 183 FERC ¶ 61,046 at PP 196-198.

emissions associated with the meter station relocation and route adjustments would be short-term and localized to the construction area.¹⁷⁷ The EA concludes that environmental justice communities would not be significantly affected by local or regional air quality impacts during construction of the Route Amendment Project facilities.¹⁷⁸ We agree.

70. Operational emissions from the Route Amendment Project would not result in any additional air quality impacts on environmental justice communities beyond what was analyzed in the Remand Order for the Rio Bravo Pipeline Project.¹⁷⁹ Accordingly, the EA concludes that operational emissions associated with the Amendment's meter station realignment and adjusted routes, which are limited to fugitive emissions and natural gas venting with negligible criteria pollutants, would result in a less than significant impact on air quality to environmental justice communities.¹⁸⁰ We agree.

71. After the EA was issued on November 14, 2023, the EPA published a final rule on March 6, 2024, lowering the primary annual PM_{2.5} NAAQS from 12.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 9.0 $\mu\text{g}/\text{m}^3$.¹⁸¹ This development does not change our analysis or conclusions regarding air quality with respect to the Route Amendment for a number of reasons. First, there are no operational emission sources within the scope of the Route Amendment that require air permits,¹⁸² so there is no occasion to apply the new NAAQS standard to the proposed Route Amendment. Second, while the updated NAAQS

¹⁷⁷ EA at 50.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ EA at 50.

¹⁸¹ 89 Fed. Reg. 16,202.

¹⁸² EA at 14 tbl.2, row 1 (confirming no new sources of air emissions as part of the Route Amendment). We note that the only operational emission sources on the Rio Bravo Pipeline Project are Compressor Station 1 in Kleberg County (over 100 miles from the Rio Grande LNG Terminal site) and fugitive emissions from the pipeline and natural gas venting at the meter stations. As reported in the 2020 EA for the Rio Bravo Pipeline Amendment, the background concentration of annual PM_{2.5} in Kleberg County was measured at 9.2 $\mu\text{g}/\text{m}^3$, and the Compressor Station 1 contribution was modeled at 0.8 $\mu\text{g}/\text{m}^3$. 2020 EA at 28, Tbl. 6. Thus the total predicted annual PM_{2.5} concentration of 10 $\mu\text{g}/\text{m}^3$ at Compressor Station 1 was below the then-existing primary annual PM_{2.5} NAAQS of 12.0 $\mu\text{g}/\text{m}^3$, but as modeled would exceed the revised primary annual PM_{2.5} NAAQS of 9.0 $\mu\text{g}/\text{m}^3$.

standards may impact the ongoing air quality review and permitting process being conducted by the Texas Commission on Environmental Quality (TCEQ),¹⁸³ it neither triggers a supplemental NEPA review nor constitutes grounds for reopening the record in the 2020 Amendment proceeding, which is final and pending judicial review.¹⁸⁴

e. Cumulative Impacts

72. No unexamined past, present, or reasonably foreseeable projects were identified within the geographic scope of the Route Amendment Project locations since issuance of the Remand Order.¹⁸⁵ The only potential change in cumulative impacts is associated with visual impacts from the meter station relocation.¹⁸⁶ The meter station would be relocated 0.6 mile east from the authorized meter station site within the Rio Grande LNG Terminal and would contribute to cumulative impacts on the viewshed.¹⁸⁷ However, the relocated meter station would be part of the Rio Grande LNG Terminal's viewshed and would not be a prominent feature on the terminal's site.¹⁸⁸ Further, the closest residence to the meter station relocation is 3.8 miles away.¹⁸⁹ Therefore, Commission staff concluded

¹⁸³ The TCEQ is the state agency responsible for implementing the NAAQS standards pursuant to state law and procedures. Compressor Station 1 is the only facility that is part of the Rio Bravo Pipeline Project that requires an air permit. Rio Bravo must obtain an air permit from TCEQ prior to receiving authorization to commence construction of the Rio Bravo Pipeline Project. The fact that a state permitting agency has not yet issued a permit required prior to commencing construction does not trigger a supplemental NEPA review. *See Mountain Valley Pipeline, LLC*, 185 FERC ¶ 61,208, at PP 19-20 (2023).

¹⁸⁴ *See Sierra Club v. FERC*, 97 F.4th 16, 28 (D.C. Cir. 2024) (rejecting argument that the effects of a new statute necessitated a supplemental NEPA analysis where neither FERC nor the project sponsor made any changes to the proposed project that would trigger a supplemental NEPA analysis) (citing 40 C.F.R. § 1502.9(d)(1)); *Stand Up for California! v. Dep't of Interior*, 994 F.3d 616, 629 (D.C. Cir. 2021) (“a [supplemental EIS] must be prepared only where new information provides a seriously different picture of the environmental landscape.”) (internal quotations omitted).

¹⁸⁵ *Id.* at 54.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 54-55.

¹⁸⁸ *Id.* at 55.

¹⁸⁹ *Id.*

that the Route Amendment Project's contribution to cumulative visual impacts on environmental justice communities associated with relocation of the meter station would be less than significant.¹⁹⁰ We agree.

f. Environmental Justice Conclusion

73. As described in the EA, the Route Amendment Project would have a range of impacts on the environment and on individuals living in the vicinity of the construction and operation activities, including environmental justice populations. As highlighted in EA table 5, six block groups out of seven block groups within the geographic scope of the Route Amendment Project are considered environmental justice communities.¹⁹¹

74. Adverse impacts associated with the Rio Bravo Pipeline Project, incorporating the Route Amendment Project, would primarily take place within the identified environmental justice communities.¹⁹² Accordingly, impacts would be disproportionate and adverse in these areas as they would be predominantly borne by environmental justice communities. However, the Route Amendment Project's impacts associated with visual resources, socioeconomics, traffic, noise, and air quality would be less than significant.¹⁹³

10. Environmental Conclusions

75. Based on the analysis in the EA as supplemented or clarified herein,¹⁹⁴ we conclude that if constructed and operated in accordance with Rio Bravo's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 42.

¹⁹² *Id.* at 50.

¹⁹³ *Id.* at 51.

¹⁹⁴ Although the analysis in the EA provides substantial evidence for our conclusions in this order, it is the order itself that serves as our record of decision. The order supersedes any inconsistent discussion in the EA.

76. As stated in environmental condition 3 in appendix A of this order, all applicable conditions of the Authorization Order and Remand Order specific to Docket No. CP16-455-000 (not repeated here) apply to the amended facilities.

IV. Conclusion

77. We continue to find that the project, as conditioned in the Authorization Order and Remand Order and as modified herein, is an environmentally acceptable action. We also maintain our previous findings of the project's benefits. Further, as discussed above, we conclude that the Rio Bravo Pipeline Project, as amended, is required by the public convenience and necessity, as conditioned in the Authorization Order and Remand Order and as modified herein.

78. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

79. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this authorization. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁹⁵

¹⁹⁵ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

80. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, applicant data responses, and exhibits therein, and all comments, and upon consideration of the record,

The Commission orders:

(A) The Order Granting Authorizations under Sections 3 and 7 of the Natural Gas Act in Docket No. CP16-455-000, as amended by the Remand Order in Docket No. CP20-481-000, is amended, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

(B) The Commission affirms its earlier determination that the Rio Bravo Pipeline Project, as amended, is required by the public convenience and necessity.

(C) All directives in the Authorization Order and Remand Order remain in effect. Rio Bravo shall continue to comply with all applicable terms and the environmental conditions set forth in the Appendix to the Authorization Order and Appendix A of the Remand Order.

(D) The certificate authority issued in Ordering Paragraph (A) is conditioned on Rio Bravo's compliance with the environmental conditions in the Appendix to this order.

(E) Rio Bravo shall comply with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in paragraphs (a), (b), (c), (e), and (f) of section 157.20 of the regulations.

(F) Rio Bravo shall complete construction of the proposed facilities and make them available for service within the timeframe conditioned in the Authorization Order, in accordance with section 157.20(b) of the Commission's regulations.

(G) Rio Bravo shall notify the Commission's environmental staff by telephone or e-mail of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Rio Bravo. Rio Bravo shall file

written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission. Commissioner Clements is dissenting with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

Appendix A

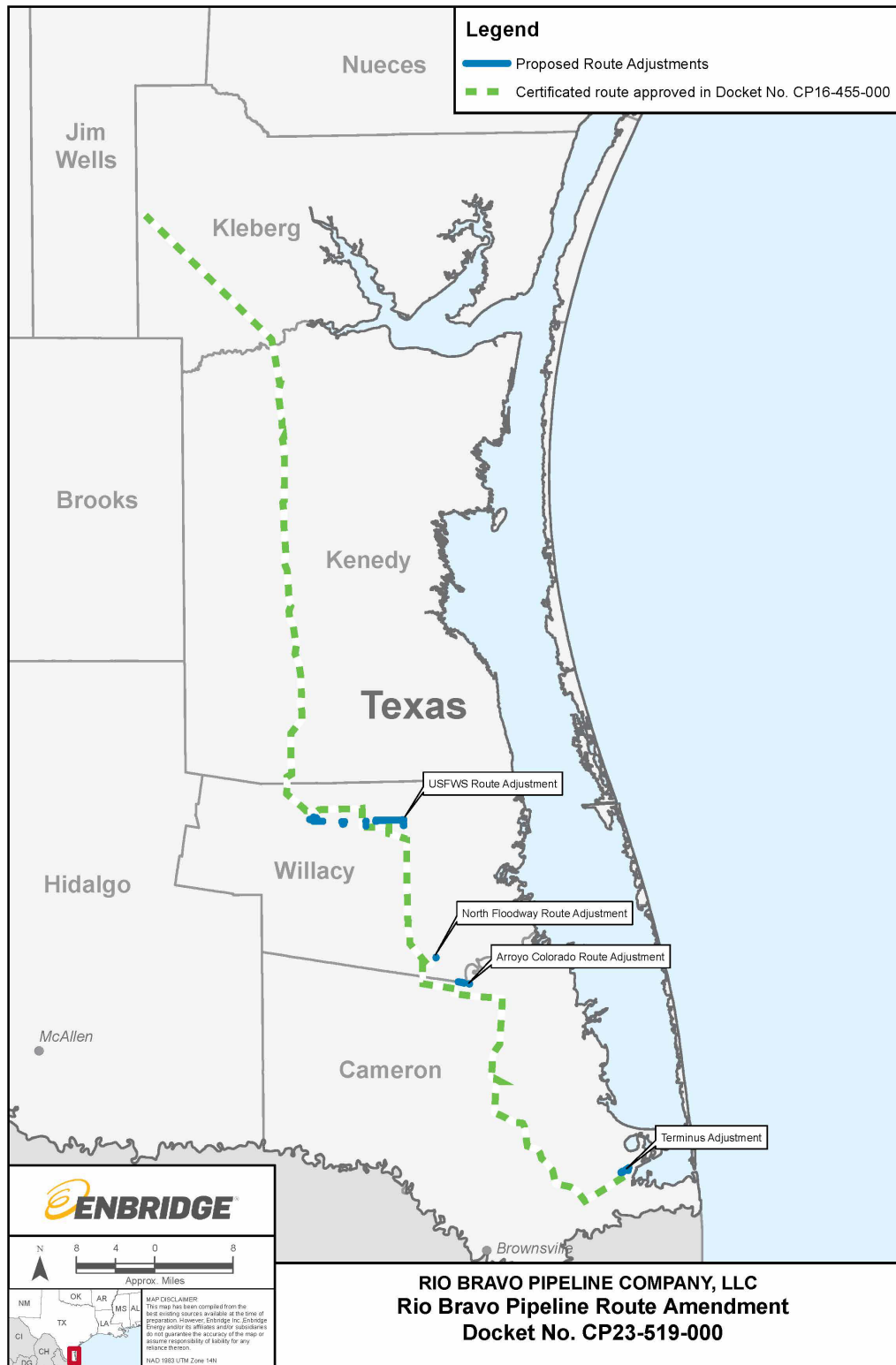
Environmental Conditions

As recommended in the Environmental Assessment (EA) for the Route Amendment Project, this authorization includes the following conditions:

1. Rio Bravo shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the Route Amendment Project environmental assessment (EA), unless modified by the Order. Rio Bravo must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP), or the Director's designee, **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.
3. Rio Bravo shall continue to comply with environmental conditions set forth in Appendix A of the Commission's November 22, 2019 *Order Granting Authorizations Under Sections 3 and 7 of the Natural Gas Act* specific to Docket No. CP16-455-000 and Appendix A of the Commission's April 21, 2023 *Order on Remand and Amending Section 7 Certificate* specific to Docket No. CP20-481-000.

4. **Prior to construction**, Rio Bravo shall file with the Secretary completed consultations with the U.S. Fish and Wildlife Service (USFWS) related to impacts on migratory birds, addressing discrepancies (e.g., timing of nest surveys, construction buffers, nighttime work) between the approved Migratory Bird Conservation Plan for the Rio Bravo Pipeline Project and the USFWS' August 23, 2023 comments for the Route Amendment Project.
5. Rio Bravo shall **not begin** construction activities **until**:
 - a. Rio Bravo provides information related to the tricolored bat in the Route Amendment Project area, including nearby occurrences and suitable habitat, potential impacts on the species, and minimization measures Rio Bravo would take to reduce impacts on the species;
 - b. FERC staff receives comments from the USFWS regarding the tricolored bat; and
 - c. Rio Bravo has received written notification from the Director of OEP, or the Director's designee, that construction or use of mitigation may begin.

Appendix B Amendment Overview Map



UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Rio Bravo Pipeline Company, LLC

Docket No. CP23-519-000

(Issued May 23, 2024)

CLEMENTS, Commissioner, *dissenting*:

1. I dissented from the Commission’s Remand Order approving the amended certificate for the Rio Bravo Pipeline Project (Project) because the Commission’s failure to prepare a supplemental environmental impact statement (EIS) for the Project, and take public comment on the supplemental EIS – particularly from the 367 newly identified environmental justice (EJ) communities¹ – produced a fundamentally flawed record that could not support a determination that the Project is required by the public convenience and necessity.² Although the certificate amendment approved in today’s Order³ will decrease the Project’s impacts on endangered ocelots and jaguarundis, I am compelled to dissent because the Project’s certificate is fatally compromised by the Commission’s errors. In other words, because the certificate itself is invalid, any amendment to the certificate is invalid. As explained below, I also dissent because the Order fails to consider significant adverse air pollution impacts that will occur as a direct result of the Commission’s approval of the certificate amendment.

2. To comply with the National Environmental Policy Act (NEPA), the Commission must consider reasonable alternatives to a proposed project, including the “no action”

¹ In performing the expanded review of EJ impacts required by the D.C. Circuit's remand decision in *Vecinos para el Bienstar de la Comunidad Costera v. FERC*, 6 F.4th 1321 (D.C. Cir. 2021) (*Vecinos*), the Commission identified 85 additional EJ communities in the area around the Rio Bravo Pipeline project, beyond the 21 identified in the Commission's original analysis.

² *Rio Grande LNG, LLC*, 183 FERC ¶ 61,046 (2023) (Remand Order) (Clements, Comm’r, dissenting at PP 2-12). I also dissented from the Commission’s order on rehearing for the same reasons. *Rio Grande LNG, LLC*, 185 FERC ¶ 61,080 (2023) (Clements, Comm’r, dissenting at PP 2-8) (Remand Rehearing Order). *See also Rio Grande LNG, LLC*, 186 FERC ¶ 61,021 (2024) (Clements, Comm’r, dissenting at P 16) (order denying stay).

³ *Rio Bravo Pipeline Co.*, 187 FERC ¶ 61,104 (2024) (Order).

alternative.⁴ The Environmental Assessment (EA) for the Route Amendment Project mischaracterized the no action alternative, and thereby improperly limited the analysis of environmental impacts to the incremental impacts of the certificate amendment, rather than the impacts of the Project as a whole. The EA states that under the no action alternative “[Rio Bravo] would still be authorized to construct the Pipeline Project as previously approved by the 2019 Order and Remand Order,” and thus that “environmental impacts would still result as described in the final Environmental Impact Statement (EIS), Amendment EA and Remand Order.”⁵ That is incorrect. Every Commission order regarding the Project has been clear that there *must* be a route realignment that meets the Fish and Wildlife Service’s (FWS) Biological Opinion (BiOp) terms⁶ approved by the Commission *before* the pipeline can be built.⁷ Without the

⁴ The Council on Environmental Quality’s (CEQ) regulations implementing NEPA provide that an environmental assessment must discuss alternatives to the proposed action and the environmental impacts of the proposed action and alternatives. 40 C.F.R. § 1501.5(c)(2). The Commission’s own regulations provide that it will comply with CEQ’s regulations. 18 C.F.R. § 380.1. The Commission requires applicants for a Natural Gas Act certificate to submit a resource report on alternatives that discusses the no action alternative. *See* 18 C.F.R. § 380.12(l). CEQ has explained that, for agency approvals of a proposed project, the no action alternative “mean[s] the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.” Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 Fed. Reg. 18026, 18027 (Mar. 23, 1981).

⁵ EA at 56.

⁶ The BiOp requires that Rio Bravo realign the initially proposed pipeline route to avoid at least 62.6 acres of the 135.9 originally impacted acres of ocelot and jaguarundi habitat. Oct. 2, 2019 FWS Final BiOp at 5. While designated a voluntary conservation measure, the BiOp makes clear that “Rio Bravo must fully implement the Voluntary Conservation Measures proposed in their [BiOp] for this project.” *Id.* at 34.

⁷ Remand Order, 183 FERC ¶ 61,046 at P 14 & n.38 (“Rio Bravo is required to, prior to receiving authorization to commence construction of the pipeline project, submit for Commission approval either a variance request or an amendment, as appropriate, for the route realignment it agreed to with FWS.”); *Rio Grande LNG, LLC*, 170 FERC ¶ 61,046, at P 31 (2020) (“[T]he November 22 Order also conditioned the LNG Terminal and pipeline authorizations on Rio Grande’s and Rio Bravo’s implementation of the mandatory measures contained in FWS’s Biological Opinion. The Biological Opinion requires Rio Grande and Rio Bravo to implement certain applicant-proposed conservation measures, including realigning the pipeline route to avoid 62.6 acres out of 135.9 acres of ocelot and jaguarundi habitat.”); *Rio Grande LNG, LLC*, 169 FERC ¶ 61,131, at P 91

requested certificate amendment, the Project would not have an approved variance request or an amendment for a route comporting with the BiOp's terms, and thus the Project could not be built. Approving the certificate amendment would therefore be the direct cause of *all* Project impacts, and those impacts should be considered in assessing the no action alternative and comparing it to the alternative of approving the amendment.⁸

3. The Commission routinely uses compliance with Clean Air Act National Ambient Air Quality Standards (NAAQS) in determining the significance of a project's emissions of air pollutants covered by the NAAQS.⁹ The EA for the Rio Bravo Pipeline Project Amendment (Amendment EA) approved in the Remand Order found that emissions of PM_{2.5} from Compressor Station 1 would not cause, or significantly contribute to, an exceedance of the NAAQS for PM_{2.5}, and therefore would not result in regionally significant impacts on air quality.¹⁰ That conclusion was based on the annual PM_{2.5} NAAQS in effect at the time, which was 12 µg/m³. However, EPA subsequently determined that the annual PM_{2.5} NAAQS must be set at 9.0 µg/m³ to be protective of

(2019) ("With imposition of the conditions required herein, *which include all measures required by FWS in its Biological Opinion*, we find construction and operation of the projects as approved will be an environmentally acceptable action and not inconsistent with the public interest.") (emphasis added). The Order attempts to whistle past these *mandatory* provisions in suggesting Rio Bravo will somehow be able to satisfy FWS with some unspecified alternative to the route realignment. Order, 187 FERC ¶ 61,104 at P 8 & n.16. But the BiOP and the Commission's orders speak for themselves.

⁸ As one court explained, CEQ "intended that agencies compare the potential impacts of the proposed major federal action to the known impacts of maintaining the status quo." *Custer County Action Ass'n v. Garvey*, 256 F.3d 1024, 1040 (10th Cir. 2001); *see also, e.g., Hydro Dev. Group*, 101 FERC ¶ 61,100, App. B at 61,390 ("We use [the no-action] alternative to establish baseline environmental conditions for comparison with other alternatives."). If the Commission were to deny the certificate amendment, the Rio Bravo pipeline could not be built. Accordingly, the required comparison is between the environmental impacts of not building the pipeline and the full range of environmental impacts from building the pipeline.

⁹ *See, e.g., Great Basin Gas Transmission Co.*, 187 FERC ¶ 61,043, at P 81 (2024); *Fla. Gas Transmission Co.*, 187 FERC ¶ 61,042, at P 42 (2024); *Transcon. Gas Pipe Line Co.*, 186 FERC ¶ 61,209, at P 48 (2024). The Commission justifies using the NAAQS as a metric on the basis that NAAQS are "established to be protective of human health." *Trailblazer Pipeline Co.*, 185 FERC ¶ 61,039, at P 98 (2024).

¹⁰ Rio Bravo Pipeline Project Amendment Environmental Assessment at 28-29, Docket No. CP20-481-000 (filed Dec. 21, 2020).

the public health and welfare.¹¹ According to the Amendment EA, the annual PM2.5 background concentration in the project area exceeds that value;¹² the modeled emissions of Compressor Station 1 would be 0.8 $\mu\text{g}/\text{m}^3$ and the total PM2.5 annual concentration would therefore be 10 $\mu\text{g}/\text{m}^3$.¹³ Accordingly, based on the values in the Amendment EA, PM2.5 emissions from Compressor Station 1 would contribute to a NAAQS violation¹⁴ and therefore would be deemed significant for NEPA purposes.

4. I have long contended that the Commission should have prepared a supplemental EIS after the *Vecinos* court's remand. Although the Commission declined to correct the errors in the Remand Order proceeding, it should not compound them by ignoring in *this* proceeding that PM2.5 emissions from the Compressor Station 1 are projected to exceed the NAAQS and thereby threaten human health. By the Commission's own yardstick, the NAAQS exceedance constitutes a significant adverse environmental impact. NEPA requires that an agency prepare an EIS for any project that will or might have a significant environmental impact.¹⁵ Accordingly, the Commission should assess the compressor station's air impacts in an EIS issued in this docket and provide ample opportunity for public comment before deciding on the proposed certificate amendment.

5. Knowing that Compressor Station 1 is projected to violate the PM2.5 NAAQS, the Commission must assess potential effects on human health and methods to avoid or mitigate them. That is particularly true given that the compressor station's emissions

¹¹ See Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 89 Fed. Reg. 16202 (Mar. 6, 2024) (to be codified at 40 C.F.R. pts. 50, 53, and 58).

¹² The Amendment EA identified the annual PM2.5 background value at 9.2 $\mu\text{g}/\text{m}^3$. Amendment EA at 28, Table 6.

¹³ *Id.*

¹⁴ EPA regulations establish that for the annual PM2.5 NAAQS a source should be considered to cause or contribute to the violation if the source's emissions exceed 0.3 $\mu\text{g}/\text{m}^3$. 40 C.F.R. § 51.165(b)(2). Compressor Station 1's PM2.5 emissions level of 0.8 $\mu\text{g}/\text{m}^3$ exceeds 0.3 $\mu\text{g}/\text{m}^3$ and therefore would contribute to the modeled NAAQS exceedance.

¹⁵ *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 985 F.3d 1032, 1039 (D.C. Cir. 2021) ("If *any* 'significant' environmental impacts might result from the proposed agency action, then an EIS must be prepared *before* agency action is taken.") (quoting *Grand Canyon Tr. v. FAA*, 290 F.3d 339, 340 (D.C. Cir. 2002)); see also *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983).

may impact EJ communities.¹⁶ The Order discounts the significance of the NAAQS revision in citing *Sierra Club v. FERC*,¹⁷ which addressed the effect of a state law on the Commission's analysis of the *need* for a proposed project. Here, air modeling shows that Compressor Station 1's PM_{2.5} emissions will exceed the NAAQS and therefore pose a threat to *human health*, a fact that the Commission should not ignore.

6. It is disheartening that, with each decision relating to the Rio Bravo Pipeline, the Commission has failed to take the "hard look" at environmental impacts that NEPA requires.¹⁸ The public as a whole – and the 367 newly identified EJ communities in particular – deserve better.

For these reasons, I respectfully dissent.

Allison Clements
Commissioner

¹⁶ The Commission uses Significant Impact Levels (SILs) to determine the area of impact for criteria air pollutants such as PM_{2.5}. The Commission cannot know the extent to which EJ communities will be affected by Compressor Station 1's PM_{2.5} emissions until it applies the newly revised PM_{2.5} SIL to determine the impact radius. See EPA, *Supplement to the Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program* at 6 -7 (Apr. 30, 2024), <https://www.epa.gov/system/files/documents/2024-04/supplement-to-the-guidance-on-significant-impact-levels-for-ozone-and-fine-particles-in-the-psd-permitting-program-4-30-2024.pdf>.

¹⁷ Order, 187 FERC ¶ 61,104 at P 8 & n.16 (citing *Sierra Club v. FERC*, 97 F.4th 16, 28 (D.C. Cir. 2024)).

¹⁸ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).