194 FERC ¶ 61,218
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

Rio Grande LNG, LLC	Docket Nos. CP16-454-009
Rio Bravo Pipeline Company, LLC	CP16-455-006 CP20-481-003
Rio Grande LNG, LLC Rio Grande LNG Train 4, LLC Rio Grande LNG Train 5, LLC	CP24-70-001

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued March 19, 2026)

1. On August 29, 2025, the Commission issued an order on remand in response to an decision of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *City of Port Isabel v. FERC*[1] reaffirming[2] that Rio Grande LNG, LLC's (Rio Grande) proposed liquified natural gas (LNG) terminal project (Rio Grande LNG Terminal) is not inconsistent with the public interest under section 3 of the Natural Gas Act (NGA) and that Rio Bravo Pipeline Company, LLC's (Rio Bravo) proposed pipeline project (Rio Bravo Pipeline), as amended, is required by the public convenience and necessity

[1] *City of Port Isabel v. FERC*, 111 F.4th 1198 (D.C. Cir. 2024) (*Port Isabel I*); *reh'g granted, in part*, 130 F.4th 1034 (D.C. Cir. 2025) (*Port Isabel II*) (remanding to the Commission for further consideration without vacatur).

[2] This is the second order on remand. A first order on remand was issued in response to an earlier remand of the Commission's original 2019 authorization for the Rio Grande LNG Terminal and Rio Bravo Pipeline projects. *See Rio Grande LNG, LLC*, 183 FERC ¶ 61,046 (First Remand Order), *order on reh'g*, 185 FERC ¶ 61,080 (2023) (responding to court's order in *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321 (D.C. Cir. 2021) (*Vecinos*) that partially remanded the Commission's 2019 Authorization Order, *Rio Grande LNG, LLC*, 169 FERC ¶ 61,131 (2019), *order on reh'g*, 170 FERC ¶ 61,046 (2020) (Rehearing Order I)).

under NGA section 7 (Second Remand Order).[3] On September 29, 2025, a coalition of petitioners (Petitioners)[4] filed a timely request for rehearing of the Second Remand Order.

2. Pursuant to *Allegheny Defense Project v. FERC*,[5] the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by NGA section 19(a),[6] we are modifying the discussion in the Second Remand Order and continue to reach the same result in this proceeding, as discussed below.[7]

I. Background

3. Given the voluminous record generated in connection with review of the Projects, spanning nearly ten years and numerous Commission and court proceedings, below is the relevant case history for ease of reference.

4. On May 5, 2016, Rio Grande and Rio Bravo filed a joint application with the Commission for authorization pursuant to NGA sections 3(a) and 7(c) to site, construct, maintain and operate the Rio Grande LNG Terminal and the Rio Bravo Pipeline projects (collectively, Projects).[8]

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[3] *Rio Grande LNG, LLC*, 192 FERC ¶ 61,198 (2025).

[4] Petitioners include Sierra Club, South Texas Environmental Justice Network, Texas RioGrande Legal Aid (on behalf of Shrimpers and Fisherman of the RGV and Vecinos para el Bienestar de la Comunidad Costera), Save RGV from LGV, Defenders of Wildlife, City of South Padre Island, City of Port Isabel, Town of Laguna Vista, and affected landowners Cynthia and Gilberto Hinojosa.

[5] 964 F.3d 1 (D.C. Cir. 2020) (en banc) (*Allegheny Def. Project*).

[6] 15 U.S.C. § 717r(a) ("Until the record in a proceeding shall have been filed in a court of appeals … the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

[7] *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Second Remand Order. *See Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

[8] Rio Grande LNG, LLC and Rio Bravo Pipeline, LLC, May 5, 2016 Joint Applications Pursuant to NGA sections 3(a) and 7(c).

5. On October 12, 2018, the Commission issued a draft Environmental Impact Statement (EIS) disclosing the potential environmental impacts associated with the Projects, as required by the National Environmental Policy Act (NEPA).[9]

6. On April 26, 2019, the Commission issued a final EIS (2019 EIS),[10] which addressed all comments on the draft EIS and reflected input from cooperating federal agencies.[11] The 2019 EIS determined that construction and operation of the Projects would "result in adverse environmental impacts … [that] would be reduced to less than significant levels with the implementation of … proposed impact avoidance, minimization, and mitigation measures and the additional measures recommended by FERC staff."[12]

7. On November 22, 2019, the Commission issued an order authorizing Rio Grande to construct and operate the Projects finding that the Projects met the section 3 and 7 standards and that, if constructed and operated as described in the 2019 EIS, the Projects would be environmentally acceptable actions (2019 Authorization).[13]

8. On December 23, 2019, Sierra Club and other petitioners sought rehearing and stay of the 2019 Authorization, asserting that the Commission had violated NEPA by

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[9] *See* Notice of Availability of the Draft Environmental Impact Statement for the Proposed Rio Grande LNG Project (Oct. 12, 2018).

[10] *See* Commission staff, Rio Grande LNG Project Final EIS, Docket Nos. CP16-454-000 and CP16-455-000, at ES-3 (issued Apr. 26, 2019).

[11] The agencies participating in the development of the 2019 EIS included the U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of Energy (DOE), U.S. Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration, the DOT's Federal Aviation Administration, the U.S. Fish and Wildlife Service, the National Park Service, the U.S. Environmental Protection Agency (EPA), and the National Oceanic and Atmospheric Administration–National Marine Fisheries Service. *Id*. at 1-5.

[12] *Id*. at ES-19. The facilities evaluated in the 2019 EIS included six liquefaction trains, four LNG storage tanks, LNG truck loading facilities, a refrigerant storage area and truck unloading facilities, a condensate storage area and truck loading facilities, marine facilities to accommodate maneuvering and loading of LNG vessels and off-loading of materials, a header pipeline and 135.5 miles of parallel pipelines to transport feed gas to the Rio Grande LNG Terminal, three new compressor stations and appurtenant metering, interconnect, booster, utilities, and other facilities. *Id*. at 2.

[13] *See Rio Grande LNG, LLC*, 169 FERC ¶ 61,131 at P 133.

failing to take a hard look at the Projects' contributions to climate change and impacts on environmental justice communities, and failed to explain why it did not use the social cost of carbon protocol to assess impacts from greenhouse gas (GHG) emissions.[14]

9. On January 23, 2020, the Commission denied rehearing and Sierra Club's request for stay (Rehearing Order I),[15] explaining that "[a]lthough the [2019] EIS identified some adverse environmental impacts, the Commission found that the project, if constructed and operated as described in the [2019] EIS with required conditions, is an environmentally acceptable action and, consequently … the Rio Grande LNG Terminal is not inconsistent with the public interest and the Rio Bravo [P]ipeline is in the public convenience and necessity."[16] The petitioners sought judicial review in the D.C. Circuit.

10. On June 16, 2020, while Sierra Club's petition for review was pending, Rio Bravo filed an application under section 7(c) of the NGA to amend its certificate to downsize the Rio Bravo Pipeline and related compression facilities (Certificate Amendment).[17]

11. On April 15, 2020, Rio Grande proposed a reduction in the number of liquefaction trains at the Rio Grande LNG terminal from six to five trains, which changes were approved on August 13, 2020.[18] Sierra Club and other petitioners requested rehearing, which was denied on January 19, 2021 (Rehearing Order II).[19]

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[14] Second Remand Order, 192 FERC ¶ 61,198 at P 6.

[15] Rehearing Order I, 170 FERC ¶ 61,046.

[16] *Id*. P 123.

[17] Rio Bravo Pipeline Company, LLC, Abbreviated Application for Amendment to Certificate of Public Convenience and Necessity, Docket No. CP20-481-000 (filed June 16, 2020).

[18] *Rio Grande LNG, LLC*, Docket No. CP16-454-000, at 1 (Aug. 13, 2020) (delegated order approving design change proposals), *aff'd on reh'g,* 174 FERC ¶ 61,048, at PP 4-7 (2021) (Rehearing Order II) (noting changes designed "to optimize the overall process design ... to eliminate a liquefaction train without affecting the authorized export capacity").

[19] Rehearing Order II, 174 FERC ¶ 61,048. A petition for review of these orders was filed but later voluntarily dismissed on August 23, 2021; *see also* Second Remand Order, 192 FERC ¶ 61,198 at n.9 (noting that the 2019 Authorization, reviewed by the D.C. Circuit in *Vecinos*, authorized and considered the impacts associated with six liquefaction trains).

12. On August 3, 2021, the D.C. Circuit in *Vecinos* remanded the Commission's 2019 Authorization for failure to adequately analyze climate change and environmental justice impacts and directed the Commission on remand to: (i) explain why its two-mile radius for analyzing impacts on environmental justice communities was appropriate or expand its radius and analysis of impacts; (ii) explain whether 40 C.F.R. § 1502.21(c) (2025) of the Council on Environmental Quality's (CEQ) NEPA implementing regulations requires the Commission "to apply the social cost of carbon protocol or some other analytical framework . . . and if not, why not;" and (iii) after addressing these issues, "revisit its determinations of public interest and convenience under Sections 3 and 7 of the NGA."[20]

13. On November 17, 2021, Rio Grande filed an application to amend its section 3 authorization to incorporate carbon capture and sequestration (CCS) facilities that would capture carbon dioxide (CO_2) from the Rio Grande LNG Terminal (CCS Amendment).[21]

14. On October 14, 2022, the Commission granted Rio Grande an extension of time to complete construction of the Rio Grande LNG Terminal facilities (Extension Order).[22] Sierra Club requested rehearing, which was denied on January 20, 2023.[23] Sierra Club did not seek judicial review.

15. On April 14, 2023, the Commission suspended its schedule for environmental review of the CCS proposal due to Rio Grande's deficient responses to staff environmental and engineering data requests.[24]

16. On April 21, 2023, the Commission issued the First Remand Order, which addressed both Rio Bravo's Certificate Amendment and the issues remanded to the Commission, and supplemented the environmental analysis of both the Rio Grande LNG

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[20] *Vecinos*, 6 F.4th at 1329-1331. *See also Rio Grande LNG, LLC*, 185 FERC ¶ 61,080 at P 6 (summarizing findings).

[21] Rio Grande LNG, LLC, Application for Limited Amendment to NGA Section 3 Authorization, Docket No. CP22-17-000 (filed Nov. 17, 2021).

[22] *Rio Grande LNG, LLC*, 181 FERC ¶ 61,032 (2022) (setting November 22, 2028 deadline for making the Rio Grande LNG Terminal available for service).

[23] *Rio Grande LNG, LLC*, 182 FERC ¶ 61,027 (2023).

[24] *See* Notice Suspending Environmental Review Schedule, Docket No. CP22-17-000 (Apr. 21, 2023); Second Remand Order, 192 FERC ¶ 61,198 at P 11. *See also Rio Grande LNG, LLC*, 185 FERC 61,080 at P 15 ("Although Commission staff anticipated issuing the EA [for the CCS Amendment] in May 2023, the schedule has been suspended while Rio Grande develops responses to several data requests.").

Terminal and the Rio Bravo Pipeline by addressing petitioners' argument regarding the social cost of carbon and updating the analysis of the projects' environmental justice impacts.[25] The Commission also reaffirmed that "the Rio Grande LNG Terminal is not inconsistent with the public interest and that the Rio Bravo Pipeline [p]roject, as amended, is required by the public convenience and necessity, as conditioned in the [2019] Authorization."[26] Sierra Club and other petitioners sought rehearing.

17. On October 27, 2023, the Commission issued an order sustaining the results of the First Remand Order,[27] finding, as relevant here, that: (i) CEQ regulations did not require preparation of a supplemental EIS; (ii) the CCS proposal was outside the scope of the remand, was being considered in a separate proceeding, and was not a connected action; (iii) its revised air quality analysis appropriately excluded data from the Isla Blanca air quality monitor consistent with Texas Commission on Environmental Quality (TCEQ) and EPA guidance; and (iv) that operation of the Projects, when combined with the other projects within the cumulative geographic scope for air quality, would not cause or contribute to a potential exceedance of the National Ambient Air Quality Standards (NAAQS)[28] on a regional or localized basis.[29] Sierra Club again petitioned for judicial review in the D.C. Circuit.

18. On November 8, 2023, Commission staff issued a notice granting Rio Grande authorization to proceed with certain construction activities.[30] Sierra Club and other petitioners sought rehearing of that notice and requested a stay of construction. The Commission denied the stay January 24, 2024.[31] Sierra Club did not request rehearing.

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[25] First Remand Order, 183 FERC ¶ 61,046 at 3.

[26] *Id*. P 208.

[27] *Rio Grande LNG, LLC*, 185 FERC ¶ 61,080.

[28] NAAQS are limits on the atmospheric concentration of six pollutants, called criteria pollutants, that are harmful to public health and the environment. *See* 42 U.S.C. § 7409. The six criteria pollutants are: carbon monoxide (CO), lead (Pb), NO_2, ozone (O_3), particulate matter (PM), and sulfur dioxide (SO_2).

[29] *Rio Grande LNG, LLC*, 185 FERC ¶ 61,080 at PP 13, 17-18, 27, 34, 42; Second Remand Order, 192 FERC ¶ 61,198 at PP 16-18.

[30] Rio Grande LNG, LLC, Docket No. CP16-454-000 (Nov. 8, 2023) (delegated order).

[31] *Rio Grande LNG, LLC*, 186 FERC ¶ 61,021, at P 29 (2024).

19. On August 6, 2024, the D.C. Circuit issued an opinion vacating and remanding the First Remand Order. Specifically, in *Port Isabel I*, the court directed the Commission to: (i) issue a supplemental EIS in connection with its revised environmental justice analysis; (ii) consider Rio Grande's CCS proposal in its environmental review either as a connected action, or if Rio Grande withdrew its proposal, "at the very least, analyze [CCS] … as an alternative via a supplemental EIS before reauthorizing the Rio Grande terminal;" and (iii) include data from the Isla Blanca monitor in its air quality analysis or provide a reason for declining to do so.[32] On August 20, 2024, Rio Grande requested to withdraw its CCS proposal; the withdrawal took effect on September 4, 2024.[33]

20. On March 18, 2025, in *Port Isabel II*, the court partially granted a petition for rehearing filed by Rio Grande and Rio Bravo, reversing the *Port Isabel I* vacatur, finding that on balance "the seriousness of the [First Remand Order's] deficiencies does not outweigh the disruptive effects of vacatur."[34] In addition, the court explained that "[t]wo recent Executive Orders have potentially altered the relevant legal landscape," referencing Executive Order 14,154, which announced that "agencies may no longer weigh any environmental considerations except those expressly provided by statute"[35] and Executive Order 14,173, which rescinded an earlier executive order requiring agencies to identify and mitigate any disproportionate impacts their activities might have on environmental justice communities.[36] "These developments may . . . be highly relevant to the Commission's proceedings on remand," the court noted, and observed that "[w]e leave it to the Commission to have the 'first word' on the Executive Orders' implications for these proceedings."[37]

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[32] *Port Isabel I*, 111 F.4th at 1211-1215.

[33] Notice of Effectiveness of Withdrawal of Application to Amend Section 3 Authorization, Docket No. CP22-17-000, 89 Fed. Reg. 76112 (Sept. 17, 2024).

[34] *Port Isabel II*, 130 F.4th at 1038.

[35] *Id*.

[36] *Id*.

[37] *Id*. at 1039 (citing *Nat'l Fuel Gas Supply Corp. v. FERC*, 899 F.2d 1244, 1249–50 (D.C. Cir. 1990) (per curiam) (noting "the general principle that an agency should be afforded the first word on how an intervening change in law affects an agency decision pending review")).

21. On March 28, 2025, the Commission issued a draft supplemental EIS for public review and comment and set a comment deadline of May 19, 2025.[38] The scope of the draft supplemental EIS was limited to the Projects, as amended,[39] and the issues on remand from *Port Isabel I*:

> The principal purpose in preparing the supplemental EIS is to respond to the court's August 6, 2024 opinion…[and] address[] changes in species with special status, update[] the discussion of Essential Fish Habitat…, update[] the cumulative impacts analysis, and update[] the reliability and safety analysis as it pertains to emergency response plans and nexus with [environmental justice communities].[40]

22. On July 31, 2025, the Commission issued a final supplemental EIS.[41]

23. On August 29, 2025, the Commission issued the Second Remand Order, which, as relevant here: (i) considered and declined to recommend CCS as a system alternative given the Commission's lack of jurisdiction over CO_2 transportation and sequestration and uncertainties associated with the now withdrawn CCS proposal;[42] (ii) determined that there would be no significant air quality impacts from operation of Rio Bravo's Compressor Station 1;[43] and (iii) after considering the Isla Blanca monitor data in revised air quality modeling, identified one significant air quality impact due to an exceedance of

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[38] Draft Supplemental EIS for the Proposed Rio Grande LNG Terminal and Rio Bravo Pipeline Project (Mar. 28. 2025).

[39] *Id*. at ES-2 (evaluating five natural gas liquefaction trains instead of six and a downsized pipeline project with one approximately 136-mile pipeline instead of two pipelines).

[40] *Id*.

[41] Final Supplemental EIS for the Proposed Rio Grande LNG Terminal and Rio Bravo Pipeline Project (Jul. 31, 2025).

[42] Second Remand Order, 192 FERC ¶ 61,198 at P 29 (noting that "[w]e agree with the analysis in the supplemental EIS").

[43] *Id*. P 44 (agreeing with Commission staff analysis that "that operation of Compressor Station 1 would not cause or contribute to a violation of the 24-hour $PM_{2.5}$ or annual $PM_{2.5}$ NAAQS" and finding "no significant air quality impacts from operation of Compressor Station 1").

the NAAQS and significant impact level (SIL)[44] for annual $PM_{2.5}$[45] in two discreet areas adjacent to and north of the terminal, which impact did not require mitigation because the area has no permanent residences or usages.[46]

24. Based on the final supplemental EIS, the Commission reaffirmed its prior findings that the Rio Grande LNG Terminal is not inconsistent with the public interest under NGA section 3 and that the Rio Bravo Pipeline is required by the public convenience and necessity under NGA section 7.[47]

25. Finally, the Commission accepted the court's invitation to evaluate whether "legal developments may alter the procedures the Commission must conduct on remand."[48] The Commission relied on Executive Order 14,154, which triggered CEQ issuance of an interim final rule rescinding its NEPA regulations on February 25, 2025 (effective on April 11, 2025) to reject arguments regarding the continued application of CEQ's NEPA regulations.[49]

26. Responding to Petitioners' claims that the Commission was bound by the 1987 version of CEQ's regulations, the Commission noted that "[i]t would not be appropriate

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[44] SILs, also known as modeling significance levels, are used for determining whether any modeled ground-level concentrations at any receptor locations would be "significant." *See* 2019 EIS at 4-264.

[45] $PM_{2.5}$ refers to inhalable particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers. Final supplemental EIS at ix.

[46] Second Remand Order, 192 FERC ¶ 61,198 at PP 38-40 (agreeing with Commission staff's conclusion that the cause and contribute analysis for 24-hour $PM_{2.5}$ showed that the contribution by the Rio Grande LNG Terminal was less than the EPA-designated SIL and "would not have a significant impact on regional air quality," concluding regarding annual $PM_{2.5,}$ that impacts in "two discrete areas just north of the terminal, within the Laguna Atascosa National Wildlife Refuge, where the cumulative model shows the project's contribution above the SIL … could be significant," and requiring Rio Grande "[p]rior to commissioning … to prepare and file a *Project Ambient Air Quality Mitigation and Monitoring Plan* for reducing the air quality impacts of overlapping construction, commissioning, and terminal operations").

[47] *Id*. PP 2, 72.

[48] *Id*. P 22 (citing *Port Isabel II*, 130 F.4th at 1036) (internal quotations omitted).

[49] *Id*. at P 50-52, 61 (citing *Removal of Nat'l Env't Pol'y Act Implementing Reguls.*, 90 Fed. Reg. 10610 (Feb. 25, 2025)).

for the Commission to follow CEQ's now-rescinded regulations as they are now legally inoperative due to CEQ's own recission and the D.C. Circuit's finding that CEQ's regulations were *ultra vires*."[50]

27. On September 29, 2025, Petitioners filed a request for rehearing of the Second Remand Order (Rehearing Request). On October 14, 2025, Rio Grande and Rio Bravo filed motions for leave to answer and answers to the request for rehearing.

II. Procedural Matters

28. The Commission's Rules of Practice and Procedure prohibit answers to a request for rehearing.[51] Accordingly, we deny the October 14, 2025, motions to answer filed by Rio Grande and Rio Bravo and reject the answers.

29. Petitioners' Rehearing Request includes two new categories of information not previously submitted into the record. As a general matter, "parties are not permitted to introduce new evidence for the first time on rehearing since such practice would allow an impermissible moving target … and would frustrate needed administrative finality."[52] Courts have explained that "[p]arties seeking rehearing of Commission orders are not permitted to include new evidence in support of their position, particularly when such evidence is available at the time of the initial filing."[53] Moreover, allowing parties to

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[50] *Id*. P 61 (citing *Marin Audubon Soc'y v. Fed. Aviation Admin.*, 121 F.4th 902, *reh'g denied en banc*, No. 23-1067, 2025 WL 374897 (D.C. Cir. Jan. 31, 2025) (*Marin Audubon*); *see also id*. (citing *Removal of References to the Council on Env't Quality's Rescinded Reguls.*, 191 FERC ¶ 61,237 (2025) (effective Aug. 14, 2025).

[51] 18 C.F.R. § 385.713(d)(1) (2025); 18 C.F.R. § 385.213(a)(2) (2025).

[52] *Columbia Gulf Transmission, LLC*, 180 FERC ¶ 61,206, at P 73 (2022) (quoting *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197, at P 16 (2018); *PaTu Wind Farm, LLC v. Portland Gen. Elec. Co., LLC*, 151 FERC ¶ 61,223, at P 42 (2015)); *see also Nat'l Fuel Gas Supply Corp.,* 155 FERC ¶ 61,227, at P 7 (2016) (quoting *Entergy Nuclear Operations, Inc. v. Consol. Edison Co. of N.Y., Inc*., 112 FERC ¶ 61,117, at P 39 (2005)) (accepting new evidence on rehearing "is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision.").

[53] *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 116-17 (D.C. Cir. 2017) (quoting *PJM Interconnection, L.L.C*., 108 FERC ¶ 61,187, at P 49 (2004)); *see also NO Gas Pipeline v. FERC*, 756 F.3d 764, 770 (D.C. Cir. 2014) ("FERC regularly rejects requests for rehearing that raise issues not previously presented where there is no showing that the issue is 'based on matters not available for consideration ... at the time of the final decision.'" (quoting 18 C.F.R. § 385.713(c)(3))).

provide supplemental information on rehearing raises fairness and due process concerns because other parties are precluded from filing answers in response.[54]

30. First, Petitioners advance new technical arguments on the feasibility of the CCS alternative[55] drawn from two publications, nearly 200 pages in length, attached to their Rehearing Request, both of which significantly pre-date issuance of the draft supplemental EIS.[56] Petitioners had ample opportunity to submit this information prior to issuance of the final supplemental EIS and the Second Remand Order, but failed to do so, and have provided no explanation for their delay. Accordingly, these materials are rejected.

31. Second, Petitioners attach public statements by Rio Grande's parent corporation regarding potential future pursuit of CCS and increased liquefaction capacity at the Rio Grande LNG Terminal.[57] Although these materials appear to post-date the Second Remand Order, Petitioners have filed similar statements in the past,[58] so these materials

[54] 18 C.F.R. § 385.713(d)(1); *see, e.g.*, *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 & n.10 (2009); *Calpine Oneta Power, L.P.*, 114 FERC ¶ 61,030, at P 7 (2006) ("The Commission looks with disfavor on parties raising new issues on rehearing. Such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision."); *see also PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,123, at P 61 n.146 (2020) (citing *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,237, at P 31 (2019)).

[55] *See* Rehearing Request at 19 n.17 and 50 n.51 (discussing conclusions).

[56] Rehearing Request, attach. 1, 2 (July 15, 2022 publication by DOE National Energy Technology Laboratory; May 15, 2016 publication by the American Journal of Respiratory and Critical Care Medicine).

[57] *Id*. at 10, attach. 3-5 (NextDecade "Fast Facts" (undated); NextDecade, Investor Relations, "Company Update" Presentation (September 2025 Presentation); NextDecade, web printout (Sept. 18, 2025)).

[58] *See id*. at n.6 (conceding "*[a]ccord*"); Sierra Club and South Texas Environmental Justice Network Comments on Draft Supplemental EIS at 16, 32 (DSEIS Comments) (claiming that CCS and the addition of a sixth liquefaction train should be treated as a connected action or should be analyzed for cumulative effects, citing NextDecade May 2025 10-Q, NextDecade 2025 10-K and NextDecade May 2025 Corporate Presentation (May 2025 Presentation). The documents Petitioners previously cited also contain statements by NextDecade that trains one through five are capable of providing up to 6 MTPA each while disclosing limitations to the 27 MTPA level authorized in the 2019 Authorization. *See* NextDecade 2025 10-K at 11 ("[w]e have obtained all major permits required … including FERC approval and DOE FTA and

add no new information beyond that already considered. Given the importance of administrative finality – exemplified in this long-running case – we decline to accept statements similar to those already in the record at this late stage of the proceeding. Accordingly, we reject these materials but explain below why such materials do not require further inquiry.[59]

III. Discussion

32. On rehearing, Petitioners primarily argue that the Commission: (i) failed to investigate Rio Grande's continued pursuit of CCS and correctly analyze carbon capture and sequestration as a connected action or an alternative; (ii) failed to appropriately analyze and consider the operational air quality impacts associated with the Projects consistent with NEPA and the NGA; (iii) erroneously concluded that the projects are in the public interest; and (iv) arbitrarily ignored Rio Grande's planned expansion and liquefaction train uprate projects. As the court recognized in *Port Isabel II*, and the Commission explained in the Second Remand Order, the legal framework applicable to this long-running proceeding has changed significantly since the court's decision in *Port Isabel I*.[60] We continue to find it appropriate to take into account those important changes in the law, including the Supreme Court's decision in *Seven County Infrastructure Coal. v. Eagle County* [61] and the rescission of CEQ's NEPA regulations, as we fulfill our responsibility to address the remaining, narrow issues on remand. To the extent any analysis on remand went beyond what is mandated by NEPA as informed by *Seven County*, the Commission did so solely in response to the court's remand and this does not reflect the Commission's position on the scope of its NEPA analysis in future proceedings. Having done so, and after conducting the analyses required by the court in *Port Isabel I* and *Port Isabel II*, we continue to find that the Commission appropriately reaffirmed its authorization of the Projects.

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non-FTA authorizations for the construction of up to five liquefaction trains and LNG exports totaling up to 27 MTPA") and May 2025 Presentation at 17 (trains one through five are capable of providing up to 6 MTPA each). Accordingly, we find Petitioners' claimed surprise and allegations of a lack of candor unfounded.

[59] *See infra* section IV.

[60] *Port Isabel II*, 130 F.4th at 1036; Second Remand Order, 192 FERC ¶ 61,198 at PP 22, 61.

[61] *Seven County Infrastructure Coal. v. Eagle County*, 605 U.S. 168 (2025) (*Seven County*).

A. Carbon Capture and Sequestration

33. Petitioners assert that the Commission's analysis of Rio Grande's now-withdrawn CCS proposal in the final supplemental EIS and Second Remand Order was arbitrary because the Commission: (i) failed to take the requisite "hard look" at CCS as an alternative by failing to adopt Rio Grande's assumptions on the location of sequestration, timing, and costs of CCS, or to "otherwise ask questions of Rio Grande" on these matters;[62] (ii) "ignored or improperly discounted the possibility of sequestering only pretreatment emissions;"[63] (iii) failed to evaluate CCS as a connected action[64] based on public statements by Rio Grande's parent corporation, NextDecade and (iv) improperly relied on the lack of jurisdiction over CO_2 transport and sequestration in dismissing CCS as an alternative, ignoring the Commission's authority to condition approvals, as well as precedent involving non-jurisdictional infrastructure.[65] We find these arguments unpersuasive.

1. The Commission Took a "Hard Look" at CCS as an Alternative

34. Petitioners contend that the Commission failed to adequately analyze Rio Grande's now-withdrawn CCS proposal as an alternative and should have recommended CCS as a system alternative. Specifically, Petitioners argue that the Commission failed to "ask questions of Rio Grande" to further develop the record on the CCS proposal[66] and, in particular, should have adopted Rio Grande's anticipated location of potential sequestration wells.[67]

35. We disagree that the Commission failed to sufficiently analyze CCS as an alternative. The Commission's obligation when conducting its environmental review under NEPA is to ensure that the environmental effects of proposed actions are

[62] Rehearing Request at 3 (citing *Birckhead v. FERC*, 925 F.3d 510, 520 (D.C. Cir. 2019)) (*Birckhead*).

[63] *Id*. (citing *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mutual Auto. Ins. Co*., 463 U.S. 29, 43 (1983) (*State Farm*)).

[64] *Id*. at 2.

[65] *Id.* at 3-4.

[66] *Id*. at 3 (citing *Birckhead*, 925 F. 3d at 520).

[67] *Id*. at 15.

"adequately identified and evaluated."[68] In analyzing impacts, the Commission "take[s] a 'hard look' at the environmental consequences before taking a major action."[69] In the Second Remand Order, the Commission followed the court's direction to analyze the CCS system proposal as an alternative in its environmental analysis in the event Rio Grande withdrew its pending CCS application.[70] Noting the withdrawal of the CCS proposal, the Commission, relying on the final supplemental EIS, carefully considered the factors relevant to evaluating CCS as a system alternative. In the final supplemental EIS, even after Rio Grande withdrew its application, staff examined the potential CCS as fully as possible. Specifically, staff examined the potential carbon capture equipment inside the terminal site (*e.g.* heat exchangers, pumps, blowers, CO_2 absorber, dehydration, and compression systems; amine regenerator and reboiler; and a waste heat recovery unit),[71] along with the non-jurisdictional facilities that would be needed to use this system, including the closest potential deep rock formations for long-term geologic sequestration with a Class VI injection well in Kleberg County, Texas to sequester the CO_2[72] and an approximately 100-mile long CO_2 transport pipeline.[73] The Commission ultimately agreed with the final supplemental EIS' recommendation not to adopt the CCS system at the terminal as an alternative, based on unknowns in the construction timeline, the lack of permitting assurances, economic feasibility, and resulting uncertainties surrounding potential environmental impacts.[74] The Commission also noted that it lacks the authority to compel Rio Grande to construct the non-jurisdictional CCS facilities.[75]

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

[69] *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc*., 462 U.S. 87, 97 (1983).

[70] *See Port Isabel I*, 111 F.4th at 1215 (finding that if Rio Grande "decide[d] on remand that it does not wish to proceed with the CCS proposal" the prior finding that CCS was a connected action would be mooted, and "the Commission must, at the very least, analyze the proposal as an alternative via a supplemental EIS" before reauthorizing the project).

[71] Final supplemental EIS at 3-10.

[72] *Id.* at 3-13 to 3-14.

[73] *Id.* at 3-14 to 3-19.

[74] Second Remand Order, 192 FERC ¶ 61,198 at PP 29-30, nn.83, 84 (citing final supplemental EIS at 3-12 to 3-21 and *Sierra Club v. FERC*, 145 F.4th 74, 79 (D.C. Cir. 2025) ("FERC has … 'substantial discretion' to determine what constitute 'feasible alternatives'") (quoting *Seven Cnty.*, 605 U.S. at 181-83)).

[75] *Id*. P 29. *See also* final supplemental EIS at 3-10 (explaining that only those facilities within the terminal site would be Commission-jurisdictional, and that all other

36. The Commission is required to "address[] environmental consequences and feasible alternatives as to the relevant project,"[76] but NEPA does not require a particular substantive outcome, so the Commission is not required to adopt any alternatives,[77] particularly where, as here, the Commission documented significant environmental and economic uncertainties as to the viability of CCS within the timeline for the Projects.[78]

37. Further, the Commission's ability to determine with any reasonable certainty the attributes, scope, and limits of the facilities in the now-withdrawn proposal is inherently limited.[79] Indeed, Petitioners concede timing uncertainty,[80] noting that CCS could come online in later years. This highlights timing unknowns and underscores the reasonableness of the Commission's decision to avoid consideration of an open-ended

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facilities including the CO_2 pipeline and sequestration well and geologic formation would be non-jurisdictional).

[76] *Seven County*, 605 U.S. at 180. *See also id*. at 181 ("the term alternatives is not self-defining, and common sense should be brought to bear") (internal citations omitted).

[77] *Id*. at 180 ("NEPA is a *purely procedural statute.* Under NEPA, an agency's only obligation is to prepare an adequate report.") (emphasis in original). *See also Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 756-57 (2004) (*Public Citizen*) ("NEPA imposes only procedural requirements . . . with a particular focus on requiring agencies to undertake analyses of the environmental impact of their proposals and actions.").

[78] *See supra* P 35.

[79] *See, e.g., Citizens for Smart Growth v. Sec'y of Dep't of Transp*., 669 F.3d 1203, 1215 (11th Cir. 2012) (citing *City of Oxford v. FAA*, 428 F.3d 1346, 1356 (11th Cir. 2005) ("agencies cannot be forced to analyze the environmental impact of a project, the parameters and specifics of which would be a mere guess.") (internal citations omitted)). Moreover, the number and importance of the many assumptions that the Commission has needed to make to analyze the now-withdrawn CCS proposal in response to the court's directives goes well beyond the sort of reasonable forecasting and speculation that NEPA requires. *Sierra Club v. FERC*, 867 F.3d 189, 198 (D.C. Cir. 2017) (citing *Del. Riverkeeper Network v. FERC*, 713 F.3d 1304, at 1310 (D.C. Cir. 2014) ("*reasonable* being the operative word")).

[80] Rehearing Request at 19.

timeline.[81] Given that NEPA's rule of reason governs the extent of discussion of alternatives, the Commission's discussion of the CCS proposal is sufficient.[82]

38. Moreover, in Rio Grande's now-withdrawn CCS proposal, the CO_2 transport and sequestration facilities, which would comprise the bulk of the required infrastructure, are not Commission-jurisdictional.[83] Petitioners suggest that the Commission erred in noting that the Commission would not compel Rio Grande to construct non-jurisdictional facilities, pointing out that this arbitrarily ignores the Commission's authority to condition approvals, and fails to distinguish the Commission's treatment of alternatives, such as electrifying pipeline compressor stations in other NGA certificate proceedings.[84] We disagree. While the Commission does assess alternatives like electric compressor stations, the determination regarding whether or not to recommend alternatives hinges on a case-specific basis that accounts for the unique facts and circumstances present in any given proceeding. Likewise here, the Commission fully assessed the CCS proposal in the final supplemental EIS and did not recommend it as an alternative.[85] Petitioners fail to acknowledge the substantial non-jurisdictional development and permitting challenges associated with CCS, as detailed in the final supplemental EIS.[86] Further, Petitioners wrongly contend that the Commission declined to adopt CCS as an alternative solely due to its "inability to compel Rio Grande to construct non-jurisdictional facilities"[87] and

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[81] *See Tenn. Gas Pipeline Co.*, 160 FERC ¶ 61,027, at P 29 (2017) ("an agency's alternatives analysis is limited to feasible alternatives").

[82] *See Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991) (noting that "this rule of reason governs both which alternatives the agency must discuss, and the extent to which it must discuss them") (internal citations omitted).

[83] Second Remand Order, 192 FERC ¶ 61,198 at P 29 & n.82. NEPA does not expand the Commission's statutory authority to include directing the construction of facilities over which it lacks jurisdiction. *See Nat. Res. Def. Council, Inc. v. EPA*, 822 F.2d 104, 129 (D.C. Cir. 1987) ("NEPA, as a procedural device, does not work a broadening of the agency's substantive powers." (citing cases)). Petitioners' citation to DOE's requirement that Alaska LNG include information regarding venting of CO_2 in connection with LNG exports in a monthly report does not alter our analysis, particularly where DOE has authority over natural gas as a commodity. *See* Rehearing Request at 36.

[84] Rehearing Request at 3-4.

[85] Final supplemental EIS at ES-6.

[86] *Id*. at 3-14 to 3-15 (describing permitting challenges).

[87] Rehearing Request at 34-35 (arguing the Commission erred in relying on the scope of its NGA jurisdiction as one factor in declining to recommend CCS as an

fail to acknowledge that the Commission appropriately articulated several substantive reasons—including non-jurisdictional permitting considerations together with unknowns in the construction timeline, the lack of permitting assurances, economic feasibility, and resulting uncertainties surrounding potential environmental impacts —for declining to do so in this proceeding.[88] Additionally, the Commission is under no obligation to adopt or recommend CCS as an alternative, nor is the Commission obligated to condition its approval of the project on CCS based on this record.[89]

39. Next, Petitioners object that the final supplemental EIS failed to include any analysis of the Rio Grande's initial plan to sequester carbon at a nearby site within 10 miles of the terminal.[90] As to the location of the Class IV sequestration well, the Commission explained that Rio Grande did not propose a specific location for the well[91] (and later withdrew its CCS proposal[92]). In light of the court's instruction in *Port Isabel I*, Commission staff conducted independent research[93] into the feasibility of Rio Grande's stated desire to locate a CO_2 sequestration well within 10 miles of the Rio Grande LNG Terminal.[94] Commission staff's analysis did not identify a hypothetical undeveloped deep

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alternative). Petitioners also note that the Commission can address permitting delays with deadline extensions, *id.* at 35, but do not address the specific reasons for the anticipated delay, including, e.g., that EPA placed the permit application for the sequestration well on hold at the applicant's request, and the entirely unknown route for the 100-mile CO_2 pipeline. Final supplemental EIS at 3-14 & n.64; *see also id*. 3-13 to 3-16.

[88] *See supra* P 35.

[89] NGA section 7(e) authorizes the Commission to attach to a certificate "such *reasonable* terms and conditions as the public convenience and necessity may require." 15 U.S.C. § 717f(e) (emphasis added). NGA section 3 authorizes the Commission to approve an application for an LNG Terminal "in whole or part, with such modifications and upon such terms and conditions as the Commission find[s] *necessary or appropriate*." 15 U.S.C. § 717b(e)(3)(A) (emphasis added).

[90] Rehearing Request at 16.

[91] Final supplemental EIS at 3-10.

[92] *Id*. at 1-2.

[93] This analysis was undertaken in response to the court's narrow and case-specific directive to evaluate the CCS system alternative.

[94] Final supplemental EIS at 3-12 ("We reviewed whether there had been any updates in CCS technology or the current CCS permitting timelines that would support

rock formation suitable for long-term geologic CO_2 sequestration within 10 miles of the terminal.[95] Petitioners argue that the Commission should have asked Rio Grande for this information, but Commission staff had previously asked for information about the site and Rio Grande did not provide the information needed for the Commission to assess any particular nearby site as part of the alternative.[96]

40. Nonetheless, Petitioners claim that the Commission erred by rejecting Rio Grande's proposed location and instead using the Kleberg County well location in its analysis.[97] We disagree. Staff considered reasonably available sites by examining pending Class VI injection well applications. Commission staff evaluated 181 pending applications for Class VI injection wells,[98] and based on this review, determined that the

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RG LNG's initial assertions that the LNG terminal's carbon emissions could be lowered by at least 90 percent, and whether the carbon could be captured and sequestered 'within 10 miles' of the LNG terminal site (or at least within the state of Texas. However … our research indicates that none of these factors appear to apply to the terminal Project.").

[95] *See Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 551 (1978) ("Time and resources are simply too limited to hold that an impact statement fails because the agency failed to ferret out every possible alternative, regardless of how uncommon or unknown that alternative may have been at the time the project was approved.").

[96] *See, e.g.,* Environmental Information Request, May 2, 2022 at Request Nos. 1.b. and 1.j. (requesting "county and state crossed by all non-jurisdictional facilities" and location of "all jurisdictional and non-jurisdictional facilities") and Rio Grande LNG, LLC May 20, 2022 Response to Request Nos. 1.b. and 1.j. (providing no specific site and noting that "[a]ll non-jurisdictional infrastructure required for sequestration of CO2 is expected to reside within Cameron or immediately adjoining counties and will not cross the Texas state line" and that the location of a Class VI well depends on EPA authorization and is not currently known).

[97] Rehearing Request at 15-16 (arguing that the Commission "improperly" rejected Rio Grande's plan to sequester carbon at a nearby site and stating that "FERC has not argued that nearby aquifers or geologic formations are not technically suitable for carbon sequestration"); *id.* at 17, 20 ("[a]dmittedly, it is unclear why Rio Grande has not submitted a Class VI permit application package" and "if Rio Grande had started this process in 2021 . . . injection well permits would have been issued by now"). That Rio Grande has not filed a permit application is not relevant here but perhaps illustrates the preliminary nature of its now-withdrawn proposal.

[98] Final supplemental EIS at 3-13 ("According to the EPA's Underground Injection Control (UIC) Class VI Permit Tracker, as of June 6, 2025, there are currently another

nearest reasonably foreseeable well location potentially capable of sequestering CO_2 from the site was about 100 miles away in Kleberg County, Texas.[99] The Commission's determination of a reasonably foreseeable well location turned on whether the location had pending permits and whether the terminal's emissions could be stored at an underground well site.[100] The final supplemental EIS then appropriately analyzed potential impacts associated with constructing the infrastructure necessary to transport and sequester the CO_2 at the Kleberg County location.[101]

41. Finally, we disagree with Petitioners' contentions that the Commission should have inquired further into Rio Grande's withdrawal of the CCS proposal, asserting that Rio Grande withdrew its CCS application to avoid environmental review.[102] Further, Petitioners claim that the Commission falsely asserted that Rio Grande has stated it will not pursue CCS.[103] Nothing in the Commission's rules prevents an applicant from withdrawing an application. The withdrawal request filed by Rio Grande adequately explained the basis for withdrawing the proposal (that the project was "not sufficiently developed").[104] Accordingly, and unremarkably, the Second Remand Order stated that Rio Grande is not pursuing CCS,[105] which is an accurate description of the proposal's procedural posture at the time of issuance of the Second Remand Order. With this clarification, we find that Petitioners' alleged inconsistencies and falsehoods in the record

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181 well applications at 62 projects under review. Of those 181 well applications, 62 well applications are at 18 projects in Texas. None of the projects are in Cameron County, where the Rio Grande LNG terminal is located.").

[99] *Id*. at 3-14.

[100] *See* final supplemental EIS at 3-14.

[101] *Id*. (noting that "a CO_2 pipeline would need to be at least 100 miles to be able to reach the Kleberg Hub").

[102] Rehearing Request at 39 ("Rio Grande's applied-for and then-withdrawn CCS application, Rio Grande cannot be permitted to use strategic timing of its filings to defeat comprehensive review.").

[103] *Id.* at 8.

[104] Rio Grande LNG, LLC, Withdrawal Request, Docket No. CP22-17-000, at 1 (filed Aug. 20, 2024).

[105] Second Remand Order, 192 FERC ¶ 61,198 at P 31.

are not present and that no further inquiry is required.[106] Moreover, the time for objecting to withdrawal of the CCS proposal has long passed; therefore, Petitioners are precluded from raising these issues for the first time on rehearing.[107]

2. The Commission Appropriately Analyzed Sequestration of Pre-treatment Emissions and Costs of CCS

42. Petitioners argue that post-combustion carbon capture is simpler for gas plants than coal plants and that the Commission cannot reject CCS as an infeasible alternative based on the final supplemental EIS's citations to challenges with carbon capture at a coal plant.[108] As discussed, the final supplemental EIS fully considered carbon capture, including disclosing that emissions reductions targets may not always be met, but found, after that analysis, that among other factors, too many uncertainties existed to support recommending CCS as an alternative.[109]

43. We also disagree with Petitioners' claim that the Commission failed to consider its suggested partial CCS alternative of sequestering only pretreatment emissions.[110] The final supplemental EIS summarized Petitioners' pretreatment comments, including Petitioners' acknowledgement that CCS has not been shown to be economically viable if

[106] *See Sierra Club v. FERC*, 153 F.4th 1295, 1307 n.6 (D.C. Cir. 2025) (concerns with inartful phrasing amount to "flyspecking" of the Commission's statements).

[107] 18 C.F.R. §§ 153.22, 385.216 (2025) (deeming withdrawal effective if no motion in opposition to the notice of withdrawal is filed within 15 days).

[108] Rehearing Request at 22.

[109] Final supplemental EIS at 3-16 ("unknown route and suite of resources, with unknown compressor or pump station designs and locations, results in too much uncertainty to precisely evaluate the range of potential environmental and safety impacts."); *id*. at 3-18 to 3-19 (discussing ranges of increased capital costs based on a variety of factors "which could make the Project no longer economically feasible at the upper end of the estimates..." and concluding that "it is unknown whether CCS could be economically feasible"); *id* at 3-19 (noting that withdrawal "suggests that it may not have been developed enough to provide the requested deliverables" and that "the lack of development may also support that the CCS project was not economically feasible to sufficiently develop the information requested"); *id*. ("even if a CCS project is or becomes economically feasible...").

[110] Rehearing Request at 3, 23-24.

economies of scale are not reached,[111] and discussed relevant impacts, noting that "while partial CCS systems would decrease carbon air emission proportionally, we would not expect a proportional decrease in land requirements and other resource impacts … [as] [a] partial CCS system would still need to be a pipeline routed to a Class VI CCS well site which we note above would still be at least 100 miles long."[112] Given the limited record information regarding a partial CCS alternative, we find this analysis sufficient. Moreover, Petitioners' contentions that NEPA requires more in this context are impermissible flyspecking.[113]

44. Petitioners also claim that the Commission "has not demonstrated that cost justifies rejecting CCS as an alternative."[114] The Commission did not make a finding that Rio Grande's CCS proposal is cost-prohibitive, nor was the Commission required to. The final supplemental EIS evaluated a range of factors, including costs among other environmental, technical, and permitting factors, and documented considerable uncertainties across each, as noted above.[115] This is all that was required, and the Commission's decision in this regard falls well within the "broad zone of reasonableness" entitled to deference.[116]

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[111] Final supplemental EIS at 3-10 ("The Sierra Club commented that FERC should address whether less costly 'partial carbon capture' (e.g., pretreatment emissions) would be appropriate, and notes that if other LNG terminals in the same general area also join in to use CCS, there may be an "economy of scale" advantage.").

[112] *Id*. at 3-16.

[113] *See*, *e.g.*, *Healthy Gulf v. FERC*, 107 F.4th 1033, 1047 (D.C. Cir. 2024) (rejecting allegation that the Commission should have sought more information on feasibility of a CCS proposal as "impermissible flyspecking.").

[114] Rehearing Request at 37.

[115] *See supra* P 35.

[116] *Gas Transmission Nw., L.L.C. v. FERC*, 157 F.4th 674, 713 (5th Cir. 2025). (citing *Seven County* and noting that "[a]n EIS invariably entails a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry … As stated, those choices are all entitled to substantial deference and merely must fall within a broad zone of reasonableness.") (internal quotations omitted).

3. NextDecade's Forward Looking Statements Were Considered and Properly Given Little Evidentiary Weight

45. Next, Petitioners contend that the Commission failed to further investigate inconsistencies between Rio Grande's statements regarding CCS and those of its corporate parent NextDecade, which publicly states that it is pursuing a CCS project.[117] Petitioners also claim that *Birckhead* requires the Commission to send data requests to Rio Grande to resolve these alleged inconsistencies.[118] Further, they accuse the Commission of falsely stating that Rio Grande is no longer pursing CCS[119] and suggest that the Commission should have disregarded Rio Grande's CCS application withdrawal and analyzed CCS as a connected action under NEPA.[120] We find these arguments unpersuasive.

[117] Rehearing Request at 1 ("Rio Grande LNG's parent company continues to tell investors and the public that it will pursue carbon capture and sequestration as part of the Rio Grande LNG terminal."). Petitioners reference the Second Remand Order, which refers to two filings NextDecade made before the Securities and Exchange Commission, a February 28, 2025 10-K filing and a May 7, 2025 10-Q filing, and further reference a May 2025 Presentation filed as an attachment to Petitioners' DSEIS Comments. Petitioners also attach improper supplements to the record which, as noted above, the Commission rejects as procedurally improper. Rehearing Request at 8-10 (citing Second Remand Order, 192 FERC ¶ 61,198 at PP 30-31).

[118] Rehearing Request at 2 (citing *Birckhead*, 925 F.3d at 520 (arguing that "FERC's analysis … was rendered inadequate by FERC's failure to take reasonable steps to ask Rio Grande LNG and its parent NextDecade about their past, present, and future plans and their actual project requirements" and that "FERC acted arbitrarily by failing to investigate those statements").

[119] *Id*. at 8-9 (comparing Rio Grande's withdrawal to other withdrawals with more definitive statements on future plans and characterizing the difference as "unusual" and a "glaring distinction" that requires further investigation).

[120] *Id*. at 2-3 ("while concurrently-pending applications generally indicate that actions are connected, such temporal overlap is not strictly required … where Rio Grande continues to publicly state that it is pursuing the CCS project that was the subject of the withdrawn application").

46. First, as explained above, the Commission accurately described the procedural posture of the CCS proposal at the time of issuance of the Second Remand Order.[121] Second, we see no indication of inconsistencies. The Second Remand Order appropriately explains that NextDecade's 10-K filings are prefaced with a "cautionary statement" that forward-looking statements regarding pursuit of CCS may vary from actual results.[122] Moreover, parent corporations routinely disclose future permitting goals in financial, board, and investor materials, but include appropriate disclaimers to warn readers against detrimental reliance[123] and courts recognize that forward-looking statements may not reliably predict future events.[124] Given the very nature of such statements, we do not see an inconsistency to clarify.

47. Moreover, far from Petitioners' unsupported suppositions, Rio Grande explained in its withdrawal that its potential CCS proposal is "not sufficiently developed to allow Commission review to continue" and requested termination of the Commission's proceeding on its application.[125] Petitioners' comparison of this statement to other unrelated withdrawals is not persuasive because the Commission considers such filings on a case-by-case basis.[126] Equally unpersuasive is Petitioners' claim that the

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[121] *See supra* P 41. Contrary to Petitioners' claims of conflicting statements, Rehearing Request at 12, Rio Grande's 2021 statements regarding readiness to pursue CCS were overtaken by Rio Grande's later withdrawal filing, which Petitioners did not protest.

[122] Second Remand Order, 192 FERC ¶ 61,198 at P 31. This leaves open the possibility that Rio Grande may pursue CCS in the future. If that occurs, and if any of the proposed activity falls within the Commission's jurisdiction, the Commission will evaluate it at the appropriate time.

[123] Even Petitioners' improper supplement, which we reject for reasons stated above but nevertheless address here, states that "[y]ou should not rely upon forward-looking statements as predictions of future events." *See* Rehearing Request, Attachment (unnumbered) (see pdf. at 268).

[124] *See, e.g.*, *Craftmatic Sec. Litig. v. Kraftsow*, 890 F.2d 628, 642 (3d Cir. 1989) (forward looking statements are considered "soft information" which refers to "statements of subjective analysis or extrapolation" including "projections, estimates, and forecasts").

[125] Rio Grande LNG, LLC, Withdrawal Request, Docket No. CP22-17-000, at 1 (filed Aug. 20, 2024).

[126] Given the significant variations that may exist across project proposals, the Commission reviews project proposals on a case-by-case basis based on the record before it. *See, e.g., Tex. E. Transmission, LP*, 131 FERC ¶ 61,164, at P 67 (2010).

Commission must further consider and pursue Rio Grande's potential future plans as to CCS because the statements are verified by company executives.[127] Rather, under these circumstances, where Rio Grande proposed and then offered a reasonable basis for withdrawing the CCS project application, and where Petitioners did not object to the withdrawal, it was reasonable for the Commission to consider but place little weight on NextDecade's statements.[128]

48. Next, Petitioners suggest that the Second Remand Order is inconsistent with *Port Isabel I* because "nothing in the record indicates that, after *Port Isabel*, FERC asked Rio Grande to confirm whether it did or did not intend to ultimately develop the CCS project"[129] and cite *Birckhead* for the proposition that the Commission is required to inquire further into the basis for Rio Grande's assumptions, costs, and motivation for withdrawing its CCS proposal.[130] We disagree.

49. The Commission disclosed and discussed Rio Grande's withdrawn CCS proposal as an alternative, as was required by the *Port Isabel I* court.[131] Additionally, the Second Remand Order addressed Petitioners' comments regarding NextDecade's public statements, as noted above, and disclosed withdrawal of the CCS application noting that "Rio Grande does not have a pending application before the Commission."[132] The

[127] Rehearing Request at 11 (statements are "certified as accurate and complete by NextDecade's Principal Executive Officer and Principal Financial Officer"). An accurate forward-looking statement is still a forward-looking statement.

[128] Because we view the record as having no inconsistencies to resolve, it follows that the Commission has not arbitrarily ignored an important aspect of the problem before it. *See id*. at 13 (claiming that the Commission failed to consider an important part of the problem, citing *State Farm*, 463 U.S. at 43).

[129] *See* Rehearing Request at 9 (internal quotations omitted).

[130] *Id*. at 2 (citing *Birckhead*, 925 F.3d at 520).

[131] *Port Isabel I*, 111 F.4th at 1213 ("Even if Rio Grande decides on remand that it does not wish to proceed with the CCS proposal (thereby mooting the connected-action issue), the Commission must, at the very least, analyze the proposal as an alternative via a supplemental EIS before reauthorizing the Rio Grande terminal.").

[132] Second Remand Order, 192 FERC ¶ 61,198 at PP 30-32.

Port Isabel I court even anticipated this potential outcome in its order,[133] so Petitioners are incorrect that the Second Remand order is inconsistent with *Port Isabel I*.[134]

50. Moreover, Petitioners' insistence that *Birckhead* requires further supplemental inquiry into whether Rio Grande plans to pursue CCS in the future is inapposite.[135] In *Birckhead*, the court expressed misgivings about FERC's "less than dogged efforts" to obtain information about the project's indirect effects.[136] To the extent this dicta remains persuasive,[137] such an inquiry is unnecessary to establish that there are no potential connected actions. NEPA only requires the analysis of any *proposal* for a major federal action,[138] and no pending proposal exists.[139]

51. Finally, Petitioners claim that NextDecade's CCS-related statements require the Commission to disregard Rio Grande's application withdrawal and, instead, evaluate CCS as a connected action.[140] We disagree. As explained in the Second Remand Order,

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[133] *Port Isabel I*, 111 F.4th at 1213 ("Even if Rio Grande decides on remand that it does not wish to proceed with the CCS proposal…").

[134] Indeed Petitioners' suggestion that further investigation is required at this time is not only beyond the scope of this remand proceeding, but would unreasonably further delay finality in this proceeding, which has been ongoing for nearly a decade.

[135] Rehearing Request at 14.

[136] *Birckhead*, 925 F.3d at 520.

[137] We note that *Seven County* overruled the D.C. Circuit's decision in *Eagle County, Colorado v. Surface Transportation Bd*., 82 F.4th 1152 (D.C. Cir. 2023) which relied heavily on *Birckhead* in finding that NEPA requires an agency to inquire into downstream environmental effects. *Seven County*, 605 U.S. at 191.

[138] 42 U.S.C. § 4332(2)(C).

[139] *Kleppe v. Sierra Club*, 427 U.S. 390, 390 (1976) (holding that federal agencies need not prepare an impact statement unless their actions are sufficiently final and definite to constitute a proposal); *Seven County*, 605 U.S. at 182 ("The textual focus of NEPA is the 'proposed action'—that is the project at hand.").

[140] Rehearing Request at 2-3 ("while concurrently-pending applications generally indicate that actions are connected, such temporal overlap is not strictly required … where Rio Grande continues to publicly state that it is pursuing the CCS project that was the subject of the withdrawn application").

the Commission considers the court's direction in *Port Isabel I* dispositive.[141] As noted above, the court anticipated that Rio Grande may withdraw its proposal and, in such case, ordered the Commission to evaluate CCS as an alternative.[142]

B. Operational Air Quality Analysis

52. Petitioners contend that the Commission's analysis of the Projects' air quality impacts violated both NEPA and the NGA because the Commission: (i) failed to use the most recent baseline data when considering Rio Bravo Pipeline impacts and explain other changes or inconsistencies between its analyses and the analyses submitted by Rio Bravo;[143] (ii) improperly relied upon the NAAQS in its consideration of Rio Grande LNG Terminal impacts and provided no basis for disagreeing with Petitioners' claims that the EPA's CO-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA) is a more appropriate method for gauging impacts;[144] and (iii) improperly relied on a mitigation plan that has yet to be filed as a basis for its approvals.[145] We find these arguments unpersuasive.

1. The Commission Appropriately Analyzed Air Quality Impacts Associated with Rio Bravo's Compressor Station 1

53. Petitioners assert that the Commission's analysis of Rio Bravo Pipeline air quality impacts is flawed because it relied on 2021-2023 baseline monitoring data from the Dona Park monitor.[146] Specifically, Petitioners fault the Commission for not

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[141] Second Remand Order, 192 FERC ¶ 61,198 at P 32.

[142] *See supra* note 70. We note that the Supreme Court's decision in *Seven County* seems to cast doubt on whether the outcome in *Port Isabel I* was correct under NEPA.

[143] Rehearing Request at 6.

[144] *Id*. at 4-5, 44 ("FERC's conclusion that it could disregard this COBRA analysis was arbitrary, and FERC provided no basis for disagreeing with the COBRA predictions").

[145] *Id*. at 81-82 (conceding that the plan is not yet due but contending that "FERC has no basis for concluding that mitigation will work, or achieve any particular level of reduction.").

[146] *Id*. at 64 (noting that the final supplemental EIS's $PM_{2.5}$ analysis uses 2021-2023 data from the Dona Park monitor, with a 2022-2024 design value for annual $PM_{2.5}$ at this monitor of 9.3 μg/m3, which already exceeds the NAAQS EPA published on June 3, 2025).

incorporating June 3, 2025 updated data for the 2022-2024 averaging period into the analysis presented in the final supplemental EIS, which issued on July 31, 2025.[147] Although we acknowledge that updated monitoring data became available in the late stages of this proceeding, after the closing of the period for comments on the draft supplemental EIS, but before issuance of the final supplemental EIS, we disagree that using the 2021-2023 Dona Park monitor data renders the Commission's analysis flawed or undermines the validity of its Rio Bravo Pipeline Compressor Station 1 air quality analysis in the Second Remand Order.

54. When developing air dispersion modeling, industry practice is to use the modeling procedures, including procedures for developing the ambient background data as outlined in Section 8.3 of Appendix W to 40 C.F.R. Part 51[148] as well as the EPA guidance document on background concentrations.[149] EPA's guidance recommends "starting with the current design value from the selected monitor for the applicable NAAQS as a uniform monitored background contribution across the project area."[150]

55. As explained in the Second Remand Order, Commission staff revisited the air quality modeling for Compressor Station 1 to consider changes in the ambient background and a change to the annual $PM_{2.5}$ NAAQS.[151] In the previous analysis submitted as part of the 2020 Amendment Project EA, the annual $PM_{2.5}$ NAAQS was 12 $\mu g/m^3$, which was subsequently lowered to 9 $\mu g/m^3$.[152] Data from the previous analysis showed that ambient background annual $PM_{2.5}$ concentrations were in excess of the NAAQS. The draft supplemental EIS indicated there were now exceedances for

[147] *Id*.

[148] 40 C.F.R. Part 51, Appendix W, Section 8.3 (Background Concentrations).

[149] EPA, Office of Air Quality Planning and Standards Air Quality Assessment Division, *Guidance on Developing Background Concentrations for Use in Modeling Demonstrations* (Nov. 2024), https://www.epa.gov/system/files/documents/2024-11/background-concentrations.pdf.

[150] *Id*. at 20.

[151] Second Remand Order, 192 FERC ¶ 61,198 at P 43. *See also* final *s*upplemental EIS at ES-6 n.13 ("On March 6, 2024, the EPA published its final rule lowering the primary annual NAAQS for $PM_{2.5}$ to 9.0 micrograms per cubic meter … [which] replaces the prior primary annual $PM_{2.5}$ NAAQS of 12.0 $\mu g/m^3$").

[152] *Id*.

annual $PM_{2.5}$ in the immediate vicinity of Compressor Station 1.[153] However, Commission staff indicated that companies typically conduct additional refined air dispersion modeling to confirm any NAAQS exceedances and requested that Rio Bravo submit updated air quality dispersion modeling for all emission-generating equipment at Compressor Station 1 for 24-hour and annual $PM_{2.5}$.[154] As noted above, Rio Bravo provided this information on May 19, 2025, before publication of updated Dona Park monitor data. The public comment period on the draft supplemental EIS closed on May 19, 2025.[155]

56. Petitioners do not dispute that Rio Bravo used then-current baseline monitoring from the Dona Park monitor in its May 19, 2025 submission. Rather, they suggest that the Commission could have used unvalidated data,[156] but at a minimum was required to update its modeling with the new EPA Design Value monitoring data reported at the Dona Park monitor on June 3, 2025 – notably *after* Rio Bravo submitted its updated air dispersion analysis.[157] We disagree.

57. Agencies are not required to supplement the record prior to finalization of an EIS every time new information comes to light.[158] NEPA "involves an almost endless series

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[153] Draft supplemental EIS at 4-47 to 4-48.

[154] Final supplemental EIS at 4-47 to 4-48.

[155] *Id*. at ES-3.

[156] Rehearing Request at 65 ("FERC has never argued that it needed to wait for EPA to validate air monitor data"). *But see Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061, PP 195-196 (2017) (noting problems with using data that is not federally validated, including data collection limitations and a limited monitoring period).

[157] Rehearing Request at 64 (stating that "[t]he final [Supplemental] EIS's $PM_{2.5}$ analysis uses 2021-2023 data from the Dona Park monitor" and that the 2022-2024 design value for annual $PM_{2.5}$ at this monitor was published on June 3, 2025). Petitioners claim that the Dona Park monitor update was published prior to Rio Bravo's submission but that is incorrect. On July 1, 2025 Rio Bravo submitted a second filing to correct errors in the May 19, 2025 submission. The correction filing did not use new baseline monitoring data but rather made corrections using the same baseline monitoring data used in the May 19, 2025 filing. This is the information the Commission reviewed and analyzed in the final supplemental EIS.

[158] *See, e.g., Theodore Roosevelt Conservation P'ship v. Salazar*, 616 F.3d 497, 514 (D.C. Cir. 2010) (an agency need not revise an almost complete environmental impact statement to accommodate new information late in the process).

of judgment calls" left primarily to the agency.[159] Because the Commission's analysis was based on then-current and validated Dona Park monitoring point information available during the supplemental EIS public comment period, we decline to require further updating. "Were supplementation to be required every time new information comes to light, agency decisionmaking would be rendered 'intractable, always awaiting updated information only to find the new information [is] outdated by the time a decision is made.'"[160]

58. Moreover, even assuming an update requirement did exist, the Commission's conclusions regarding NAAQS compliance would not change. As noted in the Second Remand Order, with respect to $PM_{2.5}$, where modeling of existing sources identifies a potential NAAQS exceedance, if the modeled contribution from the project is less than the SIL at the receptor and time period of the predicted NAAQS exceedance, the proposed facility is deemed to not have caused or contributed to the exceedance.[161] While we recognize that baseline ambient air quality at the Dona Park monitor point now exceeds the annual $PM_{2.5}$ NAAQS, this does not change our conclusion that Compressor Station 1 would not result in significant air quality impacts on annual $PM_{2.5}$ because the incremental emissions from Compressor Station 1 remain below the EPA established SIL for $PM_{2.5}$.[162]

59. Next, Petitioners argue this analysis was faulty for a number of reasons. First, Petitioners claim relying on the Dona Park monitor in the Final EIS was inconsistent with the background concentrations in the draft EIS, which were based on an average of three

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[159] *Duncan's Point Lot Owners Ass'n v. FERC*, 522 F.3d 371, 376 (D.C. Cir. 2008).

[160] *Tenn. Gas Pipeline Co., L.L.C.*, 156 FERC ¶ 61,007, at P 10 (2016) (quoting *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 373 (1989)).

[161] Second Remand Order, 192 FERC ¶ 61,198 at PP 35-36 (generally explaining the three step process for determining significance of air quality impacts).

[162] *Id*. at P 44. *See also ANR Pipeline Co.*, 194 FERC ¶ 61,059, at P 69 (2026) (generally describing three-step process using modeled project emissions in comparison to the SILs which under "Step Three … the federally delegated state agency evaluates whether the proposed facility's level of emissions of the criteria pollutant at issue is at a level that the EPA considers to have contributed to the potential NAAQS exceedance …. [which] use[s] the applicable SIL as a threshold for this determination…[and] in cases where the cumulative modeling of existing sources identifies a potential NAAQS exceedance of a criteria pollutant, for most pollutants, if the modeled contribution from the project is less than the SIL at the receptor and time period of the predicted NAAQS exceedance, the proposed facility is deemed to not have caused or contributed to the exceedance.") (citing cases).

monitors.[163] Petitioners do not allege that relying solely on the Dona Park monitor was an error but argue that the Commission's lack of explanation for why the average was used initially is arbitrary. Commission Staff evaluated Rio Bravo's use of the Dona Park Monitor and found it consistent with EPA methodology for choosing a background monitor.[164] Specifically, the proximity and surface characteristics (e.g., inland vs. shoreside) of the Dona Park monitor in relation to Compressor Station 1 informed the acceptability of use of the Dona Park monitor, consistent with EPA guidelines.[165] Further, we find reasonable Rio Bravo's assessment that the Dona Park monitor tends to be the more representative choice because it is located in greater proximity to more industrial and vehicular sources.[166] On the other hand, the National Seashore monitor, like many shoreside monitors, can record non-representative, higher PM values due to proximity to a large saltwater body.[167] Petitioners also argue that the Commission's reliance on SILs to assess project emissions was in error. Specifically, they claim that the Commission cannot rely on the SIL for the proposition that SILs represent the limit of statistical significance for PSD sources. We disagree. The SIL is a tool to assess a source's contribution to the NAAQS in the context of the PSD program, so it follows that it would change when EPA updates the NAAQS. EPA has developed SILs as a tool that permitting authorities – typically state agencies – may use to demonstrate that emissions from a proposed source or modification will not "cause, or contribute to, air pollution in excess" of the NAAQS for purposes of demonstrating compliance with the PSD program requirements.[168] EPA's guidance on the SILs $PM_{2.5}$

[163] Rehearing Request at 65.

[164] Final supplemental EIS at 4-46 to 4-49 (describing analysis); EPA, Office of Air Quality Planning and Standards Air Quality Assessment Division, *Guidance on Developing Background Concentrations for Use in Modeling Demonstrations* at 13 (November 2024).

[165] *See id.* at 13-15 (EPA guidance noting the mixture of emitting sources, and location among the factors considered in when determining which ambient monitor data are representative).

[166] *See* Rio Bravo Pipeline Company LLC, Supplement to May 19, 2025 Response to Environmental Information Request No. 5, at 8-11 (July 1, 2025).

[167] *See id*.

[168] 42 U.S.C. § 7475(a)(3) (generally prohibiting construction of a major emitting facility unless the facility operator demonstrates that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any: (a) maximum allowable increase or maximum allowable concentration for any pollutant

provides a robust technical analysis supporting its conclusion that those SILs are numerical values "below which the EPA considers a source to have an insignificant effect on ambient air quality"[169] because the degree in changes in pollutant concentrations caused by an individual contribution below the SIL are "indistinguishable from the inherent variability in the measured atmosphere and may be observed even in the absence of the increased emissions."[170]

60. Next, Petitioners contend that the Commission ignores other cumulative sources, specifically foreseeable future sources not represented in the existing baseline monitoring data. As discussed previously,[171] non-PSD sources, such as Compressor Station 1, are generally not required to include off-site sources in air dispersion modeling. As Compressor Station 1's 24-hour and annual $PM_{2.5}$ impact are below the SILs, we again conclude that a cumulative model including offsite sources is not necessary to conclude that Compressor Station 1 would have no significant impact on air quality.

61. Petitioners also argue that Rio Bravo's updated air emissions data were flawed. Petitioners question the conclusion in the final supplemental EIS[172] that potential emissions from Compressor Station 1 would not change from those shown in the 2020 Project Amendment EA and further question the decrease in the emission factor values as indicated in both the May 19, 2025 filing[173] and the July 1, 2025 supplement.[174] We agree that this

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in any area to which this part applies more than one time per year, (b) NAAQS in any air quality control region, or (c) any other applicable emission standard or standard of performance under this chapter).

[169] *Sierra Club v. EPA*, 705 F.3d 458, 461 (D.C. Cir. 2013). *See also* EPA, *Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program*, at 11 (April 2018) (EPA Ozone and PM SILs Guidance), https://19january2021snapshot.epa.gov/sites/static/files/2018-04/documents/sils_guidance_2018.pdf (noting that "changes in air quality within this range are not meaningful, and, thus, do not contribute to a violation of the NAAQS").

[170] *Id*. at 11

[171] Final supplemental EIS at 4-33; Second Remand Order, 192 FERC ¶ 61,198 at P 35.

[172] Rehearing Request at 66-67.

[173] Rio Bravo Pipeline Company, LLC, Response to Draft SEIS as Environmental Information Request #5 (May 19, 2025).

[174] *See* Rio Bravo Pipeline Company LLC, Supplement to May 19, 2025 Response to Environmental Information Request No. 5, at 8-11 (July 1, 2025).

statement is incorrect. In response to the draft supplemental EIS's direction that Rio Bravo conduct additional modeling to confirm NAAQS exceedances, Rio Bravo revised its modeling results for 24-hour and annual $PM_{2.5}$ that included revised EPA emission factors, as further discussed below.[175] While the equipment would not change, the estimate of annual emissions from Compressor Station 1 in the final supplemental EIS is lower than those indicated in the 2020 Project Amendment EA and March 2025 draft supplemental EIS due to the revised emission factors used in the July 1, 2025 supplement. The updated decrease in annual emissions supports our conclusion that impacts would not be significant.

62. Similarly, Petitioners question alleged inconsistencies between the May 19, 2025 and the July 1, 2025 filings. Specifically, Petitioners claim that Rio Bravo's July 1, 2025 filing "changed key numeric values, in ways that go far beyond clarifying" and in fact reveal errors in Rio Bravo's May 19, 2025 filing.[176] The July filing did not change any information in the model. As noted, in the draft supplemental EIS, Commission staff requested Rio Bravo file the results of an updated air quality dispersion modeling analysis for Compressor Station 1 for 24-hour $PM_{2.5}$ and annual $PM_{2.5}$.[177] Rio Bravo filed a response to this condition on May 19, 2025, which included a public summary document explaining how Rio Bravo refined the air dispersion modeling for Compressor Station 1.[178] After review of the air dispersion modeling files, staff noted certain inconsistences between the data used in the air dispersion modeling files and the public summary document of the modeling results in the May 19, 2025 filing and verbally requested that Rio Bravo correct these errors on June 27, 2025.[179] Rio Bravo's

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[175] The updated emissions factors we evaluated consisted of data from the EPA's "NG_process_gas_LPG_PM_factors" spreadsheet. These updated emission factors correspond with the resulting conclusions in the final supplemental EIS that impacts would not be significant. *See* final supplemental EIS at 4-47 n.155 (citing https://www.epa.gov/sites/default/files/2018-11/natgas_procgas_lpg_pm_efs_not_ap42_032012_revisions.xlsx). *See also infra* P 75.

[176] Rehearing Request at 66-67; *see also id*. at 67 ("Even more paradoxically, while Rio Bravo's July filing predicts identical potential to emit and a higher emission factor, it predicts a lower impact on ambient air quality than the May filing.").

[177] Draft supplemental EIS at 5-2 to 5-3.

[178] Rio Bravo subsequently submitted the AERMOD air dispersion modeling files. *See* AERMOD Air Dispersion Modeling files, Accession No. 20250521-5026 (filed May 21, 2025).

[179] Specifically, the public summary document did not match the appended modeling. In Rio Bravo's May 19, 2025 filing, staff noticed errors between the $PM_{2.5}$ emission factors used in the summary document and the same data in both the air

July 1, 2025 filing reflects those corrections in the summary of the modeling, and Commission staff has confirmed that the underlying emission factors and other modeling data did not change. In response to Petitioners' claims on rehearing, we have again confirmed that the $PM_{2.5}$ emission factors used in the July 1, 2025 filing are identical to those used in the AERMOD air dispersion modeling files submitted to the Commission on May 21, 2025. Thus, with confirmation that 24-hour and annual $PM_{2.5}$ impacts set forth in the final supplemental EIS are accurate, we again conclude that there would be no significant 24-hour or annual $PM_{2.5}$ impacts.

2. Commission Reliance on NAAQS was Proper

63. Petitioners argue that FERC improperly disregarded evidence demonstrating that air pollution from the Projects will harm surrounding communities[180] and that it was arbitrary to rely on a lack of NAAQS exceedance to "demonstrate[] a lack of health impacts."[181] Specifically, they contend that the NAAQS are not set at levels that avoid all harm and that EPA's COBRA tool demonstrates that the Projects will cause harmful health impacts.[182]

64. We disagree and find that the Commission appropriately relied on NAAQS levels, which are established to be protective of human health, as a reasonable measure of significance.[183] Further, as explained in the Second Remand Order, the Commission

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dispersion modeling files and in the EPA's "NG_process_gas_LPG_PM_factors" spreadsheet. *See supra* note 175. Staff also found a similar error in the summary document for maximum offsite 24-hour $PM_{2.5}$ impacts in comparison to the same data in the air dispersion modeling files. Thus, clarification was requested consistent with the Commission's *ex-parte* rules. *See* 18 C.F.R. § 385.2201(e)(vi) (exemption covering "[t]he preparation of an environmental impact statement if communications occur prior to the issuance of the final environmental impact statement.").

[180] Rehearing Request at 1.

[181] *Id*. at 5 (citing *Am. Trucking Ass'ns v. EPA*, 283 F.3d 355, 360 (D.C. Cir. 2002 for proposition that "EPA does not set the NAAQS at a level 'below which . . . pollutants are known to be harmless." *See also id*. at 41 (conceding "EPA sets NAAQS at levels 'requisite to protect the public health' while 'allowing an adequate margin of safety'").

[182] Rehearing Request at 44-45.

[183] Second Remand Order, 192 FERC ¶ 61,198 at P 49.

reasonably declined to use the COBRA tool here,[184] consistent with its approach in other proceedings.[185]

65. Although Petitioners contend that the Commission should use the COBRA tool in its discussion of air quality impacts, an agency may reasonably choose the appropriate methodology for fulfilling its obligations under NEPA,[186] and Petitioners do not cite any cases where an agency's reliance on NAAQS was found inappropriate. Indeed, courts have held, including in this proceeding, that NAAQS is a reasonable methodology that agencies may use when evaluating air quality impacts under NEPA.[187] We have no basis to depart from Commission or court precedent.

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[184] *Id*.

[185] *Venture Glob. CP2 LNG, LLC*, 192 FERC ¶ 61,157, PP 27-29 (2025) ("agency's choice among reasonable analytical methodologies is entitled to substantial deference, so long as it falls within a broad zone of reasonableness …[a]nd courts have held that compliance with NAAQS is one such reasonable methodology … [whereas] [o]n the other hand, EPA explains that 'COBRA is a screening tool …") (citing cases and sources); *Commonwealth LNG, LLC*, 191 FERC ¶ 61,205, P 27 (2025); *Tex. LNG Brownsville LLC*, 192 FERC ¶ 61,170, PP 40-41 (2025) (courts have held that compliance with NAAQS is a reasonable methodology for evaluating air quality impacts under NEPA) (citing cases).

[186] *See Cmtys. Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678, 689 (D.C. Cir. 2004) (citing *Citizens Against Burlington, Inc.*, 938 F.2d at 201 (stating that an agency's "choice of analytical methodologies is entitled to deference")); *see also Or. Nat. Desert Ass'n v. Rose*, 921 F.3d 1185, 1191 (9th Cir. 2019) (holding that the court must defer to an agency's technical expertise and reasonable choice of methodology, because NEPA "does not require adherence to a particular analytic protocol."); *Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1359 (9th Cir. 1994) ("NEPA does not require [that we] decide whether an [environmental impact statement] is based on the best scientific methodology available, nor does NEPA require us to resolve disagreements among various scientists as to methodology." The court's task is to ensure that the agency's procedures resulted in a reasoned analysis and disclosure of the evidence before it) (quoting *Friends of Endangered Species, Inc. v. Jantzen*, 760 F.2d 976, 986 (9th Cir. 1985))).

[187] *See Sierra Club v. FERC*, 867 F.3d 1357, 1370 n.7 (D.C. Cir. 2017) (*Sabal Trail*); *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 2021 WL 3716769 at *4 (D.C. Cir. Aug. 3, 2021) (rejecting argument that Commission acted improperly by

3. The Commission Reasonably Considered and Declined to Use the COBRA Tool

66. Next, Petitioners contend that its COBRA analysis demonstrated specific health impacts, unlike the cases cited by the Commission in the Second Remand Order, so those cases are distinguishable.[188] Further they claim that the Commission "must exercise independent judgment" and "erred in … halt[ing] its analysis of criteria pollutants once [it was] determined that pollution levels would not exceed the NAAQS.[189] We disagree.

67. As explained in the Second Remand Order, "although COBRA may be appropriate for state or local agency screening and planning for emissions of criteria pollutants," the NAAQS are more helpful for the Commission's NEPA project-specific analyses to assess significance, as they "are approved and designated as safe by the EPA for all receptors (including sensitive groups)."[190] Further, the NAAQS are statutory standards that "were developed through a public rulemaking process and has a more robust scientific basis."[191] By contrast, relying on EPA's guidance for the use of COBRA, the Commission has explained that "COBRA is inappropriate for modeling and determining the attainment of NAAQS and has a number of additional limitations, caveats, and uncertainties which we find unsuitable for project-specific analyses."[192] Indeed, EPA has specifically cautioned

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considering and rejecting "argument that the NAAQS levels did not appropriately capture potential health risks," demonstrating that the Commission was "aware of and adequately considered" cumulative effects).

[188] Rehearing Request at 59.

[189] *Id*. at 61 (citing *Pub. Serv. Comm'n of State of N.Y. v. FERC*, 589 F.2d 542, 558 (D.C. Cir. 1978); *Calvert Cliffs' Coordinating Comm. v. Atomic Energy Comm'n*, 449 F.2d 1109, 1125) (D.C. Cir. 1971) (*Calvert Cliffs*)).

[190] Second Remand Order, 192 FERC ¶ 61,198 at P 49 (agreeing with and citing final supplemental EIS at 4-35, 4-41 and *Commonwealth LNG, LLC*, 191 FERC ¶ 61,205 at P 27).

[191] *Id*. *See* EPA, *Overview of the Environmental Protection Agency's Process for Reviewing the National Ambient Air Quality Standards* 1-2, https://www.epa.gov/system/files/documents/2024-12/naaqs-process-document_dec-2024v_0.pdf.

[192] *Id*. (citing among other sources, final supplemental EIS at app. I, tbl. I-2 and EPA, *User's Manual for the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA)* 23-24, https://www.epa.gov/system/files/documents/2025-03/cobra-user-manual-v5.2.pdf (COBRA User Manual) (listing uncertainty surrounding the values of key components such as emissions inventories, population data, and health impact functions and recommending "caution when interpreting the results of analyses").

that "[m]odeling the attainment of NAAQS requires more sophisticated air quality modeling than that currently built into COBRA."[193]

68. Yet Petitioners continue to allege, incorrectly, that the Commission "has not disputed … [the] argument that, insofar as a *more sophisticated* analysis of criteria pollutants' health impacts below the NAAQS is warranted, tools to provide that analysis are available."[194]

69. As explained in *Sabal Trail*, reliance on NAAQS is appropriate under NEPA because it provided a "standard of comparison" for air quality impacts and presented expected emissions and NAAQS standards "side-by-side," which allowed the decisionmakers and the public to "meaningfully evaluate" effects by reference to a "generally accepted standard."[195] Further, as noted above, COBRA and NAAQS are different tools developed for different purposes, so we disagree with Petitioners that COBRA produces a 'more sophisticated' analysis.[196]

70. Moreover, Petitioners misapply *Calvert Cliffs*. Unlike the agency in *Calvert Cliffs*,[197] which was faulted for applying NEPA in a way that rendered its role "superfluous," here the Commission does not blindly rely on EPA to make its NEPA determinations, as Petitioners allege.[198] Rather, as discussed above and in the supplemental EIS and Second Remand Order, the Commission conducted a case-specific

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[193] COBRA User Manual at 23. We agree with Petitioners that the NAAQS do not "supersede" or supplant COBRA. *See* Rehearing Request at 44 (citing Second Remand Order, 192 FERC ¶ 61,198 at P 48 (noting that COBRA "is superseded by the EPA's NAAQS" in describing the differences between COBRA and NAAQS). As demonstrated by the foregoing discussion, COBRA and NAAQS are different tools developed for different purposes.

[194] Rehearing Request at 62 (emphasis added).

[195] 867 F.3d at n.7.

[196] *See supra* notes 193-194.

[197] *Calvert Cliffs*, 449 F.2d at 1122–23. *See also* Rehearing Request at 56 (claiming that the Commission's reliance on NAAQS does not satisfy its obligation to take its own 'hard look' independent from EPA, citing *City of Bos. Delegation v. FERC*, 897 F.3d 241, 255 (D.C. Cir. 2018)).

[198] *Calvert Cliffs*, 449 F.2d at 1122–23.

evaluation of modeling results using Project-specific data analyzed using appropriate, time-tested EPA tools to assess significance.

71. Based on these considerations, combined with the Commission's longstanding, judicially-approved policy of using NAAQS for evaluating air quality impacts under NEPA, [199] and on the Commission's detailed documentation of air quality impacts outlined in the 2019 EIS, draft supplemental EIS, final supplemental EIS, and Second Remand Order, we conclude that the Commission adequately explained the bases for its methodology and conclusions related to the three-step approach for considering the significance of air quality impacts, appropriately relied on NAAQS when assessing the significance those impacts, and appropriately considered and reasonably declined to incorporate COBRA analysis into its long-standing methodology.[200]

4. Public Comment Period

72. Petitioners contend that the Commission did not provide an adequate opportunity for public input on revised $PM_{2.5}$ modeling submitted by Rio Bravo.[201] Specifically, they take issue with the Commission's solicitation of updated air quality impact information associated with Compressor Station 1 in the draft supplemental EIS, which Rio Bravo provided on the last day of the comment period. Petitioners allege that this deprived them of an opportunity to comment because the Commission's analysis of this

[199] Second Remand Order, 192 FERC ¶ 61,198 at P 49 n.147 (citing cases indicating that comparison to standards set by administrative bodies to determine whether healthy levels of pollutants would be exceeded constitutes a hard look at the health impacts and upholding NEPA analysis finding that NEPA's requirements are per se satisfied by demonstrating conformity with NAAQS). *See also Sierra Club v. Fed. Highway Admin*., 715 F. Supp. 2d 721, 741 (S.D. Tex. 2010), *aff'd*, 435 F. App'x 368 (5th Cir. 2011) ("The defendants' decision to consider air pollution issues through the same framework used by the EPA to enforce the Clean Air Act cannot be considered arbitrary or capricious.").

[200] *See Seven County*, 605 U.S. at 169 ("When assessing significant environmental effects and feasible alternatives for purposes of NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS.").

[201] Rehearing Request at 69-81.

information was unavailable until publication of the final supplemental EIS.[202] We find this argument unpersuasive.

73. As explained in the Second Remand Order, the Commission issued a Notice of Intent to Prepare a supplemental EIS for the Projects on September 13, 2024, which generated 80 scoping comments including comments by Petitioners regarding air quality concerns.[203] The Commission then provided an additional 45 days for public comment on the draft supplemental EIS,[204] which generated additional comments, including comments by Petitioners.

74. Petitioners suggest that the court's decision in *Port Isabel I* requires FERC to provide an additional opportunity for comment on FERC's analysis of the modeling data[205] which would effectively require the Commission to re-notice a revised draft supplemental EIS for another 45-day comment period.[206] We find no support for this approach in NEPA, nor is it required by *Port Isabel I* or other court precedent.

75. An agency must apply a "rule of reason" and prepare a supplemental environmental impact statement if there remains "major federal action" to occur, and if the new information will affect the quality of the human environment in a significant manner or to a significant extent not already considered.[207] Supplemental review is only required where new information provides a "seriously different picture" of the environmental landscape.[208] The revised modeling data based on EPA emission factors does not present a seriously different picture of the environmental landscape. As discussed, the more accurate revised analysis shows that the air impacts do not worsen

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[202] *Id*. at 69.

[203] *See, e.g*., Sierra Club, South Texas Environmental Justice Network, and Carrizo Comecrudo Tribe of Texas Scoping Comments Regarding Supplemental EIS, at 3 (Oct. 15, 2024). Notably here, Petitioners submitted modeling data on the last day of the comment period.

[204] Second Remand Order, 192 FERC ¶ 61,198 at P 24.

[205] Rehearing Request at 70.

[206] *Id*. at 69-78 (draft supplemental EIS was not reasonably complete where Compressor Station 1 updated air impacts were not included 45-day public comment period).

[207] *Marsh*, 490 U.S. at 361.

[208] *City of Olmsted Falls, OH v. FAA*, 292 F.3d 261, 274 (D.C. Cir. 2002).

and are better than the outlook presented in the draft supplemental EIS. Rio Bravo submitted revised emissions factors in the May 19, 2025 filing, with further corrections and additional justification for the revised emission factors in its July 1, 2025 filing.[209] Staff reviewed the submitted information and determined that "[w]ith this additional information ... Compressor Station 1 would not have a significant impact on local or regional air quality."[210] These emissions factors were developed by the EPA and accepted by the TCEQ,[211] representing the best available data for use in this analysis. Based on the updated air dispersion modeling emission rates it was determined that Rio Bravo's compressor station emissions are below the SIL and that the emissions from Compressor Station 1, when combined with background is below the NAAQS and thus not significant.[212] The revised analysis does not reveal some new environmental impact not already considered, but shows that the project will cause less environmental harm than originally estimated.[213] This update does not present a seriously different picture and no additional draft, or comment period, is required.[214] Accordingly, the Commission appropriately relied on the updated EPA emissions factors.

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[209] *See* Rio Bravo Pipeline Company LLC, Supplement to May 19, 2025 Response to Environmental Information Request No. 5, at 2 (July 1, 2025) (providing justification for revised emission factors).

[210] Final supplemental EIS, at ES-6.

[211] *Id*. at 4-47 to 4-48.

[212] *Marsh*, 490 U.S. at 378 (reviewing agency action to confirm that agency has made a reasoned decision based on its evaluation of the significance—or lack of significance—of the new information). *See also Gas Transmission Nw., L.L.C. v. FERC*, 157 F.4th at 713 (citing *Seven County* and noting that "[a]n EIS invariably entails a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry. … As stated, those choices are all entitled to substantial deference and merely must fall within a broad zone of reasonableness.") (internal quotations omitted).

[213] *See Friends of Capital Crescent Trail v. FTA*, 877 F.3d 1051, 1058-62 (D.C. Cir. 2017) (finding that a supplemental EIS was not required where new information showed that the proposed action's environmental impact would not worsen); *South Trenton Residents Against 29 v. Federal Highway Admin.,* 176 F.3d 658 (3d Cir. 1999) (no supplemental EIS is required when highway design changes would have a lesser effect on the environment than the originally approved plan).

[214] *See Friends of Capital Crescent Trail v. FTA*, 877 F.3d at 1059 ("If an agency's decision not to prepare a [supplemental EIS] turns on a factual dispute the resolution of which implicated substantial agency expertise, the court defers to the agency's judgment.") (quoting *Marsh*, 490 U.S. at 376).

76. Moreover, as explained in the Second Remand Order, the "Commission staff's draft supplemental EIS served as a 'springboard for public comment' and any information that is filed as part of the Commission's review of the project is available in the Commission's public record."[215] To require additional comment each time new information comes into the record would render it nearly impossible to advance reviews of needed infrastructure, requiring supplemental review and re-noticing ad infinitum each time something in the record is updated or changes.

77. The Commission provided an opportunity to comment after publication of its Notice of Intent to prepare a supplemental EIS and after publication of the draft supplemental EIS, which resulted in "thorough environmental review for these projects result[ing] in over 2009 pages of detailed analysis and reports."[216] Petitioners also had the opportunity to comment on the final supplemental EIS and again, here, on rehearing.[217] Nothing further is required.

78. Finally, Petitioners contend that "[n]otwithstanding [the Commission's] attempt to revise its NEPA regulations this summer, [the Commission] remains bound by its 1987 adoption of the CEQ NEPA regulations in effect at that time, which they claim requires that the Commission issue a revised supplemental EIS with an additional 45-day comment period.[218] We disagree.

79. In the Second Remand Order, the Commission responded to Petitioners' claims that the Commission was bound by the 1987 version of CEQ's NEPA implementing regulations, noting that "[i]t would not be appropriate for the Commission to follow CEQ's now-rescinded regulations as they are now legally inoperative due to CEQ's own recission and the D.C. Circuit's finding that CEQ's regulations were *ultra vires*."[219] The Commission made this clear when, on June 30, 2025, it issued a final rule removing references to CEQ's rescinded regulations in parts 380 and 385 of the Commission's

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[215] Second Remand Order, 192 FERC ¶ 61,198 at P 46 (citing *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197, at P 105 (2018) (citing *Robertson*, 490 U.S. at 349)).

[216] *Id.*

[217] *See Wilderness Soc'y v. Bosworth*, 118 F. Supp. 2d 1082 (D. Mont. 2000) (finding that the agency did not need to issue a supplemental EIS where plaintiffs aware of expanded size of timber volume and had opportunity to comment on it before first Record of Decision).

[218] Rehearing Request at 72.

[219] Second Remand Order, 192 FERC ¶ 61,198 at P 61 (citing *Marin Audubon*, 121 F.4th 902).

regulations.[220] Given this, and that the revision of the Commission's NEPA rules is outside the scope of this limited remand proceeding, no further response is required.

5. Air Quality Monitoring Plan

80. In the Second Remand Order the Commission reaffirmed its 2023 decision to require Rio Grande to submit a *Project Ambient Air Quality Mitigation and Monitoring Plan* for reducing the air quality impacts of overlapping construction, commissioning, and terminal operations prior to commissioning of the terminal.[221] Petitioners state that "Rio Grande still has not provided the air mitigation plan contemplated in FERC's 2023 Remand Order" and claim that "it is arbitrary for FERC to rely on such a plan"[222] We disagree.

81. Courts have explained that "[t]here is a fundamental distinction ... between a requirement that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated, on the one hand, and a substantive requirement that a complete mitigation plan be actually formulated and adopted, on the other."[223] The Commission imposed a compliance condition[224] that was explained in a detailed discussion in the final supplemental EIS and Second Remand Order relevant to the environmental risks it identified.[225] NEPA "does not require a complete plan be actually formulated at the

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[220] *Id*. (citing *Removal of References to the Council on Env't Quality's Rescinded Reguls.*, 191 FERC ¶ 61,237 (2025) (effective Aug. 14, 2025).

[221] Second Remand Order, 192 FERC ¶ 61,198 at PP 40-41.

[222] Rehearing Request at 7, 81-82.

[223] *Robertson*, 490 U.S. at 352; *see also Mayo v. Reynolds*, 875 F.3d 11, 16 (D.C. Cir. 2017); *Sierra Club v. FERC*, 38 F.4th 220, 233 (D.C. Cir. 2022) (applying *Robertson* in a Commission natural gas proceeding).

[224] Second Remand Order, 192 FERC ¶ 61,198 at Ordering Para. (D) ("Rio Grande must immediately contact TCEQ, should the monitoring required by the *Project Ambient Air Quality Mitigation and Monitoring Plan* show a violation of TCEQ-permitted emissions, to report a violation and establish a plan of action to correct the violation in accordance with the terms of the facility air permit and applicable state law.").

[225] *Id*. at P 40 (explaining that the plan addresses "reducing the air quality impacts of overlapping construction, commissioning, and terminal operations"). *See also* final supplemental EIS at 4-74 (explaining that "[c]onstruction emissions from the LNG terminal, when considered with background concentrations, combined with staged emissions impacts from commissioning, start-up, and operations of the LNG terminal would add to … ambient concentrations that exceed the recently updated $PM_{2.5}$ NAAQS

onset, but only that the proper procedures be followed for ensuring that the environmental consequences have been fairly evaluated."[226] Here, Commission staff published a final supplemental EIS that identified baseline conditions for all relevant resources. Later-filed mitigation plans will not present new environmentally significant information nor pose substantial changes to the proposed action that would otherwise require a supplemental EIS. Practicalities require the issuance of orders before completion of certain reports and studies because large projects, such as this, take considerable time and effort to develop and construct. The Commission has and will continue to demonstrate our commitment to assuring adequate compliance once the condition is triggered, which, as Petitioners concede, has not yet occurred.[227]

C. Public Interest

82. Petitioners contend that the Commission "has not demonstrated that the projects will provide benefits that outweigh the foreseeable harms to the public"[228] because the Commission failed to incorporate accurate air quality information and harms into its public interest determination.[229] We disagree for the reasons set forth above and reaffirm our public interest and public convenience and necessity findings in the Second Remand Order.

83. The Commission's public interest and public convenience and necessity determinations were informed by its evaluation of the Projects' environmental impacts as explained and updated across the 2019 EIS, Authorization Order, First Remand Order, Rehearing Order I, Extension Order, Rehearing Order II, final supplemental EIS, and Second Remand Order.[230] Based on this extensive record, as further clarified here, the

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in the LNG terminal's vicinity for the duration of the terminal's construction years…"), 4-75 (explaining that the basis for imposing the mitigation plan is to "ensure that these emissions of concurrent construction, commissioning and operational emissions do not cause significant air quality impacts" consistent with a condition to monitor emissions in the First Remand Order).

[226] *Robertson*, 490 U.S. at 352.

[227] Rehearing Request at 82 (admitting that "Rio Grande is not in technical violation of this requirement, because commissioning has not yet commenced").

[228] *Id*. at 8 (citing *N.J. Conservation Found. v. FERC*, 111 F.4th 42, 62 (D.C. Cir. 2024)).

[229] *Id*. at 83.

[230] Second Remand Order, 192 FERC ¶ 61,198 at P 67 (citing Authorization Order, First Remand Order and final supplemental EIS).

Commission reaffirmed prior findings that, "if implemented as described in the applications" and "as conditioned in the Commission's orders and as modified," the Projects are environmentally acceptable actions.[231]

84. Petitioners have not overcome the presumption under NGA section 3 that the Rio Grande LNG Terminal is not inconsistent with the public interest. Regarding the Rio Bravo Pipeline, the Second Remand Order analyzed the Commission's prior findings in the Authorization Order, First Remand Order, and 2024 Order Amending Certificate, and assessed market need backed by a binding 20-year precedent agreement for the full capacity of the pipeline, and reaffirmed that the Commission adequately balanced the need for and benefits derived from the pipeline against the potential adverse consequences, including environmental impacts.[232] Based on these factors, the Commission reasonably concluded that "the Rio Grande LNG Terminal is not inconsistent with the public interest, and the Rio Bravo Pipeline Project is required by the public convenience and necessity."[233] As noted above, the arguments advanced by Petitioners here do not alter that conclusion.

85. Next, Petitioners allege that the Commission cannot determine whether the Projects' benefits outweigh foreseeable harms because "the only benefits provided by the pipeline are those provided by the terminal … [and] [a]lthough the [DOE] has approved Rio Grande's export applications, [DOE's] approvals do not rest on an affirmative finding of net public benefit."[234] Additionally, Petitioners assert that only the DOE, not the Commission, has authority to weigh the benefits of exports,[235] and that, even if DOE had concluded that exports from the Rio Grande LNG Terminal provide some benefits, the Commission still must consider whether they provide *enough* benefits.[236]

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[231] *Id*.

[232] *Id*. at P 71.

[233] *Id*. at P 72.

[234] Rehearing Request at 83-84.

[235] *Id*. ("Perhaps FERC could issue a conditional approval, identifying the harms and withholding authorization until [DOE] … determines whether exports provide harms outweighing those benefits … [or] [p]erhaps FERC could ask [DOE] to weigh in first, and provide FERC with additional information before FERC issues a final reauthorization.").

[236] *Id.* at 84.

86. The Commission addressed Petitioners' NGA section 3 public interest arguments in this same proceeding six years ago. Specifically, in 2019, Sierra Club argued that Rio Grande's DOE export approval under NGA section 3 could not support the Commission's market need determination in support of a finding of public convenience and necessity under NGA section 7.[237] The Commission addressed and rejected that argument in Rehearing Order I.[238] In *Port Isabel I*, the court remanded the Commission's orders, ultimately without vacating the orders, on two narrow issues concerning the Commission's environmental review.[239] The court's directive was specific and did not reopen particular aspects of the Commission's public interest finding, including market need. The Commission's decision on market need for the Projects is therefore final and outside the scope of this narrow remand proceeding. Accordingly, we find Petitioners' attempt "to sharpen arguments through a second bite at the apple"[240] to be an improper collateral attack on the Rio Bravo Pipeline market need finding in the 2019 Authorization and in Rehearing Order I that need not be considered further.[241]

87. No additional input is needed from DOE to carry out the Commission's independent obligations under the NGA.

IV. Expansion and Uprate Plans

88. Petitioners contend, citing the court's holding in *Port Isabel I*, that NEPA requires the Commission to further supplement the supplemental EIS to include analysis

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[237] *See* Sierra Club December 23, 2019 Rehearing Request, Docket No. CP16-454-000, at 7 ("FERC cannot rely on existing or future [DOE] approval of exports under section 3 of the [NGA] as demonstrating public convenience and necessity for purposes of section 7.").

[238] *See* Rehearing Order I, 170 FERC ¶ 61,046 at P 11 ("Sierra Club asserts that NGA section 7 does not provide a presumption favoring approval of a project; rather, section 7 requires an affirmative demonstration that the project would provide net benefits to the American public."); *Id*. at PP 16-17 (discussing arguments, relationship between NGA section 3 and 7, and finding sufficient market need). The issue of market need was not raised on appeal of the 2019 Authorization.

[239] *See supra* P 19.

[240] *Fla. Power Corp.*, 66 FERC ¶ 61,200, at 61,452 (1994) (internal quotations omitted).

[241] *See, e.g.*, *Adelphia Gateway, LLC*, 178 FERC ¶ 61,030, at PP 10, 16 (2022) (emphasizing that the Commission will not relitigate whether the Commission properly found the project to be in the public convenience and necessity).

of Rio Grande's potential expansion,[242] arguing that "Rio Grande's plan to construct a sixth train … is a connected action even though an application for this development has not yet been filed"[243] or alternatively, it should be considered in the cumulative impacts analysis.[244] Petitioners make similar claims regarding Rio Grande's plan to uprate the capacity of original trains one through five (approved in the 2019 Authorization and now under construction) to reflect actual capacity.[245] We disagree.

89. Petitioners' arguments fail because Rio Grande's potential expansion and uprate are outside the scope of this remand. In addition, additional NEPA supplemental review of Rio Grande's potential future plans at this late-stage of the proceeding is not required by NEPA. As discussed, NEPA only requires the analysis of any *proposal* for a major federal action,[246] and no pending proposals for expansion were before the agency at the same time. Waiting for Rio Grande to submit future expansions that are sufficiently final and definite to constitute a proposal is not required by NEPA[247] and would further delay finality of the Commission's 2019 Authorization – an outcome that also runs contrary to Executive Order 14,154 (seeking to eliminate delays in energy infrastructure permitting),[248] Executive Order 14,156 (prioritizing expansion of energy infrastructure as

[242] Rehearing Request at 37-43.

[243] *Id*. at 4. After the rehearing period, on November 21, 2025, Rio Grande LNG Train 6, LLC and Rio Grande LNG Common Facilities Company, LLC filed a request to initiate the Commission's pre-filing review process to add a sixth liquefaction train and a third marine berth to the Rio Grande LNG Terminal site. *See* Rio Grande LNG Train 6, LLC, Docket No. PF26-3-000.

[244] Rehearing Request at 4.

[245] *Id*. at 42. On November 21, 2025, Rio Grande, Rio Grande LNG Train 4, LLC and Rio Grande LNG Train 5, LLC, filed an application under NGA section 3 seeking authorization to uprate the liquefaction capacity of trains 1 through 5, requesting that the Commission "align the approved liquefaction production capacity of the Rio Grande LNG Terminal with the actual … capability." *See* November 21, 2025 Application of Rio Grande LNG, LLC, Rio Grande LNG Train 4, LLC, and Rio Grande LNG Train 5, LLC, Docket No. CP26-31-000.

[246] 42 U.S.C. § 4332(2)(C).

[247] *Kleppe v. Sierra Club*, 427 U.S. at 390.

[248] Executive Order No. 14,154, 90 Fed. Reg. 8353 (Jan. 25, 2025).

a matter of critical national and economic security),[249] and CEQ's final rule rescinding its NEPA implementing regulations effective January 8, 2026 (Recission Rule), which among other things, rescinds the very "connected actions" regulations that served as a basis for remand of CCS-related matters in *Port Isabel I*.[250]

90. Specifically, Petitioners contend that the newly pre-filed expansion presents the precise scenario that *Port Isabel I* suggested could reflect segmentation under CEQ's then-applicable connected actions regulation.[251] However, again, even the court in *Port Isabel I* recognized those projects would need to be pending to analyze together as connected actions.[252] Because the expansion proposal is in pre-filing, there is no proposed action to consider.[253] Pre-filing information is, by its very nature, preliminary in nature and could change prior to filing a formal application.[254] Therefore, combining environmental review of the two proceedings, either by treating the expansion project as a connected action, or by further expanding the cumulative effects analyses in the final supplemental EIS, is not required given the significant time gap and lack of temporal

[249] Executive Order No. 14,156, 90 Fed. Reg. 8433 (Jan. 25, 2025).

[250] *Removal of Nat'l Env't Pol'y Act Implementing Reguls.*, 90 Fed. Reg. 10610 (Feb. 25, 2025) (interim final rule effective April 11, 2025); *Removal of Nat'l Env't Pol'y Act Implementing Reguls.*, 91 Fed. Reg. 618 (Jan. 8, 2026) (final rule effective immediately).

[251] Rehearing Request at 37 (quoting *Port Isabel I*, 111 F.4th at 1212 (discussing a hypothetical involving a "proposal to add- as a distinct project" additional liquefaction trains).

[252] *Port Isabel I*, 111 F.4th 1198, 1213 (D.C. Cir. 2024) (explaining that if Rio Grande does not pursue a separate pending project this would "moot[] the connected-action issue").

[253] *See, e.g.*, *Const. Pipeline Co*., 154 FERC ¶ 61,046, at P 96 (2016) (stating that the project alleged to be a connected action was only in the pre-filing process, and, therefore, was not a proposed action); *Tenn. Gas Pipeline Co*., 154 FERC ¶ 61,191, at P 56 (2016) (same))).

[254] Also, a party seeking to use the Commission's pre-filing process is not required to ultimately file a formal application.

overlap of a pending proceeding with unofficial, potential future actions.[255] In any case, even under CEQ's previous connected actions regulation, the Commission still would not have considered an unproposed action in a pre-filing docket to constitute a proposed connected action.

91. And as noted in the Second Remand Order, the D.C. Circuit in *Port Isabel II* left it to the Commission to decide the implications of changes in the legal landscape post-remand.[256]

92. Given the *Port Isabel II* court's acknowledgement of intervening changes in law, we consider here the changes in law related to Petitioners' claims regarding the "connected" nature of the potential train six and the third marine berth expansion. Specifically, Rio Grande's originally applied for six liquefaction trains,[257] but requested and was later permitted to downsize its proposal to five trains on August 13, 2020.[258] At the time of the final supplemental EIS and the Second Remand Order, there were no proposals to the Commission to add a sixth train to the Rio Grande LNG Terminal or to uprate the original liquefaction trains one through five.[259] Subsequently, on December 22, 2025, in Docket No. PF26-3-000, certain affiliates of Rio Grande initiated the Commission's pre-filing process for a new project to add a third marine berth and a sixth liquefaction train to the Rio Grande LNG Terminal – notably nine years, seven months and seventeen days after Rio Grande's original application and just under five and a half years after receiving approval for the five-train project. This temporal separation precludes a finding of segmentation.

93. Moreover, the *Port Isabel I* holding regarding connected actions is distinguishable. Specifically, in rejecting the Commission's arguments that the CCS proposal was outside of the scope of the earlier remand, the court in *Port Isabel I* explained that "Rio Grande

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[255] Further, Petitioners point to nothing in NEPA's statutory language that suggests that "temporal overlap" as that phrase was previously understood under the now-rescinded CEQ regulations governing connected actions, was intended to refer to temporal overlap of multiple remand proceedings due to extended litigation seven years after issuance of the original authorization.

[256] Second Remand Order, 192 FERC ¶ 61,198 at P 22.

[257] *Id*. n.9.

[258] *Rio Grande LNG, LLC*, Docket No. CP16-454-000, at 1 (Aug. 13, 2020) (delegated order); Rehearing Order II, 174 FERC ¶ 61,048 at P 4. A petition for review of these orders was filed but later voluntarily dismissed on August 23, 2021.

[259] Final supplemental EIS, Appendix I, Summaries of Comments Received and Responses, Table I-2, at ln. GEN 4.

submitted its CCS proposal specifically in response to our 2021 remand—which required the Commission to revisit aspects of its environmental analysis and its ultimate approval of the project."[260] Here, neither the expansion nor the uprates of liquefaction trains one through five bear any relation to the remanded issues.[261] These circumstances provide an additional basis for the Commission to exercise its discretion to limit the supplemental EIS to the remanded issues and draw a "manageable line" as to further connected actions or cumulative effects analysis.[262]

94. Petitioners' argument that NEPA requires never-ending rounds of supplemental environmental review each time a project proponent considers an expansion over the course of years. has never been required.[263] As noted in the Supreme Court's landmark decision in *Seven County*, "NEPA is a procedural cross-check, not a substantive roadblock … [and] [t]he goal of the law is to inform agency decisionmaking, not to paralyze it."[264]

95. Next, addressing Petitioners' claims regarding potential capacity uprates to liquefaction trains one through five, we reject Petitioners' arguments as impermissibly untimely, as is also the case with Petitioners' attempt to rely on the September 2025 Corporate Presentation (attached to its Rehearing Request) as reflective of "new circumstances" justifying raising this matter so late in this proceeding.[265] We also reject

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[260] *Port Isabel I*, 111 F.4th at 1213; *see also id*. (rejecting same argument as to considering CCS as an alternative and explaining "Rio Grande placed the proposal before the Commission specifically in response to our remand …. *On those unique facts*, the Commission should have considered the CCS alternative as part of the terminal reauthorization process.") (emphasis added).

[261] *See supra* P 19.

[262] *Seven County*, 605 U.S. at 182 (noting further that "[s]o long as the EIS addresses environmental effects from the project at issue, courts should defer to agencies' decisions about where to draw the line—including … whether to analyze environmental effects from other projects separate in time or place from the project at hand.").

[263] *See, e.g., Delaware Riverkeeper Network v. FERC,* 857 F.3d 388, 402 (D.C. Cir. 2017) (holding that the Commission did not have to consider with the Leidy Project future expansions when their environmental details are "entirely speculative").

[264] *Seven County*, 605 U.S. at 173.

[265] *See* Rehearing Request at 42 (section titled "FERC Must Consider Rio Grande's *Announced* Plans to Increase The Output of Trains 1-5" and that "Rio Grande is *now* informing the public and investors…").

Petitioners' suggestion that RioGrande should be investigated for either withholding information or lack of candor.[266]

96. As discussed above, Petitioners may not raise new issues or evidence at the rehearing stage, in the absence of a showing that the matter could not previously have been raised. Both the May 2025 NextDecade Corporate Presentation, filed May 19, 2025 as an attachment to Petitioners' Comments on Draft Supplemental EIS, and the September 2025 Presentation attached to Petitioners' rehearing request, state that each train is capable of producing up to 6 MTPA.[267] In addition, a NextDecade 2025 10-K also attached to Petitioners' May 19, 2025 comments appropriately disclosed that trains one through five are limited to the 27 MTPA authorized in the 2019 Authorization, which reflects a capacity less than the 6 MTPA per train.[268] Accordingly, Petitioners could have, but did not, raise any concerns regarding the potential capacity uprate, in their May 19, 2025 comments. Therefore, we reject Petitioners' arguments as impermissibly late and disruptive to these proceedings.[269]

97. Nevertheless, were these arguments timely raised, we would still exercise our discretion to evaluate any potential future impacts outside this remand proceeding for the reasons articulated above. The Commission will conduct the required environmental review and evaluate appropriate impacts in individual proceedings, consistent with NEPA, court precedent, and the Commission's regulations.[270]

98. As noted above, our determination reflects the practicalities of differing types of review, as the pre-filing docket is not a formal proceeding and the information is

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[266] *Id*. ("FERC should investigate NextDecade's practice of announcing increases in output after having assuring [sic] FERC that no such increases would occur.").

[267] *Compare* May 2025 Presentation at 17 *to* Rehearing Request, Attachment: September 2025 Presentation at 17.

[268] DSEIS Comments, Attachment: NextDecade 2025 10-K ("[w]e have obtained all major permits required to build the Rio Grande LNG Facility and export LNG, including FERC approval and DOE FTA and non-FTA authorizations for the construction of up to five liquefaction trains and LNG exports totaling up to 27 MTPA").

[269] *See supra* P 29.

[270] 18 C.F.R. Part 380 (2025). *See also Seven County*, 605 U.S. at 182 (emphasis added) ("[t]he textual focus of NEPA is the "proposed action"— the project at hand — not other separate projects. Courts should defer to agencies' discretionary decisions about where to draw the line when considering … whether to analyze effects from other projects *separate in time* or place") (emphasis added).

preliminary in nature.[271] This process is necessary to produce refined information and the formal application materials necessary to conduct a thorough analysis should the applicant decide to submit a formal project application to the Commission.[272] However, not all pre-filings proceed to a formal application, and the Commission does not consider pre-filing proceedings as official project proposals under review, in line with the NGA's recognition that pre-filing proceedings and official project applications are substantively and procedurally distinct.[273] Similarly, the capacity uprate proceeding is just beginning, and the Commission does not yet have needed information to consider any impacts of that proposal here. The "manageable line" drawn here by the Commission falls within the broad zone of reasonableness articulated by the Supreme Court in *Seven County*,[274] which is entitled to substantial deference.[275]

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[271] *See supra* P 90.

[272] *Venture Glob. CP2 LNG, LLC Venture Glob. CP Express, LLC*, 189 FERC ¶ 61,148, at P 143 (2024) (citing *E. Shore Nat. Gas Co*., 181 FERC ¶ 61,233, at P 32 (2022) (finding project should not have been considered in an Environmental Assessment because it was not imminent); *PennEast Pipeline Co*., 164 FERC ¶ 61,098 at P 135 (finding projects should not have been considered in an EIS because they "were not imminent")).

[273] *See* 15 U.S.C. § 717b-1(a); *see also* 18 C.F.R. § 157.21 (2025); *Venture Glob. CP2 LNG, LLC Venture Glob. CP Express, LLC*, 189 FERC ¶ 61,148 at P 143 (citing *E. Shore Nat. Gas Co*., 181 FERC ¶ 61,233, at P 32 (2022) (finding project should not have been considered in an Environmental Assessment because it was not imminent); *PennEast Pipeline Co*., 164 FERC ¶ 61,098 at P 135 (finding projects should not have been considered in an EIS because they "were not imminent")).

[274] *See Seven County*, 605 U.S. at 182.

[275] *See Gas Transmission Nw., L.L.C. v. FERC,* 157 F.4th at 711 (finding "[t]o be sure, a gray area exists when another project is 'interrelated and close in time and place to the project at hand. Even in those circumstances, however, a court's review still must remain deferential. Consequently, even if the reviewing court in such a case might think that NEPA would support drawing a different line, a court should defer to an agency so long as the agency drew a reasonable and manageable line." (citing *Seven County*, 605 U.S. at 190 (quoting *Public Citizen*, 541 U.S. at 767)) (internal quotations omitted).

The Commission orders:

In response to Petitioners' request for rehearing, the Second Remand Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.