

Attn:

Secretary Kimberly D. Bose
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

March 30, 2015

Filed Electronically**RE: Eagle LNG Partners Jacksonville LLC; Notice of Intent to Prepare an Environmental Impact Statement for the Planned Jacksonville Project (PF15-7-000)**

Secretary Bose:

The Sabin Center for Climate Change Law (“SCCCL”)¹ submits these comments on the scope of the proposed environmental impact statement (“EIS”) for the Jacksonville Project as announced by the Federal Energy Regulatory Commission (“FERC”, or the “Commission”).²

For the purposes of these comments, SCCCL takes no position on the export of liquefied natural gas (“LNG”) or on whether the Jacksonville Project should be approved. Instead, since the scoping process is intended to help agencies identify significant issues for consideration, SCCCL focuses on a critical issue that was not identified in FERC’s Notice of Intent (“NOI”) – the potential impact of climate change on the Jacksonville Project. Specifically, sea level rise, and an associated increase in flooding and storm surges, may pose a significant risk due to the Project site’s location on the St. Johns River.

NEPA and Climate Change

Pursuant to its obligations under the National Environmental Policy Act (“NEPA”), the Commission must consider the environmental effects resulting from sea level rise and associated storm surge and flooding as reasonably foreseeable significant adverse impacts. NEPA’s implementing regulations provide that agencies must consider reasonably foreseeable indirect and cumulative environmental impacts.³ The Council on Environmental Quality (“CEQ”) has taken the position – and several courts have held – that these regulations require federal agencies to evaluate the climate change impacts of their actions.⁴ The Commission also must consider sea

¹ The Sabin Center for Climate Change Law at Columbia Law School develops legal techniques to fight climate change, trains law students and lawyers in their use, and provides the public with up-to-date resources on key topics in climate law and regulation. SCCCL works closely with the scientists at Columbia University’s Earth Institute and with governmental, nongovernmental, and academic organizations. See <http://web.law.columbia.edu/climate-change>. Please contact SCCCL for assistance locating any sources.

² 80 F.R. 11189 (March 2, 2015).

³ See 40 C.F.R. §§ 1508.7 (defining “cumulative impact”), 1508.8 (defining “effects” as including direct and reasonably foreseeable indirect effects), 1508.25(c) (providing that EISs must consider direct, indirect, and cumulative impacts); see also CEQ, *Considering Cumulative Effects under the National Environmental Policy Act* (1997) [hereinafter “Considering Cumulative Effects Under NEPA”], available at http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf.

⁴ Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews [hereinafter “2014 Draft Guidance”], 79 Fed. Reg. 77801

level rise and storm surge as future baseline environmental conditions. As CEQ guidelines clarify, agencies must define an appropriate threshold against which to compare projected environmental impacts, and this threshold should incorporate future environmental conditions.⁵

Moreover, federal and state law supports consideration of climate change adaptation in the proposed EIS. President Obama has issued an executive order regarding adaptation, which directs agencies to prepare for the impacts of climate change by integrating consideration of climate change into agency operations and overall mission objectives.⁶ More recently, President Obama signed an executive order directing federal agencies to adopt new flood elevation standards, taking climate change into account, for the siting, design, and construction of federal projects.⁷ The Department of Defense (“DOD”) also intends to adapt to the risks of climate change by “integrating climate change considerations into [the DOD’s] plans, operations, and training across the Department....”⁸

At the state level, the Florida Legislature passed the Community Planning Act in 2011,⁹ which amends the state’s growth management laws to allow local governments to consider policies to improve resilience to coastal flooding from storm surge and impacts of sea level rise.¹⁰ Additionally, the Florida Coastal Management Program (“FCMP”) Draft Assessment and Strategies for 2016-2010,¹¹ developed pursuant to Section 309 of the Coastal Zone Management Act (“CZMA”), recognizes that the state is particularly vulnerable to sea level rise and associated flooding and storm surge.¹²

I also note that the Securities and Exchange Commission (“SEC”) has issued guidance regarding publicly traded companies’ obligation to disclose the impacts that climate change may have on their operations.¹³ CEQ has proposed, but not yet finalized, revised guidance that would

(Dec. 24, 2014), *available at* http://www.whitehouse.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance.pdf; *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1215-1217 (9th Cir. 2008) (finding that “[t]he impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct”); *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 548-50 (8th Cir. 2003) (finding that degradation in air quality was a reasonably foreseeable indirect effect of a project that would increase the supply of coal to power plants); *High Country Conservation Advocates v. United States Forest Serv.*, No. 13-CV-01723-RBJ, 2014 WL 2922751, at *8-11, 13-15 (D. Colo. June 27, 2014) (holding that it was arbitrary and capricious for federal agencies to omit analysis of GHG emissions and related costs in EISs for mining exploration projects).

⁵ Considering Cumulative Effects under NEPA, *supra* note 3, at 41; 40 C.F.R. 1502.15 (defining “affected environment”); 2014 Draft Guidance, *supra* note 4, at 21.

⁶ Exec. Order No. 13,653, 78 Fed. Reg. 66817 (Nov. 1, 2013).

⁷ Exec. Order No. 13,690, 80 Fed. Reg. 6424 (Jan. 30, 2015).

⁸ Department of Defense, *Climate Change Adaptation Roadmap* (2014), *available at* <http://www.scribd.com/doc/242845848/Read-DoD-report-2014-Climate-Change-Adaptation-Roadmap>.

⁹ Fla. Stat. Ann. § 163.3161, *et seq.*

¹⁰ *Id.* §§ 163.3164, 163.3177.

¹¹ Florida Coastal Management Program, Draft Assessment and Strategies FY 2016-FY2020, *available at* http://www.dep.state.fl.us/cmp/links/files/FY2016-2020_Section309_Assessment_Strategies_draft.pdf

¹² *Id.* at 15, 23, 64.

¹³ SEC, *Commission Guidance Regarding Disclosure Related to Climate Change* (2010) (“Significant physical effects of climate change... have the potential to affect a registrant’s operations and results. For example, severe weather can cause catastrophic harm to physical plants and facilities and can disrupt manufacturing and distribution processes.... Registrants whose businesses may be vulnerable to severe weather or climate related events should

call for EISs prepared under NEPA to consider future climate impacts on projects.¹⁴ The Draft NEPA Guidance clarifies that climate change adaptation and resilience are important considerations and instructs agencies to identify the affected environment based on available climate change projections for the expected lifespan of the proposed project.¹⁵

Moreover, FERC recently required consideration of climate change impacts in connection with a proposed LNG export facility in flood-prone coastal Louisiana (the “Mississippi River LNG Project”).¹⁶ After the applicant for the Mississippi River LNG Project submitted draft resource reports to the Commission, FERC directed the applicant to supplement the reports with information regarding potential impacts of sea level rise and storm impacts for the design life of the facility.¹⁷ FERC should direct Eagle LNG Partners Jacksonville LLC to research and submit the same information, and the Commission should use this information to consider sea level rise and attendant flood risks in the Project EIS.

Sea Level Rise

As oceans absorb heat and as glaciers and ice sheets melt, global sea levels are rising at increasing rates.¹⁸ In the next several decades, storm surges and high tides will combine with sea level rise and, in some locations, land subsidence to increase flooding in many regions, threatening the communities and industries along our coastlines.¹⁹ Many sources provide current and credible data regarding sea level rise and its potential consequences. As relevant examples, SCCCL points the Commission’s attention to:

- Intergovernmental Panel on Climate Change (“IPCC”), Chapter 2.2.3 Ocean, cryosphere and sea level. In *Climate Change 2014 Synthesis Report, Fifth Assessment Report*, at 65, *available at* http://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_LONGERREPORT_Corr2.pdf.²⁰
- The National Climate Assessment, at 44-45, 396-417, *available at* <http://nca2014.globalchange.gov>.
- Climate Central, *Surging Seas: Sea Level Rise Analysis*, *available at* <http://sealevel.climatecentral.org>.

consider disclosing material risks of, or consequences from, such events in their publically filed disclosure documents.”), *available at* <http://www.sec.gov/rules/interp/2010/33-9106.pdf>.

¹⁴ 2014 Draft Guidance, *supra* note 4.

¹⁵ *Id.* at 21-23.

¹⁶ Louisiana LNG Energy, LLC, Proposed Mississippi River LNG Project (PF14-17-000).

¹⁷ Letter to Louisiana LNG Energy, LLC providing comments on Draft Resource Reports 2 through 9 re the Mississippi River LNG Project under PF14-17 (Nov. 24, 2014).

¹⁸ Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: Climate Change Impacts in the United States: The Third National Climate Assessment. U.S. Global Change Research Program, 841 pp. doi:10.7930/J0Z31WJ2 [hereinafter “National Climate Assessment”], at 44.

¹⁹ National Climate Assessment, at 45; Gordon, Kate, 2014: Risky Business: The Economic Risks of Climate Change in the United States. The Risky Business Project [hereinafter “Risky Business”], at 20.

²⁰ Church, J.A. et al., 2013: Sea Level Change. In: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

- Risky Business: The Economic Risks of Climate Change in the United States, *available at* http://riskybusiness.org/uploads/files/RiskyBusiness_Report_WEB_09_08_14.pdf

Notably, Climate Central estimates that Duval County is likely to experience 3.1 feet of sea level rise by 2100.²¹ Using these and other sources, the Commission should assess the projected range of sea level rise and storm surge throughout the life of the Jacksonville Project and identify ways to prepare for climate change-related risks. To avoid underestimating these risks, the Commission should consider basing its analysis on sea level rise at the high end of the projected range. Moreover, since the Jacksonville Project will involve sensitive and expensive equipment and bring large ships carrying highly combustible and potentially explosive cargo to the Project site, the Commission should certainly exhibit a low tolerance for risk.

Additionally, to adequately protect the environment from future climate change impacts on the Jacksonville Project, the Commission should consider the risks of more frequent and severe flooding. These risks are not fully reflected by static sea level rise data. Increasingly intense storm surges are a foreseeable risk in the coastal plain of Florida, where the Jacksonville Project is sited.

Finally, the design of the Jacksonville Project should incorporate an additional margin of safety, known as “freeboard,” to account for unanticipated risk factors. The inclusion of freeboard in flood planning is intended to protect against risks that can contribute to flood heights, such as waves and the effect of development on ground water absorption.²² These risks are separate from and additional to the risks of sea level rise and storm surge, and should be evaluated as such in connection with the Jacksonville Project.

In sum, sea level rise and increased flooding due to climate change pose a foreseeable risk to the Jacksonville Project, and this risk is directly connected to the potential for significant adverse environmental impacts. However, the Jacksonville Project NOI does not identify climate change or sea level rise as a significant issue for analysis in the proposed EIS. The Commission must consider these impacts to adequately protect the environment from future climate change impacts on the Project and to fulfill its obligations under NEPA. FERC has taken steps to consider such impacts in connection with another proposed LNG export facility, and it should do the same here.

Thank you for the opportunity to submit comments on the scope of the Jacksonville Project EIS. Please feel free to contact SCCCL with any questions.

Sincerely,

Jennifer M. Klein, Esq.

²¹ Climate Central, Sea level rise and coastal flood risk: Summary for Duval County, FL, *available at* http://ssrf.climatecentral.org.s3-website-us-east-1.amazonaws.com/Buffer2/states/FL/downloads/pdf_reports/County/FL_Duval_County-report.pdf.

²² American Society of Civil Engineers, Highlights of ASCE 24-05 Flood Resistant Design and Construction (2010), *available at* <http://www.fema.gov/media-library/assets/documents/14983>; FEMA Hurricane Sandy Recovery Advisories RA2: Reducing Flood Effects in Critical Facilities (April 2013) and RA5: Designing For Flood Levels above the BFE After Hurricane Sandy (April 2013), *available at* <http://www.fema.gov/media-library/assets/documents/30966>.

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Enclosures:

FERC's Letter to Louisiana LNG Energy, LLC providing comments on Draft Resource Reports 2 through 9 re the Mississippi River LNG Project under PF14-17 (Nov. 24, 2014)

Climate Central, Sea level rise and coastal flood risk: Summary for Duval County, FL

2014 Draft Guidance