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UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

In the matter of:

SABINE PASS LIQUEFACTION, LLC) **DOCKET NO. 10-111-LNG**

ANSWER OF SABINE PASS LIQUEFACTION, LLC
IN OPPOSITION TO MOTION TO SUPPLEMENT THE RECORD

Pursuant to 10 C.F.R. § 590.302(b) (2012), Sabine Pass Liquefaction, LLC ("Sabine") submits this answer opposing Sierra Club's November 1, 2012 Motion to Supplement the Record ("Mot. to Supp."). Sierra Club has consistently ignored the rules and regulations applicable to participants in proceedings before the Department of Energy, Office of Fossil Energy ("DOE/FE"). Sierra Club is not a party to this proceeding. Notwithstanding that fact, Sierra Club improperly sought rehearing of the Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations ("Order No. 2961-A").[1] Now, while its request for rehearing is pending before the DOE/FE, Sierra Club attempts to invoke 10 C.F.R. § 590.310, which by its terms allows ***parties*** to ongoing DOE/FE proceedings to request discovery procedures or trial-type proceedings, in support of its motion to inject new evidence into the closed record of this proceeding.

Sierra Club claims that, from its perspective, there is not a "full record" and seeks to supplement the record with additional information that would purportedly show that liquefied natural gas export projects would cause reasonably foreseeable natural gas production impacts

[1] *See Sierra Club's Motion for Rehearing and For Stay Pendente Lite* (Sept. 6, 2012) ("Mot. for Rehearing"). *See also Answer of Sabine Pass Liquefaction, LLC in Opp. to Mot. of Sierra Club for Stay* (filed Sept. 21, 2012). In its Mot. for Rehearing, Sierra Club also improperly moved for stay of the August 7, 2012 Finding of No Significant Impact and Order No. 2961-A.

for purposes of analysis under the National Environmental Policy Act. Mot. to Supp. at 1. Even if Sierra Club was a party to this proceeding – which it is not – it would not be entitled to "supplement the record" at this stage of the proceeding. The introduction of new evidence at this late stage would prejudice the parties, misuse agency resources and further prolong these proceedings. Moreover, although Sierra Club styled its motion as a request to supplement the record, its filing is nothing more than an attempt to untimely supplement its improperly filed request for rehearing.

I. SIERRA CLUB'S MOTION TO SUPPLEMENT IS IMPROPER AND SHOULD BE DENIED

Sierra Club files its motion to supplement the record pursuant to a regulation that provides that "[a]ny ***party*** may file a motion requesting additional procedures, including the opportunity to file written comments, request written interrogatories or other discovery procedures, or request that a conference, oral presentation or trial-type hearing be held." 10 C.F.R. § 590.310 (emphasis added); *see* Mot. to Supp. at 1. As a preliminary matter, this regulation clearly is intended to facilitate the conduct of ***ongoing*** pre-decision proceedings. It does not support and is not applicable to a post-decision attempt by a non-party to pry open a long-closed record. Accordingly, Sierra Club has no right to supplement the record under 10 C.F.R. § 590.310 and its motion should be denied.

More fundamentally, DOE/FE is statutorily restricted from accepting Sierra Club's motion, which, although styled as a procedural motion to supplement the record, is in actuality an untimely supplement to its Mot. for Rehearing. Under the Natural Gas Act ("NGA"), a request for rehearing must be filed not later than 30 days after issuance of a final decision in a

proceeding.[2] This is a statutory deadline not subject to agency discretion or waiver.[3] Similarly, the DOE/FE rules and regulations governing rehearing provide for "[a]n application for rehearing of a final opinion and order, conditional order or emergency interim order" to be filed "by any party aggrieved by the issuance of such opinion and order within thirty (30) days after issuance."[4] *See S. Natural Gas Co.*, 86 FERC ¶ 61,129 at 61,444-45 (1999) (denying a party's attempt to supplement its rehearing request on the basis that the supplement was filed after the 30-day statutory deadline); *see also Erie Boulevard Hydropower, L.P.*, 134 FERC ¶ 61,205 (2011) (denying motion styled as a request to lodge evidence, or alternatively as an offer of proof or a motion to reopen the record, as an attempt to untimely supplement a request for rehearing). Because the Mot. to Supp. is, in practical effect, an effort to supplement the Mot. for Rehearing, it is time-barred.

II. GRANTING NON-PARTY SIERRA CLUB'S MOTION WOULD RESULT IN UNFAIR DELAY

Before issuing its final order, DOE/FE reviewed both its record and that of the Federal Energy Regulatory Commission ("FERC") in the related proceeding, and concluded that "there is no need or sufficient justification to supplement the environmental review conducted by the FERC." Order 2961-A at 5. Sierra Club moved to intervene, challenging whether the environmental review that FERC conducted is sufficient for DOE/FE's purposes. But DOE/FE denied Sierra Club's tardy motion to intervene for good cause because "[t]he Sierra Club, like other members of the public, had a responsibility to comply with the filing deadlines established

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[2] *See* 15 U.S.C. § 717r (2006).

[3] *See Turtle Bayou Gas Storage Co., LLC*, 139 FERC ¶ 61,033 at P 1 n.2 (2012) ("NGA section 19(a), 15 U.S.C. § 717r (2006), provides for a party to a proceeding to file a request for rehearing within 30 days after issuance of a final decision or other final order, and this statutory time period for rehearing cannot be waived or extended.").

[4] *See* 10 C.F.R. § 590.501.

in the Notice of Application if it wanted to raise issues regarding the environmental impacts of granting the instant application" and "granting the Motion to Intervene would unnecessarily delay the issuance of final agency action herein and unfairly prejudice the parties to this proceeding." Order No. 2961-A at 25-26.

Sierra Club's current request to supplement the record is just more of the same—another unjustified and untimely attempt to delay this proceeding that would prejudice the actual parties. Sierra Club claims, without offering any reason why it did not do so sooner, that it "has become aware of important information relevant to [DOE/FE's] continuing consideration [of rehearing]." Mot. to Supp. at 1. Sierra Club requests that the record be supplemented by including three Energy Information Administration ("EIA") items, dated 2009, 2010 and January 2012, respectively. *Id.* at 1-2. The first two items were available before DOE/FE issued its conditional approval order on May 20, 2011 (DOE/FE Order No. 2961). The latter was available before final Order 2961-A issued on August 7, 2012. Moreover, all three documents were available well before Sierra Club moved to intervene on April 18, 2012.

If Sierra Club thought that the modeling capabilities purportedly evidenced by the EIA documents were crucial to FERC and DOE/FE's review, then Sierra Club should not have waited to present them for the first time at this late stage in the proceeding (*i.e.,* after a final order has been issued and after the period for parties—which Sierra Club is not—to seek rehearing has expired). Sierra Club cannot now inject these long-available documents into a long-closed record.

According to Sierra Club, "DOE/FE rules set out no particular standard for motions to supplement the record," and, indeed, Sierra Club cites no authority that would permit supplementation of the record at this late date. Mot. to Supp. at 4. Sierra Club merely asserts

that its requested supplementation is "appropriate." *Id.* But as DOE/FE has already held, such supplementation is ***in***appropriate because Sierra Club could have, and should have, presented all of its concerns in a timely fashion. Allowing this most recent belated attempt to delay the proceedings would contradict DOE/FE's well-reasoned and correct decision to deny intervention.

Indeed, even if Sierra Club were a party to this proceeding—and it is not—supplementation would be improper. Particularly given that "the introduction of new evidence at the rehearing stage is not subject to challenge by interested parties" in light of the prohibition on answers to rehearing requests, FERC (whose decisions are instructive here) has held that "our policy has been to reject supplements to rehearing requests" and that "[i]t is not appropriate to introduce such evidence at the rehearing stage." *Startrans IO, L.L.C.*, 130 FERC ¶ 61,209 at P 22 (2010) (internal citations omitted). Thus, to "encourage the timely submission of evidence," FERC "adheres to the general rule that the record once closed will not be reopened" and "generally does not allow the introduction of new evidence at the rehearing stage of a proceeding." *S. Cal. Edison Co.*, 137 FERC ¶ 61,016 at P 11 (2011); *see also PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030 at P 15 n.10 (2009) ("[t]he Commission has held that raising issues for the first time on rehearing is disruptive to the administrative process and denies parties the opportunity to respond.").

That rule applies with even more force in this case, where Sierra Club is not even a party to this matter and was denied party status precisely because its previous tardy attempt to interject itself into the proceeding would have caused undue delay and prejudiced the actual parties and the public. It would be patently inappropriate to allow a non-party denied intervention to supplement the record after it has been closed, especially when the proposed additions were

available when the non-party could have timely intervened. As FERC has noted, it "generally will not consider new evidence on rehearing, as we cannot resolve issues finally and with any efficiency if parties attempt to have us chase a moving target." *Ocean State Power II*, 69 FERC ¶ 61,146 at 61,548 n.64 (1994). So too here. Allowing Sierra Club yet another bite at the apple would disturb DOE/FE's already-completed and extensive review of the existing record, and require the actual parties and DOE/FE to continually chase an ever-moving target, resulting in prejudice to the parties, inefficient use of agency resources, and unfair and unnecessary delay.

III. CONCLUSION

WHEREFORE, Sabine respectfully requests that the DOE/FE deny Sierra Club's motion to supplement the record.

Respectfully submitted,

/s/ Lisa M. Tonery
Attorneys for
Sabine Pass Liquefaction, LLC

Lisa M. Tonery
Tania S. Perez
FULBRIGHT & JAWORSKI L.L.P.
666 Fifth Avenue
New York, NY 10103

Jonathan S. Franklin
FULBRIGHT & JAWORSKI L.L.P.
801 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Dated: November 13, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding.

Dated at Washington, D.C. this 13th day of November, 2012.

/s/ Maguette Ndiaye
Maguette Ndiaye
on behalf of
Sabine Pass Liquefaction, LLC