

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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SABINE PASS LIQUEFACTION, LLC

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FE DOCKET NO. 10-111-LNG

FINAL OPINION AND ORDER  
GRANTING LONG-TERM AUTHORIZATION  
TO EXPORT LIQUEFIED NATURAL GAS FROM  
SABINE PASS LNG TERMINAL TO  
NON-FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 2961-A

AUGUST 7, 2012

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- A. Sierra Club has not demonstrated good cause for granting its motion to intervene out of time.**
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- C. Sierra Club has not demonstrated that the EA is inadequate or otherwise needs to be supplemented.**

### **VI. FINDINGS**

### **ORDER**

## **I. INTRODUCTION**

Pursuant to section 3 of the Natural Gas Act (NGA),<sup>1</sup> on May 20, 2011, the Office of Fossil Energy of the Department of Energy (DOE/FE) issued Opinion and Order No. 2961 (Order 2961) conditionally granting Sabine Pass Liquefaction, LLC (Sabine Pass Liquefaction), a subsidiary of Cheniere Energy, Inc., long-term, multi-contract authorization to export lower-48 domestically produced liquefied natural gas (LNG). Order 2961 authorized LNG exports to nations with which the United States has not entered into a free trade agreement providing for national treatment for trade in natural gas (non-FTA nations). The permitted exports would be from liquefaction and related facilities to be constructed at the Sabine Pass LNG Terminal (Terminal), an existing LNG terminal in Cameron Parish, Louisiana, owned by Sabine Pass LNG, L.P. (Sabine Pass LNG). The proposed additional facilities covered by the instant application (the Liquefaction Project) would enable Sabine Pass Liquefaction to export the conditionally authorized volumes of domestically produced LNG up to the equivalent of 803 billion cubic feet (Bcf) per year of natural gas (2.2 Bcf per day).

In conditionally authorizing the proposed exports, DOE/FE compiled an administrative record based on submissions by persons who intervened in, protested, and commented on the application. Based on this record, DOE/FE reviewed a number of public interest considerations and determined that interveners and commenters had not demonstrated that the proposed authorization would be inconsistent with the public interest, as would be required to deny an application for exports to non-FTA nations under NGA section 3.

The findings and conclusions supporting issuance of the conditional export authorization are fully set forth in Order 2961. As relevant here, DOE conditioned the export authorization on (1) satisfactory completion of the environmental review of the Liquefaction Project by the

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<sup>1</sup> 15 U.S.C. 717b.

Federal Energy Regulatory Commission (FERC or Commission); and (2) issuance by DOE/FE of a finding of no significant impact (FONSI) or a record of decision (ROD) pursuant to the National Environmental Policy Act (NEPA).<sup>2</sup>

The condition linking this proceeding to the Commission's environmental review of the Liquefaction Project is a consequence of the fact that the Secretary of Energy has delegated NGA section 3 authority over the siting, construction, and operation of the Project facilities to the Commission<sup>3</sup> and the Commission was the lead agency conducting an environmental review related to the Project.<sup>4</sup> As further described below, FERC's review included the preparation of an *Environmental Assessment for the Sabine Pass Liquefaction Project* (December 2011) (EA) by FERC staff; the issuance of an *Order Granting Section 3 Authorization* on April 16, 2012 (April 16 order);<sup>5</sup> and an *Order Denying Rehearing and Stay*, issued on July 26, 2012 (July 26 order).<sup>6</sup>

The Sierra Club, as an intervener in the FERC proceeding, challenged the adequacy of the EA, the Commission's FONSI, and the lawfulness of the FERC's determination to authorize the Project facilities. The FERC addressed these concerns and found that if a series of 55 enumerated conditions are met, the Project would not constitute a major Federal action significantly affecting the quality of the human environment (April 16 Order at 39). Pursuant to the July 26 rehearing order, the FERC has now completed its environmental review of the

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<sup>2</sup> 42 U.S.C. 4321, *et seq.*

<sup>3</sup> This delegation is authorized by section 402(e) of the DOE Organization Act. 42 USC 7172(e). The currently effective delegation order, No. 00-044.00A, effective May 16, 2006, can be found at [https://www.directives.doe.gov/sdoa/delegations-documents/00-004\\_00A.pdf/view](https://www.directives.doe.gov/sdoa/delegations-documents/00-004_00A.pdf/view).

<sup>4</sup> Sabine Pass Liquefaction and Sabine Pass LNG jointly filed the FERC application although the only applicant in the instant proceeding is Sabine Pass Liquefaction. Unless otherwise specified, the applicants jointly shall be referred to as Sabine Pass, or applicant, hereafter.

<sup>5</sup> *Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.*, 139 FERC ¶ 61,039 (2012).

<sup>6</sup> 140 FERC ¶ 61,076

Project and judicial review may be available under section 19(b) of the NGA.<sup>7</sup>

On April 18, 2012, two days after the FERC issued its April 16 order authorizing the Liquefaction Project, the Sierra Club filed a motion to intervene out of time, protest, and comments in this proceeding sixteen months out of time. Sierra Club's arguments are considered in greater detail below. However, the principal contention is that the EA prepared by FERC is inadequate and that DOE/FE should supplement the FERC's EA by preparing an environmental impact statement (EIS) before issuing a final decision in the instant docket.

For the reasons set forth below, DOE/FE will deny the Sierra Club's motion to intervene out of time; and finds, based on a review of the complete record in the FERC proceeding and the arguments raised in the instant proceeding by the Sierra Club, that there is no need or sufficient justification to supplement the environmental review conducted by the FERC. Accordingly, DOE/FE has issued a FONSI based on the environmental review performed by the FERC and will incorporate the 55 environmental conditions developed in the FERC proceeding in the authorization issued herein. On this basis, DOE will issue a final order authorizing the proposed export of domestically produced lower-48 LNG.

## **II. BACKGROUND**

DOE's NGA section 3 authority to regulate the siting, construction, and operation of import and export terminals, including the proposed Project facilities, has been delegated to the FERC<sup>8</sup> and, pursuant to that delegation, FERC is the lead agency responsible for conducting an analysis of the potential environmental impacts associated with the construction and operation of those facilities.<sup>9</sup>

The Project facilities are intended to augment existing facilities previously approved by

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<sup>7</sup> 15 U.S.C. 717r(b).

<sup>8</sup> *See*, DOE Delegation Order No. 00-044.00A, effective May 16, 2006.

<sup>9</sup> *See*, 15 U.S.C. 717n.

the FERC at the Sabine Pass LNG Terminal. In 2004, the FERC issued an order authorizing Sabine Pass LNG to site, construct, and operate “Phase I” of the Sabine Pass LNG Terminal as an LNG import terminal with total regasification and send-out capacity of 2.6 Bcf per day and three storage tanks.<sup>10</sup> In 2006, the FERC authorized the construction of Phase II of the LNG Terminal, consisting of an additional three LNG storage tanks and expanded vaporization systems that increased the Terminal’s send-out capacity to 4 Bcf per day and its storage capacity to 16.9 Bcf.<sup>11</sup> The environmental analysis of the potential environmental impact associated with the siting, construction, and operation of the Phase I and Phase II facilities was contained in a Final Environmental Impact Statement (FEIS) issued in November 2004 and in an EA issued in May 2006, respectively. In addition, in 2009, the FERC authorized Sabine Pass to operate the Terminal for the additional purpose of exporting foreign-sourced LNG.<sup>12</sup> The environmental analysis of the potential environmental impact associated with exporting foreign-sourced LNG was contained in an EA issued in February 2009.

The additional facilities which comprise the Liquefaction Project, if completed, would add liquefaction capability to the existing FERC-authorized terminal to enable Sabine Pass to export domestically produced lower-48 LNG. FERC was the lead agency in the environmental analysis of the Project and DOE was a “cooperating agency”.<sup>13</sup> The adoption of cooperating agency status by DOE in part meant that DOE would not unnecessarily duplicate the FERC’s environmental review activities but, following the completion of the FERC process, would independently review the FERC’s analysis, findings, and conclusions and would determine

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<sup>10</sup> *Sabine Pass LNG, L.P.*, 109 FERC 61,324 (2004).

<sup>11</sup> *Sabine Pass LNG, L.P.*, 115 FERC 61,330 (2006).

<sup>12</sup> *Sabine Pass LNG, L.P.*, 127 FERC 61,200 (2009).

<sup>13</sup> The Council on Environmental Quality regulations implementing NEPA define “cooperating agency” as “any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect” to proposed actions for which a NEPA analysis is prepared. See 40 C.F.R. § 1508.5 (2011).

whether or not further environmental review was necessary prior to issuance of final agency action on the application in the instant docket.

### **III. PROCEEDINGS BEFORE THE FERC**

#### **A. The Commission's Pre-Filing Procedures**

Like authorizations to export LNG to non-FTA nations issued by this agency, authorizations issued by the FERC permitting the siting, construction, and operation of LNG export terminals are reviewed under NGA section 3(a). This means that such applications are granted unless it is shown that the authorizations would be inconsistent with the public interest. Additionally, under FERC's regulations, the approval process consists of two parts—a pre-filing process during which environmental review, as required by NEPA, begins;<sup>14</sup> and a formal application process that starts no sooner than 180 days after issuance of a notice that the pre-filing process has commenced.<sup>15</sup>

The FERC initiated the pre-filing process for the applicant's Liquefaction Project in August 2010.<sup>16</sup> During the pre-filing process, FERC staff engaged in extensive efforts to gather information in the form of "resource reports" on various possible environmental impacts of the proposed facilities. On October 29, 2010, the FERC issued a Notice of Intent to Prepare an Environmental Assessment of the Liquefaction Project in FERC Docket No. PF10-24-000. The Notice stated that DOE had agreed to participate as a cooperating agency in the preparation of the EA in order to meet DOE's unique responsibilities in the instant proceeding. This Notice was mailed to federal, state, and local government representatives and agencies; elected officials;

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<sup>14</sup> Sabine Pass initiated the pre-filing review process on July 26, 2010 when it submitted to FERC a letter requesting use of the pre-filing procedures. Use of these pre-filing procedures is required by FERC regulations. See, 18 CFR 157.21.

<sup>15</sup> 18 C.F.R. 157.21(a)(2).

<sup>16</sup> On August 4, 2010, the Director of the Office of Energy Projects of the Federal Energy Regulatory Commission (Commission) issued a letter order in Docket No. PF10-24-000 granting Sabine Pass' request to commence the Commission's mandatory NEPA pre-filing review process.

environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. It also was published in the Federal Register at 75 FR 68347 (Nov. 5, 2010).

## **B. The Commission's Environmental Assessment**

On January 31, 2011, Sabine Pass began the second part of the FERC approval process by filing its formal application in FERC Docket No. CP11-72-000 for an NGA section 3 authorization to site, construct, and operate the Liquefaction Project. Pursuant to a notice of application published by the FERC in the Federal Register on February 18, 2011,<sup>17</sup> motions to intervene, comments, and protests to the application were due by March 4, 2011.

On December 28, 2011, the FERC staff issued its EA for the Project along with a *Notice of Availability of the Environmental Assessment for the Proposed Sabine Pass Liquefaction Project* (Notice of Availability). FERC mailed the EA and the Notice of Availability to persons likely to have an interest in the EA, including environmental and public interest groups. The Notice of Availability also was subsequently published in the Federal Register.<sup>18</sup> Interested persons were given until January 27, 2012, to submit comments on the EA.

The EA examined numerous environmental impacts of the Project, including impacts on geology and soil resources; water resources; fisheries, vegetation and wildlife resources; land use, recreation, and visual resources; socioeconomic impacts and environmental justice; cultural resources; air quality and noise; reliability and safety; and cumulative impacts. Additionally, the EA reviewed alternatives to the Project, including a no-action alternative; alternative fossil energy sources; alternative systems (*i.e.*, making use of other existing natural gas export facilities, pipelines, or other methods of transporting natural gas); and alternative configurations

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<sup>17</sup> 76 FR 9,573.

<sup>18</sup> 77 FR 277 (January 4, 2012).

for the design of the Project.

Based on these analyses, the EA drew 53 specific conclusions and recommendations and generally recommended that the FERC incorporate these 53 items as mitigating conditions that Sabine Pass must meet in order to construct and operate the Project.<sup>19</sup> The EA also found that approval of the Liquefaction Project, subject to adoption of the 53 items, would not constitute a major federal action significantly affecting the quality of the human environment and recommended that the FERC issue a FONSI to this effect in its order on the merits of the application in the FERC docket.

### **C. The Sierra Club's Intervention and Comments in the Commission Proceeding**

On January 30, 2012, the Sierra Club submitted a *Notice of Intervention, Motion to Intervene, and Comment on the December 28, 2011 Sabine Pass Liquefaction Project Environmental Assessment* (Sierra Club Motion to Intervene) in the Commission proceeding. In its pleading, the Sierra Club challenged the adequacy of the EA on several grounds. Among other matters, the Sierra Club argued that (1) the EA unlawfully looked only at the impacts of construction and operation of the Project but ignored the effects of exporting the LNG (as distinct from the environmental impacts of the Project facilities) and failed to take a hard look at whether LNG exports are in the public interest; (2) the EA did not recognize that LNG exports would induce additional shale gas extraction and did not examine the impacts of this extraction on the environment;<sup>20</sup> (3) the EA should have revisited the issue of the potential impact of permitting LNG exports on domestic gas prices; this issue was addressed by DOE/FE in Order

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<sup>19</sup> As discussed below, the FERC's April 16 order added two additional environmental conditions.

<sup>20</sup> Sierra Club asserts that the "EA's prediction that exports will 'facilitate' shale gas extraction appears well-founded" and that "an increase in shale gas extraction (and concomitant environmental effects) is indisputably an effect likely to be 'caused by' the project." Sierra Club Motion to Intervene in FERC proceeding, at 6. Sierra Club further asserts that "NEPA requires analysis of the effects of increased drilling. The EA's failure to address these effects is unlawfully deficient." *Id.* at 8.

2961 but the Sierra Club maintained that a January 2012 study commissioned by DOE/FE from the Energy Information Administration (EIA study) “concluded that LNG export[s] will increase domestic gas prices”;<sup>21</sup> (4) the EA failed to consider that the likely domestic natural gas price increases resulting from DOE/FE’s authorization of gas exports could lead to fuel switching by generators of electricity from gas to coal, thereby increasing emissions of more hazardous pollutants and negatively affecting human health and the environment; (5) the EA unlawfully failed to take a hard look at impacts on global warming because it improperly concluded that the export facility’s greenhouse gas emissions were insignificant and improperly failed to consider indirect effects on greenhouse gas emissions, including emissions over the lifecycle of the gas that is produced for liquefaction and gas that is released during the well completion process; and (6) the EA erred in concluding that the environmental impacts of the Project are insignificant under NEPA and the FERC should have prepared an environmental impact statement (EIS).

#### **D. The Commission’s April 16 Order**

On April 16, 2012, the Commission issued an order granting Sierra Club’s motion to intervene out of time and authorizing Sabine Pass to site, construct, and operate the Project. In its April 16 order (at 12), the FERC recognized that its authority to address the issues presented to it were limited by the terms of the Secretary of Energy’s delegation order and that it was not authorized by the delegation order to address the types of issues covered by Order No. 2961’s public interest determination. The Commission stated that it was concerned that it not duplicate or possibly contradict the Secretary’s decisions. April 16 order at 11-12.

Given that the Project would be built within the footprint of the existing facilities which were previously the subject of an EIS and the relatively small and well-defined number of other

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<sup>21</sup> Citing to *Effects of Increased Natural Gas Exports on Domestic Energy Markets* (EIA, January 2012) (EIA Study), at 6. The EIA Study is available at [www.eia.gov/analysis/requests/fe/pdf/fe\\_lng.pdf](http://www.eia.gov/analysis/requests/fe/pdf/fe_lng.pdf).

environmental issues, FERC generally agreed with the EA's conclusion that the additional facilities in the Liquefaction Project would not have a significant impact on the quality of the human environment. The FERC, however, required that Sabine Pass adopt specified mitigation measures (April 16 order at 39). Appendix D of the April 16 order lists 55 such environmental conditions with which Sabine Pass must comply in order to site, construct, and operate the Liquefaction Project. These include the 53 conditions set forth in the EA plus two additional conditions.<sup>22</sup> On this basis, the FERC rejected the argument posed by the Sierra Club that an EIS for the Project was needed (April 16 order at 12 and 17).

The FERC also reviewed the direct, indirect, and cumulative impacts from the Liquefaction Project and found that the potential for induced shale gas development was neither "reasonably foreseeable" nor an "effect" for purposes of a cumulative impacts analysis within the meaning of the regulations of the Council of Environmental Quality (CEQ).<sup>23</sup> The FERC concluded that it would be impractical to consider as part of the environmental review the potential for induced shale gas development. (April 16 order at 32-33). This was a consequence apparently of the fact that no specific shale gas play had been identified and multiple direct and indirect pipeline interconnections to the Liquefaction Project meant that

Sabine Pass does not, and really cannot, estimate how much of the export volumes will come from current shale gas production and how much, if any will be new production 'attributable' to the project. The project does not depend on additional shale gas production which may occur for reasons unrelated to the project and over which the Commission has no control, such as state permitting for additional gas wells. An overall

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<sup>22</sup> There are two additional environmental conditions (conditions 13 and 14) in Appendix D of the April 16 order that are not in the EA. The April 16 order describes the reasoning for adding these additional sections in paragraphs 63-65. Environmental condition 13 requires that Sabine Pass receive a necessary air permit prior to construction of pre-treatment facilities or demonstrate through additional modeling that pollutant emissions thresholds will not be exceeded. Also, because Sabine Pass had not selected certain emissions control systems for mitigating acid gas emissions at the time the April 16 order was issued, environmental condition 14 requires Sabine Pass to demonstrate the additional emissions control systems do not affect the previously provided siting analysis. This demonstration must be filed prior to the construction of pre-treatment facilities.

<sup>23</sup> 40 C.F.R. 1508.7 and 1508.8. The FERC also cited to *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5<sup>th</sup> Cir. 2005).

increase in nationwide production of shale-gas may occur for a variety of reasons, but the location and subsequent production activity is unknown, and too speculative to assume based on the interconnected natural gas pipeline system. Accordingly, the factors necessary for a meaningful analysis of when, where, and how shale-gas development will occur are unknown at this time.

April 16 order at 32.

**E. The Sierra Club's Motion for Rehearing and Request for Stay of the Commission's April 16 Order**

On May 16, 2012, the Sierra Club submitted a motion for rehearing and request for a stay *pendente lite* of the Commission's April 16 order.<sup>24</sup> In its rehearing motion, the Sierra Club renewed its arguments that the EA was inadequate under NEPA because FERC did not analyze the potential impacts of increases in natural gas production likely to be caused by a grant of the requested authorization; that FERC should have performed an EIS; and that FERC was required to perform a more thorough analysis of the alternatives to Sabine Pass's proposal and to analyze mitigation opportunities.

In these arguments, the Sierra Club appears to draw a line between the responsibilities of the FERC to conduct an environmental review of the Liquefaction Project and the scope of DOE/FE's NEPA obligations: "Here, FERC is determining whether construction, siting, and operation of an LNG export terminal is in the 'public interest'.... DOE/FE is determining whether or not gas exports themselves are in the 'public interest'...." Motion for Rehearing at 4. The Sierra Club argues that, as lead agency, the FERC has an obligation to conduct an environmental review that meets both agencies' respective obligations. Motion for Rehearing at 3-4. Such an environmental review, according to the Sierra Club, would have included the preparation of an EIS and an analysis of alternatives to the Liquefaction Project and mitigation opportunities. According to the Sierra Club, the alternatives should have been sufficient both for

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<sup>24</sup> The Sierra Club's pleading also asked for a stay *pendente lite* of a May 10, 2012 letter order granting a request submitted by Sabine Pass Liquefaction, LLC, and Sabine Pass LNG, L.P. to commence site preparation activities.

purposes of DOE/FE's authority over the exports of natural gas (including LNG) and FERC's authority over the siting, construction, and operation of the Liquefaction Project:

FERC simply assumes that export will occur, and that shale gas production, in particular, must be enhanced. Whether or not FERC could do so for its facility-siting purposes, DOE/FE may not: Because DOE/FE is considering the propriety of export at all, it cannot reject alternatives simply because they would not further export proposals.

Rehearing Motion at 13. The Sierra Club lists seven alternatives, including not permitting exports at all because they are contrary to the public interest. The Sierra Club maintains that all seven alternatives should be considered "at a minimum" as part of the NEPA analysis.

Rehearing Motion at 13-14. In the absence of a consideration of all seven alternatives, the Sierra Club submits that FERC's conclusion that the Liquefaction Project is consistent with the public interest is arbitrary and capricious.

#### **F. The Commission's July 26 Order**

On July 26, 2012, the Commission denied the Sierra Club's motion for rehearing and also denied the request for a stay (July 26 order). In so doing, the Commission pointed out that, in the April 16 order:

The Commission did not conclude that it was not 'reasonably foreseeable' that the Liquefaction Project would induce increased natural gas production; rather the order stated that it is virtually impossible to estimate how much, if any, of the export volumes associated with the Liquefaction Project will come from existing or new shale gas production. Moreover, while it may be the case that additional shale gas development will result from the Liquefaction Project, the amount, timing, and location of such development activity is simply unknowable at this time.

...The April 16 order added that an overall increase in nationwide production of shale gas may occur for a variety of reasons, but the location and subsequent production of activity is unknown, and too speculative to assume based on the interconnected interstate natural gas pipeline system.... We also noted that the Liquefaction Project does not depend on additional shale gas production which may occur for reasons unrelated to the project, and over which the Commission has no control because it has no jurisdiction over the permitting, siting, construction or operation of natural gas wells.

April 16 order at 4-5.

The FERC noted that it had addressed a similar issue in *Central New York Oil and Gas Company, LLC*, 137 FERC 61,121 (2011), *reh'g denied*, 138 FERC 61,104 (2012), *aff'd Coalition for Responsible Growth and Resource Conservation, et al. v. FERC*, No. 12-566, 2012 U.S. App. LEXIS 11847 (2d Cir. June 12, 2012) (*Central New York*). In that case, the FERC authorized the construction of a natural gas pipeline with a route directly into the heart of the Marcellus Shale region. In determining the scope of the environmental review for the pipeline, the FERC was aware that the Pennsylvania Department of Environmental Protection was issuing thousands of well permits but nonetheless found that

it was unknown if, or when, any of these wells will be drilled, much less what the associated infrastructure and related facilities may be for those wells ultimately drilled. In short, we concluded that the Commission faces too many uncertainties about future well development to assist in our decision making process.

July 26 order at 5.

The Commission observed further that the potential for induced shale gas development is “even more attenuated from the Liquefaction Project than in *Central New York*.” *Id.*

In the July 26 order, the FERC also rejected the Sierra Club’s reliance on the EIA study and on two court decisions, *Northern Plains Resource Council v. Surface Transportation Board*, 668 F.3d 1067 (9<sup>th</sup> Cir. 2011) and *Scientists’ Institute for Public Information, Inc. v. Atomic Energy Commission*, 481 F.2d 1079 (D.C.Cir. 1973). The Sierra Club had asserted that the EIA study and the two cited cases supported the proposition that induced shale gas development resulting from LNG exports is reasonably foreseeable and should be analyzed as part of the environmental review of the Liquefaction Project.

The FERC disagreed. The July 26 order observes that the EIA study is a general economic forecast over 25 years with four export demand scenarios, none of which is specific to

the Liquefaction Project, and that it contains a number of cautionary remarks to the effect that the projections therein are “highly uncertain and subject to many events that cannot be foreseen....” July 26 order at 6, citing EIA study at 3. In short, according to the FERC, the EIA study is not a useful tool on which to make decisions regarding the appropriate scope of environmental review specific to the Liquefaction Project.

The July 26 order finds that Sierra Club’s reliance on the *Northern Plains* decision is also misplaced because the facts of that case are inapposite to the circumstances of the proposed Liquefaction Project. In *Northern Plains*, the Court concluded that the Surface Transportation Board should have considered the cumulative impacts of coal bed methane well development as part of its NEPA analysis of a proposed 89-mile rail line intended to serve specific new coal mines in three counties in Montana. The FERC distinguished *Northern Plains*, as follows:

Unlike the situation presented in *Northern Plains*, the Commission has no similar information about the timing, location and scope of future shale well development associated with the Liquefaction Project. Significantly, the *Northern Plains* court pointed out that the Surface Transportation Board was aware that future coal mine development in the project area was imminent because the Board relied on such development to justify the financial soundness of the proposed rail line. Here...it is unknown how much, if any, new shale gas production the Liquefaction Project will rely on for its export volumes, much less the location or timing of such production.

July 26 order at 7.

Likewise, the FERC distinguished *Scientists’ Institute*, a case in which the Court faulted the Atomic Energy Commission (AEC) for failing to prepare any NEPA analysis for a proposed liquid metal fast breeder reactor program when the AEC had existing detailed estimates and other information regarding the environmental impacts of the breeder program. By contrast, the FERC prepared an EA when considering the proposed Liquefaction Project but declined to factor in the potential for induced shale gas production for which it had no existing detailed or quantifiable information.

In response to several arguments presented by the Sierra Club, the FERC's July 26 order reaffirms its earlier determination that the EA thoroughly analyzed the potential environmental impacts of the Liquefaction Project and that an EIS was not warranted or necessary. Thus, the FERC rejects the Sierra Club's assertion that an EIS is necessary because the Liquefaction Project will have significant greenhouse gas (GHG) emissions. The FERC maintains that CEQ draft guidance makes clear that the level of GHG emissions is not a basis for deciding whether to perform an EA or an EIS. FERC further points out that it reviewed the potential for GHG emissions and identified mitigation measures with which Sabine Pass must comply to reduce those emissions.

Additionally, the FERC rejects the Sierra Club's contention that the controversial nature of the Liquefaction Project necessitates the preparation of an EIS. In this regard, the FERC points out that the CEQ regulations identify the likelihood that a project is going to be controversial as one of ten factors relating to the intensity of the project that determines whether a project significantly affects the quality of the human environment. April 26 order, note 31 at 10, citing 40 C.F.R. 1508.27(b)(4). However, the FERC states that in order to qualify as "controversial," there must be a dispute over the size, nature or effect of the action and that a "controversy does not exist merely because individuals or groups vigorously oppose, or have raised questions about, an action." April 26 order at 10.

The July 26 order also addresses the issue raised by the Sierra Club regarding the range of alternatives that must be considered as part of the environmental review of the Liquefaction Project:

Sierra Club appears to seek a much broader, nationwide review of the costs and benefits of LNG export and its impacts. As an example, it asserts that 'FERC and DOE/FE must consider alternatives to the proposal which would better serve the public interest, broadly analyzing the other approaches to structuring LNG exports and gas use generally, given

exports' sweeping effects on the economy.' This expansive policy proposal is not before the Commission. What is before us is the Liquefaction Project, which will be located entirely within the footprint of the previously approved currently operating Sabine Pass LNG terminal site.... The fact that Sierra Club disputes the Commission's finding that it cannot, nor is it required to, undertake a comprehensive analysis of LNG exports and their associated potential environmental impacts, does not amount to a 'controversy' requiring the preparation of an EIS.

July 26 order at 10-11.

#### **IV. PROCEEDINGS BEFORE DOE/FE**

##### **A. The Sierra Club's Motion to Intervene, Protest, and Comments in the Instant Proceeding**

On April 18, 2012, the Sierra Club submitted a Motion to Intervene Out of Time, Protest, and Comments in the instant proceeding (Motion to Intervene). The Sierra Club's Motion to Intervene was filed sixteen months after the due date for the submission of motions to intervene, protests, and comments established in a Notice of Application that had been published in the Federal Register on October 12, 2010<sup>25</sup> and nearly twelve months after issuance of Order 2961 which conditionally authorized the exports of LNG sought herein by Sabine Pass.

With respect to its motion to intervene, Sierra Club argues that the parties to the instant proceeding would not be prejudiced if intervention is permitted and contends that good cause exists for granting its late intervention "because FERC's deficient finding of no significant impact has issued, making it possible for the first time, to determine whether the environmental review which FERC conducted is sufficient for DOE's purposes." Motion at 5. The Sierra Club presses its point, as follows:

Because that review [FERC's environmental review] is inadequate..., Sierra Club's interests are directly implicated, warranting this intervention. Notably, Sierra Club has intervened mere days after FERC completed its review, thereby opening this new phase in this first proceeding.

*Id.*

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<sup>25</sup> 75 FR.62512 (October 12, 2010).

In further support of its motion to intervene out of time, the Sierra Club alludes to liberal intervention policies employed by the FERC and decisions of federal courts in other cases and also attempts to contrast the present circumstance with DOE/FE's March 25, 2011 procedural order denying a late intervention request filed by the American Public Gas Association (APGA) in this docket. With respect to the latter order, the Sierra Club maintains:

APGA argued that it had good cause to intervene because APGA had not been “monitoring export and import applications before the DOE/FE.”... Thus, APGA's late intervention was not motivated by any factual development other than APGA's own late decision to monitor export applications. The issues APGA raised were purely economic issues, whereas Sierra Club raises the environmental concerns not at issue until now. Moreover, APGA did not demonstrate that its untimely intervention would not adversely impact the proceeding, whereas Sierra Club has made this additional—and more important—showing.

Motion at 6.

As regards its protest and comments, the Sierra Club contends that Sabine Pass's application is not in the public interest and is not supported by adequate environmental analysis. In particular, the Sierra Club opposes the application on grounds that LNG exports will have significant environmental effects, including inducement of harmful shale gas extraction and “fracking.” *Id.* According to the Sierra Club, DOE must conduct a review of these environmental effects as part of the public interest determination that it is responsible to make under section 3(a) of the NGA<sup>26</sup> and in fulfillment of its responsibilities under NEPA. The Sierra Club states that Order 2961 was a conditional, *i.e.* non-final, order and, therefore, DOE/FE has committed to revisiting the determinations made in the Order, particularly including further meaningful environmental review of the impacts of the proposed authorization. The Sierra Club also argues that in commissioning a two-part study of the impacts of LNG exports, DOE/FE has

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<sup>26</sup> Citing Order 2961 at 7, 37, and 40, Sierra Club notes that DOE/FE's conditional order in the instant docket repeatedly recognized that environmental factors must be considered as part of the NGA public interest analysis.

committed to revisiting its conditional authorization prior to issuing a final order in the instant proceeding. Motion at 12.<sup>27</sup>

In this regard, the Sierra Club contends that FERC erred in not giving adequate consideration to these factors and that DOE/FE has a responsibility to not make the same alleged mistake. The Sierra Club claims that DOE/FE cannot rely on FERC's NEPA review because FERC refused to evaluate the impacts of additional natural gas production that would be induced by allowing exports of LNG. The Sierra Club points to several items in support of its position. These include: (1) a statement in Order 2961 (at 37-38) that exports would enhance support for continued natural gas exploration and development activities to supply the export market; Sierra Club argues that this statement was not rebutted; (2) statements by applicants in six other export application proceedings to the same effect; (3) an assertion in the EIA study allegedly "predicting" that 'on average, across all cases and export scenarios,' increased shale gas extraction will account for 72 percent of the study's projected increase in gas production due to LNG exports (citing to EIA analysis at 11); (4) a statement in FERC's EA asserting that the purpose of the Liquefaction Project is to "provide a market solution to allow further development of unconventional (particularly shale gas-bearing formation) sources in the United States" (citing to EA at 1-10); and (5) DOE/FE's acceptance in Order 2961 of Sabine Pass's argument that the proposed LNG exports would produce environmental benefits from greater use of natural gas both domestically and internationally (citing Order 2961 at 40).

Given the foregoing items, the Sierra Club submits that FERC's refusal to examine induced natural gas production was erroneous because such induced production is a reasonably foreseeable consequence of exports. The Sierra Club further maintains that these allegedly

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<sup>27</sup> The first part of the two-part study, referenced *supra* page 10, is the EIA study. The second part of the two-part study has not been released but is intended to build upon the EIA study in order to develop an understanding of the macroeconomic impacts of LNG exports.

reasonably foreseeable consequences are both indirect and cumulative effects of permitting LNG exports which, under NEPA, must be analyzed by DOE/FE (citing to 40 C.F.R. 1508.7).

Moreover, the Sierra Club claims that the decision in *Northern Plains* supports its position that induced gas production must be analyzed as part of the environmental review in this proceeding prior to the issuance of a final order authorizing the proposed exports of LNG. Motion at 15-16.

Much of the balance of the Sierra Club's pleading consists of an attack upon FERC's disposition of arguments that the Sierra Club presented in the FERC proceeding and the submission of evidence not previously received in the instant proceeding that allegedly demonstrates that the production of natural gas induced by LNG exports will be detrimental to the environment and, therefore, contrary to the public interest.

**B. Answer of Sabine Pass in Opposition to the Sierra Club's Motion to Intervene, Protest, and Comments**

On May 3, 2012, Sabine Pass filed an answer in opposition to the Sierra Club's pleading. The answer reviews the procedural history of the proceedings both before this agency and at the FERC. In particular, the applicant points out that the October 12, 2010 publication of the Notice of Application in the instant proceeding gave the Sierra Club legal notice of its opportunity to participate in the matter. Answer at 2. But, as described above, the Sierra Club's motion to intervene was filed some 16 months out of time.

Sabine Pass opposes the late intervention of the Sierra Club on grounds that no good cause has been shown to support the motion and the Sierra Club's intervention at this "late date" in the proceedings would disrupt the decision making process; would be inconsistent with Congressional mandates in the Energy Policy Act of 2005 (EPAAct 2005)<sup>28</sup> streamlining NEPA review of applications under section 3 of the NGA; and would be prejudicial to Sabine Pass and

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<sup>28</sup> Pub. L. 109-58 (Aug. 8, 2005).

other parties.

With respect to the question of “good cause,” Sabine Pass alleges that the Sierra Club has long been aware of this proceeding but nevertheless failed to intervene in a timely manner. If the motion to intervene were granted, Sabine Pass is concerned that the agency’s deadlines effectively would be rendered meaningless and other parties would be encouraged to “engage in similar tactics.” Answer at 8. The applicant maintains further that Sierra Club’s tardiness demonstrates a deliberate strategy of delay and that this strategy is apparent from the fact that the Sierra Club filed its lengthy motion to intervene, protest, and comments only days after the FERC issued its April 16 order authorizing the siting, construction, and operation of the Liquefaction Project. Moreover, Sabine Pass submits that good cause for allowing the late intervention has not been demonstrated because “[r]elief is not given to those who sleep on their rights” and that “the Sierra Club’s clear lack of diligence alone provides ample reason to deny its Motion.” Answer at 10.

Sabine Pass additionally contends that undue prejudice would result if the Sierra Club’s motion to intervene were granted. In this regard, the applicant argues that the Sierra Club seems to proceed from a “fundamental misconception that DOE/FE is only now considering NEPA issues for the first time and must now begin a full-blown NEPA evaluation and also reconsider the public interest determination that it made nearly 12 months ago.” Answer at 11. To the contrary, Sabine Pass contends that the public interest determination has already been made subject only to one condition—DOE’s issuance of a FONSI—and that the public interest determination is not open to reconsideration.

According to Sabine Pass, granting the Sierra Club’s motion to intervene is also objectionable because it would significantly disrupt the lead agency—cooperative agency

environmental review procedures which DOE and the FERC have followed in accordance with sections 311 and 313 of EPCA 2005 and with DOE and CEQ regulations (citing, respectively, 10 C.F.R. 1021.103 and 40 C.F.R. 1506.3(c)). Essentially, this relationship promotes cooperation between agencies and discourages duplication of effort. Furthermore, according to Sabine Pass, the cooperating agency reviews and comments on the lead agency's report before it is published but "[o]nce the report has issued, the role of the cooperating agency is normally limited. As a cooperating agency under NEPA, DOE/FE 'may adopt without recirculating' FERC's EA if, 'after an independent review' of the EA, DOE/FE 'concludes that its comments and suggestions have been satisfied.'" 40 C.F.R. 1506.3(c) (emphasis added).<sup>29</sup>

Sabine Pass argues that granting the Sierra Club's motion to intervene additionally would be prejudicial to other parties, including Sabine Pass itself and its affiliates, to the State of Louisiana and parish governments that stand to benefit economically from the Liquefaction Project, to suppliers of goods and services for the Project, and to customers of the Liquefaction Project who have executed LNG sale and purchase agreements with Sabine.

On the question of the adequacy of FERC's EA, Sabine Pass agrees with the FERC that NEPA requires analysis of "reasonably foreseeable" cumulative effects but that an impact is reasonably foreseeable if it is sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision. *Citing, City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5<sup>th</sup> Cir. 2005); *Society Hill Towers Owners' Ass'n v. Rendell*, 210 F.3d 168, 181 (3d Cir. 2000); *City of Oxford v. FAA*, 428 F.3d 1346, 1353-54 (11<sup>th</sup> Cir. 2005); and *Border Power Plant Working Grp. v. Dep't of Energy*, 260 F.Supp. 2d 997, 1027-28 (S.D. Cal. 2003).

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<sup>29</sup> Sabine Pass relies on the decisions in *LaFlamme v. FERC*, 945 F.2d 1124 (9<sup>th</sup> Cir. 1991) and *Sierra Club v. U.S. Army Corps of Engineers*, 295 F.3d 1209, 1215 (11<sup>th</sup> Cir. 2002) and prior DOE/FE-FERC practice, e.g. in *Cheniere Marketing Inc*, FE Docket No. 08-77-LNG, as further support for its position that cooperating agencies are not required to duplicate the work performed by lead agencies.

Sabine Pass draws a direct analogy between the circumstances in this proceeding with the circumstances addressed in *South Coast Air Quality Mgm't. v. FERC*, 621 F.3d 1085, 1101 (9<sup>th</sup> Cir. 2010). In *South Coast*, according to Sabine Pass, the plaintiff argued that the cumulative indirect effects of burning natural gas shipped through a particular pipeline were reasonably foreseeable because at the time it authorized the shipment, FERC knew the amount of the gas the pipeline will transfer; the expected NO<sub>x</sub> emissions that will result from the gas's consumption; and the environmental harm that will result from that consumption. Sabine Pass states that the Ninth Circuit disagreed because the known information did not include the volume of gas that would actually get shipped and that, while the FERC knew the minimum baseline properties of the gas when it entered the pipeline, it did not necessarily know the qualities of the gas when it was burned after shipment.

By comparison to the circumstances in *South Coast*, Sabine Pass asserts, the cumulative effects of increased shale gas production from the instant proposal are even less foreseeable. Sabine Pass maintains that this is because (1) the amount of LNG ultimately exported over the 20 year authorization will depend on market conditions that, in the words of the EIA study, "could change substantially in response to significant changes in natural gas trading patterns" (citing EIA study at 3); and (2) the gas delivered to the liquefaction facility could be delivered through one or more multiple pipeline interconnects that draw gas from any number of shale gas deposits or even from conventional sources. Overall, Sabine Pass agrees with the April 16 order (at pages 96-99) that "the analysis must end somewhere; these kinds of generalized indirect effects are far too speculative to be considered under NEPA." Answer at 20.

Finally, Sabine Pass maintains that an EIS is not warranted for the same reasons given by the FERC in the April 16 order.

## V. DISCUSSION AND CONCLUSIONS

### A. **Sierra Club has not demonstrated good cause for granting its motion to intervene out of time.**

Section 590.303(d) of DOE's regulations (10 CFR 590.303(d)) states that motions to intervene out of time may be granted "for good cause shown and after considering the impact of granting the late motion on the proceeding." The Sierra Club argues that good cause exists for granting its late intervention because the Commission's issuance of a FONSI has made it possible for the first time for DOE to determine whether the environmental review that FERC conducted is sufficient for DOE's purposes. The Sierra Club asserts that the concerns that cause it to seek to intervene were not at issue "until now" and that it has intervened "mere days" after FERC completed its review, thereby opening this "new phase" in the DOE proceeding.

The Sierra Club's position is factually incorrect and does not establish good cause for granting the Motion to Intervene. The Notice of Application issued by DOE/FE in this proceeding and published in the Federal Register on October 12, 2010 stated clearly, as follows:

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

75 FR at 62513. Thus, the public was put on notice as of October 12, 2010 that DOE/FE would be considering the potential environmental impacts of the proposed exports in its review of the application.

In addition, the Commission's Notice of Intent to Prepare an Environmental Assessment of the Liquefaction Project, issued October 29, 2010, mailed to environmental organizations, among others, and published in the Federal Register on November 5, 2010 notified the public that DOE intended to be a cooperating agency in the Commission's environmental review in order to help fulfill DOE's responsibilities in the instant proceeding. The Notice stated in part as

follows:

### **Involvement of U.S. Department of Energy**

The FERC is the lead federal agency in preparation of an EA that will satisfy the requirements of the National Environmental Policy Act (NEPA). The U.S. Department of Energy, Office of Fossil Energy (DOE) has agreed to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities. DOE proposes to authorize Sabine Pass Liquefaction, LLC to export liquefied natural gas (LNG) from the Sabine Pass LNG Terminal (SPLNG Terminal) if DOE determines that such export is in the public interest.

The DOE must meet its obligation under section 3 of the Natural Gas Act of 1938, as amended (NGA), to authorize the import and export of natural gas, including LNG, unless it finds that the proposed import or export will not be consistent with the public interest. The purpose and need for DOE action is to respond to the September 7, 2010, application filed with DOE (FE Docket No. 10-111-LNG) by Sabine Pass Liquefaction, LLC, in conjunction with the Sabine Pass Liquefaction Project.

In light of these published issuances, the Sierra Club was put on notice that DOE/FE was going to review environmental issues presented by the instant proceeding and that DOE/FE was going to cooperate in FERC's environmental review. The Sierra Club, like other members of the public, had a responsibility to comply with the filing deadlines established in the Notice of Application if it wanted to raise issues regarding the environmental impacts of granting the instant application. Accordingly, we reject the Sierra Club's contention in its Motion to Intervene that the completion of the Commission's environmental review established a "new phase" in the instant proceeding or that environmental concerns have not been raised in the instant proceeding "until now."

In fact, it appears that the issues raised by the Sierra Club in its Motion to Intervene are in substance the same issues raised by the Sierra Club in its challenge to the adequacy and lawfulness of the EA and those issues have already been addressed by the Commission. This fact further belies the Sierra Club's claim that good cause exists to permit its late intervention.

The Commission has compiled a complete administrative record on the issues that concern the Sierra Club with the Sierra Club's participation. The issuance of the July 26 order appears to mean that the Commission has taken final agency action that may be ripe for judicial review under section 19(b) of the NGA. Were DOE/FE to grant the Motion to Intervene, it would raise a possibility of duplicative or even conflicting administrative proceedings on a matter that has been delegated to and decided by the FERC and that may already be headed to court. DOE/FE does not see good cause for permitting an intervention sixteen months out of time in order to commence a hearing of the substantive issues raised by the Sierra Club under these circumstances.

**B. Granting the Sierra Club's Motion to Intervene Out of Time would unduly prejudice the rights of the parties to this proceeding but denying the motion would not unduly prejudice the rights of the Sierra Club.**

Notwithstanding the Sierra Club's claims to the contrary, DOE/FE finds that granting the Motion to Intervene would unnecessarily delay the issuance of final agency action herein and unfairly prejudice the parties to this proceeding. Sabine Pass has identified a number of potential negative impacts on its business interests and the interests of other persons that allegedly would follow from a grant of the Sierra Club's Motion to Intervene. DOE has not conducted a hearing to determine the basis for all of these alleged negative consequences. However, it is reasonable to conclude at least that Sabine Pass's own business interests will be negatively affected by further delay in the issuance of a final order herein. On the other hand, the Sierra Club has been given an opportunity to litigate the issues that concern it before the FERC and may have a right to appeal the FERC's orders. Consequently, it does not appear that the Sierra Club would be substantively prejudiced by a denial of its motion to intervene herein. On balance, therefore, the relative interests of parties and the Sierra Club require that the Motion to Intervene not be

granted.

**C. Sierra Club has not demonstrated that the EA is inadequate or otherwise needs to be supplemented.**

As a cooperating agency in the Commission's environmental review, DOE/FE is responsible for conducting an independent review of the results of the Commission's efforts and determining whether the record needs to be supplemented in order for DOE/FE to meet its statutory responsibilities under section 3 of the NGA and under NEPA. DOE/FE has reviewed the administrative record compiled at the FERC, including the EA and the Commission's orders. Based on that review, DOE/FE has concluded that supplementation of the record is not warranted or necessary in order for DOE/FE to take final agency action herein. DOE/FE accepts and adopts the findings contained in the Commission's April 16 and July 26 orders.

We do not agree with the Sierra Club insofar as it appears to be arguing that the nature of DOE's authority over the export of natural gas requires a broader or different environmental analysis than the one performed by the FERC. Because the Commission examined all reasonably foreseeable impacts of the Liquefaction Project, DOE believes that the scope of the EA is appropriate and the EA provides a complete picture for purposes of meeting DOE's NEPA responsibilities and fulfilling its duty to examine environmental factors as a public interest consideration under the NGA.

In reaching this conclusion, DOE/FE is mindful of the Sierra Club's argument that DOE/FE cannot rely on FERC's NEPA review because FERC refused to evaluate the impacts of additional natural gas production that may be induced by allowing exports of LNG. The Commission determined that it is impossible to estimate how much, if any, of the export volumes associated with the Liquefaction Project will come from existing or new shale gas production

and that it is also impossible to know the amount, timing, and location of such shale gas development activity.

DOE/FE accepts and adopts the Commission's determination that induced shale gas production is not a reasonably foreseeable effect for purposes of NEPA analysis, for the reasons given by the Commission. The Sierra Club has not identified any specific shale gas play that will be or is even projected as likely to be the source of gas processed in and exported through the Liquefaction Project. Additionally, as FERC noted in the April 16 order, there are multiple direct and indirect pipeline interconnections to the Liquefaction Project. In this regard, we agree with the FERC's determination that the *Northern Plains* case is inapposite because in the present circumstances it is unknown how much, if any, new shale gas production the Liquefaction Project will rely on for its export volumes, much less the location or timing of such production. These factors individually and, even more so when combined, make it impossible to meaningfully analyze when, where, and how shale-gas development will be affected by the Liquefaction Project and the proposed exports.

We hasten to add that DOE/FE is fully aware of concerns over the environmental effects of shale gas production. Those concerns are currently under study by agencies of the Federal government and, as noted in Order 2961,<sup>30</sup> DOE is participating in that effort. But, for the reasons set forth in the Commission's orders, the existence of such concerns does not establish a causal connection capable of supporting meaningful analysis of the potential environmental impacts of whether or how the Liquefaction Project and the exports of natural gas from the Project will affect shale gas development.

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<sup>30</sup> Order 2961 at 32-33.

## VI. FINDINGS

In addition to those findings set forth above and in Order No. 2961, we find that it has not been shown that a grant of the requested authorization will be inconsistent with the public interest, and we further find that the application should be granted subject to the terms and conditions set forth herein. The ordering paragraphs that follow reflect current DOE practice and are intended to replace the ordering paragraphs contained in Order 2961.

### ORDER

Pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. Sabine Pass is authorized to export domestically produced LNG by vessel from the Sabine Pass LNG Terminal up to the equivalent of 803 Bcf per year of natural gas for a term of 20 years to commence on the earlier of the date of first export or five years from the date of the issuance of this authorization on its own behalf or as agent for others pursuant to one or more long-term contracts (a contract with a term greater than two years) that do not exceed the term of this authorization.

B. Sabine Pass shall ensure compliance with the terms and conditions established by the Federal Energy Regulatory Commission in the *Environmental Assessment for the Sabine Pass Liquefaction Project* (December 2011); the *Order Granting Section 3 Authorization*, issued April 16, 2012; and the *Order Denying Rehearing and Stay*, issued July 26, 2012, including the 55 environmental conditions listed in Appendix D of the *Order Denying Rehearing and Stay*, in FERC Docket Nos. PF10-24-000 and CP11-72-000.

C. Sabine Pass must commence export operations using the planned liquefaction facilities no later than seven years from the date of issuance of Order 2961.

D. This LNG may be exported to any country with which the United States does not

have a FTA requiring the national treatment for trade in natural gas, which currently has or in the future develops the capacity to import LNG, and with which trade is not prohibited by United States law or policy.

E. Sabine Pass shall ensure that all transactions authorized by this order are permitted and lawful under United States laws and policies, including the rules, regulations, orders, policies, and other determinations of the Office of Foreign Assets Control of the United States Department of the Treasury and the FERC. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

F. Sabine Pass, or others for whom Sabine Pass acts as agent, shall include the following provision in any LPS agreement or other contract for the sale or transfer of LNG exported pursuant to this Order:

"Customer or purchaser acknowledges and agrees that it will resell or transfer LNG purchased hereunder for delivery only to countries identified in Ordering Paragraph D of DOE/FE Order No. 2961, issued May 20, 2011 in FE Docket No. 10-111-LNG, and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such LNG to such countries. Customer or purchaser further commits to cause a report to be provided to Sabine Pass Liquefaction, LLC that identifies the country of destination, upon delivery, into which the exported LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to insure that Sabine Pass Liquefaction, LLC is made aware of all such actual destination countries."

G. Sabine Pass shall file with the Office of Natural Gas Regulatory Activities or cause others to file all executed long-term contracts associated with the long-term export of LNG from the Sabine Pass LNG Terminal pursuant to this authorization within 30 days of their execution.

Sabine Pass shall file with the Office of Natural Gas Regulatory Activities or cause others to file all executed long-term contracts associated with the long-term supply of natural gas to the Sabine Pass LNG Terminal with the intent to process this natural gas into LNG for export pursuant to this authorization within 30 days of their execution.

H. Sabine Pass is permitted to use its authorization in order to export LNG on its own behalf or on behalf of or as agent for others, after registering the other party with DOE/FE.

I. As a condition of this authorization, Sabine Pass shall ensure that all persons required by this Order to register with DOE/FE have done so. Any failure by Sabine Pass to ensure that all such persons or entities are registered with DOE/FE shall be grounds for rescinding in whole or in part the authorization.

J. Registration materials shall include an acknowledgement and agreement by the registrant to supply Sabine Pass with all information and copies of contracts necessary in order to permit Sabine Pass to register that person or entity with DOE/FE, including: (1) the registrant's agreement to comply with this Order and all applicable requirements of DOE's regulations at 10 CFR Part 590, including but not limited to destination restrictions; (2) the exact legal name of the registrant, state/location of incorporation/registration, primary place of doing business, and the registrant's ownership structure, including the ultimate parent entity if the registrant is a subsidiary or affiliate of another entity; (3) the name, title, mailing address, e-mail address, and telephone number of a corporate officer or employee of the registrant to whom inquiries may be directed; (4) an acknowledgement and agreement by the registrant to include the Ordering Paragraph F provision in any contract for the sale or transfer of LNG exported pursuant to this Order; (5) within 30 days of execution, a copy, filed with DOE/FE under seal, of any long-term contracts, including LPS agreements, that result in the export of natural gas, including LNG; and

(6) within 30 days of execution by a person or entity required by this Order to register, a copy, filed with DOE/FE under seal, of any long-term contracts associated with the long-term supply of natural gas to the Sabine Pass LNG Terminal with the intent to process this natural gas into LNG for export pursuant to this authorization.

K. Each registration submitted pursuant to this Order shall have current information on file with DOE/FE. Any changes in company name, contact information, change in term of the long-term contract, termination of the long-term contract, or other relevant modification, shall be filed with DOE/FE within 30 days of such change(s).

L. Sabine Pass shall file with the Office of Natural Gas Regulatory Activities, on a semi-annual basis, written reports describing the progress of the planned liquefaction facility project. The reports shall be filed on April 1 and October 1 of each year, and shall include information on the progress of the Sabine Pass LNG Terminal liquefaction facility, and the status of the long-term contracts associated with the long-term export of LNG and any long-term supply contracts.

M. Prior to any change in control of the authorization holder, whether by asset sale, stock transfer, or other means, Sabine Pass must obtain the approval of the Assistant Secretary for Fossil Energy.

N. Within two weeks after the first export of LNG sourced from domestically produced natural gas occurs, Sabine Pass shall provide written notification of the date that the first export of LNG authorized in Order Paragraph A above occurred.

O. Monthly Reports: With respect to the LNG exports authorized by this Order, Sabine Pass shall file with the Office of Natural Gas Regulatory Activities, within 30 days following the last day of each calendar month, a report indicating whether exports of LNG have been made. The first monthly report required by this Order is due not later than the 30<sup>th</sup> day of the month

following the month of first export. In subsequent months, if exports have not occurred, a report of “no activity” for that month must be filed. If exports of LNG have occurred, the report must give the following details of each LNG cargo: (1) the name(s) of the authorized exporter registered with DOE/FE; (2) the name of the U.S. export terminal; (3) the name of the LNG tanker; (4) the date of departure from the U.S. export terminal; (5) the country of destination; (6) the name of the supplier/seller; (7) the volume in Mcf; (8) the price at point of export (FOB) per MMBtu; (9) the duration of the supply agreement (indicate spot sales); and (10) the name(s) of the purchaser (s).

(Approved by the Office of Management and Budget under OMB Control No. 1901-0294)

P. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Natural Gas Regulatory Activities, P.O. Box 44375, Washington, D.C. 20026-4375. Alternatively, reports may be-mailed or faxed to the Office of Natural Gas Regulatory Activities, respectively, at [ngreports@hq.doe.gov](mailto:ngreports@hq.doe.gov) or (202) 586-6050.

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