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



Cameron LNG, LLC

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FE Docket No. 11-162-LNG

**ANSWER OF CAMERON LNG, LLC IN OPPOSITION
TO SIERRA CLUB’S MOTION TO REPLY AND REPLY COMMENTS**

Pursuant to sections 590.302(b) and 590.306(f) of the Department of Energy’s (“DOE”) regulations, 10 C.F.R. §§ 590.303(e) & 590.306(f) (2012), Cameron LNG, LLC (“Cameron LNG”) submits this answer (“Answer”) to Sierra Club’s Motion to Reply and Reply Comments (“Motion and Additional Protest”), filed in this proceeding on May 23, 2012. In its Motion and Additional Protest, Sierra Club seeks leave to submit further comments in protest of Cameron LNG’s application to export LNG to countries with which the United States does not have a free-trade agreement and provides those comments to the DOE. Sierra Club’s motion should be denied because the DOE’s rules do not contemplate such a submission, and Sierra Club should not be permitted to file what amounts to a supplemental protest outside the procedures that govern the adjudication of import and export applications under section 3 of the Natural Gas Act (“NGA”). To the extent the DOE grants Sierra Club’s motion and accepts Sierra Club’s additional protest, Cameron LNG should be permitted to answer pursuant to section 590.306(f) of DOE’s rules, 10 C.F.R. § 590.306(f) (2012), and Cameron LNG is submitting such an answer herein.

I. ANSWER IN OPPOSITION TO MOTION

Sierra Club’s motion should be denied because the submission amounts to a supplemental protest not contemplated by the DOE’s rules. On December 21, 2011, Cameron LNG filed its

application to export LNG to non-FTA countries (“Application”). Pursuant to section 590.304(a) of the DOE’s rules, 10 C.F.R. § 590.304(a) (2012), and the Notice of Application published in the *Federal Register* on February 23, 2012, 77 Fed. Reg. 10732, 10733 (2012), any person objecting to the Application was permitted to file a protest to Cameron LNG’s application on or before April 23, 2012. Sierra Club, among others, filed such a protest.¹ See Sierra Club’s Motion to Intervene, Protest, and Comments (Apr. 23, 2012) (“Sierra Club Protest”).

Section 590.304(f) of the DOE’s rules, 10 C.F.R. § 590.304(f) (2012), specifies that Cameron LNG was permitted to file an answer to any protests within 15 days, or by May 8, 2012. See 10 C.F.R. § 590.304(f) (2012). Cameron LNG filed a timely answer as contemplated by the rules. See Answer of Cameron LNG, LLC to Motions to Intervene, Protests, and Comments (May 8, 2012) (“Answer to Protests”).

The DOE’s rules only contemplate (i) a protest to an application, and (ii) an answer by the applicant, and do not contemplate any further submission on the part of persons challenging an application. Moreover, the Notice of Application specifically required that “[a]ll protests [and] comments ... must meet the requirements specified in by regulations in 10 CFR part 590.” 77 Fed. Reg. 10732, 10735 (2012). Therefore, Sierra Club’s submission amounts to an untimely, supplemental protest that is contrary to the DOE’s rules.

Sierra Club’s current argument that it somehow reserved a right to provide additional comments in protest is not supportable. See Motion and Additional Protest at 1 (citing Sierra Club Protest at 5 n.2). As an initial matter, the Sierra Club Protest only purports to reserve a right to reply to an opposition to its motion to intervene, and not to Cameron LNG’s answer to

¹ Sierra Club also filed a motion to intervene, which Cameron LNG opposes. See Cameron LNG Answer to Protests at 4–5. Because DOE’s rules regarding motions to intervene do not contemplate answers to answers, see 10 C.F.R. § 590.303 (2012), Sierra Club’s “reply” to Cameron LNG’s opposition to its motion to intervene should be rejected. See Motion and Additional Protest at 2.

the protest. *See* Sierra Club Protest at 5 n.2. DOE's rules contemplate that motions to intervene on the one hand, and protests on the other, are distinct and separate submissions with different requirements for each.² Sierra Club now tries to conflate the two, and this should be rejected.

Sierra Club has no right under the DOE's rules to reply to Cameron LNG's Answer to Protests, and granting Sierra Club's motion will encourage other parties in this proceeding and in other import/export application proceedings to ignore the DOE's procedures and file protests out of time. Sierra Club has had its opportunity to protest Cameron LNG's Application. Sierra Club's motion should therefore be denied.

To the extent that DOE grants Sierra Club's motion to submit an additional protest, Cameron LNG must be permitted to answer Sierra Club's comments pursuant to section 590.304(f), 10 C.F.R. § 590.304(f) (2012), and Cameron LNG submits its answer as follows.

II. ANSWER TO ADDITIONAL PROTEST

A. Sierra Club Fails to Overcome the Rebuttable Presumption That LNG Exports Are in the Public Interest

Applications to export LNG are governed by section 3 of the NGA.³ Applications such as that of Cameron LNG for export to non-FTA countries are governed by section 3(a), which provides as follows:

[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary] authorizing it to do so. *The [Secretary] shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest.* The [Secretary] may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate, and may from time to time, after opportunity for

² Compare 10 C.F.R. §§ 590.303 ("Interventions and Answers") and 509.304 ("Protests and Answers").

³ 15 U.S.C. § 717b. This authority is delegated to the Assistant Secretary for FE pursuant to Redesignation Order No. 00.002.04D (Nov. 6, 2007).

hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.⁴

DOE consistently has held that section 3(a) creates a rebuttable presumption that proposed exports of natural gas are in the public interest.⁵ Accordingly, such an application must be granted unless opponents of the authorization make an affirmative showing based on evidence in the record that the export would be inconsistent with the public interest.⁶

Sierra Club's objections do not credibly show that natural gas exports are inconsistent with the public interest but instead are characterized by its hostility toward fossil fuels of any type, as illustrated by its current anti-natural gas campaign, "Dirty, Dangerous, and Run Amok."⁷ As was the case with its initial Protest, the arguments in the Motion and Additional Protest are largely irrelevant to the DOE's section 3 public interest determination and do not overcome the rebuttable presumption that the natural gas exports and the Cameron LNG project are not inconsistent with the public interest.

B. Sierra Club's Environmental Arguments Should Be Rejected

Environmental Review

Throughout its Motion and Additional Protest, Sierra Club asserts that DOE must consider detailed environmental issues regarding shale gas production as part of the public interest determination. *See* Motion and Additional Protest at 2–7. Sierra Club's supplemental protest adds nothing new to what it raised in its initial Protest and confuses the roles and responsibilities of DOE and FERC.

⁴ *Id.* (emphasis added).

⁵ *E.g.*, *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961 at 28, FE Docket No. 10-111-LNG (May 20, 2011); *Conoco Phillips Alaska Natural Gas Corp. and Marathon Oil Co.*, DOE/FE Order No. 2500 at 43, FE Docket No. 07-02-LNG (Jun. 3, 2008); *Conoco Phillips Alaska Natural Gas Corp. and Marathon Oil Co.*, DOE/FE Order No. 1473 at 13, FE Docket No. 96-99-LNG (Apr. 2, 1999).

⁶ *Conoco Phillips Alaska Natural Gas Corp. and Marathon Oil Co.*, Order No. 1473 at 13 n.42 (citing *Panhandle Producers and Royalty Owners Ass'n v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)); *see also Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, FE Docket No. 10-111-LNG (May 20, 2011).

⁷ *See* <http://content.sierraclub.org/naturalgas/> (last visited June 6, 2012).

Under section 3(e) of the NGA, FERC “shall have exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal.” NGA § 3(e)(1), 15 U.S.C. § 717b(e)(1). The Energy Policy Act of 2005 added a new section 15(b)(1), which governs NEPA analyses for “Federal Authorizations,” which includes “any authorization required under Federal law with respect to an application for authorization under section 3 [of the NGA]. . . ; and includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law with respect to an application for authorization under section 3 [of the NGA]. . . .” NGA § 15(a)(1)-(2), 15 U.S.C. § 717n(a)(1)-(2). Section 15(b)(1) states: “The [Federal Energy Regulatory] Commission *shall* act as the lead agency for the purposes of coordinating all applicable Federal authorizations *and for the purposes of complying with the National Environmental Policy Act of 1969.*” NGA § 15(b)(1), 15 U.S.C. § 717n(B)(1) (emphasis added). Therefore, by statute, FERC, and not DOE, is the agency that will perform the NEPA analysis and before which any environmental arguments will need to be made. DOE, while having an active role as a cooperating agency, is not permitted to duplicate this function. The proper forum to air environmental arguments about this project is at FERC.

Given this statutory division of labor, Cameron LNG has requested an order conditioned on the successful completion of the NEPA process at FERC. Application at 28. This is consistent with DOE’s previous orders, including that for Sabine Pass. *See Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, at 40–41. There will be no final DOE order for purposes of this question until after the NEPA review is completed, in which DOE will take part as a cooperating agency. DOE’s regulations expressly allow for conditional orders pending environmental review. *See* 10 C.F.R. § 590.402 (authorizing DOE to issue a conditional order

prior to issuance of a final opinion and order). Thus, there is no conflict with the NEPA regulations, including those cited by Sierra Club at 40 C.F.R. Part 1500.

Increased Shale Gas Production

Sierra Club continues to urge DOE's consideration of potential environmental effects of general increased shale gas production. See Motion and Additional Protest at 5–6. Although environmental issues are to be raised before FERC, Cameron LNG notes that FERC on at least three occasions has rejected similar arguments that a NEPA analysis must take into account general effects of increased shale gas production. See *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138 at PP 70–73 (2012); *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039 at PP 94-99 (2012) (“*Sabine Pass FERC Order*”); *Central N.Y. Oil & Gas Co.*, 137 FERC ¶ 61,121 at PP 81-107 (2011) (“*CYNOG*”), *reh'g denied*, 138 FERC ¶ 61,104 at PP 33-56 (2012), *on appeal*, *Coalition for Responsible Growth & Resource Conservation v. FERC*, 2d Cir. No. 12-566. “NEPA requires a ‘reasonably close causal relationship’ between the environmental effect and the alleged cause. In order to be sufficiently causally connected, the environmental impact must be 1) caused by the proposed action, and 2) reasonably foreseeable.” *CYNOG* at P 83; see also *Sabine Pass FERC Order* at P 95. In each case, FERC determined that shale gas development and associated potential environmental impacts were not sufficiently causally related to the natural gas project to warrant the type of review that Sierra Club seeks here. See *Sabine Pass FERC Order* at P 96; *CYNOG* at P 84; *Texas Eastern* at P 72. In short, the projects did not require shale gas development as a predicate, and shale gas development could increase or not without regard to the existence of the project. See *CYNOG* at P 90-92; *Sabine Pass FERC Order* at P 98; *Texas Eastern* at P 72. Finally, the projects and shale gas development were not

causally connected because state agencies, and not FERC, regulate the siting and production of natural gas. *See CYNOG* at P 93; *Texas Eastern* at P 71.

In addition, FERC found that the environmental effects of the type invoked by Sierra Club were not “reasonably foreseeable” under the Council on Environmental Quality’s regulations, not because shale gas production is not reasonably foreseeable in a general sense, but because impacts from specific new well sites and related environmental effects at such sites are highly speculative and cannot be estimated in any meaningful way. *See CYNOG* at PP 96-107; *Sabine Pass FERC Order* at PP 96-99; *Texas Eastern* at P 73. FERC found that there was no way to relate specific production and gathering activities to the projects in question. This is so for a number of reasons, including market forces and the fact that shale gas production is permitted and regulated at the state level and not by FERC:

To require the Commission to guess whether or when permitted wells may be drilled, when additional wells may be permitted, and where additional infrastructure such as compressor and gas processing stations, gathering lines, etc. will be placed, would at best amount to speculation as to future events and would be of little use as input in deciding whether to approve the [project].

CYNOG at P 100. The exact same concerns are present here. Shale gas production is neither causally related to the Cameron LNG project, nor are the impacts from shale gas production “reasonably foreseeable” for purposes of a NEPA review.

Finally, Sierra Club argues that Cameron LNG relies on the benefits of increased natural gas production for its conclusion that the Project is in the public interest, but does not consider cumulative and indirect effects of increased production in a NEPA analysis. *See Motion and Additional Protest* at 5 (citing *Scientists’ Inst. for Pub. Information, Inc. v. Atomic Energy Comm’n*, 481 F.2d 1079 (D.C. Cir. 1973) (a case applying NEPA)). *Scientists’ Institute* does not help Sierra Club. As an initial matter, this argument confuses statutory obligations under a section 3 public interest analysis and an environmental review under NEPA. The two are quite

distinct and should not be conflated. Second, it is entirely possible that general benefits to the economy and the security of the United States can be identified for purposes of a DOE public interest analysis, while at the same time causal and reasonably foreseeable effects are not identifiable for purposes of a NEPA analysis. Economic, security, and trade benefits, including job growth and economic ripple effects from gas production, can be, and routinely are, analyzed for the United States as a whole.⁸ *Scientists' Institute* does not support Sierra Club's position.

State Regulation of Gas Production

Sierra Club argues that state regulation of gas production does not relieve DOE of an obligation to consider environmental effects in a public interest analysis and criticizes Cameron LNG for purportedly relying on *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004). *See* Motion and Additional Protest at 6. However, Cameron LNG did not cite to that case in its Answer to Protests, and apparently Sierra Club recycled this argument without regard to its applicability here. Therefore, Part II.B.4 of Sierra Club's Motion and Additional Protest should be disregarded in its entirety.

Even if DOE is not so inclined, Sierra Club's argument regarding *Public Citizen* is circular and conclusory at best, and it must be rejected. To make its argument that DOE has influence over shale gas production, Sierra Club assumes that denial of the Cameron LNG project will result in less shale gas production, which of course is exactly the result it is seeking to prove. *See id.* Moreover, FERC, as discussed above, has already found no sufficient link between various natural gas infrastructure projects and shale gas production in the context of a NEPA analysis. Sierra Club's arguments should be rejected.

⁸ *See* Application at 22–27; *see, e.g., Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, at 29–30, 37–38.

Record Evidence

Because Sierra Club's arguments regarding general increased shale gas production are simply not relevant to this proceeding, any "evidence" submitted in this vein is not material.

C. The Remainder of Sierra Club's Additional Protest Also Does Not Overcome the Rebuttable Presumption that Natural Gas Exports Are in the Public Interest

Nothing set forth in Part II.C of Sierra Club's Motion and Additional Protest seriously contradicts Cameron LNG's public interest arguments or overcomes the rebuttable presumption that LNG exports are in the public interest.

Sierra Club continues to criticize Cameron LNG's use of an input-output model that it claims does not take into account sufficient so-called counterfactuals and foregone opportunities. *See* Motion and Additional Protest at 7. Cameron LNG explained in detail how it implemented a customized economic analysis using regional input-output multipliers prepared for Cameron LNG by the Bureau of Economic Analysis. *See* Application at 22–24; Answer to Protests at 17–19. Described by the Department of Commerce as "widely used in both public and private sector[s]," Cameron LNG's analysis does not need to take into account every hypothetical and is more than sufficient to support a finding that the Project is in the public interest. Moreover, as explained by Cameron LNG, Sierra Club's position conflicts with U.S. government policies and assertions, which assume that increased natural gas exports will increase the number of U.S. jobs and bring wealth to the United States. *See* Answer to Protests at 15–16, 19–20.

Regardless of Sierra Club's criticism of specific issues with respect to the Economic Impact Analysis and the conclusions regarding job creation found therein, Sierra Club's ultimate determination was that "[t]he jobs effect, in either direction, turns out to be too small to be statistically significant." Sierra Club Protest at 47. Even if one accepts this luke warm conclusion that the Project is at worst neutral with respect to job creation—and Cameron LNG

disputes that assertion for the reasons set forth in its Application and Answer to Protests—the inevitable conclusion DOE must reach is that Sierra Club has failed to overcome the presumption that natural gas exports are not inconsistent with the public interest.

Sierra Club’s arguments regarding the effect of exports on price are founded on wildly unlikely factual scenarios. As pointed out by Cameron LNG, the EIA Report did not take into account producers’ response to increasing natural gas prices. Instead, a dynamic model that includes increased production in the response to increasing prices, such as that prepared by Deloitte Center for Energy Solutions and Deloitte MarketPoint, yields only a 1.7% city gate price increase by 2035 based on 6 Bcf/d of exports. *See* Answer to Protests at 12. Sierra Club does not cure the EIA Report’s limitations. *See* Motion and Additional Protest at 8.

Sierra Club’s argument that DOE must rely on the “high/rapid” scenario in EIA’s January 2012 study is similarly without merit. Such a position is inconsistent with the fundamentals of the global natural gas markets. For reasons set forth in Cameron LNG’s Answer to Protests, it is simply not plausible that U.S. exports would grow to the magnitude and at the pace reflected in the high/rapid scenario. *See* Answer to Protests at 11–12. It would be illogical, and therefore arbitrary, for DOE to assume unlikely or implausible results when making a public interest determination under section 3 of the NGA. Therefore, DOE should not rely on the extreme scenarios contained in the EIA report and should look instead to the most likely effect on prices given the world market for natural gas and the ability of other countries to ramp up LNG exports to compete against those of the United States. Of the scenarios presented by EIA, the low/slow scenario is the most likely—although still quite aggressive—and is not inconsistent with Cameron LNG’s conclusion that its project will not result in significant price increases. *See* Answer to Protests at 13–15.

Similarly, Sierra Club criticizes the Brookings Institute Report⁹ cited by Cameron LNG because it concluded that lower-end estimates of exports are the most likely, but Sierra Club does not actually attempt to show that Brookings is incorrect. Rather, Sierra Club merely argues that export *proposals* are higher than such estimates. Motion and Additional Protest at 9. However, this is not surprising; although there may be several non-FTA export applications pending at DOE, whether any particular export facility will be ultimately constructed depends entirely on market forces. It is unlikely that all of the export facilities will be built. Sierra Club argues that DOE must make its determinations on the assumption that all of the projects must be built, but does not cite to any authority for that proposition. As discussed above, DOE is not required to make implausible assumptions and indeed it would be arbitrary for DOE to do so.

Finally, Sierra Club also criticizes the Brookings Report on the grounds that it does not sufficiently take into account environmental considerations, such as “environmental impacts of increased fracking” and other effects on land use, air quality, and water quality that result from increased shale gas production. *See* Motion and Additional Protest at 9. However, as discussed above, those issues, to the extent relevant, will be considered in the NEPA review at FERC with DOE participating as a cooperating agency.

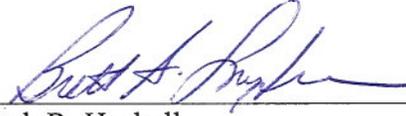
III. CONCLUSION

Sierra Club’s motion to reply is nothing more than an attempt to submit untimely, supplemental comments in protest of Cameron LNG’s Application, which are not allowed under the DOE’s procedural rules, and the motion should be denied.

⁹ Energy Security Initiative at Brookings, *Liquid Markets: Assessing the Case for U.S. Exports of Liquefied Natural Gas* (May 2, 2012) available at http://www.brookings.edu/~media/Files/rc/reports/2012/0502_lng_exports_ebinger/0502_lng_exports_ebinger.pdf.

To the extent DOE accepts Sierra Club's supplemental protest, Cameron LNG should be permitted to answer under 10 C.F.R. § 590.304(f) and submits the above answer for the DOE's consideration.

Respectfully submitted,



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Dated: June 7, 2012

VERIFICATION

County of San Diego)
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State of California)

BEFORE ME, the undersigned authority, on this day personally appeared William D. Rapp, who, having been by me first duly sworn, on oath says that he is counsel for Cameron LNG, LLC, and is duly authorized to make this Verification on behalf of such company; that he has read the foregoing instrument and that the facts therein stated are true and correct to the best of his knowledge, information and belief.

William D Rapp
William D. Rapp

SWORN TO AND SUBSCRIBED before me on the 6 day of June, 2012.

Emma Castillo
Notary Public

My Commission expires:



CERTIFICATE OF SERVICE

I hereby certify that, in accordance with 10 C.F.R. § 590.107 (2012), I caused a copy of the foregoing to be served on the following this 7th day of June, 2012:

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