

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

Golden Pass Products LLC

)

FE Docket No. 12 - 156 - LNG

**ANSWER OF GOLDEN PASS PRODUCTS LLC
TO MOTIONS TO INTERVENE AND PROTESTS**

William D. Collins
President
Golden Pass Products LLC
Three Allen Center, Suite 802
333 Clay Street
Houston, TX 77002
(713) 860-6323

Golden Pass Products LLC

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Pursuant to the Department of Energy (“DOE”) Regulations at 10 C.F.R. §§ 590.303(e) and 590.304(f) (2012), Golden Pass Products LLC (“GPP”) hereby submits this Answer to the Motions to Intervene and Protests filed with the DOE Office of Fossil Energy (“DOE/FE”) by the American Public Gas Association (“APGA”) and the Sierra Club¹ in the captioned proceeding, which concerns GPP’s Application under Section 3(a) of the Natural Gas Act (“NGA”)² to export liquefied natural gas (“LNG”) to nations that have not entered into a Free Trade Agreement with the United States (“U.S.”).

GPP opposes the APGA’s and the Sierra Club’s Motions to Intervene. Neither the APGA nor the Sierra Club has demonstrated an interest in this proceeding.

GPP further urges the DOE/FE to reject the arguments presented in the APGA’s and the Sierra Club’s protests, and approve GPP’s Application. The Protestors’ arguments are without merit. It is particularly significant that neither Protestor provided any affirmative evidence purporting to show the economic impact of authorizing the proposed LNG exports.³

¹ This Answer will refer to APGA and the Sierra Club as “Protestors” in appropriate contexts.

² 15 U.S.C. § 717b(a).

³ The Sierra Club’s January 25, 2013 Initial Comments on the DOE LNG Study attached a “White Paper” prepared by Synapse Energy Economics, Inc. The Sierra Club appended the same Synapse document to its Protest (Exhibit 11), along with its Initial Comments on the DOE LNG Study (Exhibit

(footnote continued on next page)

NGA Section 3(a) establishes a presumption that a gas export proposed under that provision is in the public interest. Section 3(a) thus imposes the burden of proof on the Protestors to present an affirmative, fact-based case with evidence sufficient to overcome the statutory presumption. By failing to submit any affirmative case, the Protestors plainly have not even addressed, let alone overcome, the statutory burden of proof. In view of the statutory presumption, the substantial evidence presented by GPP's Application showing that the proposed export is in the public interest, and the DOE/FE's own LNG Export Study, GPP's proposed export is clearly in the public interest and should be approved promptly.

The Sierra Club challenge also raises environmental issues that are not relevant to the issues before the DOE. Issues related to the environmental impact of the proposed export will be evaluated by the Federal Energy Regulatory Commission ("FERC") under the statutorily decreed division of responsibility between the DOE/FE and the FERC, with participation by the DOE and other relevant agencies. In addition, the Sierra Club includes in the environmental issues raised in its protest certain general environmental issues that are substantially beyond the reasonably foreseeable impact of the proposed export. Those environmental issues are simply not germane to GPP's Application.

10). GPP has addressed the Sierra Club's Initial Comments and White Paper in its Reply Comments on the DOE LNG Study, filed on February 25, 2013. Briefly stated, the "White Paper" is not an economic analysis of the impact of LNG exports on the U.S. economy. Instead, it is solely a critique of the NERA Study. Even in its limited scope, the Synapse White Paper is conspicuously lacking in fact-based analysis. Instead, Synapse instead makes unsupported generalized assertions that purport to call the NERA Report's conclusions into question. The Synapse document cannot be considered affirmative rebuttal evidence to the numerous studies that have been filed in the various export proceedings, as well as those prepared by academic institutions such as the Massachusetts Institute of Technology, or policy organizations such as the Brookings Institution, all of which conclude that the DOE/FE should not impose artificial restrictions such as quantity limits on LNG exports. In addition, and of particular relevance in this proceeding, the Synapse White Paper did not address GPP's Application specifically.

PROCEDURAL BACKGROUND

On October 26, 2012, GPP filed an Application with the DOE/FE under NGA Section 3(a) and Part 590 of the DOE Regulations⁴ for authorization to export domestically produced LNG via ocean-going vessel, up to the equivalent of 740 billion cubic feet (“Bcf”) of domestically produced natural gas equivalent per year⁵ to countries do not have a Free Trade Agreement (“FTA”) requiring the national treatment for trade in natural gas (“NFTA countries”).⁶ GPP further requested authority to (1) engage in natural gas purchases and LNG sales for export and (2) act as agent for third parties. In addition, GPP requested authorization to provide tolling services for third parties. GPP requested these authorizations for a twenty-five-year term commencing on the earlier of (1) the date of first export or (2) seven years from the date the requested authorization is issued.⁷

Notice of GPP’s Application was published in the Federal Register on December 6,

⁴ 10 C.F.R. §§ 590.101 – 590.505 (2012).

⁵ The DOE/FE granted GPP authorization to export LNG to FTA countries on September 27, 2012, in *Golden Pass Products LLC*, FE Docket No. 12-88-LNG, Order No. 3147. Contrary to the Sierra Club’s statement (Protest at 2) that GPP requests authorization to export “approximately” 2.4 Bcf per day (“Bcf”), and APGA’s assertion (Protest at 5) that the authorized export quantity is 2.6 Bcf per day, GPP’s annual export quantity of 740 Bcf equates to an average daily quantity of approximately 2.03 Bcf, and a daily *peak* of 2.6 Bcf. The maximum authorized annual quantity is 740 Bcf. GPP’s Application to export LNG to NFTA countries does not alter these quantities.

⁶ An NFTA country is more specifically defined as any country (1) that has or in the future develops the capacity to import LNG via ocean-going carrier; (2) with which the United States (“U.S.”) does not prohibit trade; and (3) does not have an FTA requiring the national treatment for trade in natural gas.

⁷ GPP proposes to export LNG from planned facilities to be constructed contiguous to and interconnected with the existing LNG import terminal owned and operated by Golden Pass LNG Terminal LLC (“GPLNG”) in Sabine Pass, Texas, approved by the FERC in 2005. *Golden Pass LNG Terminal LP and Golden Pass Pipeline L.P.*, 112 FERC ¶ 61,041 (2005). In the same order, the FERC approved the application of Golden Pass Pipeline LLC (“GPPL”) to construct and operate an interstate pipeline in Texas and Louisiana connected to the GPLNG Terminal. As discussed in GPP’s Application, both the GPLNG and GPPL facilities have been constructed and were placed in service in 2011.

2012.⁸ On February 4, 2013, both the APGA and the Sierra Club filed motions to intervene and accompanying protests.⁹ By orders issued on February 14 and 20, 2013, the DOE/FE granted GPP a 13-day extension of time to file its Answer to these protests.

On December 6, 2012, the DOE/FE issued a “Notice of Availability of 2012 LNG Export Study and Request for Comments.”¹⁰ The DOE/FE requested comments with regard to two studies it had commissioned to evaluate the cumulative economic impact of previously authorized and pending applications to export LNG to NFTA countries.¹¹ The DOE/FE commissioned these studies following issuance of an export authorization to Sabine Pass Liquefaction, LLC, for exports to NFTA countries.¹² The DOE/FE stated that the Study and the comments would help to inform its determination of the public interest in then-pending application proceedings, including GPP’s Application in this proceeding. GPP filed initial

⁸ *Golden Pass Products LLC*, FE Docket No. 12–156–LNG, 77 Fed. Reg. 72,837 (December 6, 2012).

⁹ Sierra Club and APGA were the only two entities that filed to intervene and formally protest GPP’s Application. Letters in support of GPP’s Application were filed by 11 public officials: (1) James E. Rich, President of the Greater Beaumont Chamber of Commerce; (2) William B. McCoy, on behalf of the Port Arthur Chamber of Commerce; (3) Dr. Paul J. Szuch, President of Lamar Institute of Technology; (4) the Honorable Jeff R. Branick, County Judge, Jefferson County, Texas (5) Randall Reese, General Manager, on behalf of Sabine-Neches Navigation District; (6) Rep. Kevin Brady of the U.S. House of Representatives, Eighth District of Texas; (7) Rep. Randy K. Weber, U.S. House of Representatives, 14th District of Texas; (8) Rep. Ted Poe, U.S. House of Representatives, Second District of Texas; (9) United States Senator Mary L. Landrieu, Louisiana; (10) United States Senator John Cornyn, Texas; and (11) Deloris Prince, Mayor of City of Port Arthur, Texas.

¹⁰ *Freeport LNG Expansion, LP., and FLNG Liquefactions, LLC.*, FE Docket No. 10-161-LNG, 77 Fed. Reg. 73627 (December 11, 2012) (“Request for Comments”).

¹¹ The two DOE/FE-commissioned studies were: (1) an analysis performed by the Energy Information Administration (EIA) and originally published in January 2012, entitled *Effect of Increased Natural Gas Exports on Domestic Energy Markets* (“EIA Study”), and (2) an evaluation performed by NERA Economic Consulting (“NERA”), a private contractor retained by the DOE/FE, entitled *Macroeconomic Impacts of Increased LNG Exports From the United States* (“NERA Study”). The Federal Register Notice referred to the two studies collectively as the “DOE LNG Study.” 77 Fed. Reg. at 73627.

¹² *Sabine Pass Liquefaction, LLC*, Opinion and Order No. 2961, *on reh’g*, Order No. 2961–A (“Sabine Pass”).

comments on the DOE LNG Study on January 25, 2013, and reply comments on February 25, 2013. Both the APGA and the Sierra Club also filed initial and reply comments on the DOE LNG Study. Pursuant to the procedure established in the Notice, all of those comments are part of the record in this proceeding.¹³

SUMMARY OF ARGUMENT

This proceeding concerns GPP's Application filed with the DOE/FE under NGA Section 3 to export 740 Bcf of natural gas in the form of LNG over a 25-year period from facilities to be constructed near Sabine Pass, Texas. Following issuance of the Notice of GPP's Application, two organizations, APGA and Sierra Club, filed motions for leave to intervene and protest GPP's Application. The APGA's Protest does not appear directed at the specifics of GPP's Application, but instead opposes all LNG exports. The Sierra Club similarly expresses general opposition to LNG exports, rather than addressing the proposed export specifically described in GPP's Application. Although the Sierra Club cites a range of policy concerns, it appears to be concerned principally that LNG exports will induce a greater level of domestic U.S. unconventional gas production through hydraulic fracturing, which the Sierra Club opposes.

Neither APGA nor the Sierra Club has shown valid interests in the outcome of the proceedings on GPP's Application under the applicable precedent and regulations. They are utilizing this proceeding as a forum to express general policy positions that have no real relationship to the issues the DOE/FE must resolve to approve GPP's Application. They have not shown any direct impact that would constitute a valid interest in the outcome of this proceeding. The DOE/FE should therefore deny their motions to intervene.

¹³ Many of the arguments presented in the APGA's and the Sierra Club's protests are reiterated in the comments on the DOE LNG Study.

GPP's Application included detailed economic studies of the impact of GPP's proposed export. Those studies, considered together with the DOE LNG Study, show that GPP's export would be in the public interest and that natural gas exports will expand the economy and create new jobs. This showing is more than sufficient to satisfy the requirement of NGA Section 3(a) that an applicant for export authorization show that its proposed export is not inconsistent with the public interest. Both APGA and the Sierra Club ignore the statutory burden of proof, which plainly is on opponents to an export application, by criticizing the studies that GPP submitted and that the DOE/FE commissioned, rather than submitting studies of their own. Based on the record, the DOE/FE must approve GPP's Application.

APGA's and the Sierra Club's criticisms of the economic studies should be accorded no weight. In response to the studies' careful and detailed analysis, the Protestors resort to implausible hypothetical scenarios to posit harms. The factual record plainly supports approval of GPP's Application. In addition to GPP's studies and the DOE LNG Study, other institutions that have examined the potential impact of LNG exports have also concluded that such exports are in the public interest. The Protestors also misstate or distort the findings of the DOE LNG Study to undermine the record evidence, but their criticisms are transparently flawed and should be disregarded.

The Sierra Club also attempts to confuse the statutorily prescribed process for environmental review of an export under Section 3(a), arguing for multiple duplicative reviews. The NGA clearly lays out the process, and specifies that the FERC shall function as the lead agency for such a review, with DOE participation. The Sierra Club seeks to further its opposition to unconventional gas production by demanding identification of the producing areas from which the gas would be exported, and insisting upon a "programmatic Environmental

Impact Statement” purporting to analyze the cumulative impact of all of the export applications on unconventional production. None of these exercises can or should be performed. As the DOE/FE previously held, there is no “reasonably foreseeable” linkage between the export proposal and any particular gas production.

For all of these reasons, the DOE/FE should promptly approve GPP’s Application.

ARGUMENT

I. NEITHER THE SIERRA CLUB NOR THE APGA HAS DEMONSTRATED AN INTEREST IN THIS PROCEEDING.

A. The DOE/FE Should Deny the Sierra Club’s Motion to Intervene.

The DOE regulations provide that “[a]ny other person who seeks to become a party to a proceeding shall file a motion to intervene, which sets out clearly and concisely the facts upon which the petitioner’s claim of interest is based.”¹⁴ The Sierra Club claims that it has 601,141 members (Exhibit I, ¶ 7) in the U.S., which would constitute approximately 0.26% of the approximately 234,564,000 voting-age United States citizens as of 2010, according to U.S. Census figures.¹⁵ It further claims to have 22,089 members in Texas, the state in which the GPP export terminal facilities would be located. *Id.* This membership total would constitute approximately 0.12% of the voting age population of Texas, and approximately 6% of the 371,034 people employed in the oil and gas industry in Texas as of 2008, according to the Texas Comptroller’s Office.¹⁶

The Sierra Club’s affidavit does not establish any potential “aggrievement” that would

¹⁴ 10 C.F.R. § 590.303(b).

¹⁵ http://www.census.gov/compendia/statab/cats/elections/voting-age_population_and_voter_participation.html.

¹⁶ <http://www.window.state.tx.us/>.

enable the Sierra Club to file a request for rehearing of the DOE/FE order on GPP's Application under NGA Section 19(b), 15 U.S.C. § 717r(b). To establish standing to challenge an order of an administrative agency such as the DOE/FE, the "irreducible constitutional minimum of standing contains three elements:" (1) injury-in-fact, (2) causation, and (3) redressability."¹⁷ To establish injury, a participant "must [, inter alia,] show . . . it has suffered an injury in fact that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical."¹⁸

The Sierra Club's affidavit fails to specify how it would be harmed by approval of GPP's Application. Nor does it provide the "rigorous data or studies" demonstrating the required "substantial probability" of such harm¹⁹ to support its assertions that any of its 601,141 members in the United States or its 22,089 members in Texas will be adversely affected by the LNG export, or that the DOE/FE's conditioning or denial of the export authorization would redress the purported harms to its membership.

The Sierra Club claims that its interest is based on the purported connection between GPP's proposed LNG export and asserted use of unconventional production techniques to produce the natural gas to be exported. As discussed below, however, Sierra Club identifies no particular production that would result directly from the proposed export. Consequently, the Sierra Club cannot show that any particular production activity would not have occurred but for the export authorization. Thus, even assuming, *arguendo*, that the DOE/FE accepts Sierra Club's argument that environmental harm could occur due to unconventional production, the

¹⁷ *Ass'n of Flight Attendants—CWA v. U.S. Dep't of Transp.*, 564 F.3d 462, 464 (D.C. Cir. 2009) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)) (internal quotation omitted)

¹⁸ *Dominion Transmission, Inc. v. FERC*, 533 F.3d 845, 852 (D.C. Cir. 2008) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC) Inc.*, 528 U.S. 167, 180 (2000)) (internal quotations omitted) (alterations in original).

¹⁹ *Grassroots Recycling Network, Inc. v. EPA*, 429 F.3d 1109, 1112 (D.C. Cir. 2005).

Sierra Club cannot show that denial of GPP's export authorization would prevent any unconventional production. Accordingly, the DOE/FE should deny the Sierra Club's motion to intervene.²⁰

The criteria for establishing "administrative standing" may permissibly be less demanding than the criteria for "judicial standing."²¹ Accordingly, "Federal agencies may permit persons to intervene in administrative proceedings even though these persons would not have standing to challenge the agency's final action in federal court."²² For purposes of its proceedings on applications under NGA Section 3(a) to consider applications to export natural gas, the DOE/FE's procedures are governed by the relevant provisions of the NGA, including Section 15(e),²³ which authorizes the establishment of rules and regulations to govern "hearings," including "paper" hearings, and "may" provide in those rules and regulations for the admission as a party "any interested State, State commission, municipality or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest." *Id.* The NGA does not define the term "interested." Intervention is permissive, and discretionary with the DOE/FE.²⁴

The Sierra Club has not demonstrated an interest that appears to be directly affected by

²⁰ Denial of the Sierra Club's Motion to Intervene would not constitute dismissal of the Sierra Club's Protest. Therefore, GPP responds to the Sierra Club's Protest in this Answer.

²¹ *Pittsburg & W.Va.Ry. v. U.S.*, 281 U.S. 479, 486 (1930); *Alexander Sprunt & Son, Inc. v. U.S.*, 281 U.S. 249 (1930).

²² *Envirocare of Utah v. Nuclear Regulatory Commission*, 194 F.3d 72, 74 (D.C.Cir. 1999), citing *Pittsburg & W.Va.Ry. v. U.S.*, and *Alexander Sprunt & Son, Inc.*

²³ 15 U.S.C. § 717n(e)

²⁴ *Alston Coal Co. v. FPC*, 137 F.2d 740 (10th Cir. 1943); *Lynchburg Gas Co. v. FPC*, 284 F.2d 756 (3rd Cir. 1960).

the outcome of this proceeding. However, should intervention nevertheless be granted, the DOE/FE should consider Sierra Club's lack of a clear cognizable interest in attributing weight to its arguments. Similarly, the Sierra Club has not made a sufficient showing to constitute "aggrievement" under NGA Section 19(a) to support a request for rehearing of any order issued in this proceeding.²⁵ If the Sierra Club is permitted to intervene, the DOE/FE should find that the Sierra Club is not an aggrieved party under NGA Section 19.

B. The DOE/FE Should Deny the APGA's Motion to Intervene.

APGA states that its members are publicly-owned natural gas distribution systems, and have an interest in securing natural gas. It contends that the GPP will increase natural gas prices. It does not cite any specific interest that relates directly to the proposed GPP export. Moreover, as discussed below, APGA's arguments relate generally to the DOE/FE natural gas export policy generally and to domestic production. Consequently, APGA has not sufficiently set forth the facts upon which its asserted interest is based. Accordingly, the DOE/FE should deny APGA's motion to intervene. If the DOE/FE permits APGA to intervene, it should clarify that it has not made a finding that the interest alleged by APGA would meet the test for "aggrievement" under NGA Section 19(a).

II. THE PROTESTORS FAIL TO REBUT THE STATUTORY PRESUMPTION THAT GPP'S PROPOSED EXPORT IS IN THE PUBLIC INTEREST.

The protests of the Sierra Club and APGA for the most part repeat their general opposition to all gas exports. The Sierra Club appends 100 exhibits comprising some 5,500 pages of material. Although GPP has not had an adequate opportunity to review fully all of this

²⁵ 15 U.S.C. § 717r(a) (emphasis added) ("Any person, State, municipality, or State commission **aggrieved** by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order").

material in the time prior to filing this Answer, GPP has been able to review the exhibits in sufficient detail to determine that almost all of that material is irrelevant to GPP's Application. Indeed, it appears that a substantial portion of the Sierra Club's Protest is irrelevant to GPP's Application. Consequently, GPP will not endeavor to address comprehensively each of the Sierra Club's arguments or the appended exhibits. Accordingly, GPP's silence with respect to any argument or exhibit should not be understood as agreement with those arguments or concurrence in the relevance of the documents.

A. The Protestors Have Misstated The Applicable Legal Standard Under NGA Section 3.

Section 3(a) of the NGA, 15 U.S.C. § 717b(a), sets forth the standard for approval of this Application:²⁶

(a) Mandatory authorization order

After six months from June 21, 1938, no 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 of Energy ("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 hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.

Section 3(a) establishes a rebuttable presumption that a proposed export of natural gas is in the public interest, and the DOE/FE must grant an export application unless the export is found to

²⁶ 15 U.S.C. § 717b(a)(emphasis added).

be inconsistent with the public interest.²⁷ Any opponents of an export application must make an affirmative showing of inconsistency with the public interest in order to overcome the rebuttable presumption favoring export applications.²⁸

In evaluating an export application, the DOE/FE focuses on the following criteria:

the domestic need for the gas; whether the proposed exports pose a threat to the security of domestic natural gas supplies; and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE/FE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements.²⁹

The DOE/FE “applies the principles described in the Secretary’s natural gas import policy guidelines[,] which presume the normal functioning of the competitive market will benefit the public.”³⁰ Accordingly, the DOE/FE examines whether the proposed exports will be conducted on a market-responsive, competitive basis.³¹ The DOE/FE gas import and export policies were “designed to establish natural gas trade on a market-competitive basis and to provide immediate as well as long-term benefits to the American economy from this trade.”³² The

²⁷ See, e.g., *Sabine Pass Liquefaction*, Order No. 2961, at 28; *Conoco Phillips Alaska Natural Gas Corp. & Marathon Oil Co.*, FE07-02- LNG, Order No. 2500, at 43 (June 3, 2008); *Phillips Alaska Natural Gas Corp. & Marathon Oil Co.*, 2 FE ¶ 70,317, at 13 (Order No. 1473) (1999).

²⁸ *Sabine Pass Liquefaction*, Order No. 2961, at 28 and n. 38; *ConocoPhillips*, Order No. 2500; *Phillips Alaska & Marathon*, Order No. 1473, at 14, 42; *Panhandle Producers and Royalty Owners Assoc. v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987).

²⁹ *Sabine Pass Liquefaction*, Order No. 2961, at 29. This approach is consistent with DOE Delegation Order No. 0204-111, which previously guided DOE/FE decisions on export applications but is no longer in effect. *Id.* See also, e.g., *ConocoPhillips Alaska*, Order No. 2500, at 44-45; *Phillips Alaska*, Order No. 1473, at 13-14.

³⁰ *Phillips Alaska*, Order No. 1473, at 47 (citation omitted).

³¹ “New Policy Guidelines and Delegation Orders Relating to the Regulation of Natural Gas,” 49 *Fed. Reg.* 6684-01 (Feb. 22, 1984) (hereinafter the “Policy Guidelines”). The DOE/FE has repeatedly reaffirmed the continued applicability of the guidelines and has consistently held that they apply equally to export applications (though written to apply to imports). *Yukon Pacific*, Order No. 350; *Phillips Alaska*, Order No. 1473; *ConocoPhillips Alaska*, Order No. 2500, *Sabine Pass*, Order No. 2961.

³² Policy Guidelines, at 6684.

DOE/FE also examines the potential effect of the export on domestic natural gas prices over the term of the exportation.

Rather than submitting evidence to rebut the statutory presumption, the Sierra Club and APGA confine their protests to general criticisms of the supporting studies submitted by GPP and unsupported speculation about implausible and unrealistic potential impacts. Challenges of this nature do not come close to overcoming the statutory presumption, and must be rejected.

B. Protestors' Challenges to GPP's Price Impact Study are Unsupported and Based on Unfounded Speculation.

I. Cumulative Impact

GPP submitted as Exhibit C to its Application a study performed by Deloitte MarketPoint, "Economic Impact of LNG Exports from the United States" (2012) ("DMP study"). The DMP study evaluated the impact of GPP's proposed export based on modeling of the market impact. The Sierra Club criticizes the DMP study for examining only the impact of GPP's export, and not specifically analyzing the impact of the exportation of the cumulative quantity for which the DOE/FE has received applications to export LNG to NAFTA countries. The Sierra Club further states that the DOE/FE "cannot" authorize GPP's proposed export or any other export project "on the assumption that the authorized activity will not occur." Sierra Club Protest at 18.

However, in determining whether a proposed LNG export is in the public interest, the DOE/FE may take into consideration market forces that may include potential limits on foreign

demand due to competition from foreign sources, as well as increased U.S. demand.³³ The DMP study and the NERA Study both support that approach. The NERA Study found, based on its analysis of global natural gas supply and demand under different assumptions, that projected “achievable” levels of exports were substantially lower than the aggregate export quantities for which export authority has been sought. NERA Study at 9-10. The DOE/FE can and should approve LNG export applications to NFTA countries in reliance on market forces to dictate the level of export capacity constructed and the level of actual exports.

2. Adequacy of Supply

GPP supported its contention that its export proposal would not adversely affect the adequacy of domestic supply to meet demand with a comprehensive analysis. As discussed in GPP’s Application, the current U.S. total technically recoverable resource base is more than adequate to supply the growing needs of the U.S. gas market. Indeed, LNG exports would potentially leverage only a small share of the vast and growing U.S. natural gas resource base.

As a result of the projected growth in production, EIA projected that U.S. natural gas production will exceed consumption early in the next decade under the Annual Energy Outlook

³³ *ANR Pipeline Company v. FERC*, 205 F.3d 403, 406 (D.C.Cir. 2000) (rejecting argument of pipeline planning an expansion challenging expansion authorization granted to a competing pipeline seeking to serve a potentially overlapping supply area). This principle is distinct from reliance of market forces to set rates in a market not found to be competitive. *Public Utility District No. 1 v. FERC*, 471 F.3d 1053 (9th Cir. 2006), 1081-1082; *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1490 (D.C. Cir. 1984). The FERC issued a Policy Statement in 1999 in which it announced that it would no longer require applicants for pipeline certificates under NGA Section 7(c), 15 U.S.C. § 717f(c), to demonstrate need by the percentage of capacity under long-term contracts or precedent agreements, but would instead permit applicants to show that their projects would not require subsidies from existing shippers. Accordingly, “[c]ompanies willing to invest in a project, without financial subsidies, will have shown an important indicator of market-based need for a project.” *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) at 61,746 – 61,747.

2012 (“*AEO 2012*”) Reference case.³⁴ This projection reflects “increased use of LNG in markets outside North America, strong growth in domestic natural gas production, reduced pipeline imports and increased pipeline exports, and relatively low natural gas prices in the United States.”³⁵

Much of the growth in natural gas production to 2035 under the *AEO 2012* Reference case results from the application of recent technological advances and continued drilling activity.³⁶ In the coming years, LNG exports could provide a new market for U.S. production that would have otherwise been slower to develop.³⁷ The proposed GPP export project is well-positioned to provide an outlet to a wide range of domestic supply sources. The proposed export facilities would be located on the Sabine-Neches Waterway just south of Port Arthur, Texas. Texas, Louisiana, Arkansas, Oklahoma and the Gulf of Mexico are key production areas in the U.S. There is a well-developed network of natural gas infrastructure in the region. As noted above, the GPPL pipeline would connect the proposed GPP export facility to six existing major interstate pipelines that operate on an open-access basis under the FERC’s regulations, as well as two existing Texas intrastate pipelines, allowing gas exports to be sourced from diverse gas inter and intra-state pipelines. LNG exports from GPP would provide an additional outlet for growing domestic gas supplies. This outlet also provides long-term signals to grow the gas production industry work force and its attendant industry expertise.

The DMP study concluded that the amounts of LNG exports it analyzed are “not likely

³⁴ *AEO 2012*, at 92 and 94.

³⁵ *AEO 2012*, at 3.

³⁶ *Id.*, at 16.

³⁷ *Id.*, at 16.

to induce scarcity, shortage or any significant deleterious effect on domestic markets.”³⁸ Incremental exports from GPP represent a small percentage of the U.S. market and would not impact the ability of the U.S. to meet domestic demand for natural gas. Furthermore, the establishment of new markets for U.S. production would enhance the development of the U.S. natural gas resources securing natural gas supplies for generations to come.³⁹

The Sierra Club challenges the DMP study’s reliance on the reserve projections in EIA’s 2011 Annual Energy Outlook (“*AEO 2011*”) reserve projections, stating that “EIA has recently drastically reduced its estimates of total gas supplies.” Sierra Club states that *AEO 2011* assumed total technically recoverable domestic shale gas reserves of 827 Tcf, while “[t]he more recent [*AEO 2012*] cuts the estimates of shale gas reserves by over 40%, to 482 tcf.” Sierra Club Protest at 19.

However, Sierra Club’s assertion is misleading, and mischaracterizes *AEO 2012*. As it explains in *AEO 2012*, EIA projects the remaining Technically Recoverable Resource (“TRR”) for natural gas based on “proved reserves” and “unproved resources.” *Proved reserves* are “the estimated volumes expected to be produced, with reasonable certainty, under existing economic and operating conditions, while “*Unproved resources* are additional volumes estimated to be technically recoverable without consideration of economics or operating conditions, based on the application of current technology.”⁴⁰

By using the term “technically recoverable” in asserting an estimate cut, Sierra Club

³⁸ DMP study at 4; see also, Charles Ebinger, Kevin Massy, and Govinda Avasrala, *Liquid Markets: Assessing the Case for U.S. Exports of Liquefied Natural Gas*, at 28–38 (Brookings Institution, May 2012)(“Brookings study”).

³⁹ *AEO 2012*, at 91 and 93.

⁴⁰ *AEO 2012* at 56.

misleadingly implies that the **total** U.S. projected gas resource base (i.e., TRR) declined by 40%. However, the cited figure applied only to the **subset** of “unproved reserves” attributable to shale gas,⁴¹ which presently accounts for approximately 25% of total gas production.⁴² The percentage reduction in EIA’s estimated TRR cited by Sierra Club did not apply to proved reserves of shale gas, let alone the other lower-48 reserves that can be produced by conventional and unconventional production techniques. *Id.*

3. Price Impact

The DMP study amply supports GPP’s contention that its export proposal would not significantly affect domestic gas prices. The DMP study includes a forecast of robust U.S. gas demand. The DMP study differs from others studies assessing the impact of exports inasmuch as it uses a dynamic model, rather than one based on a linear program or using a static representation of supply. Consequently, the DMP study presents a rigorous assessment of the economic and related impacts of exports in support of GPP’s request for authority to export LNG to non-FTA countries.

DMP’s projected gas demand for U.S. power generation is far greater than the *AEO 2012* outlook. DMP projects U.S. power generation to increase by about 50% over the next decade.⁴³ This increase equates to average annual growth rate of approximately 2% per annum, over double the growth rate in the *AEO 2012* Reference Case.⁴⁴ Furthermore, DMP’s demand projection for 2035 not only exceeds the *AEO 2012* Reference Case, it also exceeds the highest

⁴¹ See *AEO 2012*, Table I4, p. 57.

⁴² See *AEO 2012*, at 93.

⁴³ DMP study at 6 and Figure I.

⁴⁴ The *AEO 2012* Reference case projection is a business-as-usual trend estimate, given known technology and technological and demographic trends. *AEO 2012* at ii.

demand forecast scenario by more than 7%. DMP's gas demand outlook is higher than AEO 2012 outlook based on the results of their integrated power model, which reflects the favorable characteristics of natural gas in the power generation sector. Figure 4 in the DMP study shows EIA and DMP's respective projections of annual natural gas demand for power generation for the period from 2011 through 2034. Notwithstanding this projected demand growth, the DMP study demonstrates that the price impacts of the proposed export will be modest.

The majority of the projected demand growth occurs in the 2015 to 2025 time period, which coincides with the start-up of GPP's LNG export project. The DMP study analyzes multiple export scenarios, including volumes up to 12 Bcf/d of LNG exports across this period. Because the DMP model assumes market equilibrium given sufficient time and in the absence of constraints, the DMP study projects development of necessary supply to fuel substantial growth in both domestic demand and LNG exports, both at levels well in excess of the growth in EIA's outlook. DMP study at 10-11.

LNG exports will likely encourage and stabilize further U.S. natural gas developments. Supply and demand are two parts of a single dynamic, with reliable demand a key to underpinning the growth of reliable supply and a sustainable gas market. DMP concludes that LNG exports from the U.S. have the potential to provide a steady, reliable market that would underpin ongoing supply development, and thereby help to balance domestic gas supply and demand. DMP study at 4, 15-16.

APGA's primary argument (at 9-10) is GPP's proposed exportation of natural gas will increase prices to consumers, and thereby harm residential consumers by increasing the costs of purchase of natural gas, and discourage the growth of industrial manufacturing and electric

power generation based on increased gas consumption. However, APGA fails to consider whether current gas prices will sustain current levels of production. APGA's argument amounts to advocacy of a government agency imposing a cap on commodity prices by curtailing access to markets.⁴⁵ The United States has experienced gas shortages caused by regulatory regimes that capped wellhead prices, and thereby discouraged production.⁴⁶

The DOE/FE recognized the statutory burden of proof on export opponents in *Phillips Alaska*, finding that opponents of the export authorization "ha[d] not shown reasonable price increases in response to competition would be inconsistent with the public interest."⁴⁷ The DOE/FE further found that "[n]ormal competition for gas supplies . . . competition to which the LNG exports necessarily contribute, can only encourage additional exploration for that resource."⁴⁸ The DOE/FE noted the broad economic benefits of such competition: "This, in turn, can be expected to lead to increased economic activity beneficial to the State." *Id.* Access

⁴⁵ APGA relies on, among other things, a report which states that "[k]eeping American natural gas resources in America and keeping prices low will support a more diversified domestic economy and provide greater domestic job benefits than pursuing an export strategy." Drill Here, Sell There, Pay More," House Natural Resources Committee, at 1, cited in APGA Protest at 10 n. 31.

⁴⁶ The United States Court of Appeals for the District of Columbia Circuit described this period as follows:

[F]or many years the Commission also regulated the price and terms of sales by producers to interstate pipelines. See *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, 677-84, 98 L. Ed. 1035, 74 S. Ct. 794 (1954). Producer price regulation was widely regarded as a failure, introducing severe distortions into what otherwise would have been a well-functioning producer sales market. See Stephen G. Breyer & Paul W. MacAvoy, *Energy Regulation By The Federal Power Commission* 56-88 (1974). When a severe gas shortage developed in the 1970s, Congress enacted the Natural Gas Policy Act of 1978 (NGPA), Pub. L. No. 95-621, 92 Stat. 3351 (codified as amended at 15 U.S.C. §§ 3301-3432 (1994)), which gradually phased out producer price regulation.

United Distribution Companies v. FERC, 88 F.3d 1105, 1123 (D.C.Cir. 1996). All such price controls were repealed effective January 1, 1993. See Natural Gas Wellhead Decontrol Act of 1989 (the "Decontrol Act"), Pub. L. No. 101-60, 103 Stat. 157 (1989).

⁴⁷ *Phillips Alaska*, Order No. 1473, at 48.

⁴⁸ *Id.*

to export markets creates the potential for that return.

Indeed, APGA's arguments are circular. APGA contends that allowing exports will increase domestic prices. However, it also notes the prospects for "international developments possibly lowering natural gas prices" in the importing countries. It further suggests that unconventional gas production is a worldwide phenomenon. APGA offers nothing but speculation for the assertion that these trends, if true, would result in convergence to a global price. Even assuming, *arguendo*, that such a worldwide price emerged, the end result will be a market-induced curtailment of exports. APGA does not explain why a producer would export gas to a foreign market for a lower net-back price than it could earn by selling the same gas domestically.

The Sierra Club contends that (1) the DMP study "documents" what the Sierra Club characterizes as "significant gas price increases" from export, even at "far lower export levels than may occur," and (2) that GPP assumed, for purposes of studying price impacts, that "*only* Golden Pass's exports move forward." Neither contention is valid. As discussed above, the DOE/FE may consider the likelihood that actual LNG export levels will be well below the aggregate export capacity for which applications have been filed. The Sierra Club's suggestion that the DOE/FE should evaluate the likely export levels by comparing the import terminals applied for and actually constructed is obviously not a valid basis for evaluation. GPP's sole point in making that statement in its Application is precisely the point it is making now: Simply because export applications are filed does not mean that all authorized exports will in fact occur.

In any event, the Sierra Club's argument misrepresents DMP's analysis and conclusions. As DMP's study plainly states, DMP evaluated price impacts based on a broad range of

outcomes. DMP also compared the results it obtained to other studies before the DOE/FE, in order to clarify the impact of its assumptions and model. In addition, DMP provided a narrative description of its model and its assumptions..

C. Neither the Sierra Club nor APGA Rebutted GPP's Evidence of Economic Benefits

GPP's Application included evidence of substantial, long-term economic benefits that would result from the proposed export, including job creation, economic investment, and tax revenue.⁴⁹ As explained in greater detail in the GPP Application, TPG undertook a fact-based assessment of conditions in the local, state and national economy, and modeled a range of outcomes based on a range of scenarios, all shown in detail in the TPG study. In contrast, neither the Sierra Club nor APGA presented any evidence to directly rebut TPG's fact-based analysis and conclusions. As discussed previously, the Sierra Club relies in its Protest on the previously mentioned Synapse paper. Based on the Synapse Paper, the Sierra Club contends that approval of LNG exports would result in an annual loss of 131,000 job equivalents (essentially the average salary of one worker) would be lost annually under median export scenarios employed by NERA. Sierra Club Protest at 16.

In addition, the Sierra Club cites a separate document the Sierra Club characterizes as a "separate study by Dr. Wallace Tyner, a respected economist at Purdue University entitled *Comparison of Analysis of Natural Gas Export Impacts from Studies Done by NERA Economic Consultants and Purdue University (2012)*." Sierra Club Protest at 15, 21 (and Exhibit No. 9 to the Sierra Club's Protest). The cited link to the "Study" reveals that there is in fact no study

⁴⁹ GPP Application, Exhibit D, "The Socioeconomic Impact of Authorizing Exports of Liquefied Natural Gas from the Proposed Golden Pass Products LLC Facilities in Sabine Pass, Texas, on Business Activity in Jefferson County, the Surrounding Region, and the United States," The Perryman Group, August, 2012 ("TPG study").

available. Instead, there is the five-page document Dr. Tyner, *et al.* filed with the DOE/FE as Initial Comments in response to the NERA Report (“Tyner Comments”). The Tyner Comments refer to a “study,” but the actual study itself is not provided; it is cited in the Tyner Comments as “Sarica K., Tyner WE., Economic and Environmental Impacts of Increased US Exports of Natural Gas. Energy Policy. 2013;**under review.**” See Tyner Comments at 5, n. 4 (emphasis added). Thus, apart from making conclusory statements (Tyner Comments at 3) regarding the “findings” of this “study,” the Tyner Comments provide no baseline data, no detailed description of the model used, and no description of the underlying assumptions; in short, no study. The Tyner Comments thus represent nothing more than several unsubstantiated assertions to compare with NERA’s Study. There is no indication that the Tyner *et al.* Study would have any direct relevance to GPP’s proposed export, or respond to the substance of the DMP and TPG studies the GPP filed with its Application.

GPP has already responded to the Sierra Club’s arguments regarding the NERA Study in GPP’s separate Reply Comments.⁵⁰ As discussed there, it is important to recognize that NERA’s assumptions are conservative, and accordingly understate likely benefits and overstate likely detriments from LNG exports. The Sierra Club does not present evidence to support its criticisms of the TPG study filed by GPP. Instead, it offers general criticisms similar to those it leveled at the NERA Study. However, the Sierra Club’s fundamental criticism is itself premised on an unsubstantiated and erroneous assumption. Specifically, the Sierra Club argues that the resulting benefits cited by TPG are based on flawed analysis because TPG “overlooks” the possibility that the U.S. would “be better off with an alternate, non-export project of similar

⁵⁰ GPP Reply Comments at 9-12.

size – such as increased development of domestic industry, for instance.” Sierra Club Protest at 16.

The Sierra Club’s argument is flawed, for at least three reasons. First, neither Synapse nor Dr. Tyner demonstrates that the proposed export would foreclose the addition of supply sufficient to permit increased development of domestic industry. In short, the Sierra Club posits a false alternative. Second, the Sierra Club provides no basis for its implicit assumption that even if export authorization was denied and the additional supply made available, increased domestic industry would result. Third, the Sierra Club devotes much of its Protest to an argument against **any** unconventional production based on asserted environmental harms. Under well-understood economic principles, cessation or severe limitation of such production would logically reduce supply and result in substantial price increases, which would impede development of domestic industry.

The TPG study examined the impacts of the construction of the export facilities ongoing operations, additional natural gas production, and associated potential development of facilities utilizing by-products such as ethane. TPG study, Exhibit D at 17-18.) The Sierra Club cites two unrelated studies in response. Neither of the cited studies is a direct response to the TPG analysis. Both studies purport to assess the economic impact of production activity in particular regions of the U.S. in 2010 and 2011. Sierra Club Protest, at 21.

Contrary to the Sierra Club’s general contentions, TPG performed a detailed analysis of economic data and found that GPP’s proposed export would lead to total economic gains of over \$31 billion (gross product) in the U.S. and 324,790 person-years of employment. These benefits are derived from construction and other pre-operational spending, which would lead to gains in business activity in the U.S. of \$20 billion in output (gross product) and 228,350

person-years of employment or roughly 45,600 jobs nationwide per year during construction. Furthermore, the TPG analysis showed economic benefits of ongoing operations of the GPP export terminal once it is fully operational would include \$460.2 million in U.S. gross product each year (more than \$11.5 billion over the project life) as well as 3,860 permanent jobs. (TPG study, Exhibit D, at 2, 24 - 30, 42.)

D. The DOE/FE Is Not Required to Conduct an Independent NEPA Analysis of GPP's Proposed Export.

GPP stated in its Application⁵¹ that it intends to construct and operate the GPP export facility contiguous to the Golden Pass LNG Terminal LLC (“GPLNG”) LNG import terminal located in Sabine Pass, Texas. The export facility will enable GPP to liquefy and export domestically produced natural gas. GPP further explained that, as its project further develops, it will commence the mandatory pre-filing process under the National Environmental Policy Act of 1969⁵² (“NEPA”) with the FERC, and will subsequently prepare and file an application with the FERC to site, construct and operate the proposed GPP export facility under NGA Section 3(e)⁵³ and Part 153 of the FERC’s regulations.⁵⁴

The Sierra Club argues that the DOE/FE must consider in this proceeding the environmental impacts of the GPP project in the NEPA process, including: (1) impacts from the construction and operation of the export facilities on the site of the existing GPLNG import terminal, (2) indirect effects of increased gas production, and (3) non-localized effects of

⁵¹ GPP Application at 7, 11-12.

⁵² 42 U.S.C. §§ 4321, *et seq.*

⁵³ Section 3(e) of the NGA provides that the FERC has the exclusive authority to approve or deny an application for the siting, construction, expansion or operation of an LNG terminal.

⁵⁴ GPPL additionally stated that it anticipates filing an application with the FERC under NGA Section 7, 15 U.S.C. § 717f, to modify its current pipeline facilities to enable the system to transport domestic production to the GPP export facility.

increased gas prices and the increase in coal consumption that Sierra Club predicts will result. Sierra Club Protest, at 23. The Sierra Club predicts impacts, while acknowledging that GPP did not describe the proposed facilities in detail in its Application, and had not initiated the pre-filing process with the FERC.

NEPA requires federal agencies such as the DOE to examine and report on the environmental consequences of their actions. NEPA is an “essentially procedural” statute intended to ensure “fully informed and well considered” decision-making.⁵⁵ NEPA established the Council on Environmental Quality (“CEQ”) “with authority to issue regulations interpreting it.”⁵⁶ The CEQ has defined major federal actions to include actions with “[i]ndirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”⁵⁷ The Sierra Club’s comments do not focus specifically on GPP’s Application, but instead mount a general attack on unconventional gas production. As a result, the Sierra Club’s environmental challenge is not germane to GPP’s Application.

I. Congress has assigned environmental review responsibilities for natural gas exports to the FERC.

Congress has unambiguously assigned NEPA environmental review responsibility for LNG exports to the FERC. The Energy Policy Act of 2005 (“EPACT 2005”),⁵⁸ amending the NGA, expressly clarified the dual roles of the FERC and the DOE/FE relative to natural gas exports. The EPACT 2005 specifically confirms FERC’s “exclusive authority” under NGA Section 3 over natural gas export facilities, as well as FERC’s role as the lead

⁵⁵ *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978).

⁵⁶ *Dep’t of Transp. v. Public Citizen*, 541 U.S. 752, 757 (2004).

⁵⁷ 40 C.F.R. §§ 1508.8, 1508.18.

⁵⁸ Pub. L. 109-58, 119 Stat. 685 (2005).

agency in preparing any related environmental document required by the NEPA.⁵⁹ To this end, EFACT 2005 mandates (1) that the FERC establish a schedule for all federal authorizations related to natural gas exports, (2) that other federal agencies considering related federal authorizations, such as the DOE/FE, cooperate with FERC's environmental review, and (3) that these cooperating agencies comply with the NEPA-related deadlines that the FERC may establish.⁶⁰ Had Congress intended the DOE/FE to assume or duplicate FERC's NEPA responsibilities with respect to conditional natural gas exportation orders under the NGA, it would certainly have made that intention known when adopting EFACT 2005.

The FERC EIS process will afford the Protestors ample opportunity to voice their environmental concerns and submit their evidence into the consolidated record for NEPA compliance.⁶¹ The process will likewise afford the DOE/FE, as a NEPA cooperating agency, opportunity to comment and make suggestions that will facilitate the EIS process and enable the DOE/FE to discharge both its NGA Section 3 and NEPA responsibilities. As a cooperating agency, the DOE/FE may adopt FERC's Final EIS without recirculation if, after independent review, the DOE/FE "concludes that its comments and suggestions have been satisfied."⁶²

⁵⁹ See, 15 U.S.C. § 717n(b)(1).

⁶⁰ See, 15 U.S.C. §§ 717n(b)(2), 717n(c)(1), and 717n(d). The EFACT 2005 further requires the FERC to maintain a complete consolidated record of all decisions made or actions taken by FERC and the other agencies, and that this consolidated record be used as the "record on review" in connection with any challenge to such agencies' actions or inactions under NEPA. 15 U.S.C. § 717n(d).

⁶¹ Federal agencies have used this delegation process for over forty years, and nothing in NEPA prevents such an allocation of responsibility among federal agencies.

⁶² See 40 C.F.R. § 1506.3(c); 10 C.F.R. § 1021.342.

The separate roles of lead and cooperating agencies under NEPA are well established and the courts have recognized the ability of the cooperating agency to rely upon the EIS prepared by the lead agency.⁶³ The lead/cooperating agency process is designed to avoid the kind of duplication of effort within the US government that the Sierra Club is advocating here.⁶⁴

It follows that all of the environmentally-related objections that the Sierra Club has put forth in its Protest either lack a legal foundation or will be considered in a different forum. This includes:

- The Sierra Club's contention that the GPP's Application requires a full NEPA Environmental Impact Statement ("EIS"), as opposed to a less extensive Environmental Assessment ("EA"). In fact, the FERC will prepare an EIS with respect to GPP export project and the DOE/FE will participate in this EIS process.
- The alleged failure of the DOE/FE to consider indirect and cumulative environmental impacts as part of its NEPA evaluation. In fact, the full range of potential impacts deemed to warrant NEPA evaluation will be considered by the FERC as part of the consolidated NEPA process for this Application. The DOE/FE will be a cooperating agency in this NEPA process.
- Finally, the alleged failure of the DOE/FE to prepare a "Programmatic EIS" with respect to its conditional LNG export approval activities is not relevant to the instant proceeding. The decision as to whether or not a Programmatic EIS will be prepared by the FERC for LNG exports to NAFTA countries rests with the

⁶³ See *Henry v. Federal Power Commission*, 513 F.2d 395 (D.C.Cir. 1975).

⁶⁴ See *Sierra Club v. US Army Corps of Engineers*, 295 F.3d 1209, 1215 (11th Cir 2002).

discretion of the FERC. The FERC has recently concluded that that a detailed NEPA analysis of issues associated with shale gas production that *might* be induced by any particular LNG export approval (in that case, the theoretical increase in Marcellus Shale production associated with the Dominion Cove Point LNG application) is not appropriate. The FERC concluded that any such impacts are not reasonably foreseeable and that such an analysis would amount to mere speculation.⁶⁵

A federal agency is not required to prepare a programmatic EIS where no programmatic or regional action has been proposed. Preparing a programmatic EIS focused on discrete and independently proposed LNG export applications for projects that may or may not be constructed across the entire country would produce little more than a speculative study of potential environmental impacts. The DOE/FE is not required to prepare such an analysis that predicts such speculative potential impacts; rather, where the agency lacks certain information that cannot be obtained, the agency is merely required to acknowledge in the EIS that the information is unavailable.

As with all of the Sierra Club's NEPA challenges, its arguments ignore the fact that the lead agency in the NEPA process for LNG export applications is the FERC, not the DOE/FE. The DOE/FE, as a cooperating agency in the FERC-lead NEPA process, will surely fulfill its statutory NEPA obligations in this capacity. As long as FERC examines all reasonably foreseeable impacts of the exports it approves, the exercise of the DOE/FE's

⁶⁵ *Central New York Oil and Gas Company, LLC*, 137 FERC ¶16,121 (2011), *reh'g*, 138 FERC ¶ 61,104 (2012).

authority over the export of natural gas does not require "a broader or different environmental analysis" than the analysis required by the FERC.⁶⁶ Hence, the Protestors' assertions regarding the types of impacts and alternatives that must be analyzed by the DOE/FE, and whether the DOE/FE (or FERC) must prepare a "Programmatic EIS" for all such applications, are simply not germane. These matters are all properly committed to the discretion of these agencies and are properly handled in the EIS process. The DOE/FE, the Protestors and GPP will be able to make their submissions on these matters in that process through a structured process that provides all stakeholders with multiple opportunities for input on these issues.

2. The DOE/FE has authority to issue conditional orders pending completion of the EIS Process.

As GPP stated in its Application, the FERC will complete an environmental review under NEPA prior to granting the requested authorization. GPP cannot engage in the LNG exports for which it requests authorization in this Application until after the FERC has granted its NGA Section 3 authorization and the necessary facilities have been constructed and placed in-service. GPP accordingly requested that the DOE/FE issue a conditional order authorizing the export of LNG as described in this Application, conditioned on completion of the environmental review by FERC.

The DOE/FE has a longstanding practice of issuing orders approving the export or import of natural gas conditioned upon the satisfactory completion of the EIS process by

⁶⁶ See *LaFlamme v. FERC*, 945 F.2d. 1124 (CA 9, 1991) where the court notes that a cooperating agency is not required to prepare an independent Environmental Assessment or Environmental Impact Statement.

the FERC.⁶⁷ The DOE/FE has consistently utilized this approach, and it continues to be the DOE/FE's standard approach today. Importantly, this approach allows the DOE/FE to focus first on the exercise of its primary jurisdiction over the export of natural gas and to inform markets of its determinations on a timely basis. In light of the enormous financial investments that market participants must make in LNG projects, and the long-lead time for LNG project development, the importance of conditional orders in providing such early market signals is crucial.⁶⁸

The DOE/FE's authority to issue orders conditional upon subsequent completion of environmental review is fully consistent with the NGA and NEPA. Section 3 of the NGA provides that the DOE/FE may grant an application upon such terms and conditions as it may find necessary or appropriate.⁶⁹ The DOE's regulations also explicitly provide that DOE/FE may issue conditional orders at any time during a proceeding prior to issuance of a final opinion and order. Nothing in NEPA prevents such a phased approach and the Sierra Club cites no precedent or rationale for changing it.

The Sierra Club, without citation to any precedent, asserts that the DOE/FE may not conditionally approve a natural gas export proposal until the EIS Process has been completed. This contention simply ignores the fact that a conditional order does not mean that the DOE/FE has completed its public interest determination without weighing environmental factors. Absent action by the applicant and other state and federal

⁶⁷ See 10 C.F.R. § 590.402

⁶⁸ See, e.g., *Bradwood Landing LLC*, 126 FERC ¶ 61,035 at PP 28-36 (2009) *Crown Landing LLC*, 117 FERC ¶61,209 at P 26 (2006); *Weaver's Cove Energy, LLC*, 114 FERC ¶61,058 at P 108-115 (2006); *Islander East Pipeline Co.*, 102 FERC ¶61,054 at P 41- 44 (2003); *Millennium Pipeline Co., L.P.*, 100 FERC ¶61, 277 at P 225- 231 (2002).

⁶⁹ 15 U.S.C. § 717b(a).

agencies, including ultimate approval by the FERC, construction cannot begin on the GPP export facilities that are the subject of the conditional DOE/FE order. Hence, there can be no "action" that DOE/FE can take here that will have an adverse environmental impact or that will somehow limit the choice of alternatives available to the FERC.⁷⁰

The DOE/FE's public interest determination for the GPP Application will not be complete until the DOE/FE weighs these environmental factors by conducting an independent review of the FERC's EIS and determining whether the NEPA record needs to be supplemented in order for DOE/FE to meet its statutory responsibilities. The DOE/FE's independent review of the FERC's EIS and its determination of whether to follow a conditional order with a final order will constitute the completion of its public interest determination. This approach is fully consistent with the DOE/FE's responsibilities under NEPA §102 to evaluate the impact of its actions on the environment.

Nor is there merit to the Sierra Club's argument that a DOE/FE conditional order somehow restricts the FERC's evaluation of alternatives under NEPA, including the no-action alternative. FERC makes its own "purpose and need" determination under the NGA and utilizes that determination, not the determination of any other agency, to evaluate alternatives, including the no-action alternative. FERC's substantive determinations are not impacted by a conditional DOE/FE order under NGA Section 3. GPP respectfully disagrees with the Sierra Club's contentions regarding the scope of the environmental review.

⁷⁰ For NEPA purposes, the CEQ regulations define an "action" requiring an environmental review as an agency action approving a special project located in a defined geographic area. The conditional approval process employed by the DOE/FE at this stage of the proceedings cannot be described as any sort of a final project-approving determination.

However, the Sierra Club will have an opportunity to present its arguments in the appropriate context, as evidenced by the scoping comments filed with the FERC involving other export projects, which the Sierra Club appended to its protest.

3. The DOE/FE must reject the Sierra Club's attempts to link gas production to the environmental review of GPP's export project.

The DOE/FE and the FERC have already held that potential for induced shale gas development is neither a “reasonably foreseeable” result of LNG exports, nor an “effect” of LNG exports, for purposes of a “cumulative impacts analysis” within the meaning of the regulations of the Council of Environmental Quality (“CEQ”).⁷¹ 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.”⁷²

Moreover, the DOE/FE has stated that “it is fully aware of concerns over the environmental effects of shale gas production,” but has further found that “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.”⁷³ Consistent with its prior holdings, the DOE/FE must reject attempts to conflate a public interest determination

⁷¹ 40 C.F.R. 1508.7 and 1508.8; *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005).

⁷² *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005); *Society Hill Towers Owners' Ass'n v. Rendell*, 210 F.3d 168, 181 (3rd Cir. 2000); *City of Oxford v. FAA*, 428 F.3d 1346, 1353-54 (11th Cir. 2005); and *Border Power Plant Working Grp. v. Dep't of Energy*, 260 F.Supp. 2d 997, 1027-28 (S.D. Cal. 2003).

⁷³ *Sabine Pass Liquefaction, LLC*, FE10-111-LNG, DOE/FE Order No. 2961-A (Final Opinion And Order Granting Long-Term Authorization To Export Liquefied Natural Gas From Sabine Pass LNG Terminal To Non-Free Trade Agreement Nations) (2011) at 28. The Sierra Club acknowledges that its arguments against approval of GPP's Application are premised on its argument that the DOE/FE orders in *Sabine Pass Liquefaction* were “wrongly decided.” (Sierra Club at 64.) To the contrary, the DOE/FE *Sabine Pass Liquefaction* holdings were sound, and the DOE/FE should reaffirm those holdings in this proceeding.

related to LNG exports with environmental or economic review of hydraulic fracturing.

The Sierra Club's contention that the NEPA review must include "induced gas production," Sierra Club Answer, at 28, fails to connect GPP's Application to export LNG with any specific gas production that would be induced by the export. As discussed in GPP's Application and elsewhere in this Answer, the GPP export facility will be well located to provide access to substantial quantities of natural gas from diverse domestic supply sources. As described above, the GPP export facility will be constructed on the site of the GPLNG LNG import terminal, which is located on the Sabine-Neches Waterway, approximately ten miles south of Port Arthur, Texas. The GPP export facility will thus be located close to the Onshore Gulf Coast, the Offshore Gulf of Mexico and the Mid-Continent producing regions, all of which have long been, and continue to be, significant U.S. natural gas supply areas. However, GPP has not pinpointed a production source for the gas to be exported. Indeed, exported gas could be produced from diverse locations across a broad geographic area.⁷⁴

The Sierra Club argues that GPP has "acknowledged" in its Application that the project will cause additional production, and that both EIA and DMP have "the tools" to predict where this production will occur. *Id.* at 29. This argument distorts GPP's Application. The models employed by DMP and EIA have the capability to predict that adequate supply will be available from one or more of a variety of sources, but they do not provide a practical basis for determining the scope of environmental review.

The Sierra Club cites several Environmental Protection Agency ("EPA") scoping comments in support of its position. It fails to note, however, that EPA filed all of those

⁷⁴ As such, GPP does not know the basis upon which the Sierra Club confidently claims that "[t]o be sure, Golden Pass will draw its gas from fields nearer to the Gulf." Sierra Club Protest, at 56.

comments with the FERC, not the DOE/FE, as part of the FERC's NEPA review of the respective LNG export projects. Sierra Club Protest at 32, fns. 110, 111 and 112. This argument underscores the basic point that Sierra Club has presented this argument in the wrong forum, before the wrong agency. Orderly review of GPP's Application requires that issues regarding environmental impact of GPP's proposed export project should be resolved in the proceedings before the FERC.

4. The DOE/FE must reject the Sierra Club's Demand that it Deny GPP's Application based on Sierra Club's Speculative Assertions.

As discussed above, NEPA is essentially a procedural statute, intended to identify and assess the environmental impacts of certain activities. The Sierra Club contends nonetheless that based on the purported environmental effects of "induced production" attributable to GPP's proposed export, that the DOE/FE must deny GPP's Application. The Sierra Club implicitly characterizes its discussion of purported detriments of certain production practices as evidence of adverse environmental impacts, contends that "[n]one of these consequences are in the public interest," and states further that "Golden Pass has offered no evidence to the contrary." Sierra Club Protest at 62.

As discussed above, the alleged harms identified by the Sierra Club are not a "reasonably foreseeable" consequence of GPP's Application. In addition, the Sierra Club has not addressed means of mitigation of such harms, but most if not all production of natural gas is regulated on the state or federal level.⁷⁵ Sierra Club fails to explain why harmful effects of

⁷⁵ *Nat'l Comm. for the New River, Inc. v. FERC*, 373 F.3d 1323 (D.C.Cir. 2004) at 1333 – 1334 (to the extent that the FERC is required under NEPA to give some environmental consideration of nonjurisdictional facilities, the FERC has adopted the four-factor test of *Algonquin Gas*, 59 FERC at 61,934 to determine whether there is sufficient federal control over a project to warrant environmental analysis: (1) whether the regulated activity comprises "merely a link" in a corridor type

(footnote continued on next page)

production cannot be addressed by authorities with direct jurisdiction. The DOE/FE does not have authority to grant or deny permission to engage in particular production activities. The Sierra Club consequently cannot assure that any currently planned gas production would not occur unless GPP's Application is granted. Sierra Club's argument again seeks to shift the statutory burden of proof provided for in NGA Section 3(a) to GPP, and to require GPP to prove a hypothetical negative – that it will not cause speculative environmental harms that the Sierra Club cannot identify because they are not “reasonably foreseeable” consequences of GPP's export of LNG.

For the reasons set forth above, the Protestors' environmental objections are simply not relevant to the instant proceeding and should have no bearing on the approval of this Application.

project; (2) whether there are aspects of the non-jurisdictional facility in the immediate vicinity of the regulated activity that uniquely determine the location and configuration of the regulated activity; (3) the extent to which the entire project will be within the Commission's jurisdiction; and (4) the extent of cumulative federal control and responsibility. See 18 C.F.R. § 380.12(c)(2)(ii). The requirement to consider the environmental effects of non-jurisdictional facilities will thus arise only where they are built in conjunction with jurisdictional facilities and are an essential part of a major federal action having a significant effect on the environment).

V. CONCLUSION

WHEREFORE, for the reasons set forth above, GPP requests that DOE/FE deny the Sierra Club's and APGA's motions to intervene in the captioned proceeding, and authorize GPP's proposed export of LNG as described in its Application.

Respectfully submitted,

Golden Pass Products LLC

A handwritten signature in blue ink that reads "William D. Collins". The signature is written in a cursive style with a large, stylized "W" and "C".

William D. Collins
President
Golden Pass Products, LLC
Three Allen Center, Suite 802
333 Clay Street
Houston, TX 77002
(713) 860-6323

**Authorized Representative for
Golden Pass Products LLC**

CITY OF HOUSTON)
)
)
)
STATE OF TEXAS)

SS:

**CERTIFIED STATEMENT AND VERIFICATION OF
AUTHORIZED REPRESENTATIVE**

Pursuant to Section 590.103(b) of the Department of Energy's (DOE) regulations, 10 C.F.R. § 590.303(e) (2012), William D. Collins, being first duly sworn on his oath deposes and says: that he is President of Golden Pass Products LLC; that that he is duly authorized to sign and file the foregoing Answer in the captioned proceedings before the DOE; that he has read the Answer; and that all of the statements and matters contained therein are true and correct to the best of his information, knowledge and belief.

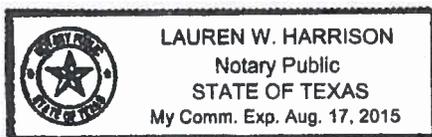


William D. Collins
President
Golden Pass Products LLC

Subscribed and sworn in Houston, Texas
this 28th day of February, 2013.


Lauren W. Harrison, Notary Public

My commission expires: 8/17/2015



CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document on all of the parties to this proceeding at the addresses provided in their initial pleadings:

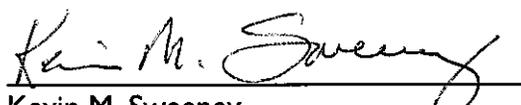
Craig Holt Segall
Staff Attorney
Sierra Club Environmental Law Program
50 F St, 8th Floor
Washington, DC
(202)-548-4597 (tel)
(202)-547-6009 (fax)
Craig.Segall@sierraclub.org

David Schryver
Executive Vice President
American Public Gas Association
Suite C-4
201 Massachusetts Avenue, N.E.
Washington, D.C. 20002
dschryyer@apga.org

Kathleen Krust
Paralegal
Sierra Club Environmental Law Program
85 2nd St., Second Floor
San Francisco, CA 94105
(415) 977-5696 (tel)
Kathleen.Krust@sierraclub.org

William T. Miller
Miller, Balis & O'Neil, P.C.
Twelfth Floor
1015 Fifteenth Street, N.W.
Washington, D.C. 20005
Telephone: (202) 296-2960
wmiller@mbolaw.com

Dated at Washington, DC, this 28th day of February, 2013.


Kevin M. Sweeney
John & Hengerer
1730 Rhode Island Ave., NW, Suite 600
Washington, DC 20036
202.429.8802
ksweeney@jhenergy.com