

ORIGINAL

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



In the matter of:

SABINE PASS LIQUEFACTION, LLC

)

DOCKET NO. 10-111-LNG

**ANSWER OF SABINE PASS LIQUEFACTION, LLC IN OPPOSITION TO  
OUT-OF-TIME INTERVENTION OF SIERRA CLUB**

Pursuant to 10 C.F.R. § 590.303(e), Sabine Pass Liquefaction, LLC (“Sabine”) submits this answer opposing Sierra Club’s Motion to Intervene Out of Time, Protest, and Comments, filed April 18, 2012 (the “Motion”).<sup>1</sup> Sierra Club’s untimely Motion, filed 16 months after the December 13, 2010 deadline for interventions, protests and comments, should be denied because Sierra Club has failed to show good cause for its late Motion, which will unduly delay and disrupt the proceeding, interfere with the ongoing, orderly process under the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321, *et seq.* (2006), and prejudice Sabine and other parties. In support of this answer, Sabine states the following:

**I. PROCEDURAL BACKGROUND**

A. DOE/FE Completes Its Public Interest Analysis And Conditionally Approves Sabine’s Application To Export LNG.

On September 7, 2010, Sabine filed an application with the Department of Energy, Office of Fossil Energy (“DOE/FE”) for long-term, multi-contract authorization to export domestically produced liquefied natural gas (“LNG”) from the Liquefaction Project proposed at the existing Sabine Pass LNG Terminal to non-Free Trade Agreement nations with which trade is not prohibited by U.S. law or policy. DOE/FE published a notice of the application in the Federal

---

<sup>1</sup> The motion mistakenly lists non-party Sabine Pass LNG, L.P. (“Sabine Pass LNG”) in the caption.

Register on October 12, 2010. *See* Sabine Pass Liquefaction, LLC; Application for Long-Term Authorization to Export Liquefied Natural Gas, 75 Fed. Reg. 62512 (Oct. 12, 2010) (“DOE October 2010 Notice”). As a matter of law, publication in the Federal Register put Sierra Club on notice of everything stated in the publication. *See Lyng v. Payne*, 476 U.S. 926, 942-43 (1986) (citing 44 U.S.C. § 1507).

Thus, as of October 12, 2010, Sierra Club had legal notice of the following:

- Sabine applied for authorization to export up to 16 million metric tons per annum (“mtpa”) of domestically produced LNG for a 20-year term, 75 Fed. Reg. at 62512;
- DOE/FE was reviewing Sabine’s application, at least in part, under the “public interest” standard of Section 3 of the Natural Gas Act (“NGA”), 15 U.S.C. § 717b(a), 75 Fed. Reg. at 62512-13;
- Sabine asserted the Liquefaction Project was in the public interest in part because of “the improved outlook for domestic natural gas production, in particular to shale gas-bearing formations in the United States,” 75 Fed. Reg. at 62513;
- Sabine and its affiliate, Sabine Pass LNG, were undergoing a pre-filing NEPA review in Docket No. PF10-24-000 pending before the Federal Energy Regulatory Commission (“FERC”), *id.*;
- Sabine was requesting a conditional order from DOE/FE, the only condition being the successful completion of FERC’s ongoing NEPA process, *id.*;
- Interested persons were provided 60 days to file any protests, motions to intervene or notices of intervention, making all such filings due by December 13, 2010. 75 Fed. Reg. at 62512.

Sierra Club did not file a motion to intervene, notice of intervention, or any comments within the prescribed time period.

On May 20, 2011, approximately six months after the comment period closed on December 13, 2010, DOE/FE issued DOE/FE Order No. 2961, its Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas From Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations (“May 20 Order”). After full and thorough consideration of Sabine’s application and all the objections and comments received from intervenors and commentators, the May 20 Order concluded that “it has not been shown that a grant of the requested authorization will be inconsistent with the public interest.” May 20 Order at 42. Accordingly, the May 20 Order granted Sabine’s application as consistent with the public interest, subject to specific listed conditions. *Id.* at 42-47 (listing conditions).

The only condition relevant to the current Motion was the requirement that Sabine successfully complete the pending NEPA process being conducted by FERC. Specifically addressing NEPA compliance, the May 20 Order stated

As requested in the application, the authorization issued in the instant proceedings will be conditioned on the satisfactory completion of the environmental review process in FERC Docket No. PF10-24-000 and on issuance by DOE/FE of a finding of no significant impact or a record of decision pursuant to NEPA.

May 20 Order at 40-41. *See also id.* at 43 ¶ F.

B. FERC Complies With NEPA By Completing An Environmental Assessment Resulting In A Finding Of No Significant Environmental Impact.

During the time Sabine’s application was pending before DOE/FE and thereafter, Sabine was pursuing a parallel path before FERC to obtain authorization under the NGA to site, construct and operate the Liquefaction Project. That process began when the Director of the Office of Energy Projects at FERC issued a letter order on August 4, 2010 in Docket No. PF10-24-000 granting the request of Sabine and Sabine Pass LNG to commence FERC’s mandatory

NEPA pre-filing review process for the Liquefaction Project. Three months later, on November 5, 2010, FERC published in the Federal Register a notice and request for comments regarding its intent to prepare an Environmental Assessment (“EA”). See Sabine Pass Liquefaction, LLC, and Sabine Pass LNG, L.P.; Notice of Intent to Prepare an Environmental Assessment for the Planned Sabine Pass Liquefaction Project and Request for Comments on Environmental Issues, 75 Fed. Reg. 68347 (Nov. 5, 2010) (“FERC November 2010 NOI”).

The FERC November 2010 NOI informed the public that the NEPA scoping process was open and that:

- FERC intended to prepare an EA “that will discuss the environmental impacts of the Sabine Pass Liquefaction Project. . . .,” 75 Fed. Reg. at 68347;
- “FERC is the lead federal agency in preparation of an EA that will satisfy the requirements of . . .NEPA,” *id.*
- DOE/FE “agreed to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities,” *id.*;
- Sabine asserted that approval of the Liquefaction Project “would improve the outlook for domestic natural gas production, owing to drilling productivity gains that have enabled rapid growth in supplies from unconventional, and particularly shale, gas-bearing formations in the United States,” 75 Fed. Reg. at 68348; and
- Scoping comments, which could be filed by three different means, were due on or before November 29, 2010. 75 Fed. Reg. at 69349.

Sierra Club did not file any scoping comments with FERC on or before November 29, 2010 explaining what environmental impacts it believed FERC and DOE/FE must consider in the NEPA process.

Three months later, on February 18, 2011, FERC published a notice of Sabine's application in the Federal Register. *See* Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.; Notice of Application, 76 Fed. Reg. 9573 (Feb. 18, 2011) ("FERC February 2011 Notice"). The FERC February 2011 Notice stated that:

- The NEPA Pre-Filing Process was complete, Docket No. PF10-24 therefore was closed, and all further proceedings would take place in Docket No. CP11-72-000;
- FERC either would publish an EA for public comment or would publish a Schedule for Environmental Review indicating the milestones and anticipated completion date for completion of a final environmental impact statement or EA; and
- The deadline for moving to intervene or for submitting comments on the application was March 4, 2011.

Sierra Club did not move to intervene or submit any comments to FERC by the March 4, 2011 deadline. FERC then issued a Notice of Schedule for Environmental Review of the Sabine Pass Liquefaction Project on December 16, 2011, reporting that it planned to issue an EA on December 28, 2011. Consistent with that notice, FERC released the EA for review on December 28, 2011.

On January 30, 2012, Sierra Club filed a Notice of Intervention, Motion to Intervene, and Comment on the December 28, 2011 Sabine Pass Liquefaction Project Environmental Assessment with FERC ("FERC Intervention"). Sierra Club commented that the EA was inadequate because, among other reasons, it failed to analyze the cumulative indirect impacts of increased production of shale-gas. FERC Intervention at 3-11.

Citing its own “liberal intervention policy,” FERC granted Sierra Club’s late FERC Intervention. *See Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P., Order Granting Section 3 Authorization*, 139 FERC ¶ 61,039 (2012) (“April 16 Order”) at PP 14-15 (citing 18 C.F.R. §§ 157.10(a)(2) and 380.10(a)(1)(i)). After granting that intervention, FERC addressed the cumulative impacts argument. FERC concluded that the alleged cumulative impacts resulting from additional production of natural gas from shale formations were not reasonably foreseeable, and therefore not amenable to NEPA analysis. May 20 Order at PP 95-99.

Specifically, FERC concluded that cumulative impacts of additional shale gas production were not reasonably foreseeable for two main reasons:

- The Liquefaction Project would receive gas from the Creole Trail Pipeline, which interconnects with several other pipelines, which in turn, interconnect with other pipelines in the interstate grid. These interconnecting pipeline systems span states from Texas to Illinois to Pennsylvania and New Jersey and cross multiple gas plays. Therefore, it was impossible to reasonably foresee the geographic sources of any additional shale gas production, and therefore impossible to analyze the potential environmental effects of the additional production. April 16 Order at PP 96-99.
- Although Sabine’s proposal specifically mentioned additional development of shale gas, Sabine did not purport to provide an exact estimate of how much of the exported gas would come from current shale or conventional wells, and how much new production from either shale or conventional gas wells would be attributable to the Liquefaction Project. *Id.*

FERC concluded that because neither the location nor the volume of the additional production was known, “the factors necessary for a meaningful analysis of when, where, and how shale-gas development will occur are unknown at this time.” *Id.* Because the key factors for a “meaningful analysis” were not available, “it is simply impractical for the Commission to consider impacts associated with additional shale development as cumulative indirect impacts resulting from the project which must, under CEQ regulations, be meaningfully analyzed by this Commission.” *Id.*

After a careful and thorough review of the comments received on the EA, including Sierra Club’s comments in its FERC Intervention, FERC made the following finding:

Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Sabine Pass’ application and supplements, and in compliance with the environmental conditions in Appendix D of this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

*Id.* at P 118.

FERC’s completion of the EA and issuance of a Finding of No Significant Environmental Impact (“FONSI”) met one part of the condition imposed by DOE/FE in the May 20 Order—the satisfactory completion of FERC’s NEPA process. The remaining condition—issuance by DOE/FE of a FONSI based on FERC’s environmental review process—is the only matter now pending.

## **II. OPPOSITION TO SIERRA CLUB’S INTERVENTION**

Sabine hereby opposes Sierra Club’s Motion on the following grounds: (A) Sierra Club has not shown good cause for its tardiness; (B) Sierra Club’s participation at this late date would disrupt DOE/FE’s orderly decision making process and be inconsistent with Congressional mandates in the Energy Policy Act of 2005 (“EPAct 2005”), Pub. L. No. 109-58, 119 Stat. 594,

streamlining NEPA review for applications for authorizations under NGA Section 3; and (C) granting the Motion would prejudice Sabine and other parties.

A. Sierra Club Is Unjustifiably Late.

Late intervention may be granted only “for good cause shown and after considering the impact of granting the late motion on the proceeding.” 10 C.F.R. § 590.303(d). Sierra Club has failed to show good cause for intervening more than sixteen months late. To the contrary, Sierra Club has long been aware of both this proceeding and the objections it now raises, but nonetheless has failed to intervene in a timely manner. Allowing its tardy intervention would effectively make this agency’s deadlines meaningless and serve to encourage other parties to engage in similar tactics.

Sierra Club, as explained above, has been on legal notice since at least October 12, 2010 of the precise nature of Sabine’s application, the fact that FERC’s lead-agency NEPA review had already begun, and that Sabine was contemplating an approval from DOE/FE that was conditioned only on the completion of the FERC NEPA review process. By November 5, 2010, Sierra Club also was on notice that DOE/FE had agreed to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities. In the May 20 Order, DOE/FE stated at that time that it “*is* analyzing the potential environmental impacts of the requested export authorization under NEPA. DOE/FE is a cooperating agency in the environmental review being conducted by the FERC’s Office of Energy Projects in FERC Docket No. PF10-24-000.” *Id.* at 40-41 (emphasis added). Thus, just as FERC had earlier made clear in the FERC November 2010 NOI that DOE/FE had intended to satisfy its NEPA responsibilities through its role as a cooperating agency, the May 20 Order further confirmed that DOE/FE was already analyzing NEPA issues through that process.



Yet, even though DOE/FE had confirmed again that its own NEPA review was already underway, Sierra Club filed nothing in this docket. Instead, it waited until after FERC issued its EA and then sought untimely intervention in FERC's proceeding on January 30, 2012. Only after FERC denied all of its objections did Sierra Club file the instant Motion. Sierra Club prides itself for having filed its motion "mere days after FERC completed its review." Motion at 5. But far from reflecting favorably on Sierra Club, that action further demonstrates its delay strategy. It seems unlikely that Sierra Club developed the 45-page, single-spaced Motion in "mere days." Rather, it seems that Sierra Club has been long aware of all of the issues it raises yet waited to move before this agency until now.

All these facts show that this is no ordinary case of tardiness. Sierra Club's conduct indicates a deliberate strategy of delay. It had not one, but numerous, opportunities to weigh in on this proceeding, both before DOE/FE and FERC, but chose to wait. Now, 16 months late, it seeks to raise again arguments that FERC has squarely rejected, in an eleventh-hour attempt to disrupt and delay a coordinated NEPA review process that has been ongoing for nearly two years. *See Upton v. Tribilcock*, 91 U.S. 45, 55 (1875) ("Relief is not given to those who sleep on their rights.").

Federal case law demonstrates that good cause does not exist in these circumstances. When considering whether "good cause" exists to modify a scheduling order setting forth deadlines in civil litigation, courts have held that "'good cause' depends on the diligence of the moving party." *Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 340 (2d Cir. 2000) (Sotomayor, J.).<sup>2</sup> "Although the existence or degree of prejudice [to the opposing party] might

---

<sup>2</sup> Sierra Club's reliance on Fed. R. Civ. P. 24 cases is misplaced. Motion at 4. Rule 24 requires "timely" motions, and Courts consider a variety of factors to measure timeliness. Sierra Club's motion clearly is untimely.

supply additional reasons to deny a motion, the focus of the inquiry is upon the moving party's reasons . . . . If that party was not diligent, the inquiry should end." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992); *see also ICU Med., Inc. v. Rymed Tech., Inc.*, 674 F. Supp. 2d 574, 578 (D. Del. 2009) (good cause "hinges on diligence of the movant, and not on prejudice to the non-moving party").

Sierra Club contends that "a party's diligence in seeking intervention is measured by the party's actions after learning that its interests were at stake." Motion at 5. According to its own Motion, Sierra Club's interests are in protecting the environment on behalf of its members. *See* Motion at 2. Those interests were "at stake" at the very outset of this proceeding. However, in its attempt to ensure that DOE/FE does not reject its arguments as FERC already has done, Sierra Club now seeks to redefine its interest more narrowly. *See* Motion at 5. Specifically, Sierra Club stated that "[b]ecause [the FERC] review is inadequate...Sierra Club's interests are directly implicated." *Id.* Stated differently, Sierra Club asserts that it learned its interests were at stake once FERC rejected its comments. That is not the law. A putative intervenor's interests do not appear at the moment when an agency rejects a position it favors; if that were so, then every non-party dissatisfied with an agency ruling could intervene at that late date. Rather, an intervenor's interests are at stake whenever a proceeding is commenced that could affect those interests.

Accordingly, Sierra Club's clear lack of diligence alone provides ample reason to deny its Motion.

**B. Granting Sierra Club's Motion Would Unjustifiably Delay and Disrupt This Proceeding.**

Sierra Club contends that good cause exists because its late participation would not disrupt the proceeding given that the phase of the proceeding for DOE/FE to consider the environmental questions Sierra Club raises in its Motion began upon completion by FERC of its environmental analysis, Motion at 3-4. However, this argument rests on the fundamental

misconception that DOE/FE is only now considering NEPA issues for the first time and must now begin a full-blown NEPA evaluation and also reconsider the public interest determination that it made nearly 12 months ago. As a preliminary matter, the public interest determination has already been made and is subject to only one condition as relevant here: DOE/FE issuance of a FONSI. Sierra Club misapprehends the nature of that review and proposes a course for DOE/FE that would be inconsistent with the NEPA scheme applicable to applications for authorizations under NGA Section 3 delineated by Congress in EAct 2005.

1. DOE/FE's Public Interest Inquiry Is Not Open To Reconsideration.

The bulk of Sierra Club's motion is devoted to its argument that Sabine's export proposal is "contrary to the public interest" and should be disapproved for that reason. *See* Motion at 19-45. That argument alone amply demonstrates Sierra Club's lack of good cause for its tardiness. DOE/FE made clear on October 12, 2010, at the very outset of this proceeding, that it would be evaluating Sabine's application under the NGA's "public interest" standard and that the "decisional record" on the application would "be developed through responses to this notice by parties, including the parties' written comments and replies thereto." 75 Fed. Reg. 62514. Then, in its May 20 Order, DOE/FE made a specific finding that "it has not been shown that a grant of the requested authorization will be inconsistent with the public interest." May 20 Order at 42.

Although the May 20 Order was conditional, none of the conditions specified the reopening of the public interest inquiry. The only condition arguably relevant here was the specification that "the authorization granted by this Order is conditioned on the satisfactory completion of that environmental review process in FERC Docket No. PF10-24-000 and on issuance by DOE/FE of a finding of no significant impact or a record of decision pursuant to NEPA." *Id.* at 43 ¶ F. Under this condition, the *only* further proceedings would be (1) the

satisfactory completion of FERC's NEPA review and (2) issuance by DOE/FE of a FONSI or record of decision pursuant to NEPA. No other determinations were contemplated.<sup>3</sup>

The reason for this condition was clear. Under NEPA, DOE/FE cannot issue a final approval on Sabine's application until the procedural requirements of NEPA have been satisfied. But DOE/FE made clear that the NEPA process was not a substitute for its own consideration of the public interest pursuant to the NGA. That process began long ago and the time for Sierra Club to become involved in that process likewise passed long ago.

2. Disruption of the NEPA Review Process Would Be Inconsistent with Congressional and Administrative Intent To Streamline that Process.

Sierra Club's untimely intervention would significantly disrupt the cooperative agency review under NEPA, which has been ongoing for more than a year and is nearing its completion. As with its public interest arguments, the time for Sierra Club to weigh in with its NEPA arguments has long since passed.

EPAAct 2005 amended the NGA to streamline the process for reviewing and approving natural gas projects, including LNG facilities. It expressly provided FERC with lead agency status for the purposes of coordinating all applicable federal authorizations and complying with NEPA. To facilitate the process, the FERC was required to institute a NEPA pre-filing process, set deadlines for issuance by participating agencies of all federal authorizations and to maintain a single consolidated record for all federal authorizations to be used for appeals or judicial review of such decisions. *See* EPAAct 2005, Sections 311 and 313. In this regard, EPAAct 2005 also

---

<sup>3</sup> Citing a February 24, 2012 letter to a member of Congress from the Deputy Secretary of Energy, Sierra Club contends that DOE has purportedly "committed" to revisiting its conditional authorization in this case following studies by the Energy Information Administration. Motion at 12. That is not what that letter says. Rather, the letter made clear that 2.2 Bcfd of natural gas was "***already authorized*** for export" in this case. Feb. 24, 2012 Letter at 2 (emphasis added).

provided a path for direct, expedited appeal to the U.S. courts of appeals from most agency decisions authorized under federal law. *See* EPA Act 2005, Section 313.

As set forth above, DOE/FE's NEPA review is not just beginning now. It began in 2010 when DOE/FE became a cooperating agency with FERC as the lead agency. As intended at the outset of that process, and as DOE/FE has previously done, the governing regulations permit DOE/FE to adopt FERC's finding so long as FERC has satisfactorily addressed any comments raised by DOE/FE during the cooperative agency process. DOE/FE has adopted regulations of the Council on Environmental Quality that govern its role as a cooperating agency. *See* 10 C.F.R. § 1021.103. These regulations provide that "DOE shall cooperate with the other agencies in developing environmental information and in determining whether a proposal requires preparation of an EIS or EA, or can be categorically excluded from preparation of either." 10 C.F.R. § 1021.342.

The lead/cooperating agency process exists to avoid duplication of efforts within the federal government. A cooperating agency such as DOE/FE provides its input through that process by participating in the review and submitting comments *before* the lead agency issues its report. Once the report has issued, the role of the cooperating agency is normally limited. As a cooperating agency under NEPA, DOE/FE "may adopt *without recirculating*" FERC's EA if, "after an independent review" of the EA, DOE/FE "concludes that *its* comments and suggestions have been satisfied." 40 C.F.R. § 1506.3(c) (emphasis added); *see also* Council on Environmental Quality Guidance Regarding NEPA Regulations, 48 Fed. Reg. 34263, 34265-66 (July 28, 1983) (CEQ regulations regarding adoption of an EIS should be applied to allow the adoption of an EA). The DOE's National Environmental Compliance Program specifically anticipates adoption of EAs prepared by other agencies and designates to each Secretarial Officer

the authority to adopt another agency's EA and issue a FONSI. DOE Order 451.1B § 5(a)(9)(d) (Jan. 19, 2012).

In *LaFlamme v. FERC*, 945 F.2d 1124 (9th Cir. 1991), the Ninth Circuit rejected an argument that a cooperating agency (the Forest Service) “erred in failing to prepare an independent EA or EIS.” *Id.* at 1130. As the court made clear, “when a lead agency prepares environmental statements, there is no need for other cooperating agencies involved in the action or project to duplicate that work.” *Id.* (citing 40 C.F.R. §§ 1501.5, 1501.6). Because FERC was the lead agency in that case, “it was not unreasonable for the Forest Service as a cooperating agency to decline to prepare independently an EA or an EIS.” *Id.* See also *Sierra Club v. U.S. Army Corps of Engineers*, 295 F.3d 1209, 1215 (11th Cir. 2002) (“Agencies are not required to duplicate the work done by another federal agency which also has jurisdiction over a project. NEPA regulations encourage agencies to coordinate on such efforts.”).

Thus, under the regulatory process that DOE/FE has subscribed to, the only requirement for DOE/FE to adopt the NEPA report of a lead agency such as FERC is that DOE/FE independently review FERC's findings and conclude that DOE/FE's comments and suggestions have been satisfied. 40 C.F.R. § 1506.3(c). This makes perfect sense and is consistent with Congressional intent in EPOA 2005 and CEQ's streamlining provisions. The entire point of the lead/cooperating agency structure is for the agencies to work *together* during the NEPA process rather than have the cooperating agency reinvent the wheel after the lead agency's report. If the cooperating agency has any concerns, it may file comments with the lead agency during the process. If the lead agency does not satisfactorily address those concerns, the cooperating agency can decide not to adopt the lead agency's report. Here, DOE/FE was entitled to file comments with FERC on any issues of concern to it during the NEPA process, but FERC's

docket indicates that no such comments were filed. Therefore, DOE/FE is entitled to adopt FERC's finding after an independent consideration since there are no unresolved DOE/FE comments.

Indeed, that is what DOE/FE has done previously with regard to the Sabine Pass LNG Terminal. In 2009, DOE/FE likewise participated as a cooperating agency with regard to a NEPA review being conducted by FERC as lead agency relating to modifications to the Sabine Pass LNG Terminal to allow the re-export of LNG that previously had been imported from foreign sources. As in this case, FERC made a finding of no significant environmental impact. On June 5, 2009, DOE/FE adopted that finding "on the basis of the EA" previously prepared by FERC. *See DOE/FE Finding of No Significant Impact for Cheniere Marketing, Inc. Regarding Order Granting Application for Authorization to Export Liquefied Natural Gas*, FE Docket No. 08-77-LNG (June 5, 2009) at 2. *See also id.* at 1 ("All discussion and analysis related to the potential impacts of a grant of the export application are contained within the [FERC] EA . . . which is hereby incorporated by reference"). The same kind of determination is warranted here.

C. Allowing Intervention at This Late Stage Will Unjustifiably Prejudice the Parties.

Even if Sierra Club had otherwise shown good cause, and it has not, untimely intervention can be granted only after consideration of its effects on the proceedings. Granting Sierra Club's untimely Motion will prejudice and unduly burden Sabine, as well as other parties. Strategic plans, investment opportunities and the creation of many jobs that will stimulate the national, regional and local economies as a direct result of the authorization of the Liquefaction Project are dependent on DOE/FE's issuance of a FONSI in a timely manner. In this regard, delving into the policy arguments raised by Sierra Club without a showing of good cause will unnecessarily delay this proceeding and have a cascading impact on the multiple interests represented by the Liquefaction Project.

The cost of all of this unnecessary delay would not fall upon Sierra Club—which would affirmatively welcome it—but upon Sabine and the thousands of other entities and people whose lives and economic well-being would be enhanced by construction of a project already found to be in the public interest and to cause no significant environmental impact.

More specifically, parties that will be prejudiced by disruption or delay to this proceeding by Sierra Club’s Motion include:

- Sabine and its affiliates, including Cheniere Energy, Inc., its shareholders and investors, who have dedicated tens of millions of dollars to develop the Liquefaction Project and are preparing to spend \$6 billion on Phase I (*i.e.*, Trains 1 and 2) of the Liquefaction Project.<sup>4</sup> Phase II (*i.e.*, Trains 3 and 4) of the Liquefaction Project will result in additional investments.
- The State of Louisiana and Cameron Parish who would receive enormous economic benefits from the investment, including the creation of 100-150 direct long-term, skilled technical jobs and 3,000 peak construction jobs.
- Potential U.S. suppliers of services and equipment, including ConocoPhillips Company, Bechtel Oil, Gas and Chemicals, Inc. and General Electric, all who propose to dedicate substantial resources to the Liquefaction Project.

---

<sup>4</sup> At present, financing arrangements are being structured to fund development and construction of the Liquefaction Project (Phase I). Cheniere Energy Partners, L.P. (“Cheniere Partners”) recently announced that it has engaged eight financial institutions to act as Joint Lead Arrangers to assist in the structuring and arranging of up to \$4 billion of debt facilities. The proceeds will be used, *inter alia*, to pay for costs of development and construction of Phase I of the Liquefaction Project. This follows on the heels of Cheniere Partners’ announcement that it has entered into an agreement with Blackstone Energy Partners and its affiliates (collectively “Blackstone”) to finalize and execute definitive agreements under which Blackstone would purchase newly issued Senior Subordinated Paid-in-Kind Units for \$2 billion, the proceeds of which will be used to finance the equity portion of the costs of developing, constructing and placing into service Phase I of the Liquefaction Project.



- Customers of the Liquefaction Project who have executed LNG sale and purchase agreements with Sabine including: BG Gulf Coast LNG, LLC; Gas Natural Fenosa; GAIL (India) Limited; and Korea Gas Corporation.

In sum, while Section 590.303(d) of the DOE regulations protects the rights of those parties that have shown good cause for late intervention, it also protects parties like Sabine from the burdens and disruption caused by unjustified, late intervenors. Like the lack of good cause, the undue delay and prejudice is itself sufficient reason to deny Sierra Club's Motion.

D. If Sierra Club's Objections Are Considered, They Should Be Rejected

For the reasons set forth above, Sierra Club's objections come far too late and should be denied for that reason alone. But if DOE/FE nevertheless considers Sierra Club's objections, it should reject them. FERC took a "hard look" at the environmental consequences of the Liquefaction Project as informed by Sierra Club's objections and properly concluded that the environmental effects of increased production of shale gas are not reasonably foreseeable and therefore not amenable to NEPA analysis.

Sierra Club challenges FERC's conclusion that the cumulative indirect effects of increased shale gas production are not reasonably foreseeable because "induced production is eminently foreseeable, as demonstrated by the fact that it *has been foreseen* by DOE/FE, by the Energy Information Administration, by Sabine Pass, by every other company that has applied for LNG export authority, and by FERC itself." Motion at 13. Sierra Club further points to the January 2012 Energy Information Agency report (the "EIA Report") to support its argument, noting that the EIA Report states that 72% of the increased production caused by exports will come from shale gas. *Id.* at 14. Thus, because additional production of shale gas has been foreseen, Sierra Club argues, that additional production must be analyzed as a cumulative

indirect effect. *Id.* at 14-15. Sierra Club’s argument misses the point completely. FERC did not conclude that additional shale gas production as a general matter was not reasonably foreseeable; FERC concluded that the *environmental effects* of additional shale gas production were not reasonably foreseeable because it could not be determined when, how much, and where the additional shale gas production would take place. April 16 Order at PP 96-99. In other words, the absence of any specific proposals or concrete plans for additional shale gas production makes it impossible to conduct any “meaningful analysis” of the environmental effects of additional production.

NEPA requires analysis of “reasonably foreseeable” cumulative effects. 40 C.F.R. § 1508.7. “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.” *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005) (citation and quotation marks omitted). Agencies “need not delve into the possible effects of a hypothetical project, but need only focus on the impact of the particular proposal at issue and other pending or recently approved proposals that might be connected to or act cumulatively with the proposal at issue.” *Society Hill Towers Owners’ Ass’n v. Rendell*, 210 F.3d 168, 181 (3rd Cir. 2000) (quoting *Nat’l Wildlife Fed. v. FERC*, 912 F.2d 1471, 1478 (D.C. Cir. 1990)). “Restricting cumulative impact analysis to foreseeable future actions ensures that the details of these actions are sufficiently concrete for the agency to gather information useful to itself and the public.” *City of Oxford v. FAA*, 428 F.3d 1346, 1353-54 (11th Cir. 2005). Thus, the mere possibility that a power plant might expand to generate more electricity because of a proposed power line that would facilitate transmission of the additional power generated does not generate reasonably foreseeable environmental effects. *See Border Power Plant Working Grp. v. Dep’t of Energy*, 260 F. Supp. 2d 997, 1027-28 (S.D.

Cal. 2003). In contrast, when the record evidence before the agency shows that specific turbines at a power plant would generate power to be transmitted over the proposed line, the operations of the two turbines, and their consequent environmental effects, were “reasonably foreseeable” under NEPA. *Id.* at 1016-17.

In *South Coast Air Quality Management*, the Ninth Circuit rejected an argument nearly identical to Sierra Club’s argument in this case. In that case, the plaintiff argued that cumulative indirect effects of burning natural gas shipped through a particular pipeline were reasonably foreseeable because at the time it authorized the shipment, FERC knew

1) the amount of the gas the pipeline will transfer; 2) the purchasers and shippers who will buy the gas; 3) the [Wobbe Index] of the gas; 4) the expected NOx emissions that will result from the gas’s consumption; and 5) the environmental harm that will result from that consumption.

*S. Coast Air Quality Mgm’t v. FERC*, 621 F.3d 1085, 1101. From that information, plaintiff argued, FERC could analyze the effects of burning the transported gas. The Ninth Circuit disagreed, noting that the “information is significantly less than meets the eye.” *Id.* Specifically, while FERC knew the maximum capacity of the pipeline, it did not know the volumes of gas that actually would get shipped, a factor that would be determined by market conditions. *Id.* Similarly, the court noted that while FERC knew the minimum baseline of the properties of the gas when it entered the pipeline, it did not necessarily know the qualities of the gas when it was burned after shipment. *Id.* Because of the unknowns, the cumulative effects of burning the gas were not reasonably foreseeable.

The cumulative effects of increased shale-gas production are even less foreseeable. First, while DOE/FE has conditionally approved Sabine’s application to export up to the equivalent of 16 mpta of LNG annually for twenty years, the amount of LNG ultimately exported each year will depend on market conditions. As the EIA Report notes, “[g]lobal natural gas markets are

not integrated and their nature could change substantially in response to significant changes in natural gas trading patterns.” EIA Report at 3. Thus, the quantity of increased shale production is not reasonably foreseeable. Second, as FERC noted in its April 16 Order, the Sabine liquefaction facility will receive natural gas from the Creole Trail Pipeline, which interconnects with several other interstate pipelines that span most of the Eastern United States. April 16 Order at P 97. Because the gas delivered to Sabine’s liquefaction facility could be sourced anywhere in the Eastern half of the country, it could come from any number of shale-gas deposits, or even from conventional sources. Thus, the ultimate source of the natural gas is not reasonably foreseeable. Finally, Sierra Club has not identified for analysis any in-progress, planned, or even proposed large-scale shale-gas development projects attributable to Sabine’s application. DOE/FE has no authority to approve or disapprove the drilling of shale gas wells, and cannot itself know when, where, and on what conditions additional wells will be approved.

No person of ordinary prudence would reasonably take the alleged environmental effects of increased shale production into account when making a decision regarding the Sabine Pass facility, *see City of Shoreacres*, 420 F.3d at 453, because it is simply impossible to know where any of that production will occur and therefore how it would affect any particular environment. Indeed, if Sierra Club were correct, agencies would also have to consider the environmental impacts of the unknown factories that make the drilling equipment used for the new production, and the environmental impacts of the additional employment at those factories. As FERC properly concluded in the April 16 Order, the analysis must end somewhere; these kinds of generalized, indirect effects are far too speculative to be considered under NEPA. April 16 Order at PP 96-99.

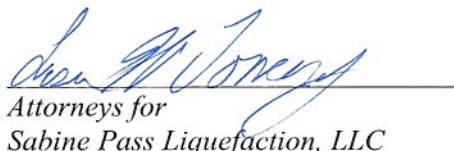
E. Sierra Club's Remaining Objection Should be Rejected.

Sierra Club also asserts that DOE/FE regulations require a full EIS. Motion at 16. This argument has been rejected by FERC already and for the same reasons should be rejected by DOE/FE. *See* May 20 Order at PP 43-46. Moreover, Sierra Club's objection misapprehends DOE/FE's NEPA rules, which identify classes of actions that "normally" require either an EA or an EIS. *See* 10 C.F.R. § 1021.400(a) and Appendices C and D. The regulation is not an inexorable command, however, and actions that "normally" requires an EIS can be authorized by an EA followed by a FONSI. As set forth above, the FERC's environmental review record, developed with DOE/FE's participation as a cooperating agency, supports issuance of a FONSI by DOE/FE, which would obviate the need for an EIS.

III. CONCLUSION

WHEREFORE, Sabine respectfully requests that the DOE/FE deny Sierra Club's Motion and issue a Finding of No Significant Impact.

Respectfully submitted,



\_\_\_\_\_  
*Attorneys for*  
*Sabine Pass Liquefaction, LLC*

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

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


Benjamin Vetter  
FULBRIGHT & JAWORSKI L.L.P.  
1200 17th Street  
Suite 1000  
Denver, CO 80202-5835

Dated: May 3, 2012

**CERTIFICATE OF SERVICE**

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

Dated at Washington, DC this 3rd day of May, 2012.



---

Nicholas McMann  
*Paralegal on behalf of  
Sabine Pass Liquefaction, LLC*