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

IN THE MATTER OF:

LNG Development Company, LLC (d/b/a Oregon LNG)	**)**	**FE DOCKET NO. 12-77-LNG**

ANSWER OF LNG DEVELOPMENT COMPANY, LLC (D/B/A OREGON LNG) TO OUT-OF-TIME INTERVENTION, PROTESTS AND COMMENTS

Pursuant to Sections 590.303(e) and 590.304(f) of the Department of Energy's ("DOE") regulations,[1] LNG Development Company, LLC (d/b/a Oregon LNG) ("Oregon LNG") hereby submits this Answer to the American Public Gas Association's ("APGA") Motion for Leave to Intervene and Protest ("APGA Motion") and the Citizens Against LNG, Inc.'s ("CALNG") Notice of Intervention and Comments ("CALNG Motion"), both filed on November 6, 2012. Oregon LNG also submits this Answer in opposition to the Sierra Club and Columbia Riverkeeper's (collectively "Sierra Club") Motion to Intervene, Protest, and Comments ("Out-of-Time Motion") filed on November 7, 2012. In support of this Answer, Oregon LNG states the following:

I. PROCEDURAL BACKGROUND

On July 16, 2012, Oregon LNG filed an application pursuant to Section 3 of the Natural Gas Act ("NGA")[2] with the DOE, Office of Fossil Energy ("DOE/FE") for long-term, multi-contract authorization to export up to 9.6 million metric tons per annum of liquefied natural gas ("LNG") from a proposed LNG terminal site in Warrenton, Clatsop County, Oregon ("Export

[1] 10 C.F.R. §§ 590.303(e) and 590.304(f) (2012).
[2] 15 U.S.C. § 717b (2006).

Project" or "Project") to any country with which the U.S. does not have a Free Trade Agreement requiring the national treatment for trade in natural gas and LNG, that has or in the future develops the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy ("July 16 Application").

Notice of Oregon LNG's July 16 Application was published in the Federal Register on September 7, 2012 ("NOA") and provided, among other things, that protests, motions to intervene, requests for additional procedures and written comments to the July 16 Application be filed with DOE/FE by no later than 4:30 p.m. eastern time on November 6, 2012.[3] Both APGA and CALNG filed timely motions to intervene, which Oregon LNG does not oppose. Sierra Club, by contrast, submitted its Out-of-Time Motion to DOE/FE after the deadline established by the NOA.[4] Oregon LNG opposes Sierra Club's Out-of-Time Motion and respectfully submits that Sierra Club cannot show good cause for its late filing for the reasons discussed in Section IV.A below.

II. ANSWER TO APGA MOTION

The APGA Motion espouses the position that the export of natural gas as LNG as proposed by the July 16 Application is not in the public interest because "exports will lead to potentially significant price increases."[5] APGA claims that such potential price increases will (i) jeopardize the transition away from carbon-intensive (*e.g.,* coal-fired) electric generation, (ii) inhibit efforts to foster the use of natural gas as a transportation fuel, which in turn, will

[3] 77 Fed. Reg. 55,197 (Sept. 7, 2012). Notably, the NOA provided for a 60-day comment period, which is double the 30-day minimum time period contemplated by the DOE regulations at 10 C.F.R. § 590.205(a), to enable interested persons ample time and opportunity to submit comments, protests, motions to intervene, notices of intervention or motions for additional procedures.

[4] Sierra Club's Out-of-Time Motion has been deemed late by DOE/FE. *See DOE/FE Notification to Sierra Club of Late Filing* (Nov. 16, 2012). As DOE/FE indicated in that notification, Sierra Club must make a subsequent filing to seek leave to file its protest and comments to the July 16 Application out of time.

[5] APGA Motion at 3.

jeopardize U.S. energy independence, and (iii) "reverse the nascent trend toward renewed domestic manufacturing."[6] APGA also states that the Export Project will not prove economically viable because as unconventional natural gas reserves and export capacity expand around the world, the price arbitrage opportunity that Oregon LNG seeks to exploit will dissipate.[7]

As discussed below, the APGA Motion wrongfully concludes that Oregon LNG's proposed exports will significantly increase domestic natural gas prices and thus is inconsistent with the public interest. APGA fails to put forth any relevant or specific study or analyses to discredit or contradict either the market or economic impacts analysis provided by Oregon LNG in support of the July 16 Application. Thus, the APGA Motion is wholly unsupported and fails to overcome the statutory presumption in favor of granting the July 16 Application. Accordingly, it should be accorded no weight by DOE/FE in its deliberations.

A. APGA Fails to Overcome the Public Interest Presumption

As a preliminary matter, the APGA Motion is incorrectly premised on the supposition that the Oregon LNG Project is like other proposed LNG export projects that will primarily export domestically-produced LNG. That is not the case. The Export Project is proposed to export primarily Canadian-sourced LNG.[8] In this regard, APGA's reliance on the DOE/FE commissioned report, *Effect of Increased Natural Gas Exports on Domestic Energy Markets* ("EIA Export Report") and the *Annual Energy Outlook 2012* ("AEO 2012"), both prepared by

[6] *Id.* APGA's arguments with the general theme of energy independence predicated on protectionist export restrictions already have been considered and rejected by DOE/FE in the Sabine Pass Liquefaction, LLC ("Sabine Pass") proceeding. *See Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 2961 at 35-36 (May 20, 2011) ("Order No. 2961"). APGA has not shown any change in circumstances that would warrant a departure from this prior ruling.

[7] APGA Motion at 3-4.

[8] Although the Export Project will interconnect with the Williams Northwest Pipeline Company system to connect Pacific Northwest demand centers with both British Columbian and Rockies supplies, the vast majority of the natural gas feedstock for the Export Project would come from resources in Western Canada and not the U.S. *See* July 16 Application at 16.

the Energy Information Administration ("EIA"), is misplaced. Neither the EIA Export Report nor AEO 2012 take into account the demand for natural gas imports from Canada created by the Export Project, as contemplated by the July 16 Application. Moreover, the EIA Export Report is limited to the West South Central Census Division, which effectively assumes that incremental LNG exports would occur from the Gulf Coast States of Texas or Louisiana—not the Pacific Northwest, which is the proposed location of the Export Project.[9] Given these limitations, which are discussed further below, neither the EIA Export Report nor AEO 2012 support, or are even relevant to, APGA's position that LNG exports from the Project will result in a material increase in domestic natural gas prices.

Although the EIA Export Report accounted for changes in modeled flows of gas into and out of the Lower-48 (*i.e.,* import/export from/to Canada/Mexico) to analyze the increased export scenarios,[10] it relied on the AEO 2011 reference cases to set the outlook for U.S. natural gas imports from Canada. AEO 2011 reflects that U.S. imports of Canadian pipeline gas will decrease due to improving prospects for domestic U.S. natural gas production.[11] That is because AEO 2011 did not take into consideration proposed LNG export capacity that directly impacts the cross-border natural gas flow between the U.S. and Canada. In this regard, the Oregon LNG Export Project would provide demand for up to 1.3 Billion cubic feet per day of Canadian natural gas.[12] Similarly, AEO 2012 fails to take into account the Export Project and reflects that "[g]enerally, lower natural gas prices…result in lower natural gas imports from Canada…"[13]

[9] EIA Export Report at 2.
[10] *Id.*
[11] AEO 2011 at 60.
[12] The AEO 2011 Reference case did not consider any proposed export projects and was limited to existing liquefaction capacity in Alaska as the only source for U.S. exports of LNG. *See id.* at 80.
[13] AEO 2012 at 62. *See also id.* at 73 ("With prospects for domestic U.S. natural gas production continuing to improve, the need for imported natural gas declines. U.S. imports of natural gas from Canada fall to 2.4 trillion cubic feet in 2025 in the Reference case and remain relatively flat through the end of the projection.").

To address this gap in the EIA data, Oregon LNG commissioned from Navigant Consulting, Inc. ("Navigant") a Project-specific study in support of its July 16 Application.[14] The Navigant Study analyzed the price impacts resulting from exporting primarily Canadian-sourced LNG as contemplated by the July 16 Application. APGA did not conduct or submit its own analysis to counter the Navigant Study but rather merely refers to studies and analyses that focus solely on natural gas development in the U.S., or pertain to general economic forecasts, none of which is specific to the Export Project. The more relevant Project-specific data provided by Navigant and empirical data relied on by Oregon LNG all establish that Canadian-sourced supplies are ample and sufficient to meet the demand presented by the Export Project without materially impacting domestic supply and natural gas prices.[15]

APGA conveniently has chosen to ignore the relevant data and overlook the fact that Oregon LNG's export proposal is similar to previous applications for authorization to re-export foreign-sourced LNG, which DOE/FE has expeditiously granted by reasoning that exporting such LNG could not significantly reduce the availability of domestically-produced natural gas.[16] In this regard, the APGA Motion wrongly focuses on domestic supply as the ultimate source of gas for the Export Project. Nothing in the APGA Motion calls into question the validity of Navigant's results, which are extensively described in the July 16 Application.[17]

B. The Economic Viability of the Export Project is not Relevant to the Public Interest Analysis

The legal standard applicable to applications under Section 3 of the NGA is well established, as detailed in Oregon LNG's July 16 Application.[18] In opposing Oregon LNG's

[14] July 16 Application, Appendix B, *Oregon LNG Export Project Market Analysis Study*, prepared by Navigant Consulting, Inc. (Apr. 13, 2012) ("Navigant Study").
[15] *See* July 16 Application at 4 & n. 9.
[16] *See, e.g.*, *ConocoPhillips Company*, DOE/FE Order No. 3038 (Nov. 22, 2011).
[17] July 16 Application at 22 – 26.
[18] *Id*. at 12 – 14.

July 16 Application, APGA seeks to turn the legal standard under Section 3 of the NGA on its head by attacking the economic viability of the Project. APGA suggests that rather than following the principles established by the DOE's Policy Guidelines, which promote free and open trade by minimizing federal control and involvement in energy markets,[19] DOE/FE should reject Oregon LNG's export proposal on the basis that the Export Project is not economically viable. Contrary to APGA's claims, it is not within DOE/FE's role in administering Section 3 of the NGA to analyze the economic merits and commercial viability of a proposed project.

III. ANSWER TO CALNG COMMENTS

The CALNG Motion expresses vague "concerns about the cumulative impacts of all these LNG Export proposals on gas supply and the domestic price of natural gas."[20] The CALNG Motion further urges DOE to conduct a Programmatic Environmental Impact Statement ("EIS") and economic study of all the proposed LNG export projects in the U.S. CALNG asserts that this programmatic assessment should include the impacts of hydraulic fracturing, impacts on water and air quality and water supply, and an independent assessment of "what the sustainable natural gas supplies truly are" so that facilities are not built and then abandoned due to a lack of supply.[21] CALNG's position must be rejected insofar as Oregon LNG's proposed Export Project is a discrete project that is independent in nature. It is not part of a coordinated federal program and there is no basis for preparing a programmatic EIS for all proposed export projects in the U.S.

Courts have established that federal agencies may prepare a programmatic EIS to consider the broad environmental consequences attendant upon a "wide-ranging federal

[19] *Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas*, 49 Fed. Reg. 6,684 (Feb. 22, 1984).
[20] CALNG Motion at 1–2.
[21] *Id.* at 3–4.

program."[22] Programmatic EISs are not prepared for individual projects proposed by private developers like Oregon LNG.[23] For example, in *Weaver's Cove, LLC*, FERC rejected repeated requests by the Conservation Law Foundation to prepare a programmatic EIS, holding that it should not be prepared for individual, "discrete proposal[s]" filed under specific federal statutes like the NGA.[24] FERC noted that the existence of other proposed projects in the region did not necessarily "connect" the Weaver's Cove project to others, or demonstrate concerted group activity.[25] In the same vein, FERC has never undertaken to prepare a programmatic EIS for the multitude of interstate natural gas pipeline projects subject to its NGA review. Further, the D.C. Circuit has stated that a programmatic EIS is not required even for individual projects conducted under the auspices of a federal "program," if the project is "discrete and independent in nature" or "separately operated."[26]

For the reasons discussed above, CALNG's request that DOE/FE prepare a programmatic EIS should be rejected.

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[22] *See Found. Econ. Trends v. Heckler*, 756 F.2d 143, 159 (D.C. Cir. 1985) (*quoting Nat'l Wildlife Fed'n v. Appalachian Reg'l Comm'n*, 677 F.2d 883, 888 (D.C. Cir. 1981)).

[23] *See generally, Pac. Rivers Council v. U.S. Forest Serv.*, 689 F.3d 1012, 1015 (2012) (considering a programmatic EIS for the U.S. Forest Service's Land and Resource Management Plan ("LRMP"), a federal program that coordinates and guides all management decisions of national forests subject to the LRMP); *State of Nev. v. DOE*, 457 F.3d 78, 92 (2006) (considering a programmatic FEIS for a national, underground nuclear waste repository coordinated, developed and operated by DOE); *In the Matters of N. States Power Co.*, 7 NRC 41 *17 (1978) (recognizing the expansion of the DOE Energy Research and Development Administration's program for developing a permanent, high-level waste repository as part of a "coordinated federal program," involving preparation of a programmatic EIS).

[24] 114 FERC ¶ 61,058 at P 64 (2006) ("Weaver's Cove").

[25] *Id.*

[26] *Found. on Econ. Trends v. Lyng*, 817 F.2d 883, 884-85 (holding that the United States Department of Agriculture's research program on animal productivity research was not a "program" requiring a programmatic EIS, even if the individual projects were conducted pursuant to the same underlying policy objective).

IV. ANSWER TO SIERRA CLUB OUT-OF-TIME MOTION

A. Sierra Club Has Not and Cannot Establish Good Cause for its Late Intervention

Oregon LNG hereby opposes Sierra Club's Out-of-Time Motion, which was filed with DOE/FE after the deadline established by the NOA. Sierra Club has not, and cannot, show good cause for filing its Out-of-Time Motion beyond the regulatory deadline.

Section 590.303(d) of the DOE regulations requires that a motion to intervene be filed no later than the date established in the applicable order or NOA, in this case, 4:30 p.m. eastern time on November 6, 2012, "unless a later date is permitted by the Assistant Secretary for good cause shown and after considering the impact of granting the late motion of the proceeding."[27] Sierra Club failed to submit its Out-of-Time Motion by the deadline established and has failed to show good cause for its delay.

As a sophisticated organization of over 600,000 members, and with a record of active participation in the natural gas industry regulatory arena, Sierra Club should not be allowed to circumvent procedural requirements. Sierra Club has failed to demonstrate good cause for submitting its intervention beyond the extended 60-day intervention period provided in the NOA. Should DOE/FE grant the Out-of-Time Motion without an actual demonstration of good cause, the agency would, in effect, turn its regulatory deadlines into no more than guidelines that may be ignored when convenient.

Furthermore, the environmental concerns raised by Sierra Club in its Out-of-Time Motion are more appropriately lodged and considered in the related Federal Energy Regulatory Commission ("FERC") proceeding, which will entail a full blown environmental review of the Export Project.

[27] 10 C.F.R. § 590.303(d).

B. Issuance of a Conditional Order is Appropriate in this Proceeding

Sierra Club argues that DOE may not issue a conditional order authorizing the export of LNG pending completion of the National Environmental Policy Act ("NEPA")[28] review process for the Export Project.[29] While acknowledging that DOE has the authority to issue conditional orders, Sierra Club nonetheless states that "this general authority may not trump DOE's specific rules barring the agency from taking any 'action concerning a proposal' that is the subject of an EIS" if that action "tends to limit the choice of reasonable alternatives."[30] Sierra Club wrongfully concludes that "[b]ecause FERC, the lead agency for purposes of NEPA review, has already determined that an EIS is needed here, DOE/FE's regulations prohibit DOE/FE from issuing a conditional authorization now."[31]

Sierra Club's contorted logic is flatly contradicted by DOE regulations and long-standing DOE practice.[32] Specifically, Section 590.402 of the DOE regulations explicitly provides that

[28] National Environmental Policy Act of 1969, 42 U.S.C. § 4332 (2006).

[29] Oregon LNG has requested that the Assistant Secretary issue a conditional order authorizing the export of LNG, conditioned on completion of the environmental review of the Export Project by FERC. Oregon LNG expects that DOE/FE will act as a cooperating agency, in connection with the NEPA review and development by FERC of an EIS for the Export Project.

[30] Out-of-Time Motion at 16.

[31] *Id.*

[32] In promulgating its regulations setting forth the administrative procedures for the import and export of natural gas, DOE indicated that issuance of a conditional decision is appropriate when the application at issue involves, for example, the importation of LNG into new terminal facilities. In such a case, DOE reviews the application to determine if the proposed importation is in the public interest based on the considerations within DOE's jurisdiction, while, concurrently, FERC must review other aspects of the proposed importation such as siting, construction and operation of the LNG receiving terminal facilities. *See Import and Export of Natural Gas*, 46 Fed. Reg. 44,696, at 44,700 (Sept. 4, 1981). *See also Ocean State Power*, DOE/ERA Opinion and Order No. 243-A, 1 ERA ¶ 70,810 (1988) (granting the first conditional authorization by predecessor agency, the Economic Regulatory Administration, to import natural gas from Canada, conditioned upon a final opinion and order from ERA after review by DOE of the final EIS being prepared for the Ocean State project by FERC). Moreover, courts have upheld the authority of regulatory agencies to issue conditional orders. *See City of Grapevine, Tex. v. Dep't of Transp.*, 17 F.3d 1502, 1509 (D.C. Cir. 1994) (upholding the Federal Aviation Administration's approval of a runway, conditioned upon the applicant's compliance with the National Historic Preservation Act); *Idaho v. Interstate Commerce Comm'n*, 35 F.3d 585, 598 (D.C. Cir. 1994) (agency set forth conditions under which the railroad could proceed, without granting final approval); *PUC of Calif. v. FERC*, 900 F.2d 269, 282-83 (D.C. Cir. 1990) (stating that an agency can make a final decision, so long as it assessed the environmental data before the decision's effective date).

the Assistant Secretary may issue conditional orders[33] and DOE routinely issues conditional orders subject to satisfactory environmental review in circumstances similar to those in this matter.[34]

Not surprisingly, Sierra Club again cites no precedent in support of its position. While conveying no actionable authorization, the issuance of a conditional order is nonetheless an important milestone for a project developer such as Oregon LNG, as well as other market participants, in what can otherwise be a very protracted "black box" process. Given the significant time and resources devoted to the development of LNG facilities, including the long lead time associated with permitting and construction, issuance of a conditional order serves as an important affirmation to the domestic and international marketplace that a project is moving forward in the regulatory review and approval process.

As Sierra Club notes, FERC, the lead agency for purposes of the NEPA review of the Oregon LNG Project, has determined that an EIS is appropriate. There is no reason to conclude, as Sierra Club wrongly does, that issuance of a conditional order by DOE will tie FERC's hands in its review of project alternatives in the NEPA process. In support of its position, Sierra Club states that in another proceeding, DOE's issuance of a conditional order resulted in FERC summarily rejecting a "no-action" alternative because "the no-action alternative could not meet the purpose and need for the Project."[35] However, in the proceeding referenced by Sierra Club, FERC reasonably analyzed the no-action alternative and concluded on the basis of the record

[33] "The Assistant Secretary may issue a conditional order at any time during a proceeding prior to issuance of a final opinion and order. The conditional order shall include the basis for not issuing a final opinion and order at that time and a statement of findings and conclusions. The findings and conclusions shall be based solely on the official record of the proceeding." 10 C.F.R. § 590.402.
[34] *See, e.g., Sabine Pass*, DOE/FE Order No. 2961; *Rochester Gas and Electric Corp.*, DOE/FE Order No. 503 (May 16, 1991).
[35] Out-of-Time Motion at 16.

before it that the no-action alternative "could not meet the purpose and need for the project."[36] Moreover, as a practical matter, FERC routinely and logically finds that the no-action alternative will not enable a project sponsor to meet its project purpose and need.

C. DOE is Not Required to Prepare a Separate or Programmatic EIS

In its Out-of-Time Motion, Sierra Club states that "if the EIS FERC prepares is inadequate to inform DOE/FE's decision or discharge DOE/FE's NEPA obligations, DOE/FE must prepare a separate EIS."[37] Since DOE/FE will be a cooperating agency in the FERC NEPA process, there is no reason to believe that the EIS will be inadequate to inform DOE/FE's decision or to discharge its NEPA obligations. Equally misplaced, for the reasons discussed above in Section III, is Sierra Club's suggestion that DOE should prepare a programmatic EIS.

The Energy Policy Act of 2005 ("EPAct 2005")[38] 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, FERC was required to institute a NEPA prefiling 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.[39] DOE/FE has adopted regulations of the Council on Environmental Quality ("CEQ") that govern its role as a cooperating agency.[40] These regulations permit DOE/FE to adopt FERC's findings so long as FERC has satisfactorily addressed any comments raised by DOE/FE during the cooperative agency process. The regulations provide that "DOE shall cooperate with the other agencies in developing

[36] Environmental Assessment for the Sabine Pass Liquefaction Project, Docket No. CP11-72-000 at 3-1 (Dec. 28 2011).
[37] Out-of-Time Motion at 8–9.
[38] Pub. L. No. 109-58, 119 Stat. 594 (2005).
[39] *See* EPAct 2005, Sections 311 and 313.
[40] *See* 10 C.F.R. § 1021.103.

environmental information and in determining whether a proposal requires preparation of an EIS or EA, or can be categorically excluded from preparation of either."[41]

Oregon LNG expects that DOE/FE will participate in the FERC-initiated NEPA process as a cooperating agency. As such, DOE/FE would provide its input by participating in the review and submitting comments before FERC issues its NEPA report. Once the report has issued, DOE/FE "may adopt without recirculating" FERC's EIS if, "after an independent review" of the EIS, DOE/FE "concludes that its comments and suggestions have been satisfied."[42] In addition, DOE's NEPA Compliance Program specifically anticipates adoption of an EIS prepared by other agencies.[43]

The lead/cooperating agency process exists to avoid the very type of duplication of efforts within the federal government that Sierra Club advocates. In *LaFlamme v. FERC*,[44] the Ninth Circuit rejected an argument that a cooperating agency (the Forest Service) "erred in failing to prepare an independent EA or EIS."[45] 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."[46] 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."[47]

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[41] 10 C.F.R. § 1021.342.
[42] 40 C.F.R. § 1506.3(c); *see also* CEQ Guidance Regarding NEPA Regulations, 48 Fed. Reg. 34,263, 34,265-66 (July 28, 1983).
[43] DOE Order 451.1B § 5(f)(2)(e) (Jan. 19, 2012) (designating the General Counsel with the authority to adopt another agency's EIA); *see also id.* § 5(a)(10) (allowing each Secretarial Officer or Head of a Field Organization to request delegation of approval or adoption authority for a specific EIS).
[44] 945 F.2d 1124 (9th Cir. 1991).
[45] *Id.* at 1130.
[46] *Id*. (citing 40 C.F.R. §§ 1501.5, 1501.6).
[47] *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. This makes practical sense and, more importantly, is consistent with Congressional intent in EPAct 2005 and CEQ's streamlining provisions.

D. Sierra Club Has Failed to Credibly Overcome the Public Interest Presumption

Sierra Club's objections do not credibly show that natural gas exports are inconsistent with the public interest. In this docket, as in other NGA Section 3 proceedings for export authorization pending before DOE/FE, Sierra Club continues to urge consideration of the potential environmental effects of increased shale gas production resulting from LNG exports. Sierra Club also attacks Oregon LNG's analysis related to the economic benefits of the Project stemming from job creation and tax revenues. Sierra Club also repeats the general theme of the APGA Motion that natural gas exports are inconsistent with the public interest because they will lead to an increase in domestic natural gas prices and will overly burden domestic consumers of natural gas. As discussed below and in Section II.A above (which arguments are equally applicable here), nothing in Sierra Club's Out-of-Time Motion credibly contradicts Oregon LNG's public interest arguments or overcomes the rebuttable presumption found in Section 3 of the NGA that LNG exports are in the public interest.

1. *DOE/FE and FERC Precedent Have Established that the Impacts of Induced Natural Gas Production are Impossible to Predict*

The issue of whether the NEPA analysis for an LNG export project must consider the impacts of induced natural gas production previously has been flatly rejected by both DOE/FE

and FERC.[48] In this regard, FERC has held that induced production is neither "reasonably foreseeable" nor an "effect" for purposes of a cumulative impacts analysis within the meaning of the CEQ's regulations.[49]

Similarly, in *Central New York Oil and Gas Company, LLC*,[50] a case concerning the construction of a natural gas pipeline connecting with the Marcellus Shale region, FERC determined that it was unknown if and when the thousands of well permits being issued in the Marcellus Shale would be drilled, much less what the associated infrastructure and related facilities would be. In light of "too many uncertainties," FERC concluded that including the well development and drilling impacts in the scope of its NEPA analysis would not assist the decision making process.[51]

FERC previously has distinguished the very same case law cited by Sierra Club in this proceeding: *Northern Plains Resource Council v. Surface Transportation Board*[52] and *Scientists' Institute for Public Information v. Atomic Energy Commission*.[53] In distinguishing *Northern Plains* under similar circumstances, FERC stated that it did not have the type of information regarding timing, location and scope of future shale well development that was present in *Northern Plains* and, in the context of an LNG export terminal, noted that the extent to which the relevant project would rely on new shale gas production was unknown.[54] Likewise, FERC distinguished *Scientists' Institute*—a case in which detailed estimates and information

[48] Order No. 2961-A at 11–12, 27–28 (Aug. 7, 2012). *See also Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.*, 139 FERC ¶ 61,039 at P 99 (2012), *reh'g denied* 140 FERC ¶ 61,076 at PP 8 - 22 (2012).
[49] *Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.*, 139 FERC ¶ 61,039 at P 96 (2012).
[50] 137 FERC ¶ 61,121 (2011), *reh'g denied*, 138 FERC ¶ 61,104 (2012), *aff'd, Coalition for Responsible Growth and Res. Conservation v. FERC*, No. 12-566, 2012 U.S. App. LEXIS 11847 (2d Cir. June 12, 2012) (hereinafter "*Central New York*").
[51] *Central New York*, 137 FERC ¶ 61,121 at P 98.
[52] 668 F.3d 1067 (9th Cir. 2011) [hereinafter "*Northern Plains*"].
[53] 481 F.2d 1079 (D.C. Cir. 1973) [hereinafter "*Scientists' Institute*"].
[54] 139 FERC ¶ 61,039.

(regarding the environmental impacts of a breeder reactor) were available—by noting that it had no detailed or quantifiable information regarding induced production.[55]

In this proceeding, Sierra Club expands its prior concern regarding induced shale gas production to all natural gas production. However, this is a distinction without a difference because the fact remains that the amount of production that might be induced by Oregon LNG's Export Project remains unknowable, as does the location and timing of any such production. Moreover, Sierra Club fails to account for the fact that the Oregon LNG Project is proposed to export primarily Canadian-sourced LNG.

2. *Sierra Club Fails to Establish that Oregon LNG's Economic Impacts Study is Not Reliable*

Sierra Club criticizes Oregon LNG's use of an input-output model in its economic impacts study, claiming that it does not take into account sufficient so-called "counterfactuals" and "foregone opportunities."[56] Yet, Sierra Club fails to put forth any relevant studies or economic modeling analysis specific to the Export Project that contradict or discredit the economic impacts analysis prepared by ECONorthwest[57] showing, among other things, the tremendous impact on job creation and increases in domestic economic activity and tax revenues for the Pacific Northwest regional and local economies.

Moreover, Sierra Club's position on the economic benefits of the Project conflicts with U.S. policies that laud exports because they increase the number of U.S. jobs and bring wealth to the U.S. In this regard, President Obama's National Export Initiative is the result of the Administration's stated policy goal of doubling U.S. exports and increasing U.S. employment. As part of that initiative, President Obama has indicated that every $1 billion increase in exports

[55] *Id*.
[56] Out-of-Time Motion at 60.
[57] July 16 Application, Appendix C, *An Economic Impact Analysis of the Oregon LNG Project in Northwest Oregon*, prepared by ECONorthwest (Apr. 9, 2012).

supports more than 6,000 jobs in the United States and also noted that "[i]n a time when millions of Americans are out of work, boosting our exports is a short-term imperative" and doing so is "also critical for our long-term prosperity."[58]

V. CONCLUSION

WHEREFORE, Oregon LNG respectfully requests that DOE/FE consider and order action consistent with Oregon LNG's Answer and accord no weight in its deliberations to the APGA Motion, CALNG Motion and Sierra Club Out-of-Time Motion. Finally, Oregon LNG requests that DOE/FE deny Sierra Club's Out-of-Time Motion.

Respectfully submitted,

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Dated: November 21, 2012

[58]Anna Fitfield, *Obama unveils plans to double exports*, FINANCIAL TIMES (Mar. 11, 2010), *available at* http://www.ft.com/cms/s/0/d328bdf6-2d28-11df-9c5b-00144feabdc0.html#axzz1zD1aBsuQ.

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C. this 21st day of November, 2012.

/s/ Maguette Ndiaye
Maguette Ndiaye
Paralegal on behalf of
LNG Development Company, LLC
(d/b/a Oregon LNG)

VERIFICATION

State of New York)

County of New York)

BEFORE ME, the undersigned authority, on this day personally appeared Lisa Tonery, who, having been by me first duly sworn, on oath says that she is counsel for LNG Development Company, L.P. (d/b/a Oregon LNG) and is duly authorized to make this Verification; that she has read the foregoing instrument and that the facts therein stated are true and correct to the best of her knowledge, information and belief.

Lisa Tonery

SWORN TO AND SUBSCRIBED before me on the 21st day of November, 2012.

Richard A. Palmer

Name: Richard A. Palmer

Title: Notary Public

My Commission expires:

RICHARD A. PALMER
NOTARY PUBLIC, State of New York
No. 02PA8263589
Qualified in New York County
Commission Expires 12-31-14