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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	)	
	)	**FE DOCKET NO. 12-184-LNG**
Pangea LNG (North America)	)	
Holdings, LLC	)	

SIERRA CLUB'S RENEWED MOTION TO REPLY AND REPLY

Pursuant to sections 590.302(a) and 590.310 of the Department of Energy Office of Fossil Energy (DOE/FE)'s regulations, 10 C.F.R. §§ 590.302(a) & 590.310, Sierra Club moves for leave to reply to the answer of Pangea LNG (North America) Holdings, LLC ("Pangea") to Sierra Club's motion to intervene, protest, and motion to intervene out of time/motion to have late filed exhibits considered. Sierra Club's reply is incorporated into this filing.

I. Sierra Club Should Be Granted Leave to Reply

DOE/FE rules allow any party to move for additional procedures in any case. *See* 10 C.F.R. §§ 590.302(a) & 590.310. In this case, Sierra Club made such a motion in its protest, requesting permission to file a reply if an answer was filed. *See* Protest at 3 n.2. Pangea did not oppose that request, and Sierra Club renews it here.

The public interest test of 15 U.S.C. § 717b requires DOE/FE to conduct a searching inquiry to determine whether Pangea's export proposal is consistent with the public interest. As Deputy Assistant DOE Secretary Chris Smith has explained, LNG export authorization is "a tremendously important decision" with significant public impacts. *See* Nick Snow, Oil and Gas Journal, *US DOE to move carefully on LNG export requests, NARUC meeting told* (Feb. 5, 2013). Because the public interest necessarily embraces environmental concerns, *see Nat'l Ass'n for the Advancement of Colored People v. Federal Power Comm'n*, 425 U.S. 662, 670 n.4 & n.6 (1976), DOE/FE has an important obligation to fully consider the environmental issues that are the primary subject of Sierra Club's protest. Accordingly, DOE/FE should proceed only with the benefit of a full record and

complete arguments in this case. In Sierra Club's view, Pangea's answer of to the Protests of the American Public Gas Association and the Sierra Club ("Answer") misstates important questions of fact and law that bear on the public interest. Sierra Club therefore seeks leave to reply to address these matters. DOE/FE should ensure that these important questions receive fair consideration by considering this brief reply.

II. Sierra Club Must Be Granted Leave to Intervene

In opposing Sierra Club's intervention, Pangea begins with fifteen pages of fuss about very little, if not nothing. DOE/FE has already determined that Sierra Club's motion to intervene, protest, and comment were timely filed, despite the fact that DOE/FE's server recorded a *de minimus* one minute delay in filing. Although DOE/FE should also accept Sierra Club's late-filed exhibits, and Pangea has not identified any prejudice that would result from such acceptance, these exhibits are not necessary to Sierra Club's motion and protest. Regardless of whether the exhibits are considered, Sierra Club has demonstrated both an interest in this proceeding sufficient to warrant intervention and, as explained in part III below, that Pangea's proposal is contrary to the public interest.

A. DOE/FE Has Already Determined that Sierra Club's Motion to Intervene, Protest, and Comments Will Be Treated As Timely Filed

Sierra Club electronically filed (via email) the text of its motion to intervene, protest, and comment on April 29, 2013, including an explanation that the exhibits thereto would be delivered by overnight mail the following day. On May 2, 2013, DOE/FE informed Sierra Club, via telephone conversations with Kathleen Kurst and Nathan Matthews, that the exhibits would not be considered timely, as we explain in part II.B below. DOE/FE also informed Sierra Club that the email had been received by DOE/FE's computers at 4:31 Eastern time, one minute after the filing deadline, but that because this delay was *de minimus*, DOE/FE would treat Sierra Club's email as timely filed. As such, Sierra Club did not address the 4:31 time stamp in our May 6, 2013 motion to have late filed exhibits considered.

DOE/FE reiterated this position was reiterated in writing on May 10, 2013, explaining that it would consider the motion to have been timely filed, "in the absence of countervailing information" demonstrating that doing so would "material[ly] prejudice" any party. Because Pangea has not identified any such

prejudice, DOE/FE's initial evaluation still stands, and Sierra Club's filing must be treated as timely.

Pangea offers three flawed arguments against DOE/FE's proposed decision. First, Pangea argues that it is improper for DOE/FE to consider Sierra Club's motion separate from the exhibits thereto. Yet Pangea has not identified any statute or regulation requiring Sierra Club to include cited documents as exhibits in filings before DOE (and Sierra Club is not aware of any such rule). Indeed, Pangea did not include the majority of the material it cited in its own application, despite its argument that its own application is well supported because it includes "citations to scholarship," Answer at 50. Pangea separately acknowledges that DOE may take administrative notice of studies and other information, Answer at 51 n.191; the documents cited by Sierra Club are proper subjects for such notice. Indeed, many of the key documents Sierra Club cites, such as the EIA and NERA Export Studies and EIA's National Energy Modeling System, are documents already in DOE's possession. Sierra Club offered these documents as exhibits to its filing for the convenience of DOE and the parties, but DOE would be both permitted and required to consider this information regardless of whether Sierra Club submitted it as exhibits.[1] Because Sierra Club was not required to submit the cited exhibits *at all*, it would be absurd to hold that, by submitting them late, Sierra Club rendered an otherwise timely filing untimely.

Second, Pangea argues that treating Sierra Club's intervention as timely filed will prejudice Pangea because if Sierra Club is permitted to intervene at all, Sierra Club will raise additional issues in these proceedings and create a burden on Pangea. This argument wrongly conflates prejudice attributable to intervention itself with prejudice attributable to the time at which intervention is sought. As explained in our May 6 motion, courts in interpreting analogous Federal Rules of Civil Procedure have explained that "For the purpose of determining whether an application for intervention is timely, the relevant issue is not how much prejudice would result from allowing intervention, but rather how much prejudice would result from the would-be intervenor's failure to request intervention as soon as he knew or should have known of his interest in the

[1] As Pangea notes, Sierra Club's May 6 motion states that its filings before DOE/FE "have required the support of numerous exhibits." This sentence does not concede a formal or legal requirement, and Pangea has not identified such a requirement. Instead, recognizing the breadth of Sierra Club's filings, Sierra Club has endeavored to assist DOE/FE by providing ready access to the cited documents—even where, as here, many of these documents are already possessed by other DOE sub-agencies or DOE/FE itself, or are proper subjects for administrative notice.

case." *Stallworth v. Monsanto Co.*, 558 F.2d 257, 267 (5th Cir. 1977) (interpreting Fed. R. Civ. P. 24), *see also AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 953 (9th Cir. 2006) (in determining whether to allow amendment of a complaint under Fed. R. Civ. P. 15, looking to prejudice specifically attributable to the delay in seeking amendment and excluding costs that would have been imposed had the amendment been filed earlier).[2] Pangea has not identified any prejudice attributable to a one-minute delay in Sierra Club's electronic filing.

Third, Pangea contends that DOE/FE lacks the authority to treat this filing as timely because DOE rules do not explicitly contemplate such treatment. A "well-established principle" of administrative law is that "it is 'permissible as an exercise of agency power, inherent in most statutory schemes, . . . to overlook circumstances that in context may fairly be considered *de minimus*.'" *Kentucky Waterways Alliance v. Johnson*, 540 F.3d 466, 483 (6th Cir. 2008) (quoting *Alabama Power Co. v. Costle*, 636 F.2d 323, 360 (D.C. Cir. 1979)). A one-minute delay in filing certainly falls below this *de minimus* threshold.

Thus, as stated in DOE/FE's May 10 letter, no party will be prejudiced by treating Sierra Club's motion to intervene, protest, and comments as timely filed, and DOE/FE should adhere to its commitment to do so.

B. DOE/FE Should Consider Sierra Club's Late-Filed Exhibits

Separately, DOE/FE stated that it would "defer ruling on the admission of the late-filed exhibits" until it had reviewed briefing regarding Sierra Club's May 6 motion to have these exhibits considered. As Sierra Club explained in that motion, DOE/FE should admit these exhibits because Sierra Club had good cause to believe that it submitted them in compliance with procedures specified by DOE/FE and because delay in submitting these exhibits does not prejudice any party or these proceedings. Pangea's arguments against consideration of these exhibits misstate the facts underlying Sierra Club's showing of good cause and fail to demonstrate prejudice.

[2] Pangea contends that these authorities are inapplicable because under the federal rules, the question is whether delay and prejudice are so great as to render a filing untimely, whereas under DOE and FERC rules, the question is whether delay and prejudice are such that a filing submitted after a deadline should be considered. Pangea offers no explanation as to why this distinction is relevant.

The problem giving rise to this situation is that DOE/FE invited electronic filing but then asked Sierra Club not to use such filing. The notice of the availability of the application in this proceeding, like DOE/FE's notices in many other proceedings, had invited electronic filing of motions to intervene, comments, and other documents. One benefit for electronic filers is that because electronic filing is nearly instantaneous, it allows the filer the full comment period, whereas filing by physical delivery (whether of paper or discs) requires documents to be prepared somewhat in advance (especially where, as is largely the case for the Sierra Club, the persons authoring and preparing the filing are located on the West Coast). As we explained in our May 6 motion, over the past eighteen months, Sierra Club's attempts to electronically file documents with DOE/FE, whether via regulations.gov or via email, have caused problems for DOE/FE, leading DOE/FE to request that Sierra Club not electronically file exhibits.

Pangea misstates the nature DOE/FE's request regarding filing by email. Answer at 12. As Sierra Club understood DOE/FE's December 17, 2012 request, DOE/FE did not merely request that Sierra Club submit exhibits by "limit[ing] the size of its email files and submit[ing] its files in multiple parts" (although submission of large attachments has caused additional problems); instead, DOE/FE requested that Sierra Club not use email to submit exhibits at all.

Pangea argues that, to avoid the problems DOE/FE experienced as a result of electronic filing, Sierra Club should have simply acted to ensure that exhibits were physically received by DOE/FE by the filing deadline. Had DOE/FE merely requested that Sierra Club not electronically file its exhibits, without more, Sierra Club would have done so. However, DOE/FE offered an alternative. In apparent recognition of the fact that forgoing electronic filing burdened Sierra Club by, *inter alia*, effectively shortening the comment period, DOE/FE explicitly informed Sierra Club that, so long as exhibits were sent via overnight mail postmarked by the day of the filing deadline, exhibits would be considered timely. Because this process was explicitly offered, Sierra Club cannot be faulted for using it.

Pangea characterizes DOE/FE's offer of this alternative process as a "one-time accommodation," Answer at 14, but neither DOE/FE's communication with the Sierra Club nor the facts surrounding it indicated that the accommodation was particular to an individual proceeding. Instead, this offer appeared to be a response to the recurring, systemic problems DOE/FE faced regarding receipt of large electronic filings.

Pangea further misunderstands the nature of Sierra Club's conversation with DOE/FE on April 29. Pangea argues that Sierra Club learned that DOE/FE would treat exhibits received on April 30 as timely filed, but that Sierra Club caused its exhibits to be received on April 30 anyway. Not so. DOE/FE employee Natalie Wood has stated that, as part of her conversation with Sierra Club on April 29, she attempted to inform Sierra Club that exhibits would need to be received on April 29. Sierra Club does not dispute that Ms. Wood made such an attempt. However, as a result of miscommunication between Ms. Wood and Sierra Club, Sierra Club did not understand that DOE/FE had stated that it would not treat exhibits received on April 30 as timely—indeed, Sierra Club did not understand DOE/FE to have discussed the process or timing for filing exhibits whatsoever. Similarly, Sierra Club's argument is not that DOE/FE was "too late" in informing Sierra Club that exhibits would need to be received by April 29; on the contrary, Sierra Club did not understand this information at all.

Sierra Club has not argued that DOE/FE had an obligation to take further measures to inform Sierra Club of DOE/FE's policies for filing of exhibits. Sierra Club merely argues that, given the history of communication between DOE/FE and Sierra Club, Sierra Club's actions in filing exhibits here are an understandable and excusable error. Measured against the other, much longer, delays in filings that have been condoned by FERC, Sierra Club has demonstrated good cause for the single day delay at issue here.

Finally, Pangea has not identified any prejudice attributable the delay in filing exhibits. As explained above, prejudice must be specifically attributable to delay, not to the filing itself. Because of Sierra Club's excusable error in filing the exhibits and the lack of prejudice attributable to the delayed filing, DOE/FE should accept these exhibits.

C. Sierra Club Has Demonstrated Interests In This Proceeding Sufficient to Warrant Intervention

Pangea separately argues that Sierra Club's motion to intervene should be denied on the merits because "Sierra Club has not shown that it has any specific interest in this docket." Answer at 8. Pangea misstates both the standard for intervention under the Natural Gas Act ("NGA" or "Act") and the evidence regarding Sierra Club's interests.

Pangea first contends that because many of Sierra Club's concerns pertain to natural gas production and export generally, rather than to factors unique to this

proceeding, Sierra Club has not shown an interest sufficient to warrant intervention here. Answer at 8-9. Pangea offers no authority supporting this argument. Pangea's proposal will cause environmental harm affecting Sierra Club's interests and the public interest in, *inter alia*, the environment. The fact that other projects and proposals will cause similar harm does not change the fact that Sierra Club's interests will be affected by this proceeding. The NGA allows intervention by "any . . . person whose participation in the proceeding may be in the public interest," 15 U.S.C. § 717n(e). The Supreme Court has made clear that the public interest includes environmental interests like the Sierra Club's. *See NAACP v. Federal Power Comm'n*, 425 U.S. at 670 n.4 & n.6. DOE regulations merely require an intervenor to state the "facts upon which the petitioner's claim of interest is based." 10 C.F.R. § 590.303(b).

Second, DOE/FE must reject Pangea's suggestion that Sierra Club's ability to participate in other proceedings precludes intervention here. Answer at 9. DOE/FE's own regulations require Sierra Club to intervene in *this* proceeding at *this* stage in order to protect its interests. Sierra Club agrees that a more sensible framework for handling intervention would be to allow Sierra Club to intervene in this docket once environmental review is underway, *i.e.*, once more definite plans have been put forward by Pangea and a draft NEPA document has been circulated. At that stage, Sierra Club will be able to provide additional detail regarding likely environmental effects (although such specific showing is not required for intervention). Nonetheless, DOE/FE recently rejected Sierra Club's effort to proceed in precisely this manner (*i.e.*, to intervene once DOE/FE began considering environmental impacts).[3] Accordingly, Sierra Club has a right to intervene here to preserve its right to seek judicial review of DOE/FE's decisions.

III. Pangea's Proposal Is Contrary to the Public Interest

In responding to the merits of Sierra Club's protest and comments, Pangea attempts to hide from the fact that the authorization it seeks will increase the likely volume of exports and that these exports will increase domestic gas production. Pangea's arguments on these issues fail. Moreover, Pangea has not addressed Sierra Club's economic arguments, which provide further evidence that Pangea's application is contrary to the public interest.

[3] *See* DOE/FE Orders 2961A, 2961B.

A. The Natural Gas Act's Public Interest Inquiry Encompasses Environmental Effects

The Supreme Court has explained that the NGA's public interest provision extends to DOE/FE "the authority to consider conservation, environmental, and antitrust questions" in addition to consumer protection concerns. *Nat'l Ass'n for the Advancement of Colored People v. Fed. Power Comm'n*, 425 U.S. 662, 670 n.4 (1976) (citing 15 U.S.C. § 717b as an example of a public interest provision). Pangea cites no authority to the contrary. In the face of this clear holding, Pangea's argument that environmental concerns are outside the scope of the NGA public interest inquiry fails.

Because DOE/FE has the authority to consider environmental effects, and to make decisions on the basis of these effects, *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004), is inapplicable. *Public Citizen* applies only "where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions." *Id.* at 770. Here, the NGA provides DOE/FE with authority to act on the basis of, and thereby prevent, environmental effects.

B. Approval of Pangea's NFTA Application Will Likely Increase The Volume of Gas Exported

As explained by the NERA Study, the volume of gas that will be exported from the U.S. is expected to increase when gas can command higher prices in foreign markets. Pangea concedes that exports to NFTA countries can command a higher price than exports to FTA countries. Answer at 28-31. Thus, notwithstanding DOE/FE's prior authorization of FTA exports from terminal, approval of the NFTA application should be expected to increase the volume of gas actually exported.

Pangea's arguments to the contrary are unavailing. Although authorization of the exports does not guarantee that the terminal will be built, Pangea concedes that authorization of NFTA exports makes terminal completion, and resulting exports, more likely. Answer at 27, 28. DOE/FE's statement in the Freeport Conditional Authorization that "the volume of authorized exports *to FTA countries* is by no means a reliable predictor of the number and capacity of LNG export facilities that will ultimately be financed, constructed, and placed in operation" supports Sierra Club's position here. Answer at 27 n.93 (quoting Freeport Order at 64). In this statement, DOE/FE recognizes that demand for

exports to FTA countries is limited, supporting Sierra Club's contention that authorization of exports to NFTA countries makes exports more likely.

Pangea offers a "decision matrix" that purports to show that, whether or not the project is built or operated, DOE's decision to approve or deny the NFTA export application will not influence the volume of gas exported. DOE/FE's decision does not merely affect the consequences that will follow from construction and any given level of operation: because NFTA exports are more valuable than FTA exports, DOE/FE's decision will influence *whether* the facility is constructed and, if so, what *level* of operation occurs.

C. Exports Will Induce Additional Gas Production

Pangea cites DOE/FE and FERC's *Sabine Pass* decisions for the proposition that it is uncertain whether exports will induce additional gas production. As we explained in our comment, these decisions are completely at odds with available modeling, and DOE/FE cannot rely on them here.

Pangea further cites FERC's Texas Eastern pipeline decision as supporting the principle that development of distribution and market access infrastructure does not foreseeable induce production. Answer at 34-35. This case is distinct because NFTA authorization is essential to, and not merely a facilitator of, access to NFTA markets, and because EIA and others have provided extensive modeling of the way in which production will increase in response to exports.

D. Available Tools Can Predict Where Induced Production Will Occur

Sierra Club's comment explained that models used by EIA and Deloitte Marketpoint, among others, can provide forecasts of where this production will occur. We further noted that Pangea's own expert purported to rely on a "basin-by-basin, play-by-play" model of domestic gas production and its response to exports. Pangea argues that its proposed project *could* access gas from multiple supply sources, and that the model is not "intended" to identify where production induced by the project will occur. Answer at 40. But Pangea does not dispute that this model nonetheless generates predictions of the extent to which individual plays and basins will increase production in response to the project. Nor does Pangea dispute that the EIA and Deloitte models can supply such predictions.

E. Induced Production Therefore Must Be Considered in NEPA and NGA Analyses

Pangea fails to distinguish cases that require consideration of market responses to changes in resource supply and demand. Pangea argues that *Mid States Coalition for Progress v. Surface Transportation Board* is distinct because there, the agency had "evidence of the specific amount of reduced-cost coal that the proposed activity would provide." Answer at 44. Here, DOE/FE has definite knowledge, rather than merely some evidence, of the precise volume of LNG that the project would make available to foreign buyers. Pangea argues that *Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission* is distinct because there, "the agency already knew the quantity, type and cost of waste that would result from" the proposed project. This information is not meaningfully distinct from the information available here: as we have demonstrated, here, DOE/FE can already predict the volume of gas production that would result from the project, the air emissions likely to be caused by this production, and other associated impacts.

On the other hand, the additional cases Pangea cites are distinct. For example, in *City of Dallas v. Hall*, 562 F.3d 712, 719 (5th Cir. 2009), effects of a proposed wildlife refuge designation on a potential reservoir were deemed to be too speculative to require discussion under NEPA because there were no actual plans to construct the reservoir; indeed, the court emphasized that the reservoir was unlikely to be constructed or put into use regardless of whether the refuge was created. Here, in contrast, there is a causal link between exports, additional gas production, and the environmental effects thereof.

F. A Programmatic EIS Is The Best Tool For Analyzing Exports' Impacts

Sierra Club has explained that exports represent a major change in the domestic energy landscape, and that as such, export proposals should be considered programmatically. Sierra Club has advanced this argument in multiple forums, including calling for a programmatic EIS in individual export proceedings as well as petitioning DOE for a rulemaking regarding the process for evaluating export applications. We have explained that, absent systemic consideration using one or more of these vehicles, export decisions risk being made in individual adjudicatory proceedings that are ill-suited to consideration of these broad policy impacts. The *consequences* of these decisions will be felt systemic or programmatic level, regardless of whether DOE/FE chooses to (improperly, in our view) approach these issues solely through individual adjudications. Contrary to

Pangea's argument, Answer at 32, Sierra Club has never contended that DOE/FE's actions on LNG export authorizations are not part of a broad federal program: Sierra Club contends that such a program is in effect underway, regardless of the form of proceeding DOE/FE uses, and that DOE/FE and the public would be best served if DOE/FE acknowledged this fact and acted accordingly.

G. DOE/FE Must Not Conditionally Authorize the Project Before Analyzing Its Environmental Impacts

Because the public interest includes environmental impacts, DOE/FE cannot make a determination regarding the public interest—conditional or otherwise—before it has considered environmental impacts. This requirement stems both from the Natural Gas Act and from basic principles of administrative law: environmental impacts are "an important aspect of the problem" before DOE/FE and failure to consider them in the public interest determination would be arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Independently, DOE regulations prohibit any action prior to completion of NEPA review. As Sierra Club's protest explained, 10 C.F.R. § 1021.211 provides that "[w]hile DOE is preparing an EIS that is required under § 1021.300(a) of this part, DOE shall take no action concerning the proposal that is the subject of the EIS before issuing an ROD, except as provided at 40 CFR 1506.1."

Pangea argues that section 1021.211 does not prohibit conditional authorization here because it is FERC, rather than DOE/FE, that will prepare the NEPA review heere, and because 40 CFR § 1506.1 authorizes interim actions that will not have environmental effects. Pangea's formalistic argument ignores the context, structure, and purpose of section 1021.211. Viewed in context, section 1021.211 is plainly intended to prevent DOE/FE from acting while a NEPA document is prepared *regardless* of what agency prepares the document. Section 1021.211 incorporates the limitations contained in 40 C.F.R. § 1506.1, a Council on Environmental Quality regulation that forbids – with limited exceptions – agency action that would have an adverse environmental impact or limit the choice of alternatives until NEPA analysis is complete and a final record of decision is prepared. *See* 40 C.F.R. § 1506.1(a) ("Until an agency issues a record of decision . . . no action concerning the proposal shall be taken which would (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives.") 40 C.F.R. § 1506.1 does not make any formalistic distinction

between NEPA review conducted by the acting agency and NEPA review conducted by a cooperating agency. DOE's incorporation of section 1506.1 into its own regulation suggests that DOE/FE's regulation – section 1021.211 – shares the structure of section 1506.1, and, like section 1506.1, prohibits mid-NEPA action regardless of which agency prepares the NEPA document.

This understanding of section 1021.211 is consistent with the underlying purpose of section 1506.1, and of NEPA as a whole. "NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). Section 1506.1 accomplishes that purpose by precluding interim action while alternatives are examined. *Cmte. ForPreservation of Seattle Fed. Reserve Bank Bldg. v. Fed. Reserve Bank of S.F.*, 2010 WL 1138407, at *4 (W.D. Wash. 2010) (holding, after discussing section 1506.1 and the purposes of NEPA, that the signing of a sale agreement while NEPA review was still in progress "constitutes a violation of NEPA"). To read a "cooperating agency" exception to this principle into 10 C.F.R. § 1021.211 runs counter to NEPA's core purpose.

As the Sierra Club explained in its protest, the DOE regulation allowing for conditional orders, 10 C.F.R. § 590.402, does not provide an exception to the basic NEPA prohibition against agency action pending NEPA review. Section 590.402 cannot trump NEPA, and thus must be read to allow for conditional orders only when NEPA permits.

To be clear, Sierra Club does not object to FERC's acting as lead agency for NEPA review. DOE/FE nonetheless has an independent obligation to ensure that DOE/FE and the public are adequately informed regarding (and that DOE/FE actually considers) the environmental impacts of proposed DOE/FE actions, as both DOE/FE and FERC have recently recognized. See Sabine Pass LNG, FERC Docket No. CP11-72-001, 140 FERC ¶ 61,076 P 32 (July 26, 2012) ("DOE has separate statutory responsibilities with respect to authorizing the export of LNG from Sabine Pass; thus it has an independent legal obligation to comply with NEPA."), DOE/FE Docket No. 10-111-LNG, Order 2961-A, 27 (Aug. 7, 2012) (DOE/FE recognizes that it is "responsible for conducting an independent review" of FERC's analysis and determining whether "the record needs to be supplemented in order for DOE/FE to meets its statutory responsibilities under section 3 of the NGA and under NEPA."). To ensure that this obligation is adequately fulfilled, DOE/FE can and must wait until NEPA review is completed before issuing an export authorization. As explained in Sierra Club's protest,

NEPA requires consideration of environmental impacts at the earliest possible time. Moreover, because environmental impacts are part of the Natural Gas Act public interest analysis, it would be nonsensical to conduct a balancing of effects on the public interest until environmental impacts have been examined pursuant to the NEPA process

H. Pangea Has Not Dispute Sierra Club's Employment and Other Economic Arguments

Sierra Club explained, on the basis of information contained in the NERA Study, that exports would likely lead to a net reduction in domestic employment and make most Americans worse off economically. Pangea has not responded to these arguments. Nor has Pangea responded to Sierra Club's showing that the Black and Veatch and Perryman studies cited by Pangea provide only a partial picture of economic and employment consequences, inferior to the net effect Sierra Club extrapolated from the NERA study. Accordingly, Sierra Club reiterates its unrebutted argument that available data shows that exports will harm overall employment in the United States and cause a wealth transfer from lower and middle class Americans to the few shareholders of few companies that will benefit.

IV. Conclusion

The most important issue raised in Sierra Club's protest is DOE/FE's obligation to consider the impacts of induced production. NEPA requires disclosure of induced production's impacts, and the Natural Gas Act requires DOE/FE to weigh them. Fairly weighed, such impacts demonstrate that Pangea's proposal is not in the public interest. This is particularly so given the evidence that project's economic impacts on the public at large will be generally negative, as explained in our comments on the NERA study. Of course, whether or not these economic benefits are as large as Trunkline contends, it would be arbitrary and capricious to weigh them without counting the environmental cost. Accordingly, as we explained in our protest, DOE/FE's public interest review must consider the environmental effects of terminal construction and operation, of induced production, and of increased domestic gas prices. To ensure that these effects are given adequate consideration, DOE/FE should deny Pangea's request for a conditional authorization prior to completion of environmental review.

Dated: June 20, 2013

Respectfully submitted,

/s/ *Nathan Matthews*

Nathan Matthews
Sierra Club Environmental Law Program
85 2nd St., Second Floor
San Francisco, CA 94105
(415) 977-5695

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
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Pangea LNG (North America) Holdings, LLC	**)**	
	)	

CERTIFICATE OF SERVICE

I hereby certify that I caused the above documents to be served on the applicant and all others parties in this docket, in accordance with 10 C.F.R. § 590.017, on June 20, 2013.

Dated at San Francisco, CA, this 20th day of June, 2013.

_____

Nathan Matthews
Associate Attorney
Sierra Club Environmental Law Program
85 Second Street, Second Floor
San Francisco, CA 94105
Telephone: (415) 977-5695
Fax: (415) 977-5793
Email: nathan.matthews@sierraclub.org

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	)	
	)	**FE DOCKET NO. 12-184-LNG**
Pangea LNG (North America) Holdings, LLC	)	
	)	

VERIFICATION

SAN FRANCISCO	§
	§
CALIFORNIA	§

Pursuant to C.F.R. §590.103(b), Nathan Matthews, being duly sworn, affirms that he is authorized to execute this verification, that he has read the foregoing document, and that facts stated herein are true and correct to the best of his knowledge, information, and belief.

Nathan Matthews
Associate Attorney
Sierra Club Environmental Law Program
85 Second Street, Second Floor
San Francisco, CA 94105
Telephone: (415) 977-5695
Fax: (415) 977-5793
Email: nathan.matthews@sierraclub.org

Subscribed and sworn to before me this 20th day of June, 2013.

Notary Public

MARK DAVID BOSLER
Commission # 1977496
Notary Public - California
San Francisco County
My Comm. Expires Jun 3, 2016

My commission expires: 6-3-16