

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

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

**SIERRA CLUB AND COLUMBIA RIVERKEEPER’S MOTION TO REPLY AND REPLY**

Pursuant to 10 C.F.R. § 590.302(a), Sierra Club and Columbia Riverkeeper move for leave to reply to the LNG Development Company, LLC, d/b/a Oregon LNG (“Oregon LNG”) Response to our Protest and Motion to intervene. Movants’ reply is incorporated into this document.

**I. Sierra Club and Columbia Riverkeeper Hereby Move For Leave to Reply to Oregon LNG’s Response**

Although DOE/FE rules do not automatically provide parties the right to a reply, the rules allow for a wide range of procedural motions. See 10 C.F.R. §§ 590.302 & 590.310. “Any party may file a motion requesting additional procedures.” 10 C.F.R. § 590.310. Movants requested a reply motion in their initial protest filing, and Oregon LNG did not oppose this request. See Protest at 3 n.2.

DOE/FE should grant this unopposed request because this reply will aid DOE/FE in determining whether LNG exports are in the “public interest.” 15 U.S.C. § 717b. As movants’ protest explained, the public interest embraces a wide range of issues, including environmental concerns. See Protest at 5-8 (citing, e.g., *Nat’l Ass’n for the Advancement of Colored People v. Federal Power Commission*, 425 U.S. 662, 670 n.4 & n.6 (1976)). Movants have described their work to protect the public interest in the environment, as well as the interests of the thousands of movants’ members who will be affected by Oregon LNG’s proposal. Protest at 2-3. DOE/FE should ensure that these interests receive a fair hearing by allowing movants to respond to Oregon LNG’s arguments, especially those regarding the scope of environmental review warranted here.

## II. Sierra Club and Columbia Riverkeeper's Reply

### A. Movants Should Be Granted Leave to Intervene

Oregon LNG does not dispute that movants have an interest in these proceedings sufficient to support intervention, but Oregon LNG argues that movants have not shown good cause for intervention out of time. As explained in movants' motion to intervene out of time filed November 20, 2012, harm to the proceedings is the primary concern in evaluating motions to intervene out of time. Oregon LNG does not dispute that Movants' two-hour delay in filing the initial motion to intervene caused no hardship to these proceedings, nor could it, as evidenced by Oregon LNG's lengthy discussion of the merits of arguments raised in movants' protest. Moreover, movants' November 20 filing demonstrated good cause for this delay.

### B. DOE/FE Cannot Issue a Conditional Order Prior to NEPA Review

Although DOE/FE has general authority to issue conditional orders, this authority is limited by DOE and CEQ regulations prohibiting action that would limit the scope of available alternatives, 10 C.F.R. § 1021.211, and requiring that environmental review be performed "at the earliest possible time." 40 C.F.R. § 1501.2. Protest at 16-17.

Oregon LNG wrongly asserts that movants' position is "flatly contradicted" by DOE/FE regulations and practice. Answer at 9-10. Just the grant of authority over exports provided by the Natural Gas Act does not displace NEPA, the Endangered Species Act, and other statutes generally applicable to federal agency, the regulatory grant of authority to issue conditional orders does not displace the NEPA obligation to integrate environmental review into the earliest stages of agency decisionmaking.<sup>1</sup>

More fundamentally, Oregon LNG has not acknowledged the logical necessity of performing environmental review prior to any public interest determination. As DOE/FE has stated, and as Oregon LNG does not dispute, the "public interest" evaluated by the Natural Gas Act includes environmental impacts. DOE/FE cannot evaluate these impacts, and thus the public interest generally, until environmental review is complete. Attempting to do so prior to completion of NEPA review would involve a failure to consider important aspects of the problem before DOE/FE, and therefore be arbitrary and capricious.

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<sup>1</sup> Nor has DOE/FE "routinely" issued conditional orders prior to completion of environmental review. Oregon LNG cites only two examples, one of which DOE/FE is administratively reviewing.

### C. DOE/FE's NEPA Obligations

Although Oregon LNG's answer includes extensive argument over DOE/FE's general NEPA obligations, there is little dispute here. Movants and Oregon LNG agree that (1) DOE/FE has an independent obligation to review adequacy of any EA or EIS upon which it relies, but that (2) if FERC, as lead agency, prepares an EA or EIS that fully considers the environmental impacts of the decision before DOE/FE, DOE/FE is not required to prepare an additional, redundant EIS.

DOE/FE and FERC have both recognized that, although FERC acts as lead agency for purposes of NEPA review of proposed LNG exports, DOE/FE has an independent obligation to ensure that DOE/FE and the public are adequately informed regarding the environmental impacts of proposed DOE/FE decisions, as required by NEPA. *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 meet its statutory responsibilities under section 3 of the NGA and under NEPA.").

Oregon LNG acknowledges this independent obligation. Answer at 12. If there is any dispute here, it is limited to Oregon LNG's improper attempt to narrow DOE/FE's duty to mere obligation to ensure that "DOE/FE's comments and suggestions have been satisfied," *id.* at 13. As we explained, and as DOE/FE and FERC have stated, the fact that FERC 'holds the pen' in authoring NEPA review in no way diminishes DOE/FE's statutory obligations.

On the other hand, movants have never argued that, if FERC prepares an EIS that provides all the information DOE/FE must consider, DOE/FE must nonetheless prepare a redundant EIS. Movants' protest merely identifies the scope of DOE/FE's NEPA and NGA obligations. NEPA review, whether completed by FERC or DOE/FE, must encompass this scope before DOE/FE can proceed.

Movants' suggestion that DOE/FE prepare a programmatic EIS regarding LNG exports is consistent with this principle. As we explained, NEPA requires consideration of cumulative effects regardless of whether FERC or DOE/FE authors NEPA review and regardless of whether a programmatic EIS is prepared. A programmatic EIS, however, provides the most efficient and appropriate method of considering these impacts. Because DOE appears to be the agency best qualified to lead preparation of such an EIS (and in greatest need of the information it would provide), movants suggest that DOE/FE take that role. Once a programmatic EIS is completed, in individual export terminal proceedings, FERC may use that EIS when FERC acts as lead agency for facility-specific NEPA review.

#### D. The Proposed Exports Are Contrary to the Public Interest

Oregon LNG challenges movants' public interest arguments on two grounds: Oregon LNG asserts that environmental impacts of induced shale gas production are unforeseeable and need not be considered, and Oregon LNG seeks to defend its flawed discussion of economic benefits. Both challenges fail. More generally, Oregon LNG has not disputed movants' showing of adverse local environmental impacts or of adverse environmental and economic (including gas price) impacts not related to site-specific effects of induced production, nor does Oregon LNG dispute that these impacts are contrary to the public interest.

Regarding the impacts of induced production, Oregon LNG primarily relies on DOE/FE and FERC's orders in the *Sabine Pass* proceeding. As movants demonstrated in their protest, not only are those orders legally incorrect (indeed, DOE/FE is currently reviewing its order), they rested on factual records markedly different than the one here.<sup>2</sup> As we explained, the Energy Information Administration's National Energy Modeling System can predict where induced production will occur. Protest at 24-26. Oregon LNG has not acknowledged this argument or difference in the factual record.

Regarding economic impacts, Oregon LNG has not rebutted movants' criticisms of Oregon LNG's economics arguments. Moreover, the recently released NERA Economic Consulting report commissioned by DOE/FE affirms key aspects of movants' arguments. NERA Economic Consulting, *Macroeconomic Impacts of LNG Exports from the United States* (Dec. 5, 2012).<sup>3</sup> For example, movants argued that Oregon LNG had failed to acknowledge counterfactuals, *i.e.*, the economic conditions that would exist absent exports. Protest at 49. One key example of this defect is that that jobs created by the proposal would be offset by jobs lost in manufacturing and other industries as a result of increased gas prices, but this offset receives no discussion in Oregon LNG's analysis. *Id.* The NERA report supports movants in this regard, refuting Oregon LNG's argument about job creation and concluding that "LNG exports are not likely to affect the overall level of employment in the U.S." NERA Report at 2.

Because this report on macroeconomic impacts represents a significant new source of information regarding the potential impacts of Oregon LNG's proposal, DOE/FE must provide the public with an opportunity to review and comment on this study in general, and on its implications regarding Oregon LNG's proposal in particular, before proceeding with Oregon LNG's application.

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<sup>2</sup> The information regarding NEMS movants introduced here also distinguishes the other authority Oregon LNG cites, *Central New York Oil and Gas Company, LLC*, 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).

<sup>3</sup> [http://www.fossil.energy.gov/programs/gasregulation/reports/nera\\_lng\\_report.pdf](http://www.fossil.energy.gov/programs/gasregulation/reports/nera_lng_report.pdf).

### III. Conclusion

The record before DOE/FE shows that LNG exports will (1) raise gas prices, (2) cause significant economic disruption without delivering the job-creation benefits Oregon LNG asserts, and (3) come with major environmental and resultant economic costs. Oregon LNG's response to movants' protest does not seriously disturb any of these conclusions. As such, on this record, DOE/FE can only rationally conclude that Oregon LNG's proposed exports are not in the public interest. DOE/FE also may not move forward until it fully complies with NEPA, ESA, NHPA, and its other statutory obligations. Movants' motion to intervene should be granted, and Oregon LNG's application should be denied.

Dated: December 6, 2012.

Respectfully submitted,

*/s/ Nathan Matthews*

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**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. § 590.107, on December 6, 2012.

Dated at San Francisco, CA, this 6<sup>th</sup> day of December, 2012.



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VERIFICATION


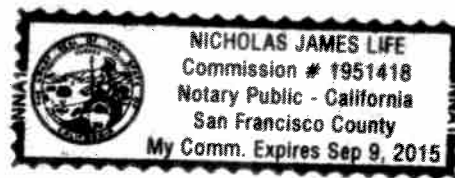
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Pursuant to C.F.R. §590.103(b), Nathan Matthews, being duly sworn, affirms that he is authorized to execute this verification, that he has read the foregoing document, and that facts stated herein are true and correct to the best of his knowledge,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



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Subscribed and sworn to before me this 6<sup>th</sup> day of December, 2012.

  
Notary Public

My commission expires: 09/09/2015