UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

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IN THE MATTER OF	**)**	
	)	**FE DOCKET NO. 12-05-LNG**
Gulf Coast LNG Export, LLC	**)**	
	)	

Sierra Club's Renewed Motion to Reply and Reply Comments

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Pursuant to 10 C.F.R. §§ 590.302(a) & 590.310, Sierra Club moves for leave to reply to Gulf Coast's answer to its protest. Sierra Club's reply is incorporated into this filing.

I. Sierra Club Hereby Renews its Motion for Leave to Reply to Gulf Coast's Answer

DOE/FE rules allow any party to move for additional procedures in any case. *See* 10 C.F.R. §§ 590.302(a) & 590.310. Sierra Club did so in its protest, moving for a reply if any party opposed its motion to intervene. *See* Sierra Club Protest at 3 n.2. Sierra Club now renews that motion.

DOE/FE is confronting a very large, and novel, wave of LNG export applications. Each such application raises important questions as to whether the economic and environmental implications of export are in the public interest. *See* 15 U.S.C. § 717b; *see also 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); *Udall v. Federal Power Comm'n*, 397 U.S. 428 (1967). As DOE/FE and Deputy Assistant Secretary Smith have acknowledged, "a sound evidentiary record is essential to reach a reasoned decision in these [LNG export] proceedings." Letter from Secretary Smith to Rep. Edward Markey (Feb. 24, 2012) at 4. Sierra Club has provided DOE/FE with an extensive, careful, discussion of relevant impacts in its protest. DOE/FE should allow Sierra Club to reply in order to ensure that these arguments are fully aired before it, and the record is fully developed before DOE/FE makes its final determination.

Relatedly, Gulf Coast spends much of its answer wrongly asserting that DOE/FE need not address important duties under environmental statutes and the Natural Gas Act. DOE/FE should allow Sierra Club to counter these arguments, consistent with the usual course of our adversarial system of justice, thereby ensuring that DOE/FE fully understands the arguments and the record before it.

Gulf Coast does not offer any substantial reason why DOE/FE should not allow Sierra Club to reply. It asserts only that it was improper for Sierra Club to request a reply, *see* Gulf Coast Answer at 7, even though DOE/FE regulations explicitly allow any party to request additional procedures by motion, *see* 10 C.F.R. §§ 590.302(a) & 590.310. Gulf Coast apparently feels that Sierra Club should not have included its motion in its protest, and instead should have filed it as a separate document. There is no reason why the format of Sierra Club's motion should bear on DOE/FE's determination. Gulf Coast responded to the motion, and DOE/FE may now rule upon it. Because Gulf Coast has no substantive objection to Sierra Club's reply, its formalistic objections should not have any weight.

For the foregoing reasons, DOE/FE therefore should grant Sierra Club's motion to reply, as Sierra Club does below.

II. Sierra Club's Reply

A. Sierra Club Should be Granted Leave to Intervene

All that DOE/FE regulations require to intervene is a timely motion setting out "clearly and concisely" the basis for the movants' interest in this matter. 10 C.F.R. § 590.303(b). This low hurdle rightly reflects DOE/FE's Natural Gas Act responsibilities: DOE/FE is seeking to determine the public interest on matters which have weighty implications for the country, and so naturally benefits from hearing views from many perspectives as it weighs export applications. Allowing intervention upon a clear statement of interest ensures that the record is well-built and that all arguments are carefully presented.

Sierra Club has clearly fulfilled this standard. The rules require only that Sierra Club state its interests clearly and concisely. Sierra Club has done so. That is enough to intervene. Gulf Coast's contentions that Sierra Club's interests are not sufficient are thus without merit.

In any event, Sierra Club's motion, which is substantiated, at length, by its protest, explains that gas exports have local, regional, and national implications, all of which implicate Sierra Club's interests and those of its members. Sierra Club represents over 600,000 members, a great many of whom will be directly affected by DOE/FE's decisions here. Some live near the proposed terminal and will be affected by its pollution, construction, and associated traffic; others will be affected by the infrastructure development, including pipelines, which the terminal will require; still more live in gas plays whose production will be impacted by the terminal; and even more will experience these exports' negative impacts on gas prices and supply. *See* Sierra Club Protest at 2. Sierra Club and its members are interested in ameliorating these impacts; they are also interested in fully understanding them, and so have a strong interest in the disclosure and analysis required in these proceedings.

Gulf Coast dismisses and mischaracterizes these legitimate interests, which it pejoratively describes as "rants." Gulf Coast Answer at 7. Gulf Coast may well disagree with Sierra Club, but its disagreement on the merits does not warrant denying Sierra Club its right to intervene. It does not and cannot show that Sierra Club members are not legitimately interested in its proposal and its implications, and so has no legitimate grounds to object to Sierra Club's intervention.

Gulf Coast's attacks on Sierra Club's interests related to the national impacts of export are particularly baffling.[1] It is true that Sierra Club has deep concerns about poorly-regulated natural gas production, and that Sierra Club firmly believes that a rapid transition to a very low carbon economy is necessary to prevent the dangerous climate change which the Environmental Protection Agency has determined endangers American's health and welfare. *See*, *e.g.*, 74 Fed. Reg. 66,496 (Dec. 15, 2009). These are serious and valid interests. They support Sierra Club's intervention here because Gulf Coast's proposal would deepen our national investment in unconventional natural gas production, and encourage fossil fuel use – as Gulf Coast acknowledges, *see* Gulf Coast Application at 10 ("Gulf Coast is positioned to provide [the U.S.] with significant economic benefits by increasing domestic natural gas production"). National policy decisions are often made project-by-project, as is the case in these export proceedings.

[1] Sierra Club does not depend solely on these interests to intervene, of course, because the impact of Gulf Coast's terminal on its members is itself more than enough to support its motion, but these additional interests also strongly support intervention.

If Sierra Club, or any party, is to have a voice in DOE/FE's decision as to where the public interest lies with regard to LNG export, it must participate in these licensing proceedings where that decision is made. There is nothing wrong with basing intervention on such well-documented concerns over the implications of Gulf Coast's proposed exports for the nation. On the contrary, DOE/FE must consider precisely these impacts as it reaches a decision, and Sierra Club's intervention will contribute to building a full record for that determination.

Finally, DOE/FE has recently instructed Sierra Club to intervene at the outset if it intends to raise environmental issues in these proceedings, including the adequacy of any environmental review. *See Sabine Pass,* Order 2961-A (Aug. 7, 2012). Although Sierra Club does not concede that the recent order to that effect was rightly decided, it demonstrates that environmental intervention is appropriate at this juncture under DOE/FE's current understanding of its procedures.

Sierra Club thus seeks to intervene to, among other purposes, ensure that the local, regional, and national environmental impacts of DOE/FE's decision on this project are properly disclosed and weighed. These interests plainly support intervention, despite Gulf Coast's largely rhetorical complaints to the contrary. The motion should be granted.

B. Gulf Coast's Objections to Sierra Club's Protest Are Without Merit

Gulf Coast devotes a great deal of its response to arguing that DOE/FE need not fulfill its obligations under the National Environmental Policy Act (NEPA) or other environmental statutes. Gulf Coast is wrong. In this reply, Sierra Club first reemphasizes that DOE/FE has independent NEPA compliance obligations, and then shows that Gulf Coast's insistence that DOE/FE need not consider the national environmental implications of its proposal is wrong.

i. DOE/FE Has Independent NEPA Compliance Obligations

Gulf Coast spends much of its time, *see* Gulf Coast Answer at 8-17, establishing a point that no one disputes: FERC is the lead agency for NEPA compliance in the Natural Gas Act context. *See* 15 U.S.C. § 717n. True enough, but this obligation does not remove DOE/FE's own obligations to ensure that the NEPA process is completed legally, and can supports its final decision as to whether Gulf Coast's proposal is in the public interest.

Gulf Coast seems to think that FERC's role means DOE should "disregard[]" Sierra Club's protest because this FERC process will "satisfy DOE's and FERC's NEPA obligations." Gulf Coast at 11. Gulf Coast is wrong: DOE/FE has independent responsibilities under both the Natural Gas Act and NEPA. If Sierra Club is to speak to DOE/FE's particular duties, and to have a voice in DOE/FE's final decision, including its decision whether its NEPA obligations have been fulfilled, it naturally must appear before DOE/FE. Sierra Club certainly can participate in the FERC docket as well, but that does not substitute for appearing here.

Sierra Club's NEPA arguments are directly material to DOE/FE's decisions because only DOE/FE will weigh the proposed project's environmental impacts to decide whether Gulf Coast's proposed LNG exports are in the public interest. As DOE/FE knows, FERC is charged only with determining where and how to site export terminals. *See* Department of Energy Delegation Order No. 00-004.00A § 1.21 (May 16, 2006). DOE/FE, by contrast, is charged with broadly considering whether export is in the public interest. *See* Department of Energy Redelegation Order No. 00-002.04E § 1.3 (Apr. 29, 2011).

This means that DOE/FE must determine, for itself, whether Gulf Coast's proposal is in the public interest, an inquiry which requires it to weigh environmental impacts. To do so, DOE/FE must review the project's environmental implications; NEPA review supplies the information which DOE/FE requires to do so. For this reason, Sierra Club continues to urge DOE/FE not to "conditionally" approve Gulf Coast's application until all the facts are in (whether FERC compiles them under NEPA or it does so itself): DOE/FE needs environmental data so that it can properly weigh all the impacts of the proposal at once. But even if DOE/FE does issue such a conditional approval, it must still independently determine whether the NEPA documents which FERC prepares are adequate to support DOE/FE's purposes. Because these determinations must occur in this proceeding, DOE/FE may not disregard Sierra Club's contentions as to the necessary contents of the environmental review, as Gulf Coast urges.

To put the point plainly, NEPA provides that "*all* agencies of the Federal Government" shall comply with its requirements, which include its directive that an environmental impact statement (EIS) be prepared for every "major Federal action[] significantly affecting the quality of the human environment." 16 U.S.C. § 4332. Accordingly, though Congress has given FERC a central coordinating role in the NEPA process here, *see* 15 U.S.C. § 717n, it has not removed DOE/FE's own obligations.

DOE/FE and Council on Environmental Quality regulations confirm as much. The lead agency has a coordinating role, to be sure, *see* 40 C.F.R. § 1501.5, but the cooperating agency have its own independent NEPA obligations to fulfill. It must contribute appropriately to the preparation of any joint EIS, use its own funds, and, as appropriate, "assume . . . responsibility for developing information and preparing environmental analyses." *See* 40 C.F.R. § 1501.6. As well as working to prepare an adequate NEPA analysis, the cooperating agency must make an independent decision whether to adopt that analysis or whether it must be amended to serve its particular purposes. *See* 40 C.F.R. § 1506.3. "Independent review" is always required, *id.*, so Sierra Club's protests' contentions as to the proper scope of review are directly relevant to these proceedings.

Indeed, DOE/FE's recent orders in the *Sabine Pass* matter underline why Sierra Club's protest must be heard in this proceeding. There, DOE/FE bifurcated its public interest determination, conditionally approving the project while deferring weighing environmental factors until after FERC completed its environmental review. *See* DOE Order 2961 (May 20, 2011). Sierra Club participated in the FERC process, but the process did not, in Sierra Club's view, analyze all the relevant environmental impacts. Sierra Club therefore sought to intervene in the DOE docket when FERC forward its environmental analysis to DOE/FE. DOE/FE denied this "out-of-time" intervention, maintaining that Sierra Club should have intervened and protested with regard to these issues within the initial "filing deadlines … if it wanted to raise issues regarding the environmental impacts of granting the instant application." *See* DOE Order 2961-A at 25 (Aug. 7, 2012).

Sierra Club certainly does not concede that *Sabine Pass* was rightly decided (and has recently petitioned DOE/FE to rehear the matter), but if that case is indicative of DOE/FE's handling of this process, they demonstrate that DOE/FE expects environmental matters to be raised before it from the outset if they are to be raised at all. Whether DOE/FE again seeks to bifurcate its public interest determination (a course which Sierra Club continues to maintain impermissibly skews the public interest weighing test) or makes a single final determination, it must do so on the basis of a full understanding of the environmental implications of its decision. It appears now to make clear that such a full understanding must be based on an analysis which fairly weighs *all* of these impacts. Sierra Club's protest outlines

those issues which DOE/FE must ensure are fully analyzed under NEPA, and then carefully weighed in the Natural Gas Act public interest determination.

ii. DOE/FE Must Consider the Environmental Implications of Increased Shale Gas Production

Gulf Coast will plainly induce substantial new gas production, with significant environmental impacts, and these impacts will be even more substantial when considered cumulatively with the impacts of other export proposals. The Natural Gas Act requires DOE/FE to consider the environmental impacts of export proposals. *See Nat'l Ass'n for the Advancement of Colored People v. Federal Power Comm'n*, 425 U.S. at 670 n.4 &n.6 ; *Udall v. Federal Power Commission*, 397 U.S. 428. NEPA supports this analysis by providing that DOE/FE must consider all "reasonably foreseeable" impacts of its actions. *See* 40 C.F.R. §§ 1508.7 & 1508.8. DOE/FE must therefore disclose these impacts, and alternatives which could mitigate them, under NEPA, and must use this analysis to inform its Natural Gas Act process.

a. Residual Uncertainty Does Not Justify Foregoing a NEPA Analysis of Export-Linked Production

Gulf Coast nonetheless maintains that DOE/FE can ignore these impacts because the "location of any such upstream activity is entirely unknown." Gulf Coast Answer at 18. Although Sierra Club acknowledges that DOE/FE found such reasoning compelling in *Sabine Pass*, *see* Order 2961-A at 27-28, that order was wrongly decided and should not govern here. Just as Gulf Coast is perfectly able to project the alleged *economic* consequences of its proposal without knowing precisely where each well will be drilled, so, too, must DOE/FE consider the environmental consequences of the proposal, whether or not it has complete information on the location of possible induced production.

Initially, governing NEPA regulations and Circuit Court precedent make clear that uncertainty does not justify failing to weigh impacts at all, as Gulf Coast would maintain. On the contrary, though agencies need not foresee the truly unforeseeable, they cannot "avoid drafting an impact statement simply because describing the environmental effects of and alternatives to particular agency action involves some degree of forecasting." *Scientists' Institute for Public Information, Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C. Cir. 1973). "[O]ne of the functions of a NEPA statement is to indicate to the extent to which environmental effects are essentially unknown. *It must be remembered that the basic thrust of an agency's responsibility under NEPA is to predict the environmental effects of proposed action before the action is taken and those effects are known." Id.* (emphasis added). The point is not that NEPA analysis at this phase will answer every question about export definitively and completely, but that it will enhance DOE/FE's and the public's understanding by providing forecasts which are as thorough as possible at the time which DOE/FE makes its decision. "Reasonable forecasting and speculation is . . . implicit in NEPA" and is required here. *See id.*

This is why the NEPA regulations provide a well-defined process for analyzing uncertainty. The rules provide that where information is incomplete, the agency must gather it (expending reasonable funds to do so) to fill in key aspects of the picture. 40 C.F.R. § 1502.22(a). If costs are truly exorbitant, or if it is very difficult to generate a particular piece of information, the agency must still do its best, providing a careful description of what it believes to be missing from its evaluation, a "summary of existing credible scientific evidence" relevant to its problem, and the agency's best "evaluation" of the impacts before it based upon what it knows. 40 C.F.R. § 1502.22(b)(1). In all cases, the goal is to develop the best informed analysis possible, advancing the public's understanding even of uncertainties before the final decision is made.

So, Gulf Coast's insistence that there are uncertainties and unknowns with regard to export's effects on production, and those uncertainties justify foregoing the NEPA process, is fundamentally misguided. Uncertainty is not a reason to forego NEPA: It is a reason to *perform* NEPA.

Further, Gulf Coast considerably overstates the extent, and implications, of such uncertainty as is present here. In its application, Gulf Coast is very clear that its project will be an immediate cause of expanded natural gas production. It confidently predicts (and quantifies) likely economic impacts of increased production, and urges that DOE/FE should rely upon these predictions to grant Gulf Coast's export license. Indeed, even in its answer, Gulf Coast still acknowledges that "export activities from [its] Terminal will undoubtedly support increased natural gas production." Gulf Coast Answer at 18. This admission should end any legal doubt as to DOE/FE's duties: The export proposal will cause increased natural gas production, so those impacts must be analyzed and disclosed to the greatest extent possible. *See, e.g.*, *Henry v. Federal Power Comm'n*, 513 F.2d 395, 406 (D.C. Cir. 1975) ("NEPA requires an integrated view of the environmental damage that may be caused by a situation, broadly considered").[2]

In fact, Gulf Coast's entire case for approval is rooted in its claims concerning the economic consequences of increased gas production that would not occur without its terminal. Its assertions include that:

· The size of the Texas natural gas market and "the exponential growth of unconventional resources in the region" will provide a "diverse and reliable source of natural gas … to support the requested Export Authorization." Gulf Coast Application at 6.

· Pipeline capacity in the region has been built to "transport expanding Eagle Ford, Barnett, and Haynesville shale formation production to local markets and to interconnections with the interstate natural gas pipeline network," thereby enabling Gulf Coast to readily access these supplies. *See id.* at 6-7.

· "Large volumes of domestic shale gas reserves and continued low production costs" from these reserves are what "will enable the United States to export LNG while also meeting domestic demand." *Id.* at 10.

· Gulf Coast intends to "provide Texas, the Gulf Coast region, and the United States with significant economic benefits by increasing domestic natural gas production." *Id.*

· Gulf Coast will drive this production because "[t]he requested Export Authorization will allow the U.S. to benefit now from the natural gas resources that may not otherwise be produced for many decades, if ever." *Id.* at 11.

· Gulf Coast will create "[b]etween 34,000 and 42,000 new American jobs … by the increase in drilling for and production of natural gas required to support the Export Authorization." *Id. See also*

[2] Because DOE must consider the consequences of its actions, Gulf Coast's argument that other agencies may have direct regulatory responsibility over some other aspects of the gas production process, and so DOE may disregard production impacts, is wrong. *See Henry*, 513 F.2d at 406 (NEPA is "not to be frustrated by an approach that would defeat a comprehensive and integrated consideration by reason of the fact that particular officers and agencies have particular occasions for and limits on their exercise of jurisdiction.").

id. at 23-24 (quantifying jobs from "increased production of natural gas required for the Export Authorization").

· Gulf Coast will promote "full development of commercial shale gas reserves." *See id.* at 12.

· The market will "fully anticipate" "[d]emand created by the Export Authorization" because there will be time "for natural gas producers to increase production [and] for interstate players to build interstate transmission lines." *Id.* at 15.

· "Texas is well positioned to absorb the increased demand from the Export Authorization without materially affecting the gas supply available" because decreased domestic flows from Texas "will prompted increased production out of the Midcontinent basin" and the northeast. *Id.* at 19.

From beginning to end, thus Gulf Coast grounds its public interest argument in increased natural gas production. It bases its jobs claims on specific production forecasts, and promises to expand the production of plays in Texas and throughout the nation. This impact is not only "reasonably foreseeable": it is the *raison d'etre* of the proposal. It is therefore astonishing that Gulf Coast now asserts that impacts from increased production are "not possible" to forecast. *See id.* at 21 n. 68. If that were so, Gulf Coast's economic predictions would be just as unreliable – but Gulf Coast wants DOE/FE to rule based upon them. It cannot both put forward its economic projections while drawing a veil over their economic consequences.

DOE/FE must take both sets of impacts into account because, as, the D.C. Circuit Court of Appeals has made clear, an agency may not simultaneously weigh economic benefits while disregarding environmental costs. *See Scientists' Institute,* 481 F.2d at 1097. If a project's proponents can project its economic impacts, commensurate environmental projections are legally entitled to the same weight. As the court held, where economic forecasts have been offered, "parallel environmental forecasts would be accurate for use in planning how to cope with and minimize the detrimental effects attendant upon" economic plans. *Id. See also Northern Plains Resource Council v. Surface Transportation Board*¸668 F.3d 1067, 1081-82 (9th Cir. 2011) (holding that where an agency relied on economic development "to justify the financial soundness of [a] proposal" it could not decline to consider commensurate environmental impacts). Agencies cannot skew their analyses, or mask the costs of their actions, by examining only one side of a problem while refusing to consider the other.

Moreover, when it is pointing to its purported economic benefits, Gulf Coast does not contend, as it does in the environmental context, that an inability to predict precisely where the new jobs it relies upon will be prevents it from claiming these economic benefits, or that DOE/FE cannot consider them without localizing them. There is no reason why environmental benefits cannot be weighed in precisely the same way. Just as a given gas well will require a certain amount of cement, steel, and job time (as Gulf Coast calculates) so too will a given well produce a certain amount of air and water pollution, land disturbance, and pollution control expenses. These are not unknowable impacts and they are just as relevant on a national basis as economic impacts are. *See also* Sierra Club Protest at 13-14 (emphasizing this point). DOE/FE can project the magnitude and type of environmental disturbance that the proposal will cause, and it must do so.

Indeed, other bodies of the government have conducted, and are conducting, national-scale analyses of this type. For instance, the Energy Information Administration, in its LNG export report, projected national combustion-related emissions changes associated with varying levels of export. *See* Sierra Club

Protest at 38-39 (citing this analysis). Likewise, the Environmental Protection Agency has developed detailed estimates of many different pollutants emitted as air pollution from natural gas drilling across the country, which include production forecasts. *See generally* EPA, Regulatory Impact Analysis, *Final New Source Performance Standards and Amendments to the National Emissions Standards for Hazardous Air Pollutants for the Oil and Natural Gas Industry* (April 2012).[3] The New York Department of Environmental Conservation has also taken extensive measures to quantify likely land, air, and water impacts of drilling across its region, producing hundreds of analysis of likely impacts of different production scenarios. *See generally* NYDEC, *Revised Draft Supplemental Generic Environmental Impact Statement on the Oil, Gas, and Solution Mining Regulatory Program* (Sept. 2011).[4] It is certainly possible, despite Gulf Coast's contentions, both to develop environmental profiles for future production across the country (and composite profiles for production in general), and to assess many of the risks associated with production. DOE/FE can draw upon these analyses as it considers the likely national impacts of increased production for export.

In short, it is not necessary to project with certainty exactly where environmental impacts will occur, on the level of individual wells (or even individual plays), in order to be able to acknowledge that such impacts exist, and to describe them with some degree of generality. Gulf Coast has claimed economic benefits, at a national level, associated with particular increases in gas production. DOE/FE can, and must, describe the national environmental impacts associated with the same increases, or its analysis will not be sound, or legally supportable.

But, in fact, even the premise of Gulf Coast's uncertainty argument appears to be wrong: DOE/FE may well be able to make more focused projections than Gulf Coast acknowledges. Although Gulf Coast insists that regional projections of export's impact on production are impossible to make, its application actually relies upon such predictions for economic purposes. The Deloitte consultant report on which Gulf Coast largely relies to predict price impacts, *see* Gulf Coast Application at 13-16, appears to forecast production shifts in specific shale plays in response to a given level or export. *See, e.g.*, Deloitte, *Made in America: The Economic Impact of LNG Exports from the United States* (2011) at 6 (explaining that if LNG is "exported from one particular geographic point, the entire eastern part of the United States reorients production and flows and basis differentials change substantially"); *see also id.* at 6 (explaining that the reference case for the model predicts increased production in the Marcellus and Haynesville shales) & 8 (explaining that Deloitte considers how producers will "develop more reserves in anticipation of demand growth, such as LNG exports" and forecasting different prices depending on where exports occur).

According to Deloitte, its "World Gas Model" and its component "North American Gas Model" are designed precisely to provide this sort of finer-grained analysis. Deloitte explains that "[t]he North American Gas Model is designed to simulate how regional interactions of supply, transportation, and demand determine market clearing prices, flowing volumes, storage, reserve additions, and new pipelines throughout the North American natural gas market." *See* Deloitte, *Natural Gas Models.*[5] The model "contains field size and depth distributions for every play, with a finding and development cost model included. This database connects these gas plays with other energy products such as coal, power,

[3] Available at: http://www.epa.gov/ttn/ecas/regdata/RIAs/oil_natural_gas_final_neshap_nsps_ria.pdf.
[4] Available at: http://www.dec.ny.gov/energy/75370.html.
[5] Available at: http://www.deloitte.com/view/en_US/us/Industries/power-utilities/deloitte-center-for-energy-solutions-power-utilities/marketpoint-home/marketpoint-data-models/b2964d1814549210VgnVCM200000bb42f00aRCRD.htm

and emissions." *Id.* According to Deloitte, its modeling thus allow it to predict how gas production, infrastructure construction, and storage will respond to changing demand conditions, including those resulting from LNG export: "The end result is that valuing storage investments, identifying maximally effectual storage field operation, positioning, optimizing cycle times, demand following modeling, pipeline sizing and location, and analyzing the impacts of LNG has become easier and generally more accurate." *Id.*

Gulf Coast has relied on this modeling to insist that its project is in the public interest, and so cannot disown it now. Although Sierra Club expresses no particular view as to the particular merits of Deloitte's approach, or the specific claims Gulf Coast makes based upon the model, the model's existence demonstrates that it is not impossible to forecast the response of particular plays to LNG export. Because such modeling is possible – and, in fact, was submitted into the record here – Gulf Coast may not argue that is impossible to produce localized prediction of where production, and, hence, environmental impacts will occur, in response to export.

The bottom line is that (1) any uncertainty as to the environmental impacts of export-linked production argues for, not against, a full EIS here, (2) even if such impacts cannot be linked to particular locations, they are still relevant and legally must be disclosed and considered, and (3) it appears entirely possible to make more location-specific predictions in any event. Accordingly, DOE/FE must conduct such an analysis in a full EIS, and then use that analysis to inform its Natural Gas Act decision.

b. Gulf Coast's Authority to the Contrary is Not Compelling

The contrary authorities that Gulf Coast cites, and the recent *Sabine Pass* order, err to the extent that they either hold that predictions of localized impacts are necessary for those impacts to be foreseeable for NEPA purposes, or that LNG export's national production impacts cannot be weighed. Even if such localized predictions are not possible (as they may be), DOE/FE simply does not need to forecast the precise location of all environmental impacts to acknowledge that there *are* obvious environmental impacts associated with increased gas production for export. It can and must forecast those impacts, and consider relevant alternatives, as NEPA requires.

DOE/FE's recent Order 2961-A in the *Sabine Pass* matter should not govern here, for the reasons given above and in Sierra Club's Petition for Rehearing in that matter.[6] Gulf Coast's remaining authority, and its attempts to distinguish Sierra Club's authority, are also not persuasive, for several reasons.

Gulf Coast relies principally on recent opinions surrounding the MARC I pipeline in the Northeast. *See* Gulf Coast Answer at 18-19, 22-23. That case is only persuasive authority here, and should be rejected on its facts in any event. MARC I was a "bi-directional hub line," running to and from the Marcellus field. *Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,1121 at ¶ 91-92 (Nov. 14, 2011). FERC determined that the project therefore did not have a direct causal relationship with shale development, and that it likewise did "not depend on the development of Marcellus Shale in northeastern Pennsylvania for its justification." *Id.* at ¶ 92. The Second Circuit upheld FERC on the ground that "the impacts of that development are not sufficiently causally related to the project to warrant a more in-depth analysis." *Coalition for Responsible Growth and Resource Conservation v. FERC*, 2012 WL 2097249, *2 (2nd Cir.

[6] Available at: http://www.fossil.energy.gov/programs/gasregulation/authorizations/Orders_Issued_2010/Sierra_Club_Rehearing_Petition_9-6-2012.pdf

2012). Regardless of the merits of these opinions as to MARC I, they turn in large part on FERC's and the Circuit's determination that the pipeline would not cause gas development.[7]

That is not the case here. As we have explained at length, and as Gulf Coast concedes, its project will "undoubtedly" lead to increased natural gas production, Gulf Coast Answer at 18, and that production would *not* otherwise have occurred. *See* Gulf Coast Application at 11 (Gulf Coast will "allow [production] from resources that may not otherwise be produced for many decades, if ever"). So, even if the MARC I cases were rightly decided, which Sierra Club does not concede, they do not control here.[8] The causal link that FERC thought was absent in those cases is present in this instance, and is necessary to Gulf Coast's claim that its proposal is in the public interest.

As such, this case is far closer to *Border Power Plant Working Group v. Dep't of Energy*, 260 F. Supp. 2d 997 (S.D. Ca. 2003). Just as constructing a transmission line caused power plants to operate to produce power to be sent down the line, *see id.* at 1013-17, so will constructing an LNG export terminal cause gas to be produced for export. Though Gulf Coast in its answer maintains that this causal connection does not exist, *see* Gulf Coast Answer at 20, it relies upon just such a causal nexus to justify its entire project. Gulf Coast lamely protests that "natural gas production," in general, "will occur regardless of DOE's decision on the application," *id.* at 20-21. Maybe so, but this is beside the point. *More* gas production will occur if DOE grants this application. That effect warrants NEPA analysis.

In the end, Gulf Coast cannot acknowledge its impacts only when they are convenient for its purposes, and neither can DOE/FE. Impacts of production must be accounted for in a full environmental impact statement (either in collaboration with FERC or not, if the FERC process fails to cover them), and DOE/FE must weigh them in its public interest analysis.[9]

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[7] It is true that FERC also maintained that MARC I's impacts could not be localized for analysis. Sierra Club has already explained why localization is not a prerequisite to NEPA analysis. The Second Circuit did not address FERC's reasoning on this point.

[8] Gulf Coast's other FERC case, *Texas Eastern Transmission, LP Algonquin Gas Transmission, LLC*, 139 FERC ¶ 61,138 (May 21, 2012) likewise turns on its determination that pipeline was neither dependent upon gas production nor would cause gas production. *See id.* at ¶ 72. Again, this is not the case with LNG export, which depends upon new gas production and would cause such production.

[9] Gulf Coast also asserts that DOE/FE may disregard the requirements of the Endangered Species Act (ESA) and National Historic Preservation Act (NHPA). Gulf Coast is wrong.

With regard to the ESA, Gulf Coast asserts that DOE/Fe need not undertake a species analysis because it must be "reasonably certain" that species will be affected by the indirect effects of an export approval. *See* Gulf Coast Answer at 24. This is a misleading statement of the law. In fact, the ESA regulations provide that "[e]ach Federal agency shall review its actions at the earliest possible time to determine whether any action *may affect* listed species or critical habitat." 50 C.F.R. § 402.14. If so, and the agency cannot show otherwise on the basis of an informal consultation, a formal biological opinion is required. *See id.* It is true that, within the context of this process, the agency need not consider indirect and cumulative effects which are not "reasonably certain" to occur, *see* 50 C.F.R. § 402.02, but this is a secondary standard.

At this point in the process, Sierra Club's point is simply that the proposal certainly "may affect" listed species, and that DOE/FE must consult appropriately to so determine. Because increased production is, in fact, certain, to occur – as Gulf Coast must acknowledge – DOE/FE must consider its impacts as well. If locational uncertainty constrains DOE/FE's consideration, this is a practical difficult to overcome, not a reason to avoid consulting at all. DOE/FE could, for instance, notify Fish and Wildlife Service officials managing endangered species in major Texas shale plays that an increase in production is possible, and solicit their informed opinions as to the likely impacts of this production on species there. If a serious threat appears, it can then be dealt with early in the process.

III. Conclusion

Gulf Coast does not challenge any of the record evidence Sierra Club has submitted documenting the many adverse environmental impacts of its export proposal; instead, it just urges DOE/FE not to consider any of this evidence. This DOE/FE may not do. The National Environmental Policy Act requires disclosure of such impacts, and the Natural Gas Act requires DOE/FE to weigh them. Fairly weighed, Sierra Club continues to contend, such impacts demonstrate that Gulf Coast's proposal is not in the public interest. This is particularly so given the project's questionable economic benefits (as tow which, Sierra Club rests upon its protest as filed). Whether or not these economic benefits are as large as Gulf Coast contends, it is arbitrary and capricious to weigh them without counting the environmental cost. DOE/FE, animated by its obligation to broadly consider and to protect the public interest, reject Gulf Coast's invitation to adopt such a cramped, narrow, and illegal analysis.
Dated: September 18, 2012

Respectfully submitted,

/s/ Craig Segall

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Likewise, an NHPA analysis is required to drive early analysis in order to "identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties." 36 C.F.R. § 800.1(a). Such analysis is generally required unless the federal action has "[n]o potential to cause effects" on historic properties. *See*36 C.F.R. § 800.3(a)(1). Again, significantly expanding natural gas production – with the associated pollution and infrastructure development – certainly has some potential to impact historic properties. As such, it makes sense for DOE/FE to consider how such production might be managed, and to notify officials and areas which have some potential to be affected.

Sierra Club, in short, does not ask that DOE/FE do the impossible, but it does ask that it pay due regard to the important cultural and ecological preservation values embodied in these planning statutes.

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	)	
	)	**FE DOCKET NO. 12-05-LNG**
Gulf Coast LNG Export, LLC	)	
	)	

VERIFICATION

SAN FRANCISCO	§
	§
CALIFORNIA	§

Pursuant to C.F.R. §590.103(b), Craig Segall, 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.

Craig Segall
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Subscribed and sworn to before me this 18 day of September, 2012.

Albana Drobonku
Notary Public

ALBANA DROBONKU NOTARY PUBLIC DISTRICT OF COLUMBIA Expires July 14, 2017

My Commission Expires
July 14, 2017

My commission expires: _____

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
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IN THE MATTER OF	)	
	)	**FE DOCKET NO. 12-05-LNG**
Gulf Coast LNG Export, LLC	)	
	)	

CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to C.F.R. § 590.103(b), I, Craig Segall, hereby certify that I am a duly authorized representative of the Sierra Club, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy, on behalf of the Sierra Club, the foregoing documents and in the above captioned proceeding.

Dated at Washington, DC, this 18th day of September, 2012.

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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. § 590.017, on September 18, 2012.

Dated at Washington, DC, this 18th day of September, 2012.

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