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

In the Matter of	)	
	)	**FE Docket No. 13-132-LNG**
MAGNOLIA LNG, LLC	)	

ANSWER OF MAGNOLIA LNG, LLC
IN OPPOSITION TO THE SIERRA CLUB AND
THE AMERICAN PUBLIC GAS ASSOCIATION
MOTIONS TO INTERVENE, PROTEST, AND COMMENTS

Pursuant to Sections 590.302(b), 590.303(e), and 590.304(f) of the Department of Energy's ("DOE") regulations,[1] Magnolia LNG, LLC ("Magnolia LNG") hereby submits this consolidated Answer in opposition to the American Public Gas Association ("APGA") Motion to Intervene and Protest ("APGA Filing") and the Sierra Club Motion to Intervene, Protest, and Comments ("Sierra Club Filing"), both of which were filed on May 23, 2014,[2] in the above-captioned proceedings.

In support of this Answer, Magnolia LNG states the following:

I. BACKGROUND

Magnolia LNG filed its application in the DOE's Office of Fossil Energy ("DOE/FE") docket cited above on October 11, 2013, seeking long-term, multi-contract authorization to export up to the equivalent of approximately 1.08 billion cubic feet of natural gas per day ("Bcf/d") (or approximately 420 trillion Btu per annum), which is approximately equivalent to eight (8) million metric tons per annum ("mtpa") of domestically produced liquefied natural gas ("LNG") for a 25-year period, commencing on the earlier of the date of first export or ten (10) years from the date of issuance of the authorization requested therein. In its October 11, 2013

[1] 10 C.F.R. §§ 590.302(b), 590.303(e), 590.304(f) (2014).
[2] Magnolia LNG notes that despite including a certificate of service with its timely intervention, comments, and protest, Sierra Club failed to serve Magnolia LNG.

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application, Magnolia LNG proposes to export LNG from the terminal it intends to construct, own, and operate near Lake Charles, Louisiana ("Magnolia LNG Terminal") to any country with which the United States does not have a free trade agreement ("non-FTA") requiring national treatment for trade in natural gas and LNG, which has or in the future develops the capacity to import LNG via ocean-going carrier, and with which trade is not prohibited by U.S. law or policy ("Magnolia LNG Non-FTA Application"). DOE/FE published notice of the Magnolia LNG Non-FTA Application in the Federal Register on March 24, 2014,[3] establishing that the comment period would close on May 23, 2014.[4] Sierra Club and APGA both filed timely interventions in this proceeding.

On April 30, 2014, Magnolia LNG submitted to the Federal Energy Regulatory Commission ("FERC") its formal application to site, construct, operate, and maintain the LNG facilities that comprise the Magnolia LNG Terminal and has been assigned docket number CP14-347-000. Included with its FERC application were Resource Reports 1-13, which provide comprehensive information on the myriad environmental, safety, and engineering issues required under FERC's regulations implementing the mandates of the National Environmental Policy Act ("NEPA") and which will be used as the basis of the environmental impact statement ("EIS") that will be prepared for the Magnolia LNG Terminal.

As relevant to this Answer, following its order authorizing LNG exports to non-FTA nations from the Sabine Pass terminal, DOE commissioned two studies on the impacts of LNG exports on the U.S. economy: a microeconomic study performed by the Energy Information Administration ("EIA") and a macroeconomic study performed by NERA Economic Consulting (collectively, the "LNG Export Study"). The stated intention was to determine, broadly

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[3] 79 Fed. Reg. 15,980 (Mar. 24, 2014).
[4] *Id.*

speaking, the likely impacts of larger scale exports of LNG on the U.S. economy. In December 2012, DOE invited public comment on the LNG Export Study, with an initial comment period ending January 24, 2013, and a reply comment period ending February 25, 2013. In its subsequent conditional authorizations, DOE has explained that the conclusion of the LNG Export Study is that the United States will experience net economic benefits from the issuance of authorizations to export domestically produced LNG and that the LNG Export Study is fundamentally sound.[5] Both Sierra Club and APGA filed initial comments on the LNG Export Study.

Since releasing the LNG Export Study and the end of the reply comment period, DOE has issued conditional orders on six applications from five different proposed facilities to export LNG to non-FTA countries. In each of these orders, it has supported the conclusions of the LNG Export Study and updated its analysis as new EIA data on domestic natural gas supply, demand, and price projections are released, as it has noted it will continue to do. On May 29, 2014, DOE announced proposed changes to the way it will process the pending non-FTA applications, including those that already have received a conditional authorization. Among other things, DOE's proposed changes would (1) eliminate the current practice of issuing conditional orders, (2) no longer process applications based on the queue DOE established in December 2012, and (3) base the sequence in which DOE issues final decisions solely on a project's completion of the environmental review process required under NEPA.[6]

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[5] *Jordan Cove Energy Project, LP,* DOE/FE Order No. 3413, at 141 (2014) [hereinafter Jordan Cove]; *Cameron LNG, LLC*, DOE/FE Order No. 3391, at 131 (2014) [hereinafter Cameron]; *Freeport LNG Expansion, LP et al.*, DOE/FE Order No. 3357, at 153 (2013) [hereinafter Freeport II]; *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3331, at 139 (2013) [hereinafter Cove Point]; *Lake Charles Exports, LLC*, DOE/FE Order No. 3324 , at 123 (2013) [hereinafter Lake Charles]; and *Freeport LNG Expansion, LP and FLNG Liquefaction, LLC*, DOE/FE Order No. 3282, at 110 (2013) [hereinafter Freeport I].
[6] 79 Fed. Reg. 32,261 (June 4, 2014).

II. SIERRA CLUB AND APGA'S MOTIONS TO INTERVENE SHOULD BE REJECTED

DOE's regulations set forth that any person seeking to intervene in a natural gas export authorization proceeding must "set[] out clearly and concisely the facts upon which the petitioner's claim of interest is based," and to "state, to the extent known, the position taken by the movant and the factual and legal basis for such positions."[7] An "interested person" is defined in the regulations as being limited to persons "whose interest in a proceeding goes beyond the general interest of the public as a whole."[8] Finally, an intervenor's participation "shall be limited to matters affecting asserted rights and interests specifically set forth in the motion to intervene."[9]

DOE should reject Sierra Club and APGA's motions to intervene because both parties have filed essentially form comments that only loosely relate to the Magnolia LNG Non-FTA Application and, moreover, contain arguments that DOE and FERC already have rejected expressly. As set forth in greater detail below, Sierra Club and APGA's arguments are largely a repetition of the general arguments they made in their initial comments on the LNG Export Study and in nearly every LNG export proceeding, which DOE consistently has rejected. Their arguments filed in Magnolia LNG's proceeding attempt to reopen issues already thoroughly examined in the LNG Export Study and seek to overturn already issued conditional authorizations. Magnolia LNG's docket is not the appropriate forum for such arguments and both Sierra Club's and APGA's motions to intervene should be rejected as a result.

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[7] 10 C.F.R. § 590.303(b), (c) (2014).
[8] *Id.* at § 590.102(b).
[9] *Id.* at § 590.303(g).

III. SIERRA CLUB'S COMMENTS AND PROTEST SHOULD BE REJECTED

The Sierra Club Filing advances a number of recycled arguments that, as demonstrated below, either already have been rejected or rely on misinterpretations of relevant, controlling regulations and case law, disregard more recent and controlling decisions on point, and gloss over facts that demonstrate that the cases Sierra Club cites are distinguishable from the facts in the Magnolia LNG proceeding. These arguments cannot overcome the NGA's rebuttable presumption in favor of the authorization requested in the Magnolia LNG Non-FTA Application, noted below. Moreover, once these arguments are subtracted from the Sierra Club Filing, what little remains is neither persuasive nor sufficient to overcome the burden either. Therefore, DOE should reject Sierra Club's comments and protest.

A. Sierra Club Fails to Overcome the NGA's Rebuttable Presumption in Favor of LNG Exports to Non-FTA Nations

Section 3(a) of the NGA sets forth the general standard of review for applications seeking authorization to export LNG to countries with which the United States does not have an FTA requiring national treatment for trade in natural gas and with which trade is not prohibited by United States law or policy. Section 3(a) provides:

> [N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary] authorizing it to do so. The [Secretary] shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.

DOE/FE has recognized that "[t]his provision creates a rebuttable presumption that a proposed export of natural gas is in the public interest."[10] DOE/FE has further explained that, pursuant to this standard of review, "DOE/FE must grant such an application unless opponents of the application overcome that presumption by making an affirmative showing of inconsistency with the public interest."[11] Sierra Club fails to overcome this rebuttable presumption because its arguments are fundamentally flawed, based on inaccurate recitations of case law and regulations, and already have been rejected by DOE and FERC. Therefore, DOE should reject Sierra Club's comments and protest.

B. Sierra Club's Arguments are Fundamentally Flawed

In its comments and protest, Sierra Club largely reiterates arguments it already has made before DOE and FERC in other LNG export application proceedings.[12] These arguments include (1) that DOE cannot issue a conditional authorization for the Magnolia LNG Non-FTA Application prior to the completion of the NEPA process, (2) that DOE must consider the volumes of all pending applications for authorization to export LNG to non-FTA countries in its cumulative impacts analysis of the Magnolia LNG Non-FTA Application, (3) that DOE must prepare a programmatic EIS for all pending applications to export LNG to non-FTA countries, (4) that DOE must consider the alleged upstream environmental impacts in its NEPA analysis of

[10] *See, e.g.,* Jordan Cove at 6; and Cameron at 6.
[11] *See, e.g.,* Jordan Cove at 6; and Cameron at 6.
[12] *See, e.g.,* Motion to Intervene and Protest of Sierra Club in Trunkline LNG, FERC Docket No. CP14-119 (filed Apr. 24, 2014); Motion to Intervene and Protest of Sierra Club in Southern LNG, FERC Docket No. 14-103 (filed Apr. 23, 2014); Motion to Intervene and Protest of Sierra Club in Excelerate LNG, FERC Docket No. CP14-71 (filed Mar. 18, 2014); and Motion to Intervene and Protest of Sierra Club in Sabine Pass LNG, FERC Docket No. CP14-12 (filed Nov. 14, 2013). Sierra Club also filed a similar protest in most of the non-FTA LNG export application dockets at DOE, including: *Cameron LNG, LLC,* FE Docket No. 11-162-LNG; *Cheniere Marketing, LLC,* FE Docket No. 12-97-LNG; *Dominion Cove Point LNG, LP,* FE Docket No. 11-128-LNG; *Excelerate Liquefaction Solutions I, LLC,* FE Docket No. 12-146-LNG; *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC,* FE Docket No. 11-161-LNG; *Golden Pass Products LLC*, FE Docket No. 12-156-LNG; *Gulf LNG Liquefaction Co. LLC,* FE Docket No. 12-101-LNG; *Gulf Coast LNG Export, LLC,* FE Docket No. 12-05-LNG; *Jordan Cove Energy Project, L.P.,* FE Docket No. 12-32-LNG; *LNG Development Company, LLC (d/b/a Oregon LNG),* FE Docket No. 12-77-LNG; *Sabine Pass Liquefaction LLC,* FE Docket No. 10-111-LNG; *Southern LNG Company, L.L.C.,* FE Docket No. 12-100-LNG; and *Trunkline LNG Export, LLC*, FE Docket No. 13-04-LNG.

the Magnolia LNG Non-FTA Application, (5) that the supply and price impacts of LNG exports on domestic natural gas have been understated, and (6) that LNG exports will harm the U.S. economy. Not only have both DOE and FERC rejected these arguments in other LNG export proceedings,[13] but Sierra Club misconstrues case law and relevant agency regulations and oversimplifies economic and commercial principles.

1. DOE has Discretion to Issue Conditional Authorizations

The Sierra Club asserts that DOE is prohibited from issuing conditional authorizations until the EIS for a project is complete.[14] To support this assertion, Sierra Club quotes from section 1021.211 of DOE's regulations,[15] which provides the limitations on actions that DOE may take during the NEPA process. Sierra Club extracts from that regulation the language that reads "DOE shall take no action,"[16] but Sierra Club cites only a portion of the regulation, omitting the language that disproves its argument. Section 1021.211 of DOE's regulations in its entirety states:

> While 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. Actions that are covered by, or are a part of, a DOE proposal for which an EIS is being prepared shall not be categorically excluded under subpart D of these regulations unless they qualify as interim actions under 40 CFR 1506.1.[17]

Sierra Club fails to include the reference to the exceptions in section 1506.1 of the Council on Environmental Quality ("CEQ") regulations,[18] implementing NEPA, which Sierra Club itself

[13] *See, e.g.,* Jordan Cove at 103, 107-12, 116-24, 126, 130-33, 135-36, and 140; and *Sabine Pass Liquefaction, LLC*, 140 FERC ¶ 61,076, at 10 (2012).
[14] Sierra Club Filing at 3-4.
[15] 10 C.F.R. § 1021.211.
[16] Sierra Club Filing at 3.
[17] 10 C.F.R. § 1021.211 (emphasis added).
[18] 40 C.F.R. § 1506.1 (2013).

recognizes that DOE has adopted.[19] Importantly, that section of the CEQ regulations further explains that the action an agency is prohibited from taking while an EIS is pending is any action that either would "(1) have an adverse environmental impact; or (2) limit the choice of reasonable alternatives."[20] DOE's conditional authorizations do not authorize the commencement of construction or construction related activities and expressly are based on satisfactory completion of the NEPA process.[21] Mitigation or avoidance of any potential environmental impacts and analysis of alternatives to the project are core components of the final EIS, which must be completed prior to DOE's issuance of a final order. As such, DOE's conditional authorization neither adversely impacts the environment nor does it limit the choice of reasonable alternatives.

Moreover, section 1506.1 of CEQ's regulations goes on to explain that "agencies shall not undertake in the interim [while an EIS is pending] any major Federal action."[22] As defined in CEQ's regulations, a "major Federal action" includes "[a]pproval of specific projects, such as construction or management activities located in a defined geographic area."[23] Conditional authorizations by their nature do not rise to the level of a project approval and therefore do not constitute a major Federal action.

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[19] Sierra Club Filing at 7 (citing 10 C.F.R. §1021.103).
[20] 40 C.F.R. § 1506.1(a).
[21] *See, e.g.,* Jordan Cove at 140-41, 152, and 154 (ordering paragraph F).

> As we have explained elsewhere, we are attaching a condition to this export authorization ordering that Jordan Cove's authorization is contingent on both its satisfactory completion of the environmental review process and its on-going compliance with any and all preventative and mitigative measures imposed at the Jordan Cove Terminal by federal or state agencies. When the environmental review is complete, DOE/FE will reconsider its public interest determination in light of the information gathered as part of that review. This procedure will not foreclose the choice of reasonable alternatives or influence subsequent development.

Id. at 140-41.
[22] 40 C.F.R. § 1506.1(c).
[23] *Id.* at § 1508.18(b)(4).

2. DOE Need Not Consider All Pending Export Proposals in its Cumulative Impacts Analysis

Sierra Club next argues that DOE must consider the proposed LNG export volumes of all pending non-FTA applications in its analysis of cumulative impacts for the Magnolia LNG Non-FTA Application.[24] However, as explained in greater detail below, DOE need not consider all pending export proposals in its cumulative impacts analysis for the Magnolia LNG Non-FTA Application.

The crux of Sierra Club's argument that DOE must consider the cumulative impacts of all pending applications to export LNG to non-FTA nations in its analysis of the Magnolia LNG Non-FTA Application is that "[t]he public, after all, will not experience each proposed terminal as an individual project."[25] Sierra Club's argument ignores DOE's existing practice of considering the incremental impact of each project as it is conditionally authorized on the then-existing total volumes that have received conditional or final authorization for export to non-FTA countries.[26]

In addition, the cases that Sierra Club cites in making this argument do not stand for the principles they are used to support. One example is *Kleppe v. Sierra Club*,[27] which Sierra Club cites stating that the case holds "in a related context, 'when several *proposals* for . . . related actions that will have a cumulative or synergistic environmental impact . . . are pending concurrently before an agency, their environmental consequences must be considered together.'"[28] The quote in full from the high Court reads: "Thus, when several proposals for coal related actions that will have cumulative or synergistic environmental impact upon a region

[24] Sierra Club Filing at 11-15.
[25] *Id.* at 11.
[26] *See, e.g.,* Jordan Cove at 144.
[27] *Kleppe v. Sierra Club*, 427 U.S. 390 (1976).
[28] Sierra Club at 13 (citing Kleppe, 427 U.S. at 410).

are pending concurrently before an agency, their environmental consequences must be considered together."[29] Even a cursory review of the facts in *Kleppe* and the remainder of that decision make clear that the crux of the Supreme Court statement that Sierra Club relies on is the supposition that the "several proposals" are in the same region. For example, following the quote cited above, Justice Powell, delivering the Supreme Court's opinion, goes on to explain that

> Agreement to this extent with [Sierra Club's] premise, however, does not require acceptance of their conclusion that all proposed coal-related actions in the Northern Great Plains region are so "related" as to require their analysis in a single comprehensive impact statement. . . . In sum, [Sierra Club's] contention as to the relationships between all proposed coal-related projects in the Northern Great Plains region does not require that [the Department of Interior] prepare one comprehensive impact statement covering all before proceeding to approve specific pending applications.[30]

The Court then concludes that a regionwide environmental impact statement was not required absent an existing proposal for regionwide action.[31] Magnolia LNG's proposed LNG exports to non-FTA countries are not part of a regionwide action -- nor are all of the pending applications to export LNG to non-FTA countries. Rather, the pending applications are individual applications to export LNG to non-FTA countries from export facilities proposed to be located throughout the United States.

By selectively paraphrasing the Supreme Court's decision in *Kleppe* and failing to parse the distinguishing facts, Sierra Club misconstrues the high Court's holding and in doing so it argues for DOE action that is not required by the controlling statute. The Magnolia LNG Non-FTA Application is not part of a regionwide proposal, it is an isolated project. Both FERC and DOE will consider the proposed Magnolia LNG Terminal under NEPA with the information

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[29] Kleppe, 427 U.S. at 410 (emphasis added).
[30] Kleppe, 427 U.S. at 410 and 414.
[31] *Id.* at 414-15.

related to other projects (LNG and non-LNG) in the vicinity, which Magnolia LNG already has provided in its Resource Report 1 and throughout the other resource reports filed with its formal application at FERC on April 30, 2014. Therefore, the propositions that Sierra Club uses the above case law to support are not appropriately applied to the Magnolia LNG Non-FTA Application and DOE should reject them.

3. A Programmatic EIS is Neither Necessary nor Appropriate

Intermingled with its argument that DOE must consider the cumulative volumes of all pending applications to export LNG to non-FTA countries in its consideration of the Magnolia LNG Non-FTA Application is Sierra Club's further argument that DOE "can best analyze the pending export proposals' cumulative impacts by preparing a programmatic EIS."[32] A programmatic EIS for all pending applications to export LNG to non-FTA countries is neither necessary nor appropriate.

The controlling CEQ regulations explain that a single EIS must be prepared when "[p]roposals or parts of proposals [ ] are related to each other closely enough to be, in effect, a single course of action. . . ."[33] In its regulations, CEQ provides the example of "broad Federal actions such as the adoption of new agency programs or regulation"[34] as the type of circumstances when a single EIS would be required. In finding that although a "multi-phase federal program like a major highway development is a probable candidate for a programmatic EIS,"[35] a programmatic EIS was not required,[36] the D.C. Circuit suggested two questions for consideration when an agency is evaluating whether to prepare a programmatic EIS. First,

[32] Sierra Club Filing at 15.
[33] 40 C.F.R. § 1502.4(a).
[34] *Id.* at § 1502.4(b).
[35] *Nat'l Wildlife Fed'n v. Appalachian Regional Comm'n*, 677 F.2d 883, 888 (D.C. Cir. 1981).
[36] *Id.* at 891 ("preparation of site-specific EISs in connection with the Appalachian highways, as the system currently stands, is sufficient for compliance with NEPA").

"could the programmatic EIS be sufficiently forward looking to contribute to the [agency's] basic planning of the overall program? … [and second] does the [agency] purport to 'segment' the overall program, thereby unreasonably constricting the scope of . . . environmental evaluation?"[37]

In applying these two considerations, the Fourth Circuit found that FERC did not err in not preparing a programmatic EIS when it implemented a new provision of the Federal Power Act that provided FERC with "jurisdiction in certain circumstances to issue permits for construction or modification of electric transmission facilities. . . ."[38] There, the court explained that a programmatic EIS would not be "sufficiently forward looking"

> [b]ecause permit applications will come in from private parties, [therefore] FERC cannot now identify projects that are likely to be sited and permitted. By the same token, FERC does not have information about the ultimate geographic footprint of the permitting program. Without such information a programmatic EIS would not present a credible forward look and would therefore not be a useful tool for basic program planning.[39]

Similarly, the individual applications to export LNG from terminals proposed at sites spread across the United States are not related and DOE, like FERC, receives applications from private parties at the private parties' discretion. Consequently, the programmatic EIS that Sierra Club calls for would not be a useful tool for even basic program planning because DOE cannot identify projects that are likely to be sited and permitted, nor does it have information about the ultimate geographic footprint of the permitting program. Furthermore, DOE has not proposed a new program or new regulations that would make a programmatic EIS appropriate under the controlling CEQ regulations implementing NEPA and case law on point.

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[37] *Id.* at 889.
[38] *Piedmont Envtl. Council v. Fed. Energy Regulatory Comm'n*, 558 F.3d 304, 310 (4th Cir. 2009).
[39] *Id.* at 316.

4. Alleged Upstream Environmental Impacts are Not Indirect Effects under NEPA of Granting the Magnolia LNG Non-FTA Application

The majority of the Sierra Club Filing is focused on the argument that NEPA compels DOE to consider Sierra Club's alleged upstream environmental impacts when the agency conducts its NEPA environmental review of the Magnolia LNG Project. Sierra Club's argument on this point incorrectly describes the case law that purportedly buttresses it and overlooks more recent, controlling case law on point. As a legal matter, Sierra Club's argument is flawed and DOE should reject it as inconsistent with well-established law and policy.

The CEQ regulations implementing NEPA[40] require that a federal agency prepare an EIS when it engages in a "major federal action" that significantly affects the quality of the human environment. The CEQ regulations further define a "major federal action" as "actions with effects that may be major and which are potentially subject to Federal control and responsibility."[41] The term "effects" is then defined to include: "(a) Direct effects, which are caused by the action and occur at the same time and place,"[42] and "(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable."[43]

There is no argument that the upstream environmental impacts that Sierra Club alleges cannot be direct effects of DOE's grant of the Magnolia LNG Non-FTA Application since these alleged impacts do not occur at the same time or in the same place as the export proposed in the Magnolia LNG Non-FTA Application. Instead, Sierra Club alleges that these environmental impacts are "indirect effects of the proposed action."[44] As noted above, in order to qualify as an

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[40] 40 C.F.R. §§ 1500, *et seq.* (2013).
[41] *Id.* at § 1508.18.
[42] *Id.* at § 1508.8(a).
[43] *Id.* at § 1508.8(b).
[44] Sierra Club Filing at 28.

"indirect effect" under the CEQ definition, an effect must both be (1) caused by the action and (2) reasonably foreseeable.[45] Examination and analysis of case law from multiple courts, including cases that Sierra Club itself cites, support the conclusion that NEPA does not require DOE to consider the alleged upstream impacts because DOE's grant of the Magnolia LNG Non-FTA Application would not be the legally relevant cause of these alleged effects and the "induced upstream production" resulting from individual export authorizations is not reasonably foreseeable.

(a) DOE is not required to consider the alleged upstream impacts because they are not caused by DOE's grant of the Magnolia LNG Non-FTA Application.

Although cited in another section of the Sierra Club Filing,[46] Sierra Club does not include a recent Supreme Court case on point in its indirect effects argument. In *Department of Transportation v. Public Citizen*,[47] the Supreme Court held "that where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect."[48] The Court explained that the "reasonably close causal relationship" required under NEPA to justify inclusion of an environmental effect in consideration of an agency's action is not satisfied by a "but for" causal relationship.[49] Instead, the Court cited one of its earlier decisions on point that "analogized this requirement to the 'familiar doctrine of proximate cause from tort law.'"[50] Thus, one way to analyze whether the upstream environmental impacts that Sierra Club alleges would qualify as

[45] 40 C.F.R. § 1508.8(b).
[46] Sierra Club Filing at 7.
[47] 541 U.S. 752 (2004).
[48] *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 770 (2004).
[49] *Id.* at 767. *See also Transcontinental Gas Pipe Line Co. LLC,* 145 FERC ¶ 61,152, at 70 (2013) (citing *Public Citizen* and finding "Similarly, there is not a reasonably close causal relationship between the general use of fracking and our approval of the Virginia Southside Expansion Project.").
[50] *Public Citizen*, 541 U.S. at 767 (citing *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

an indirect effect of DOE's grant of the Magnolia LNG Non-FTA Application is to determine whether such agency action could be considered the proximate cause of the alleged impacts. Case law, including cases Sierra Club cites, demonstrates that it cannot.

Black's Law Dictionary defines proximate cause as "a cause that directly produces an event and without which the event would not have occurred."[51] In describing proximate cause, Prosser and Keeton have explained:

> In a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the dawn of human events, and beyond. But any attempt to impose responsibility upon such a basis would result in infinite liability for all wrongful acts, and would "set society on edge and fill the courts with endless litigation." As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability. Some boundary must be set to liability for the consequences of any act, upon the basis of some social idea of justice or policy.[52]

Using proximate cause as the necessary causal relationship for a NEPA indirect effects analysis, the same must be true -- without some boundary, it would be possible to say that there are an infinite number of effects from an action by an agency, making it impossible for the agency to consider all such effects and for the applicant to mitigate against all such effects. A boundary must be set and the Supreme Court has said that boundary is proximate cause.

Border Power Plant Working Group v. Department of Energy,[53] a federal district court decision issued in 2003 prior to the Supreme Court decision in *Public Citizen* and cited in the Sierra Club Filing,[54] shows that DOE's action on an LNG export application cannot be the legally relevant cause of the alleged upstream impacts because it cannot be the proximate cause

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[51] BLACK'S LAW DICTIONARY (9th ed. 2009).
[52] W. Page Keeton, et al., *Prosser and Keeton on Torts* § 41, at 264 (5th ed. 1984) (citing *North v. Johnson*, 58 Minn. 242 (1894)).
[53] 260 F. Supp. 2d 997 (S.D. Cal. 2003).
[54] Sierra Club Filing at 28-29.

when the alleged indirect effect would exist regardless of the agency's action. The facts of *Border Power*, as well as distinguishing case law, are relevant to *Border Power*'s application in the LNG export context. In addition, from a precedential standpoint, it is important to note that the district court's decision preceded the Supreme Court's opinion in *Public Citizen*.

In *Border Power*, the court examined whether DOE was required to consider the environmental impacts of four turbines at a natural gas generation facility in Mexico when it issued a Presidential Permit that allowed Baja California Power to construct a power line ("BCP line") to provide transmission service from Mexico to the United States.[55] The court found that because three of the four turbines ("EAX turbines") would have been built regardless of the BCP line, the line was not the but-for cause of the construction of these turbines. Consequently, DOE was not required to consider the alleged upstream environmental effects of these natural gas power plants serving the BCP line.[56]

The only turbine for which DOE was required to consider upstream environmental effects was the fourth turbine ("EBC turbine"). The district court found that the record established that the EBC turbine was licensed and configured *only* to sell power to the United States using the BCP line and had no other outlet for its generated power.[57] Therefore, the court found that the BCP line was the but-for cause of the EBC turbine because the EBC turbine would not have been constructed without the BCP line.[58]

As noted above, after the *Border Power* decision, the Supreme Court explained in *Public Citizen* that a finding of proximate cause is necessary to establish the requisite causal relationship between an agency's action and an indirect effect under NEPA. In contrast to the proximate

[55] *Border Power*, 260 F. Supp. 2d at 1017.
[56] *Id.*
[57] *Id.*
[58] *Id.*

cause test, but-for causation is a significantly easier test to satisfy and is generally defined simply as "the cause without which the event could not have occurred."[59] Despite Sierra Club's reliance on *Border Power* in its legal argument, the fact that the EBC turbine in *Border Power* met the lower bar set for but-for cause is not persuasive evidence that it would have constituted proximate cause as well. Rather, *Border Power* stands for the principle that an agency's action cannot be the but-for cause when there is an alternative reason for the existence of alleged indirect effects.

If agency action is not the but-for cause of an alleged impact, it cannot be the proximate cause of that alleged impact and the agency need not consider the alleged impact in its indirect effects NEPA analysis.

In 2010, in *Sierra Club v. Clinton*,[60] the federal court distinguished *Border Power* and applied the test from *Public Citizen*. There the court considered whether the Department of State (DOS) was required to assess the trans-boundary impacts associated with the development of Canadian oil sands in its NEPA analysis when it issued a permit that enabled construction of the Alberta Clipper Pipeline ("AC Pipeline").[61] The AC Pipeline was designed to transport crude oil produced from Canadian oil sands to the United States.[62] Citing *Public Citizen*, the court found that DOS's actions were not the legally relevant cause of Sierra Club's alleged environmental impacts of the Canadian oil sands development. The court explained that because the AC Pipeline was not the sole pipeline that would transport Canadian oil sands, the AC Pipeline could not be the proximate cause of Sierra Club's allegations.[63] It went on to clarify that

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[59] *Id.*
[60] 746 F. Supp. 2d 1025 (D. Minn. 2010). Although the facts in *Clinton* are closer to the facts at hand and the case provides important analysis of the holding in *Border Power*, Sierra Club completely omits *Clinton* from its arguments.
[61] *Id.* at 1028-30.
[62] *Id.*
[63] *Id.* at 1045-46 & n.11.

> Canadian oil sands will be extracted and utilized regardless of the Alberta Clipper pipeline. The clearest evidence of this is that Alberta oil sands production has been increasing for years even though the Alberta Clipper pipeline has not be constructed. Production of oil from the oil sands is driven by global market demand for oil and the price of oil, not be [sic] whether one more or one less pipeline exists to transport that oil to the United States. Were the Alberta Clipper pipeline not built, the oil produced in Alberta would simply find another outlet through which to meet the global demand for that oil.[64]

Whether used for domestic consumption or exported to our allies abroad via a different project, unconventional natural gas will continue to be produced regardless of whether the Magnolia LNG Non-FTA Application is granted and irrespective of whether the Magnolia LNG Terminal is constructed. Like the AC Pipeline in *Clinton* and the EAX turbines in *Border Power*, domestic production of natural gas will be driven by global market demand and not by whether the Magnolia LNG Non-FTA Application is granted. Therefore, granting the Magnolia LNG Non-FTA Application cannot be said to be the proximate cause of the alleged upstream impacts and, in turn, the alleged upstream impacts cannot be an indirect effect of such agency action. Therefore, Sierra Club's argument should be rejected.

Since Sierra Club's arguments focus on alleged impacts that are upstream, it is also worth noting that a second way to analyze whether an agency action is the legally relevant cause of an alleged indirect effect is to examine whether the agency has the ability to prevent the alleged effect. In *Public Citizen*, the Court analyzed whether the Federal Motor Carrier Safety Administration (FMCSA) was required to evaluate the environmental effects of those cross-border motor carrier operations when it promulgated regulations related to the application form and safety requirements applicable to Mexican-domiciled motor carriers.[65] At the time there was a Presidential moratorium barring authorizations for Mexican motor carriers to enter the United

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[64] *Id.* at 1043(quoting the App. of Admin. Record Materials for the Alberta Clipper Pipeline at 15774).
[65] *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 759-61 (2004).

States. Under the relevant statute, the FMCSA was required to certify any motor carrier that was able to demonstrate its willingness and ability to comply with the safety and financial requirements set forth in the Department of Transportation's regulations.[66] Congress had frozen funding for the review and processing of applications by Mexican motor carriers to operate in the United States pending the FMCSA's implementation of specific application and safety requirements for Mexican motor carriers.[67]

Unions and environmental groups filed suit after FMCSA issued the regulations arguing that the agency had violated NEPA because it did not consider the environmental effects of the cross-border motor carrier operations. The Court found that "the legally relevant cause of the entry of Mexican trucks is *not* FMCSA's action, but instead the actions of the President in lifting the moratorium and those of Congress in granting the President this authority while simultaneously limiting FMCSA's discretion."[68] In enunciating its reasoning, the Court explained that since the FMCSA lacked the authority to prevent the cross-border operations, "the environmental impacts of cross-border operations would have no effect on FMCSA's decision-making – FMCSA simply lacks the power to act on whatever information might be contained in the EIS."[69]

Here, the legally relevant cause of the alleged environmental impacts of unconventional production is *not* DOE's grant of the Magnolia LNG Non-FTA Application. Production will occur regardless. Rather, the actions of other federal and state agencies with oversight over natural gas production are the legally relevant cause of any alleged impacts under NEPA. DOE, like the FMCSA, has no ability to prevent the alleged environmental impacts of upstream

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[66] *Id.* at 766.
[67] *Id.* at 760-61.
[68] *Id.*. at 767 (citing *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).
[69] 15 U.S.C. § 717b.

production alleged in the Sierra Club Filing for two reasons. First, the NGA does not provide DOE with any authority to exercise jurisdiction over the production of natural gas. Second, it is the receipt of a permit from the relevant state regulatory body or the Bureau of Land Management that enables natural gas production to occur. Therefore, DOE is not the legally relevant cause of the alleged environmental impacts and NEPA does not require DOE to evaluate those alleged effects in its analysis of the Magnolia LNG Non-FTA Application.

(b) DOE is not required to consider the alleged upstream impacts because they are not reasonably foreseeable under NEPA.

As noted above, an "indirect effect" under NEPA must be both caused by the agency action and reasonably foreseeable.[70] DOE need not assess Sierra Club's alleged environmental effects in its consideration of the Magnolia LNG Non-FTA Application because not only are those effects not caused by DOE's actions as set forth above, but the alleged effects also are not reasonably foreseeable as defined under NEPA. CEQ has explained that the purpose of requiring an agency in preparing an EIS to focus on the reasonably foreseeable impacts was to "generate information and discussion on those consequences of greatest concern to the public and of greatest relevance to the agency's decision,"[71] not to "distort[] the decisionmaking process by overemphasizing highly speculative harms."[72] Sierra Club cites several cases related to this issue, though examination of the facts of those cases proves them to be distinguishable from the facts DOE is confronting in each of the LNG export proposals before the agency, including Magnolia LNG's.

To support its argument that induced production is a reasonably foreseeable effect of DOE's authorization of LNG exports, Sierra Club cites *Northern Plains v. Surface*

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[70] 40 C.F.R. § 1508.8.
[71] 50 Fed. Reg. 32237 (1985).
[72] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 356 (1989).

Transportation Board.[73] In that case, the court held that the Surface Transportation Board ("STB") was required to consider the environmental effects of certain coal bed methane wells when it approved applications to construct railroads that would haul coal.[74] Although the Sierra Club is correct that STB was required to consider the impacts of production in that case, its citation oversimplifies the court's holdings, thereby misconstruing the relevant legal principles.

Importantly, in *Northern Plains*, the court explained that the coal bed methane wells were reasonably foreseeable because STB had incorporated BLM and the State of Montana's programmatic EIS evaluating the future impacts of coal bed methane in the Powder River Basin, which "contained actual numbers, broken down by counties, about development over the next 20 years."[75] Furthermore, in that case the coal bed methane wells either were under consideration or had been approved. The STB had sufficiently specific information before it about the location and duration of coal bed methane production.

In contrast to *Northern Plains*, there are several core aspects of the unconventional natural gas production that could be used to provide supply to a capacity holder at an LNG export terminal, like Magnolia LNG's proposed terminal, that are unknown and too speculative to be considered reasonably foreseeable under NEPA -- namely the location, timing, duration, and potential environmental effects of such unconventional production.[76] This is compounded by the fact that the interstate pipeline system in the United States is highly interconnected and natural gas molecules are fungible. Operating under the same section of the NGA that DOE uses to process applications to export LNG to non-FTA countries, FERC explained in the Sabine Pass proceeding,

[73] 668 F.3d 1067 (9th Cir. 2012).
[74] *Id.* at 1080-81.
[75] *Id.* at 1079.
[76] *See, e.g., Cheniere Creole Trail Pipeline LP*, 145 FERC ¶ 61,074, at 15 (2013).

> Here, the pipeline interconnects that will provide natural gas to the Liquefaction Project cross both shale and conventional gas fields. Specifically, Sabine Pass will receive natural gas at its interconnection with the Creole Trail Pipeline, which interconnects with other pipelines in the interstate grid. These interconnecting pipeline systems span from Texas to Illinois to Pennsylvania and New Jersey, and cross multiple shale gas plays, as well as conventional gas plays. In addition, each of these interconnecting pipeline systems has a developed network of interconnects with other gas transmission pipeline companies that may cross additional gas plays. We also noted [in the April 16 Order] that the Liquefaction Project does not depend on additional shale gas production which may occur for reasons unrelated to the project, and over which the Commission has no control because it has no jurisdiction over the permitting, siting, construction or operation of natural gas wells.[77]

This statement is true for the Magnolia LNG Non-FTA Application as well. Magnolia LNG will be receiving natural gas from the Kinder Morgan Louisiana Pipeline which has multiple interconnects with multiple interstate and intrastate natural gas pipelines and storage facilities that will be carrying natural gas sourced from hundreds if not thousands of wells across multiple states.

The degree of information that the agency had in *Northern Plains* is similar to that in *Mid States Coalition for Progress v. Surface Transportation Board*,[78] another case that Sierra Club cites but fails to fully explain or acknowledge later cases that distinguish its holding. There the court examined whether the STB was required to consider the potential air quality impacts that would result from an increase in low-sulfur coal used for generation when it approved a railroad

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[77] *Sabine Pass Liquefaction, LLC*, 140 FERC ¶ 61,076, at 10 (2012). *See also Cheniere Creole Trail Pipeline, LP*, 145 ¶ 61,074, at 14 (2013).

> Consequently, the Commission restates, for the same reasons previously articulated, that "the factors necessary for a meaningful analysis of when, where, and how gas development will occur are simply unknown at this time" and that "it is impractical for the Commission to identify and assess impacts associated with the production of additional gas supplies that may be transported by pipelines, including Creole Trail's pipeline, for export from the Sabine Pass LNG's terminal."

Id.

[78] 345 F.3d 520 (8th Cir. 2003).

project that would be used to access coal mines in the Powder River Basin and transport coal to market.[79] The court found that the environmental effects from increased availability of low-sulfur coal were a reasonably foreseeable result of the railroad project approval and explained in part that "[t]he increased availability of inexpensive coal will at the very least make coal a more attractive option to future entrants into the utility market when compared with other potential fuel sources. . . . it will most assuredly affect the nation's long-term demand for coal as the comments to the DEIS explained."[80]

Although the extent of the environmental effects in *Mid States* were speculative, the court noted their nature was not, reasoning "it is almost certainly true – that the proposed project will increase the long-term demand for coal and any adverse effects that result from burning coal."[81] The coal at issue in *Mid States* came from one source, the Powder River Basin. As explained above, this is in stark contrast to natural gas in the United States, which comes from a multitude of sources. Furthermore, because natural gas is a fungible commodity it is impossible to know the origin of any single molecule. Thus, it is impossible to have the same meaningful analysis of alleged impacts of unconventional natural gas production or "generate information and discussion on those consequences . . . of greatest relevance to the agency's decision,"[82] which is one of the purposes CEQ ascribes to the reasonable foreseeability element of the NEPA indirect effects analysis.

In distinguishing *Mid States*, the court in *Habitat Education Center v. U.S. Forest Service*[83] reached the same conclusion when it examined whether the U.S. Forest Service in proposing the "Twentymile" timber sale project, was required under NEPA to describe the

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[79] *Id.* at 548.
[80] *Id.* at 549.
[81] *Id.*
[82] 50 Fed. Reg. 32237 (1985).
[83] 609 F.3d 897 (7th Cir. 2010).

effects of another proposed timber sale, known as the Twin Ghost project.[84] The court concluded that consideration of the cumulative impacts of the Twin Ghost project was not required "because of the lack of information about the nature and scope of the Twin Ghost project."[85] Citing to its sister circuits,[86] the court explained "an agency decision may not be reversed for failure to mention a project not capable of meaningful discussion."[87] Directly distinguishing *Mid States*, the court clarified,

> It may well be that where, as in *Mid States*, the challenged cumulative effects are predictable, even if their extent is not, they may be more likely to be capable of meaningful discussion than in a case where the challenged omission is a future project so nebulous that the agency cannot forecast its likely effects. In any event, an agency does not fail to give a project a "hard look" simply because it omits from discussion a future project so speculative that it can say nothing meaningful about its cumulative effects. To hold otherwise would either create an empty technicality – a requirement that agencies explicitly state that they lack knowledge about the details of potential future projects – *or paralyze agencies by preventing them from acting until inchoate future projects take shape (by which time, presumably, new inchoate projects would loom on the horizon)*. This unreasonable

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[84] *Id.* at 898-99.
[85] *Id.* at 903.
[86] The Seventh Circuit explains:

> The Forest Service, in contrast, relies on *Environmental Protection Information Center v. United States Forest Service (EPIC)*, 451 F.3d 1005 (9th Cir. 2006). In EPIC, the Ninth Circuit held that "although it is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now, if not enough information is available to give meaningful consideration now, an agency decision may not be invalidated based on the failure to discuss an inchoate, yet contemplated, project." *Id.* at 1014. Several other circuits have similarly suggested that a project is not "reasonably foreseeable" if not enough is known to provide a meaningful basis for assessing its impact. *See Town of Marshfield v. FAA*, 552 F.3d 1, 4-5 (1st Cir. 2008) (discussion of cumulative impacts of future action not required where "some ... action was foreseeable but one could only speculate as to which ... measures would be implemented"); *City of Oxford v. FAA*, 428 F.3d 1346, 1353 (11th Cir. 2005) ("An agency must consider the cumulative impacts of future actions only if doing so would further the informational purposes of NEPA"); *Society Hill Towers Owners' Ass'n v. Rendell*, 210 F.3d 168, 182 (3d Cir. 2000) ("[P]rojects that the city has merely proposed in planning documents are not sufficiently concrete to warrant inclusion in the [environmental analysis] for the ... project at issue here."). We agree with our sister circuits.

Id. at 902.
[87] *Id.* at 903.

> result would replace the "tyranny of small decisions" with the impossible requirement that all agency action be comprehensive.[88]

Similarly, there remains significant uncertainty regarding many elements of unconventional natural gas development.[89] Regulations concerning well development in many states are still being crafted, refined, and revisited. Entities with drilling permits do not always develop their permitted wells immediately. In some cases producers drill and complete natural gas wells but production is put on hold due to market factors that make it less profitable to actually produce and flow gas. The natural gas that is ultimately exported from the Magnolia LNG Terminal may not even come from an unconventional source and the terminal capacity holder has no way of knowing the source of its export commodity. FERC already has recognized this as well. In applying *Mid States*, FERC recently found

> Here, unlike the circumstances in Mid-States, the indirect effect is not identifiable. The court in Mid-States found that "when the nature of an effect is reasonably foreseeable, but the extent is not, an agency may not simply ignore the effect." However, in this proceeding, the nature of the effect of any induced natural gas production from the proposed project is not ""reasonably foreseeable" as contemplated by the CEQ regulations. Here, it is unknown at this time when, where, and how additional gas development will occur. As the Commission explained in Sabine Pass, it "did not conclude that it was not "reasonably foreseeable" that the Sabine Pass Liquefaction Project would induce increased natural gas production; rather, the order stated that it was virtually impossible to estimate how much, if any, of the export volumes associated with the Sabine Pass Liquefaction Project will come from existing or new shale gas production. In the same vein, it is virtually impossible to estimate how much, if any, of the export volumes associated with the Sabine Pass Liquefaction Project will

[88] *Id.* at 902-03 (emphasis added).

[89] On May 29, 2014, in addition to the process changes noted above in Section I, DOE also issued two environmental documents it said it would consider in future non-FTA analyses, although clearly stated that it was not required under NEPA to consider these matters. One of these documents was a compendium of a multitude of studies and analysis addressing potential impacts of upstream unconventional production, including hydraulic fracturing. DOE makes clear in this summary report that there is substantial uncertainty around many of the alleged impacts. DEP'T OF ENERGY, A Proposed Change to the Energy Department's LNG Export Decision-Making Procedures (May 29, 2014), *available at* http://energy.gov/articles/proposed-change-energy-departments-lng-export-decision-making-procedures (last visited June 8, 2014).

> come from induced gas production, or the associated environmental impacts of any such production.
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> In addition, it was not disputed in Mid-States that computer programs existed whereby that project's effects on coal consumption could be forecast. In contrast, as stated above, the Commission finds that neither the EIA Export Study nor the Deloitte Report provide assistance to us in forecasting when, where, and how gas development attributable to exports from the Sabine Pass Liquefaction Project will occur.
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> For these reasons, the Commission finds that because it is not required to consider impacts from the production of additional gas supplies for export as either direct or indirect impacts of Creole Trail's project, CEQ regulations do not require that the Commission consider such impacts as incremental impacts and consider them as part of the cumulative impact of past, present and reasonably foreseeable future actions by federal and non-federal agencies.[90]

Sierra Club also cites *City of Shoreacres* to support the argument that "an impact is 'reasonably foreseeable' if it is 'sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.'"[91] While it cites the black letter law, Sierra Club does not provide any analysis of this case nor does it provide the facts of the case. The facts and the court's analysis do not weigh in Sierra Club's favor.

In *City of Shoreacres* the court analyzed whether the U.S. Army Corps of Engineers violated NEPA by issuing a dredge and fill permit for construction of a shipping terminal without evaluating the environmental impacts associated with deepening of the Houston Ship Channel. Appellants claimed that deepening the ship channel was reasonably foreseeable because "the cargo ships of the future will be too large to use the Houston Ship Channel at its current depth."[92] The court concluded that the Army Corps had not erred because the

[90] *Cheniere Creole Trail Pipeline LP,* 145 FERC ¶ 61,074, at 16-18 (2013) (citations omitted).
[91] *City of Shoreacres v. Waterworth,* 420 F.3d. 440, 453 (5th Cir. 2005) (citing *Sierra Club v. Marsh,* 976 F.2d 763, 767 (1st Cir. 1992)).
[92] *Id* .at 451.

administrative record demonstrated that the deepening of the Houston Ship Channel was too speculative.[93] The court went on to explain that "for a number of reasons it is impossible to know whether the channel will ever be deepened,"[94] pointing out that

> Rather than explain how the Corps erroneously interpreted the evidence in the administrative record, [appellants] simply recite the platitude that mere uncertainty does not equal a lack of reasonable foreseeability. While this is true, indeed obvious, in a sense, such proposition does not mean that it was an abuse of discretion for the Corps to treat deepening of the Houston Ship Channel as too speculative to warrant consideration as a cumulative impact of the Port's dredge and fill permit.[95]

Similarly, as FERC aptly pointed out in its order issuing the certificate of public convenience and necessity for construction and operation of the Central New York Oil and Gas Company's MARC I Project, "as of October 2010 PADEP [Pennsylvania Department of Environmental Protection] issued thousands of well permits, and continues to do so today. However, it is unknown if, or when, any of these wells will be drilled, much less what the associated infrastructure and related facilities may be for those wells ultimately drilled."[96] The development of a well requires numerous steps in advance including the "acquisition of mineral rights, well permits, and approvals of associated processing, gathering, and NGA-exempt transportation facilities,"[97] which require state authorization. Given that "state legislatures have reviewed and revised regulations governing further development,"[98] the level of regulation in each state remains a moving target. DOE is not attempting to shirk its responsibilities under NEPA—it is merely applying the principles of the law to the facts before it. There is insufficient information about when, where, and to what extent unconventional development will occur for it

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[93] *Id.*at 453-54.
[94] *Id.* at 453.
[95] *Id.* at 453-54.
[96] *Central New York Oil and Gas Company, LLC*, 137 FERC ¶ 61,121, at 96 (2011).
[97] *Texas Eastern Transmission, LP, Algonquin Gas Transmission, LP*, 141 FERC ¶ 61,043 at 38 (2012).
[98] *Id.*

to be reasonably foreseeable with regard to the Magnolia LNG Terminal. Moreover, DOE, the terminal capacity holders, and Magnolia LNG itself cannot know the origin of the LNG that is ultimately exported because of our nation's interconnected interstate pipeline grid and the fungible nature of natural gas.

For the reasons set forth above, the alleged environmental effects of unconventional natural gas production are not the reasonably foreseeable result of DOE's grant of an LNG export authorization to Magnolia LNG. Therefore, the alleged environmental impacts that Sierra Club asserts are not the indirect effects of DOE's actions and DOE is not required under NEPA to consider the alleged effects when it considers the Magnolia LNG Non-FTA Application. Accordingly, DOE should reject Sierra Club's comments and protest.

5. The BRG Study Does Not Understate Domestic Natural Gas Price Impacts

The Sierra Club claims the BRG Study understates the extent to which prices will increase in response to exports as a result of six stated problems.[99,100] The following assessment provides a response to each of Sierra Club's statements.

First, the Sierra Club states the BRG Study does not consider the full volume of proposed exports and the resulting effects on prices. The Sierra Club has repeatedly made this argument, however the relevant export volumes for study are not the full volumes of proposed exports from all projects currently before the DOE. The appropriate levels of exports for study are the quantities that are likely to be exported from the U.S. Not all export projects are viable due to a variety of risk factors including market, regulatory, financial and legal considerations. As such, not all projects will go forward.

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[99] Sierra Club Filing at 61-66.

[100] The Sierra Club's bulleted points are in a different order than the corresponding text that addresses each point. Magnolia LNG's responses are ordered according to the corresponding text.

The final word on export projects will come from each project's LNG customers and lenders who provide the necessary commercial and financial support to make projects viable. Actual project construction for these large capital projects requires that financing be in place. Financing commitments, in turn, require that commercial contracts be in place (as well as requisite authorizations and permits). Permits and authorizations are necessary requirements, but standing alone are insufficient to guarantee a project's success. DOE approval does not guarantee which projects will actually get the commercial contracts and financing needed to construct a successful project. The number of projects that get DOE approval is likely to exceed the number of projects that get built due to the much more difficult tasks of securing environmental approvals, commercial contracts, and project financing.

The recent DOE announcement[101] proposed a major overhaul of its review process for approving LNG exports and stated that the DOE plans to undertake an additional economic impact study.[102] Christopher Smith, Principal Deputy Assistant Secretary for Fossil Energy, explained, "The proposed changes to the manner in which LNG applications are ordered and processed will ensure our process is efficient by prioritizing resources on the more commercially advanced projects."[103] This statement supports that it is appropriate to consider those projects which are in an advanced stage of development and are more commercially viable, a volume smaller than the full volume of proposed exports.

The LNG export projects BRG included for various LNG export scenarios were based on the project status in permitting and commercial development at the time of study:

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[101] DEP'T OF ENERGY, A Proposed Change to the Energy Department's LNG Export Decision-Making Procedures, (May 29, 2014), *available at* http://energy.gov/articles/proposed-change-energy-departments-lng-export-decision-making-procedures (last visited June 8, 2014).

[102] Announced plans include undertaking an additional economic impact study studying LNG export levels of between 12 and 20 Bcf/d.

[103] DEP'T OF ENERGY, A Proposed Change to the Energy Department's LNG Export Decision-Making Procedures, (May 29, 2014), *available at* http://energy.gov/articles/proposed-change-energy-departments-lng-export-decision-making-procedures (last visited June 8, 2014).

- The Reference Case included projects that had received all the DOE approvals and had signed commercial agreements;
- The Magnolia Scenario and Moderate LNG Scenario included projects that either had received all the DOE approvals, or were at an advanced position in the DOE queue and had signed commercial agreements; and
- The High LNG Scenario included projects that were at a reasonably good position in the DOE queue and had commercial agreements under development, as well as advanced Canadian projects.

Recent industry studies have put the likely levels of exports in the 6 Bcf/d to 10 Bcf/d range, far below the DOE applications for 35.9 Bcf/d for export to non-free trade agreement nations.[104,105,106] The BRG Study High LNG Scenario has the maximum LNG export capacity studied at 13.9 Bcf/d, and results in LNG export volumes that reach 11.1 Bcf/d by 2025 and stay relatively flat through 2035. These volumes are about 1.0 Bcf/d higher than the high-end of the industry studies range. This LNG export capacity is more optimistic than most expectations for likely export levels and is reasonable for testing U.S. price impacts.

As presented in the BRG Study, at 14 Bcf/d the High LNG Scenario demand levels to the Reference Case yields price increases of just over 15% by 2035, "modest price impacts that

[104] EBINGER, C., MASSY, K., AND AVASARALA, G., BROOKINGS INSTITUTE, LIQUID MARKETS: ASSESSING THE CASE FOR U.S. EXPORTS OF LIQUEFIED NATURAL GAS, at 40-41 (2012) ("exports are not commercially viable beyond a certain threshold"…"expected by many experts to be roughly 6 bcf/day by 2025"), *available at* http://www.brookings.edu/~/media/research/files/reports/2012/5/02%20lng%20exports%20ebinger/0502_lng_exports_ebinger.pdf (last visited June 8, 2014).

[105] Chui H. Hong, *U.S. LNG Export Potential Gaining Momentum, Goldman Sachs Says,* BLOOMBERG NEWS, May 21, 2013 ("The market doesn't need more than 7.7 billion cubic feet a day of U.S. LNG for the next decade based on the bank's [Goldman Sachs] demand forecasts."), *available at* http://www.businessweek.com/news/2013-05-21/u-dot-s-dot-lng-export-potential-gaining-momentum-goldman-sachs-says (last visited June , 2014).

[106] U.S. ENERGY INFORMATION ADMIN, ANNUAL ENERGY OUTLOOK 2014 at CP-9 (May 2014) ("U.S. exports of LNG from new liquefaction capacity surpass 2.0 Tcf in 2020 and increase to 3.5 Tcf in 2029 [9.6 Bcf/d]."), *available at* http://www.eia.gov/forecasts/aeo/pdf/0383(2014).pdf (last visited June 8, 2014).

should not raise substantial concerns for natural gas consumers." This is due to the robust and resilient nature of North America's shale gas resources.

Second, the Sierra Club states that BRG fails to consider the demand created by the liquefaction process. This statement is incorrect. BRG does consider the demand created by the liquefaction process on a terminal by terminal basis. The GPCM model BRG deployed assumes 9% of fuel consumption for the liquefaction process for each LNG export terminal,[107] which is very close to the EIA assumption that 10% of the additional gas of the processed volumes is used to power the liquefaction plants. The demand for natural gas to power liquefaction equipment is not included in the LNG export demand but is included in the pipeline fuel component[108] of demand presented in the BRG Study.[109] Because the BRG Study does not ignore this source of demand it has not understated the price impacts from this demand source.

Third, the Sierra Club states that the BRG Study assumes export capacity will be brought online more slowly than export applicants propose, failing to address the potential for near-term price effects. BRG makes realistic and reasonable assumptions regarding the ramp-in period for export capacity that reflect BRG's expertise with actual industry operating conditions rather than simple permit authorization figures. As a result, BRG's forecast involves one liquefaction train coming online every six months on average, as compared to the Sierra Club critique of BRG's alleged assumption of individual trains coming online every twelve months. Thus, the Sierra Club critique is inaccurate and hard to understand.

The Sierra Club intervention also appears to suggest that the timing of capacity for all facilities with applications before the DOE should be considered. Referring back to the response to the first Sierra Club statement, it is not appropriate to consider the export volumes from all

[107] This assumption was not specified in the BRG Study.
[108] The GPCM model is designed to capture liquefaction terminal fuel consumption in the pipeline fuel sector.
[109] BRG Study at 23, and Appendices at 4, 8, 12, 16 and 20.

applications before the DOE. In its High LNG Scenario, BRG has considered an appropriate level of LNG export capacity, phased-in at appropriate rates and therefore the results do address the potential for near-term price effects. As can be seen in the price results figure at page 3 of Appendix 4 of the BRG Study, there is no near-term price effect during the rapid phase-in period of LNG export capacity in the period from 2016 to 2022.

The Sierra Club draws attention to the January 2012 EIA Study's "high/rapid" scenario. In this scenario, 12 Bcf/d of LNG export related demand is phased-in at a rate of 3 Bcf/d per year. The EIA results present wellhead price increases approaching 40 percent in 2018 and 2019.

- For the full outlook period, EIA's projected price impacts on residential, commercial, and industrial consumers are modest. Compared to the reference case, the average price increases from 2015 to 2035 are 9% for residential, 10% for commercial and 20% for industrial customers.
- Second, the EIA study assumes a fixed supply, which does not consider the gas supply responses to natural gas demand growth and, therefore, would lead to overestimated price impact of demand change. In reality, producers will respond to increased demand for both indigenous demand and LNG exports by increasing production.

The BRG study mentioned that production will respond to both domestic gas demand and LNG export demand, which will "ultimately reflect the extent to which North American natural gas supply – and unconventional gas reserves and production in particular – can sustain increased levels of LNG export."[110]

Fourth, the Sierra Club argues both NERA and BRG overstate the extent to which price impacts of exports will be self-limiting for at least two reasons:

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[110] *Id.* at 4-5.

- First, "parties contracting for export terminal capacity typically enter 'take-or-pay' agreements wherein they pay for terminal capacity whether they use it or not. Once this cost is sunk at the time of terminal construction, it will no longer factor into buyer's decision-making, reducing the price spread needed for exports to occur."[111]
- Second, "even when the price spread decreases to the point that U.S. customers outbid potential exporters, the existence of export capacity and possibility of exports will likely exert upward pressure on domestic gas prices: the mere existence of export capacity will likely raise U.S. prices even when prices are such that no gas is in fact exported."[112]

The BRG study used "shale spreads"[113] to measure the economics of LNG export and possibility of exports. If potential U.S. gas prices increase, shale spreads could eventually erode and underpin the economic rationale and feasibility of LNG exports.[114] Nevertheless, the Sierra Club argues buyers will allegedly have an obligation to take LNG export volumes irrespective of shale spreads because sunk liquefaction capacity costs paid for by buyers under "take-or-pay" ("TOP") agreements allegedly provide an incentive to take LNG even if it becomes uneconomic.

LNG TOP clauses involve an agreement by which buyers agree to either take and pay the contract price for a minimum annual contract quantity or pay for that quantity if not taken each year. Under TOP clauses, buyers typically have certain flexibility options to either purchase the full contracted quantity if prices are attractive or reduce consumption by a specified percentage if prices become unattractive. Additionally, many TOP clauses are accompanied by make-up rights that allow buyers to "make up" consumption of volumes not taken over a specified period

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[111] Sierra Club Filing at 65.
[112] *Id.*
[113] "Shale spread" is a term BRG's team leader has coined to describe the sustained differential between low U.S. shale production costs and liquid trading prices for natural gas and higher international LNG prices (typically indexed or benchmarked to oil).
[114] BRG Study at 7.

of time. The impact of these confidential clauses would be hard to model, but it is unlikely to be as rigid as Sierra Club suggests due to the flexibility provisions that typically accompany take-or-pay obligations.

Additionally, most U.S. LNG buyers are either large LNG aggregators or large buyers who have LNG vessels and trading capabilities such that if price spreads between the U.S. and the destination market are not attractive the buyers have rights to divert cargoes to other markets that may temporarily have more attractive price dynamics. Again, this dynamic is hard to model without a robust industry expert model for these conditions.

Although BRG has not been engaged to undertake such complex global LNG modeling for the Magnolia filing, it has appropriately captured the salient commercial features of LNG exports by assuming a relatively high load factor (or capacity utilization, which is approximately 90%) for the LNG export terminals modeled.

Currently, most U.S. LNG export contracts are indexed to hub prices, which will fluctuate with domestic gas market prices. If U.S. prices increase, the price pressure will be transferred to the LNG importers as well. The shale spreads between U.S. domestic prices and foreign LNG buyers have been built in BRG's LNG export demand curves—thus if shale spreads decreases significantly, North American LNG exports could be undermined.[115] This will primarily occur by two means: reduced LNG takes under the flexibility of existing LNG export contracts and reduced interest by foreign buyers in new LNG contracts.

In fact, as BRG has stated, the impact of LNG exports is likely to be much greater on foreign LNG prices than on U.S. natural gas prices. As soon as foreign LNG prices come within a margin of the delivered cost of U.S. LNG exports (effectively approximately HH + $4 to $6 for

[115] *Id.* at 32.

the range of foreign markets), then foreign buyers are likely to reduce or cease new purchases of U.S. LNG.

Because LNG purchases involve long-term commitments, the important factor will be buyer's future expectations for LNG delivered prices and shale spreads. Once the expectation of thinner spreads becomes apparent, the interest in LNG exports will be reduced.

The Sierra Club has not presented sufficient information to demonstrate that advanced stage LNG projects will significantly increase domestic gas prices. In the BRG study, the incremental market and price impacts of the Magnolia project as compared to the reference case are negligible. BRG's higher LNG export scenarios have the modest price impacts and would not raise substantial concerns for domestic gas consumers.[116]

Fifth, the Sierra Club argues BRG uses a proprietary model but reaches results that appear to differ from the model's author. The Sierra Club appears to incorrectly assume that BRG's proprietary model results are equivalent to the GPCM model results issued from time to time by Robert Brooks & Associates ("RBAC"). While BRG's North American natural gas market simulations are performed using the GPCM model under license from RBAC, a number of proprietary changes are made to the model as described in the BRG Study at 8. Although BRG licenses the GPCM software from RBAC, the input analysis and scenarios are proprietary to BRG and are not provided by RBAC. In particular, BRG used its proprietary Shale Resource Potential ("ShaRP") model and other tools and analyses to develop the input assumptions for the study. As compared to RBAC input assumptions, BRG's proprietary input analysis reflect differences in key assumptions, including supply cost and production curves, EIA target demand levels, and the location of LNG export terminals. Therefore, BRG's results should be expected to differ from any results published by RBAC.

[116] *Id.* at 14.

Furthermore, the RBAC report[117] cited by the Sierra Club is from March 2012, nineteen months before the October 2013 BRG Study. RBAC's baseline view on natural gas production, the level of LNG exports and the level of prices continued to evolve in the interim time period. For example, RBAC's database released in Q1 2012 assumes US shale supply will reach 54 Bcf/d by 2035, but the RBAC outlook released in Q3 2013 increased US shale supply to 58 Bcf/d by 2035. It is not appropriate to compare the BRG Study to an outdated RBAC analysis.

Sixth, the Sierra Club states BRG's forecasts differ from EIA projections, but BRG has not adequately explained these differences and has not provided a basis for DOE/FE to choose BRG's conclusions. The Sierra Club makes a number of statements about differences in the BRG results and assumptions compared to the EIA analysis that will be addressed one by one.

BRG's reference case projects Henry Hub gas prices that are approximately $0.39 to $0.97/mmbtu below the AEO 2013 reference case in the 2022 to 2030 period. This is primarily due to differences in assumptions between the shale supply cost curves from BRG's ShaRP model compared to the EIA supply curves. As explained in the BRG report, a detailed comparison cannot be performed because EIA shale production cost curves are not available.[118]

BRG's ShaRP model was used to develop shale gas production and cost input parameters for different classes of wells such as from sweet spots to uneconomic reserves base on detailed geo-technical analysis.[119] The ShaRP model considers capital and drilling costs, environmental compliance costs (such as wastewater treatment and fugitive methane etc.), non-drill costs, direct and indirect operating costs and royalties, production taxes, and other items. More importantly,

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[117] Brooks, R., *Using GPCM to Model LNG Exports from the US Gulf Coast* (2012), *available at* http://www.rbac.com/press/LNG%20Exports%20from%20the%20US.pdf (last visited June 8, 2014).
[118] BRG Study at 22.
[119] *Id.* at 15.

BRG ShaRP model integrates detailed natural gas liquids ("NGLs") revenue analysis as related to net dry gas production costs.

In the AEO 2012, EIA estimates U.S. unproved technically recoverable ("TRR") shale gas resources of approximately 482 Tcf,[120] a very conservative number by comparison to other leading industry estimates. On April 9, 2013, the Potential Gas Committee ("PGC") estimated total shale gas reserve of more than double EIA's figures.[121] Specifically, PGC stated:

- "The growing importance of shale gas is substantiated by the fact that the PGC's total assessed shale gas resource of 1,073 Tcf for 2012 accounts for approximately 48% of the country's total Traditional potential resources."[122]
- "The largest volumetric and percentage gains were reported for Appalachian basin shales (primarily the Marcellus but including other Devonian shales and the Utica), which collectively rose by 335 Tcf (147%). A substantial increase, 21.6 Tcf (58%), also was made for the Eagle Ford Shale in the Texas Gulf Coast basin."[123]

BRG's ShaRP analysis incorporates an analysis of shale reserves that was recently based on AEO 2012 TRR numbers, with upward adjustments from the PGC estimates and proprietary research, especially for liquid-rich shale plays such as the Marcellus, Utica, and Eagle Ford plays. As a result, BRG's proprietary analysis of the shale gas production potential and costs includes 40% higher shale TRR than the AEO 2012 reference case. Meanwhile, AEO 2013

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[120] U.S. ENERGY INFORMATION ADMIN, ASSUMPTIONS TO THE ANNUAL ENERGY OUTLOOK 2012, at 115-16 (2012), *available at* http://www.eia.gov/forecasts/aeo/assumptions/pdf/0554(2012).pdf (last visited June 8, 2014).
[121] POTENTIAL GAS COMMITTEE, POTENTIAL GAS COMMITTEE REPORTS SIGNIFICANT INCREASE IN MAGNITUDE OF U.S. NATURAL GAS RESOURCE BASE, (2013), *available at* http://potentialgas.org/download/pgc-press-release-april-2013.pdf (last visited June 8, 2014).
[122] *Id.*
[123] *Id.*

increased their unapproved TRR shale resources by 12% to 543 Bcf/d[124] which also demonstrates EIA thought the AEO 2012 TRR was too conservative.

For the foregoing reasons, Sierra Club's protest fails to overcome the NGA's rebuttable presumption in favor of granting the Magnolia LNG Non-FTA Application and should be rejected.

6. Magnolia's Proposed LNG Exports will Benefit the Local, Regional, and National Economy

Despite specific information in the Magnolia LNG Non-FTA Application regarding the local, regional, and national economic benefits related to the export authorization requested therein, Sierra Club argues that the project will harm U.S. workers and the U.S. economy.[125] In pertinent part, the Magnolia LNG Non-FTA Application states:

> Magnolia LNG will use U.S. companies to supply much of the equipment and materials needed for the Magnolia LNG Terminal. Construction of the first two LNG trains will lead to the direct creation of over 1,000 construction jobs. In addition, at full capacity of four liquefaction trains the Magnolia LNG Terminal will lead to the creation of 55-60[126] permanent direct jobs and an additional 175 indirect jobs. The overall capital investment for the first two trains will be approximately $2.2 billion and approximately $3.7 billion for the entire four trains. Magnolia LNG will become an active part of the local community—creating jobs, spurring economic development and working with local business and governing bodies to efficiently export LNG.
>
> At a national level, authorizing the LNG exports requested in this Application will promote President Obama's goals set forth in the [National Export Initiative]. As President Obama notes in the Executive Order, the NEI is intended to "improve conditions that directly affect the private sector's ability to export" and to "enhance and coordinate Federal efforts to facilitate the creation of jobs in the United States through the promotion of exports." The

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[124] U.S. ENERGY INFORMATION ADMIN, ASSUMPTIONS TO THE ANNUAL ENERGY OUTLOOK 2013, at 123 (2013), *available at* http://www.eia.gov/forecasts/aeo/assumptions/pdf/0554(2013).pdf (last visited June 8, 2014).

[125] Sierra Club Filing at 66-71.

[126] As stated in Magnolia LNG's April 30 FERC application, this number has since been increased to 65-70 permanent direct jobs based on more detailed review.

> President went on to explain that "[i]mproved export performance will, in turn, create good high-paying jobs." Magnolia LNG's Project will support this domestic economic growth potential. In addition, granting Magnolia LNG's request for authorization in this Application will help balance the U.S. trade deficit and, as noted above, assist our nation's allies by diversifying their supply options and allowing commercial parties a greater opportunity to freely negotiate trade agreements with their counterparties, as evidenced by recent testimony before the House Committee on Energy and Commerce by representatives of foreign nations interested in investing in the U.S. economy through LNG exports.
>
> Louisiana's state economy, the Gulf Coast regional economy, and the Lake Charles economy will benefit from the immediate influx in commerce during the construction and operation of the Magnolia LNG Terminal. In addition, the Magnolia LNG Terminal site is leased from the Port of Lake Charles. The lease payments that Magnolia LNG will make to the Port of Lake Charles over the term of the lease will help stimulate the local economy.[127]

In addition to broadly ignoring information proffered by the applicant, Sierra Club's arguments focus mainly on the NERA Study. All interested parties had ample opportunity to comment on the LNG Export Study, of which Sierra Club availed itself. DOE already has rejected Sierra Club's arguments, which Sierra Club itself acknowledges.[128] The Magnolia LNG Non-FTA Application is not the proper forum to reassert unsuccessful arguments on the LNG Export Study and repetition alone does not better an argument. Sierra Club's protest does not present any arguments or new evidence in this vein that DOE has not already considered and therefore should be rejected.

[127] Magnolia LNG Non-FTA Application at 23-24 (citations omitted).
[128] Sierra Club Filing at 68 (noting "DOE/FE gave short shrift to these concerns in the Freeport Conditional Authorization").

IV. APGA'S PROTEST SHOULD BE REJECTED

APGA's protest, like Sierra Club's, makes only loose connections to the Magnolia LNG Non-FTA Application and is comprised largely of arguments that DOE already has rejected.[129] In addition, APGA argues that once a showing of harm has been made, the burden of proof falls on the proponent of the application.[130] This argument incorrectly states the initial burden of proof, which DOE repeatedly has recognized falls on those opposing the proposed exports. Even assuming APGA's statement relates to the burden of proof in the face of evidence that overcomes the rebuttable presumption, as set forth below the APGA Filing restates previously rejected arguments on the LNG Export Study that are improperly reasserted in this proceeding and fails to overcome the NGA's rebuttable presumption. As such, APGA's protest should be rejected.

As it had in its initial comments on the LNG Export Study, APGA argues that the LNG Export Study relies on outdated projections that fail to accurately project, and ultimately underestimate, domestic demand.[131] In *Freeport I*, the first conditional authorization following the end of the reply comment period on the LNG Export Study, DOE acknowledged and rejected this argument,[132] noting "[a]s the Supreme Court has observed, if an agency were required to rehear new evidence before it issues a final administrative decision, 'there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.'"[133] DOE has restated its position in every conditional authorization since.[134] Moreover, DOE explained that it would update its analysis to include the most recent EIA data

[129] *See, e.g.,* Jordan Cove at 103, 107-12, 116-24, 126, 130-33, 135-36, and 140.
[130] APGA Filing at 23.
[131] *Id.* at 8-9. *See also* Comments of the American Public Gas Association on the NERA-Macroeconomic Impacts of LNG Exports from the United States ("2012 LNG Export Study"), at 2-3 [hereinafter APGA Initial Comments on LNG Export Study].
[132] Freeport I at p. 60-62.
[133] *Id.* at p. 61.
[134] Jordan Cove at 88; Cameron at 77; Freeport II at 97; Cove Point at 87; and Lake Charles at 73.

as that data became available, and the agency has been true to that statement. For example, in its most recent conditional authorization in *Jordan Cove*,[135] DOE compared EIA's Annual Energy Outlook ("AEO") from three separate years. Notably, in each instance where DOE has updated its analysis in response to new EIA data, it consistently has found that the conclusions of the LNG Export Study remain valid and that across all scenarios, the United States stands to gain net economic benefits from allowing LNG exports. Moreover, as the American Petroleum Institute ("API") aptly points out in its comments in support of the Magnolia LNG Non-FTA Application,

> AEO 2014 projections weigh strongly in favor of approving Magnolia's Application to export LNG to non-FTA countries. EIA projects that although evolving natural gas markets will continue to spur increased use of cleaner-burning natural gas for electricity generation in the U.S., they will also support expanded export opportunities.[136]

APGA's argument has been rejected consistently and is insufficient to overcome the rebuttable presumption in favor of the Magnolia LNG Non-FTA Application. Therefore, DOE should reject APGA's protest.

Next, APGA asserts that LNG exports generally will harm economically vulnerable households and that both LNG exports generally and the export authorization requested in the Magnolia LNG Non-FTA Application will suppress other domestic industries, threatening a transition to coal and keeping the United States dependent on foreign oil.[137] While DOE/FE explicitly has stated that: "the public interest requires [DOE/FE] to look to the impacts to the U.S. economy as a whole, without privileging the commercial interests of any industry over

[135] *Jordan Cove Energy Project, L.P.*, DOE/FE Order No. 3413 (2014).
[136] American Petroleum Institute, Motion to Intervene and Comments in Support, at 4 (filed May 23, 2014) (citing *AEO 2014*, Executive Summary, at p. ES-2).
[137] APGA Filing at 10-15.

another,"[138] APGA already made these arguments in its initial comments on the LNG Export Study[139] and DOE rejected them. For example, in *Freeport I*, DOE explained

> DOE believes that the public interest generally favors authorizing proposals to export natural gas that have been shown to lead to net benefits to the U.S. economy. While there may be circumstances in which the distributional consequences of an authorizing decision could be shown to be so negative as to outweigh net positive benefits to the U.S. economy as a whole, we do not see sufficiently compelling evidence that those circumstances are present here. None of the commenters advancing this argument has performed a quantitative analysis of the distributional consequences of authorizing LNG exports at the household level.[140]

As above, DOE has repeated this position in every conditional authorization to date[141] and APGA has yet to proffer a quantitative analysis of the distributional consequences at the household level. Similarly, although repeatedly rejected, APGA fails to provide any evidence beyond its unsubstantiated presumption that LNG exports will suppress other domestic industries. In *Jordan Cove*, DOE pointed out in its response to this argument that "[t]he implication of the latest EIA projections is that a greater quantity of natural gas is projected to be available at a lower cost than estimated just two years ago."[142] DOE went on to explain,

> Moreover, given the supply projections under each of the above measures, we find that granting the requested authorization is unlikely to affect adversely the availability of natural gas supplies to domestic consumers such as would negate the net economic benefits to the United States.[143]

Repetition alone does not serve to provide the necessary support for an argument that already has been found to be lacking and DOE should reject APGA's argument here, as it has multiple times before.

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[138] Jordan Cove at 100.
[139] APGA Initial Comments on LNG Export Study, at 2-7.
[140] Freeport I at 75.
[141] Jordan Cove at 103; Cameron at 92; Freeport II at 111-12; Cove Point at 101-02; and Lake Charles at 87.
[142] Jordan Cove at 108.
[143] *Id.* at 110.

APGA also has failed to enter any evidence into the record that granting the Magnolia LNG Non-FTA Application will threaten the U.S. transition from coal or that it will threaten to keep the United States dependent on foreign oil. These arguments ignore AEO 2014's supply projections showing total domestic dry gas production outpacing total domestic natural gas consumption.[144] API notes that these projections demonstrate that "[t]he U.S. has sufficient quantities of natural gas for U.S. residential use and electricity generation, all while allowing expanded U.S. export opportunities, and without harming the U.S. manufacturing sector."[145] APGA restates stale arguments and fails to overcome the NGA's rebuttable presumption in favor of granting the Magnolia LNG Non-FTA Application and therefore should be rejected.

Finally, to support its argument that granting the Magnolia LNG Non-FTA Application will keep the United States dependent on foreign oil, APGA asserts that "[i]f the DOE/FE approves Magnolia's export application along with others, the resulting increase in natural gas prices would undermine recent investments to expand natural gas as a transportation fuel."[146] APGA does not support its allegations regarding price impacts and also misses a unique aspect of the Magnolia LNG Terminal. Namely, that the proposed Magnolia LNG Terminal would serve domestic markets by including facilities to load LNG onto (1) LNG carriers and barges for domestic marine distribution to other U.S. states and territories and the possibility of LNG bunkering, and (2) LNG trucks for road distribution to LNG refueling stations in Louisiana and the surrounding states.[147] While mid- and small-scale liquefaction projects add to the viability of the network that is needed to successfully make LNG a transportation fuel, the long term

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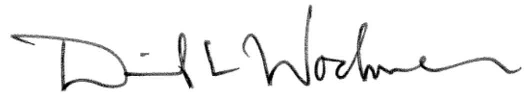
[144] U.S. ENERGY INFORMATION ADMIN, ANNUAL ENERGY OUTLOOK 2014, at Table CP-5 (2014), *available at* http://www.eia.gov/forecasts/aeo/pdf/0383(2014).pdf (last visited June 8, 2014).
[145] API Comments in Support at 5.
[146] APGA Filing at 14-15.
[147] Application of Magnolia LNG, LLC for Authorization under Section 3 of the Natural Gas Act, FERC Docket No. CP14-347-000, at 1 (filed Apr. 30, 2014).

agreements that underlie the Magnolia LNG Non-FTA Application represent the scale of investment needed to make the domestic distribution network a reality. The Magnolia LNG Terminal actually will add in a meaningful way to the infrastructure that APGA incorrectly asserts the project will harm. Here again, APGA has failed to overcome the NGA's rebuttable presumption in favor of the Magnolia LNG Non-FTA Application and should be rejected.

V. CONCLUSION

For the foregoing reasons, DOE should reject APGA's motion to intervene and its protest, as well as Sierra Club's motion to intervene, its comments, and its protest.

Respectfully submitted,



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Counsel for Magnolia LNG, LLC

Dated: June 9, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of June 2014 served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

David L. Wochner
Counsel for Magnolia LNG, LLC

VERIFICATION

Ernie Megginson, being first duly sworn on his oath deposes and says: that he is the Vice President of Magnolia LNG, LLC; that he is duly authorized to make this Verification; that he has read the foregoing application and is familiar with the contents therein; that all the statements and matters contained therein are true and correct to the best of his information, knowledge and belief; and that he is authorized to execute and file this answer with the United States Department of Energy.

Ernie Megginson
Vice President
Magnolia LNG, LLC

SWORN TO AND SUBSCRIBED before me on the 9th day of June, 2014.

Name: Patricia Ann Castro

Title: Notary Public

My Commission expires: 9-28-2017