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

**IN THE MATTER OF** )  
 )  
**SABINE PASS LIQUEFACTION, LLC** ) **FE DOCKET NO. 13-30-LNG**  
 ) **FE DOCKET NO. 13-42-LNG**

**SIERRA CLUB'S MOTION TO REPLY AND REPLY**

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Pursuant to sections 590.302(a) and 590.310 of the Department of Energy Office of Fossil Energy (DOE/FE)’s regulations, 10 C.F.R. §§ 590.302(a) & 590.310, Sierra Club moves for leave to reply to the answer of Sabine Pass Liquefaction, LLC (“Sabine Pass”) to Sierra Club’s motion to intervene, protest and comment. Sierra Club’s reply is incorporated into this filing.

**I. Sierra Club Should Be Granted Leave to Reply**

Sierra Club respectfully requests leave to reply to Sabine Pass’s answer. Although a reply is not automatically provided for by DOE rules, those rules allow parties to request additional procedures. 10 C.F.R. § 590.302 & 590.310. In this case, a brief reply is appropriate to assist DOE/FE in its public interest inquiry.

The public interest test of 15 U.S.C. § 717b requires DOE/FE to conduct a searching inquiry to determine whether Sabine Pass’s export proposals are consistent with the public interest. As Deputy Assistant DOE Secretary Chris Smith has explained, LNG export authorization is “a tremendously important decision” with significant public impacts. *See* Nick Snow, Oil and Gas Journal, *US DOE to move carefully on LNG export requests, NARUC meeting told* (Feb. 5, 2013). Because the public interest necessarily embraces environmental concerns, *see Nat’l Ass’n for the Advancement of Colored People v. Federal Power Comm’n*, 425 U.S. 662, 670 n.4 & n.6 (1976), DOE/FE has an important obligation to fully consider the environmental issues that are the primary subject of Sierra Club’s protest. Accordingly, DOE/FE should proceed only with the benefit of a full record and complete arguments in these cases. In Sierra Club’s view, the Answer of Sabine Pass Liquefaction, LLC in Opposition to the Motions to Intervene, Protest, and Comments of America’s Energy Advantage, Inc., Industrial Energy Consumers of America and the Sierra Club (“Answer”) misstates important questions of fact and law that bear on the public interest. Sierra Club therefore seeks leave to reply to address these matters. DOE/FE should ensure that these important questions receive fair consideration by considering this brief reply.

## II. Sierra Club Must Be Granted Leave to Intervene

Sabine Pass argues that Sierra Club’s motion to intervene should be denied because the Sierra Club has not demonstrated a sufficient interest in these proceedings. Answer at 13. Sabine Pass misstates both the standard for intervention under the Natural Gas Act (“NGA” or “Act”) and the evidence regarding Sierra Club’s interests. On essentially similar facts, DOE recently granted Sierra Club’s motion to intervene in a similar proceeding, and DOE must do the same here.<sup>1</sup>

On the first point, the NGA does not require intervenors to show *any* specific interest in the proceeding—the NGA allows intervention by “*any* . . . person whose participation in the proceeding may be in the public interest,” 15 U.S.C. § 717n(e) (emphasis added). Although DOE’s regulations require a would-be intervenor to identify facts underlying any claim of interest, the regulations do not (and could not) require any particular interest as a prerequisite to intervention. Thus, if a party can better inform DOE/FE, raise arguments on the public’s behalf, or otherwise act to serve the broad public interest inquiry, that party is to be admitted as an intervenor. Here, Sierra Club seeks to present to DOE/FE unique information related to the environmental implications of the proposals before it. The Supreme Court has made clear that the public interest includes environmental interests like the Sierra Club’s. *See NAACP v. Federal Power Comm’n*, 425 U.S. at 670 n.4 & n.6. Accordingly, Sierra Club should be granted intervention so that DOE/FE may make a fully informed decision on Sabine Pass’s proposals. There is no requirement – and Sabine Pass cites none – that the Sierra Club provide additional information regarding its interests beyond that which Sierra Club already provided.

On the second point, even if a particular interest were required, Sierra Club would satisfy any possible standard. Sabine Pass expresses confusion as to what type interest would be required or suffice—Sabine Pass faults AEA and IECA for expressing interests in the effects exporting gas from the U.S. will have on natural gas supply and prices (interests Sierra Club shares), arguing that these market effects are not sufficiently tied to Sabine Pass’s proposed expansion, but Sabine Pass also faults Sierra Club for raising interests specific to the construction, siting, and operation of this facility. Answer at 7, 13. Sierra Club has both interests. The environmental and economic issues which the Sierra Club raises here clearly serve the public and the purposes of the Natural Gas Act, as well as reflect the substantial interests of the Sierra Club’s own members. The Sierra Club’s environmental interests include the effects of the expansion itself, effects of increased coal consumption in response to increased domestic gas prices, and the effects of increased domestic natural gas production. Sabine Pass argues that the Sierra Club’s assertion that its members will be affected by Sabine Pass’s proposals is unsupported, Answer at 13, is incorrect. The Sierra Club detailed at length the environmental

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<sup>1</sup> *Order Conditionally Granting Long-Term Multi-Contract Authorization To Export Liquefied Natural Gas By Vessel From The Cove Point Lng Terminal To Non-Free Trade Agreement Nations*, DOE/FE Order 3331, FE Dkt. 11-128-LNG (Sept. 11, 2013) (“Cove Point Order”).

consequences that will arise from additional natural gas production that the proposed project would stimulate. Moreover, the Sierra Club cited the EIA Export Study, which included detailed predictions about the amount of coal increase that would result from various levels of LNG exports. In sum, Sierra Club easily satisfies the minimal standards for intervention in this proceeding.

### **III. Sabine Pass's Proposals Are Contrary to the Public Interest**

#### **1. DOE/FE Is Not Bound By, and Should Not Follow, its Orders in Prior LNG Export Proceedings**

DOE/FE must reject Sabine Pass's argument that DOE/FE's orders in previous export proceedings conclusively dispose of Sierra Club's concerns. Answer at 14, 15. As Sierra Club explained in its protest, DOE/FE is free to reconsider the analysis contained in prior orders in subsequent proceedings, including this one. Sierra Club Protest at 6-7. In light of DOE/FE's ability to reconsider its prior analysis, Sierra Club seeks to persuade DOE/FE that its prior orders should not be followed; in this docket, Sierra Club does not aim to overturn the previous Sabine Pass and Cove Point Orders themselves.

Indeed, DOE/FE's sole final export authorization (for the prior Sabine Pass application) was based on a much slimmer record than the one now available, and the remaining orders cited by Sabine Pass are conditional authorizations explicitly subject to future revision or rescission. Although Sabine Pass asserts that "Since issuing the LNG Export Study and reviewing comments thereon, DOE/FE has granted three additional applications for authorization to export LNG to non-FTA nations," Answer at 3, these conditional authorizations have not fully addressed—and certainly do not conclusively dispose of—Sierra Club's arguments here, as explained in Sierra Club's protest.

#### **2. Sierra Club's Arguments Regarding Environmental Impacts Are Appropriate Here**

Sabine Pass also criticizes Sierra Club for presenting environmental arguments here, wrongly arguing that these arguments should only be presented in the related FERC proceeding. Answer at 15. As we have explained, DOE/FE has independent NEPA and NGA obligations to consider the environmental issues raised by Sierra Club.

To be clear, Sierra Club does not object to FERC's acting as lead agency for NEPA review. DOE/FE nonetheless has an independent obligation to ensure that DOE/FE and the public are adequately informed regarding (and that DOE/FE actually considers) the environmental impacts of proposed DOE/FE actions, as DOE/FE has recently recognized. *See* DOE/FE Docket No. 10-111-LNG, Order 2961-A, 27 (Aug. 7, 2012) (DOE/FE recognizes that it is "responsible for conducting an independent review" of the NEPA analysis – in that case, conducted by FERC – and determining whether "the record needs to be supplemented in order for DOE/FE to meet its statutory responsibilities under section 3 of the NGA and under NEPA."). Moreover, environmental issues are not

merely pertinent to NEPA review; as Sierra Club has explained, DOE/FE has a substantive obligation to consider environmental impacts as part of its NGA decision.

### **3. DOE/FE Must Not Conditionally Authorize the Proposed Project Before Analyzing Its Environmental Impacts**

Sabine Pass has requested that DOE/FE issue conditional orders granting export authorization pending completion of the NEPA process by FERC and subsequent issuance of a FONSI by DOE/FE. Answer at 15-16. However, DOE/FE regulations prohibit any action prior to completion of NEPA review. As Sierra Club's protest explained, DOE/FE's regulation at 10 C.F.R. § 1021.211 "explicitly provides that DOE 'shall take no action' concerning a proposal that is the subject of an EIS until the EIS is completed." See Protest at 19-21. Sabine Pass's answer does not address this DOE/FE's obligations under this regulation.

Because environmental impacts are part of the Natural Gas Act public interest analysis, it would be nonsensical to conduct a balancing of effects on the public interest until environmental impacts have been examined pursuant to the NEPA process. Accordingly, DOE/FE may not conditionally authorize the proposed projects before the environmental impacts of the proposed exports have been analyzed fully.

## **IV. Sabine Pass's Proposal Will Have Numerous Harmful Environmental And Other Effects**

### **1. DOE/FE Should Prepare A Programmatic EIS**

Sabine Pass argues that Sierra Club is incorrect when it states that DOE/FE should prepare a programmatic EIS to consider the impacts – both direct and indirect – of all proposed export projects, citing 10 C.F.R. 1021.104(b) and claiming that DOE/FE's actions here do not constitute a "coordinated federal program." Answer at 17. In doing so, Sabine Pass relies on an overly cramped reading of 10 C.F.R. 1021.104(b). This regulation provides that a "[p]rogrammatic NEPA document means a broad-scope EIS or EA that identifies and assesses the environmental impacts of a DOE program; it may also refer to an associated NEPA document, such as an NOI, ROD, or FONSI." Sabine Pass argues that LNG exports are not a DOE program, because the individual applications are driven by separate companies, before multiple agencies, and are not "an orchestrated series of projects directed by a single decision-maker" such as DOE/FE. *Id.* Although DOE/FE is not programmatically initiating these applications, it has quite reasonably determined that it will take programmatic steps in their evaluation, as demonstrated by DOE/FE's commissioning of the broadly-applicable EIA and NERA export studies. DOE/FE should adopt a similarly encompassing approach to the environmental impacts of the pending applications.

## 2. DOE/FE Must Consider the Environmental Impacts of Additional Natural Gas Production

As explained at length in the Protest, DOE/FE is legally obligated to consider the environmental impacts of new natural gas production that will occur in response to new demands from Sabine Pass's proposals. Protest at 29-32. DOE/FE must reject Sabine Pass's argument that *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004), relieves DOE/FE of this responsibility. *Public Citizen* applies only "where an agency has *no ability* to prevent a certain effect due to its *limited statutory authority* over the relevant actions." *Id.* at 770 (emphasis added). Here, the Natural Gas Act provides DOE/FE with authority to act on the basis of, and thereby prevent, environmental effects. There are no limits on DOE/FE's Natural Gas Act authority that would preclude it from denying export applications or limiting exports' scope and thus preventing additional natural gas production from occurring.

DOE/FE must also reject Sabine Pass's argument that demands from its expanded facility are not "sufficiently causally related" to shale development and its associated effects. Answer at 19. Sabine Pass does not dispute that its facility will require an increase in production, nor does it dispute that existing models can predict where production will increase in response to its demand. See Protest at 27-29. Sabine Pass's expansion can thus be traced to new sources of supply with sufficient precision to support environmental analysis. Sabine Pass's attempt to claim that it is a disembodied demand source that cannot be held accountable for the environmental consequences of its demand must thus be rejected.

The various FERC decisions cited by Sabine Pass are inapplicable here. Answer at 19, n.99. Notably, the *Central New York Oil and Gas Co., LLC*, 138 FERC 61,104 (2012) ("*CNYOGC*") concerned a pipeline not connected with an export project and for which the causal link between the pipeline and increased gas demand was much weaker than the link in the export context. In *CNYOGC*, the proposed pipeline facilitated access to new gas markets by making transportation to certain markets *easier*, but its construction was not an absolute *prerequisite* for access to those markets. Here, by contrast, there is no question that Sabine Pass's proposals to export gas to non-free trade agreement countries cannot go forward without the approval Sabine Pass seeks from DOE/FE. Thus, in this case, the causal relationship between the proposed agency action and the ultimate environmental effect is more direct than was true in *CNYOGC*. FERC export orders have wrongly relied on *CNYOGC* without acknowledging this different factual context, or the degree to which the available evidence documents a link between exports and expanded production, as Sierra Club has explained. These FERC orders do not bind DOE/FE, and DOE/FE must decline to follow their flawed reasoning here.

## V. Economic Arguments

Sierra Club explained that the proposed projects would cause a *net* loss of jobs and an unfair *redistribution* of wealth. Sabine Pass responds that the project will create some local jobs and a net increase in wealth. These responses are completely orthogonal to Sierra Club's arguments, and fail to show that the projects will be in the public interest.

On job creation, Sierra Club explained that exports would eliminate jobs in manufacturing and other energy intensive industries as a result of increased gas prices. This effect is demonstrated by the NERA study, which predicts a decrease in net wage income as a result of exports. Indeed, the NERA study can be used to quantify this effect, by correlating aggregate lost wages with lost jobs—a technique NERA has used elsewhere.<sup>2</sup> Sierra Club does not dispute that the proposed projects will also create some jobs, both in gas exploration and production and temporary jobs associated with facility construction, but these jobs are factored into the NERA figures and will be outnumbered by jobs lost. Thus, Sabine Pass's repeated invocation of the "thousands of jobs" that it claims will be created by the expansion projects, answer at 20-21, in no way rebuts Sierra Club's showing that the projects will cause a net loss of US jobs.<sup>3</sup>

On regressive wealth redistribution, Sierra Club explained that because of job losses and higher gas prices, most American households would experience a monetary loss as a result of wealth, despite the fact that shareholders of gas production and export companies would see an increase in wealth. Sabine Pass argues that "Sierra Club has not presented any evidence showing negative distributional consequences to any particular socioeconomic sector." Answer at 21. Sierra Club provided precisely that, by explaining that, contrary to NERA and Sabine Pass's rosy assumption, most US households do not hold shares in the industries that will benefit from exports. Indeed, most US households do not own any stock whatsoever, including indirect ownership through retirement accounts. As explained in the Synapse expert report attached to Sierra Club's NERA study comments, "NERA's claim of widespread benefits is not supported by data from the U.S. Census Bureau. In 2007, just before the financial crash, only about half of all families owned any stock, including indirect holdings in retirement accounts."<sup>4</sup> Moreover, neither NERA nor Sabine Pass provide any evidence indicating the share of

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<sup>2</sup> As Sierra Club explained in its comments on the NERA study (included as exhibits to Sierra Club's protest), NERA underestimated the number of jobs lost, but the NERA study provides a likely minimum estimate. Sierra Club Initial NERA Comment at 10-13. Moreover, as we previously explained, NERA ignored effects on job quality rather than quantity. *Id.* at 20-21.

<sup>3</sup> Sabine Pass cites its Stage 3 FERC application as the source of its job creation figure, but a review of the application shows that Sabine Pass did not consider these impacts on other industries.

<sup>4</sup> Sierra Club Initial NERA Comment at Ex. 5, p.9.

stock-owning households who own enough stock in the gas sector to ensure that they receive benefits offsetting their higher energy bills and loss of wage income.

Finally, even the NERA study's conclusion of net economic benefit, which Sabine Pass relies upon, is uncertain. Sabine Pass argues that there is not "any basis for the argument that LNG exports will reduce GDP." Answer at 22. Sierra Club's protest cited the academic study by Kemal Sarica & Wallace E. Tyner, which reached exactly this conclusion.<sup>5</sup> Sabine Pass did not acknowledge—much less refute—this study.

## **VI. Conclusion**

The most important issue raised in Sierra Club's protest is DOE/FE's obligation to consider the impacts of induced natural gas production. Sabine Pass's answer asserts that this and other issues raised by the Sierra Club have already been resolved by DOE/FE in prior orders, but the Sierra Club has provided detailed analysis explaining why these issues have not, in fact, been adequately addressed.

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

Dated: October 23, 2013

Respectfully submitted



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<sup>5</sup> Protest at 21 (citing Kemal Sarica & Wallace E. Tyner, Economic and Environmental Impacts of Increased US Exports of Natural Gas (Purdue Univ., Working Paper, 2013) (available from the authors) and Wallace Tyner, Initial Comment on NERA Study (Jan. 14, 2013) (summarizing the results of the above study), Protest Ex. 14.)



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CERTIFICATE OF SERVICE

I hereby certify that I caused the above documents to be served on the applicant and all others parties in this docket, in accordance with 10 C.F.R. § 590.017, on October 23, 2013.

Dated at San Francisco, CA, this 23<sup>rd</sup> day of October, 2013.



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VERIFICATION

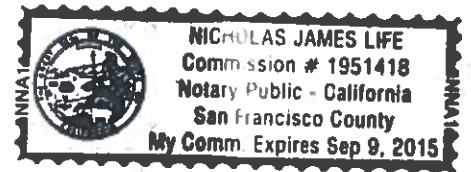
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Pursuant to C.F.R. §590.103(b), Nathan Matthews, being duly sworn, affirms that he is authorized to execute this verification, that he has read the foregoing document, and that facts stated herein are true and correct to the best of his knowledge,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



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Subscribed and sworn to before me this 23<sup>rd</sup> day of October, 2013.

  
Notary Public

My commission expires: 09/09/2015