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DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

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IN THE MATTER OF)
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VENTURE GLOBAL LNG, LLC) FE DOCKET NO. 13-69-LNG
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SIERRA CLUB'S RENEWED MOTION TO REPLY AND REPLY

Pursuant to sections 590.302(a) and 590.310 of the Department of Energy Office of Fossil Energy (DOE/FE)'s regulations, 10 C.F.R. §§ 590.302(a) & 590.310, Sierra Club moves for leave to reply to the answer of Venture Global LNG LLC ("Venture") to Sierra Club's motion to intervene, and protest. Sierra Club's reply is incorporated into this filing.

I. Sierra Club Should Be Granted Leave to Reply

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

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

docket 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

Sierra Club agrees that some of the issues Sierra Club raises in this proceeding are similar to issues that Sierra Club has raised elsewhere. This similarity is unsurprising, because Venture's project will have impacts that are similar to those of other proposed export projects. Venture is mistaken, however, in arguing that this similarity provides any ground for denying Sierra Club's motion to intervene here. Answer at 12-13. Instead, DOE must grant Sierra Club's motion to intervene in this case, because the interests Sierra Club seeks to protect here are the same type of interests that DOE has already determined to be sufficient to warrant intervention in numerous other LNG export proceedings.¹

Although the injuries Sierra Club and its members will suffer if Venture's project is approved are similar to injuries Sierra Club will suffer if other LNG export projects proceed, Venture's project will cause additional, marginal injuries, as explained in Sierra Club's protest. These injuries provide an interest sufficient to warrant intervention here. The fact that other projects and proposals will cause similar harm does not change the fact that Sierra Club's interests will be affected by this proceeding. The NGA allows intervention by "any . . . person whose participation in the proceeding may be in the public interest," 15 U.S.C. § 717n(e). The Supreme Court has made clear that the public interest includes environmental interests like the Sierra Club's. *See NAACP v. Federal Power Comm'n*, 425 U.S. at 670 n.4 & n.6. DOE regulations merely require an intervenor to state the "facts upon which the petitioner's claim of interest is based." 10 C.F.R. § 590.303(b).

Furthermore, DOE/FE must reject Venture's suggestion that Sierra Club's ability to participate in other proceedings precludes intervention here. DOE/FE's own regulations require Sierra Club to intervene in *this* proceeding at *this* stage in order to protect its interests, and to similarly raise its public interest arguments at

¹ *See, e.g., Jordan Cove*, DOE/FE Order 3413 at 158 (Mar. 25, 2014), *Cameron LNG*, DOE/FE Order 3391 at 146 (Feb. 2, 2014), *Freeport LNG*, DOE/FE Order 3357 at 170 (Nov. 15, 2013).

this time. Sierra Club agrees that a more sensible framework for handling intervention would be to allow Sierra Club to intervene in this docket once environmental review is underway, *i.e.*, once more definite plans have been put forward by Venture and a draft NEPA document has been circulated. At that stage, Sierra Club will be able to provide additional detail regarding likely environmental effects (although such specific showing is not required for intervention). Nonetheless, in the *Sabine Pass* proceeding DOE/FE rejected Sierra Club's effort to proceed in precisely this manner (*i.e.*, to intervene once DOE/FE began considering environmental impacts).² Accordingly, Sierra Club has a right to intervene here to preserve its right to seek judicial review of DOE/FE's decisions.

III. Procedural Issues

Venture's answer reveals that Sierra Club and Venture agree on several issues. DOE/FE's public interest and environmental review must consider both phases of Venture's proposed exports together, especially in light of the proposed integrated design for both phases. Answer at 8. DOE/FE must adhere to its proposed procedural change and not provide conditional review or authorization of either phase until environmental review is complete. Answer at 10-11. The updated economic study, considering higher volumes of exports, will almost certainly be complete before DOE/FE begins to review Venture's applications, the conclusions from this study must be incorporated into DOE/FE's review, and all parties and the public must be provided with an opportunity to respond to this study's conclusions. Answer at 11-12.³ Although Venture's application extensively discussed exports to Haiti in its public interest arguments, Venture does not challenge Sierra Club's showing that this argument is irrelevant,⁴ and Venture now retreats from these arguments. Answer at 7, 19-20.

² See DOE/FE Orders 2961A, 2961B.

³ Note that Venture, in discussing this study, refers only to arguments made by APGA, but Sierra Club also explained that the prior EIA LNG export study failed to consider export volumes that would likely result from authorization of Venture's applications. Protest at 14-18.

⁴ Sierra Club's protest explained that:

- Venture has provided no evidence that it can or will supply LNG to Haiti at less than market rates.

Nonetheless, Sierra Club and Venture continue to have significant disagreement on procedural and substantive issues related to Venture's application. Procedurally, on one hand, Venture faults Sierra Club for raising arguments in this proceeding that have been raised elsewhere, Answer at 12-13, while on the other, Venture argues that it would be inappropriate for DOE/FE to engage in consolidated review of these environmental issues, Answer at 31. Venture cannot have it both ways.

Venture contends that Sierra Club has "dump[ed] thousands of pages of exhibits into [this] proceeding without explanation," and that these exhibits are "unexplained and irrelevant." Answer at 30-31. The significance of each of Sierra Club's exhibits is explained in Sierra Club's protest, and Sierra Club provides pincites for nearly all of these exhibits directing DOE, Venture, and the public to the pertinent passage. DOE has recognized that these exhibits provide information important to review of the environmental impacts of LNG exports, as roughly two thirds of the documents cited and provided by Sierra Club are also cited in the DOE and NETL environmental materials released on May 29, 2014.

Sierra Club agrees, however, that DOE/FE's procedures for environmental review of LNG export projects have to date been needlessly burdensome. As explained in the prior section, if DOE/FE permitted intervention and protests in LNG export dockets during or after NEPA review, Sierra Club would not need to file documents in this proceeding that will also be included in the NEPA review. In comments submitted regarding DOE/FE's "addendum" to environmental review of LNG exports, Sierra Club has requested that DOE/FE confirm that those materials, the documents DOE/FE and NETL cite therein, and the comments submitted thereon will all be considered part of the administrative record for review of individual export applications, which has the potential to significantly streamline the process. Absent such clarification from DOE/FE's,

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- Available modeling and other evidence indicates that Asia and Europe are the markets willing to pay the highest prices for US LNG, such that market-rate exports will go to these destinations
 - Even if Haiti were willing and able to pay market rates for LNG, no evidence indicates that Venture would be more able or likely to supply LNG to Haiti than would other export projects.

Protest at 59, 71-72. Venture has not disputed any of these issues.

however, prudence requires Sierra Club to present its arguments, and the evidence supporting it, at this stage of each DOE/FE docket.

In addition to streamlining review of individual export applications in this way, an even more sensible approach would be to engage in programmatic treatment, through a programmatic EIS, rulemaking, or similar, regarding LNG exports.

Thus, while Venture is correct that Sierra Club's protest raises many issues that Sierra Club has raised elsewhere, DOE/FE's current practice requires these issues to be raised and considered anew here.

While DOE/FE has refused to engage in programmatic discussion of LNG exports, DOE/FE has mistakenly relied on its general guidance regarding LNG imports. Venture continues to argue that this guidance applies here. Answer at 2-3. As Sierra Club explained in its protest, the reasoning underlying this guidance does not apply to exports. In this regard, the import guidance is akin to DOE/FE's outdated practice of conditionally authorizing export applications. Although DOE/FE conditionally authorized several export applications, DOE/FE has recently recognized that the purported policy justification for conditional authorizations does not apply to the export context, and DOE/FE has proposed to abandon this practice. Similarly, although DOE/FE's recent conditional export authorizations have relied on DOE/FE's import guidance, DOE/FE must acknowledge that the reasoning underlying this guidance has no application to the export context. Whereas Venture contends that DOE/FE "has decidedly rejected" Sierra Club's argument that the import guidance does not apply to exports, DOE/FE has never addressed the substance of this argument.

IV. Induced Gas Production

As Sierra Club explained, Venture's project will induce additional gas production. Venture does not dispute this fact: indeed, Venture's answer unconditionally defends the EIA LNG Export Study and other analyses that model these impacts. Indeed, Venture's answer seeks to supplement the record by citing various economic studies for the first time, and each of these studies indicates that exports will induce additional gas production. *See, e.g.*, Ebinger at 37 ("much of the gas for export will come from new production, rather than the displacement of consumption in other sectors."), ICF State Level Impact Study at 9 ("ICF's original modeling showed that for each of the three export cases, the

majority of the incremental LNG exports (79%-88%) are offset by increased domestic natural gas production.”).

Venture’s answer further undermines DOE’s assertion, in the environmental addendum, that it is unclear whether authorizing exports will lead to exports actually occurring. Venture states “Given the significant market interest demonstrated through the negotiation process, Venture Global decided to double its initial planned liquefaction capacity. The additional capacity desired by the market-place led to a second application to DOE/FE for a second phase of the Venture Global Project.” Answer at 7.

Also, Venture ignores key caveat that these studies endorse exports if environmental problems fixed. In light of gas production’s environmental impacts, even some export proponents have argued that the environmental impacts of gas production must be reduced before exports occur. Notably, a report by Michael Levi of the Brookings Institution concludes that the benefits of gas exports outweigh the risks and costs *if* “proper steps are taken to protect the environment.”⁵ Levi concludes that “environmental risks arising from natural gas production would . . . rise due to new production for exports,” and that safe management of these risks would not happen without further action.⁶ Levi recommended that, for a start, the environmental practices recommended by the SEAB should be required prior to exports.⁷

Nonetheless, Venture argues that induced production should be excluded from NEPA and Natural Gas Act analyses because induced production does not meet various legal standards related to causation or foreseeability. Venture first argues, quoting without attribution from *Department of Transportation v. Public Citizen*, 541 U.S. 751 (2004), that DOE/FE’s approval of exports cannot be a legally relevant cause of induced gas production. Answer at 28. Yet the language Venture quotes from *Department of Transportation* clearly distinguishes that case from this situation. There, the agency was *prohibited* from altering its action on the basis of environmental effects. The Department of Transportation “ha[d] *no ability to prevent* a certain effect due to its limited statutory authority over the relevant actions,” and therefore could not “be considered a legally relevant

⁵ Michael Levi, *A Strategy For U.S. Natural Gas Exports*, at 6 (June 2012), available at http://www.hamiltonproject.org/files/downloads_and_links/06_exports_levi.pdf

⁶ *Id.*

⁷ *Id.* at 21.

‘cause’ of the effect.” *Id.* at 770 (emphasis added). There, where the agency had “no discretion to prevent the entry of Mexican trucks, its [environmental assessment] did not need to consider the environmental effects arising from the entry.” *Id.* (emphasis added). Here, DOE/FE unquestionably has the authority and duty to consider environmental impacts in its public interest analysis, the authority to deny export authorization on the basis of environmental impacts, and thereby to prevent the environmental harms associated with induced production.

Venture then argues that induced production is not sufficiently foreseeable. In arguing that integration of the U.S.’s gas market precludes predicting where gas exported by Venture’s project will come from, Venture does not acknowledge that EIA’s National Energy Modeling System, among other tools, can provide sophisticated predictions regarding where production will increase in response to Venture’s gas demand. We note that the pertinent question is not where the specific gas molecules exported by Venture’s project are produced, but the potentially simpler question of where production will increase in response to Venture’s project. While the gas exported by Venture may come from one field one week and another the next, changes in the location of new production are likely to be less flitting.

Indeed, materials cited by Venture specifically predict where this production will occur. Venture argues that most of this production will occur in the Gulf. Answer at 6. The ICF State Level Impact study Venture incorporates by reference provides a detailed model of new production in response to exports, and indicates that such modeling could be done to determine the impact of Venture’s exports specifically. ICF State Level Impact study, at 9: “The allocation matrices were based either on model results (e.g., changes in natural gas production by year and state),” *Id.* at 15 (mapping where exports will come from).

Venture further argues that climate impacts of induced production are not sufficiently foreseeable, citing *WildEarth Guardians v. Jewell*, 738 F.3d 298 (D.C. Cir. 2013). That case held that, where the Bureau of Land Management had quantified the amount of greenhouse gases a proposed project would emit, the agency was not required to further assess the marginal impact that quantity of emissions would have on the global climate. *Id.* at 309. This holding does not excuse DOE/FE from quantifying the increase in greenhouse gas emissions that would result from Venture’s project—including emissions from production that the project would undoubtedly induce.

V. Domestic Price Impacts and Alleged Local, Regional, and National Economic Benefits

Sierra Club's protest shows that Venture understates the adverse economic impact of the proposed project. Venture's answer fails to rebut this showing.

As Sierra Club explained, the EIA LNG Export Study understates the likely impacts of LNG exports. Two of the reasons for this are that while the EIA study establishes that price impacts increase alongside the total volume of exports and the rate at which exports are brought online, the EIA study underestimates both of these inputs. Venture asserts that DOE/FE's conditional authorizations have rejected protestors' criticisms of the EIA study, but Venture does not point to any discussion of these specific issues.

Moreover, the EIA and NERA studies, as well as DOE/FE's conditional authorizations issued to date, have not considered the economic impacts of the adverse environmental effects of LNG exports. Contrary to Venture's assertion, the NERA Study does not support a conclusion of net benefit from exports, because it does not include the environmental impacts of exports, or the economic harms these environmental impacts will entail. Similarly, although the NERA Study indicates a net loss of U.S. employment as a result of exports, the NERA Study was explicitly not designed to consider this important aspect of the public interest analysis.

VI. Conclusion

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

given adequate consideration, DOE/FE should deny Venture's request for a conditional authorization prior to completion of environmental review.

Dated: June 27, 2014

Respectfully submitted,

/s/ Nathan Matthews

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VENTURE GLOBAL LNG, LLC

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FE DOCKET NO. 13-69-LNG

VERIFICATION

SAN FRANCISCO

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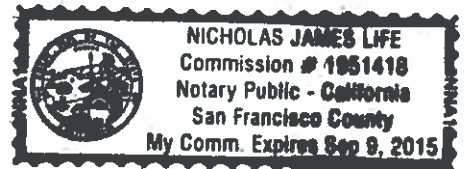
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Pursuant to C.F.R. §590.103(b), Nathan Matthews, being duly sworn, affirms that he is authorized to execute this verification, that he has read the foregoing document, and that facts stated herein are true and correct to the best of his knowledge,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

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Subscribed and sworn to before me this 25th day of July, 2014.

Notary Public



My commission expires: 07/09/2015

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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 July 25, 2014.

Dated at San Francisco, CA, this 25th day of July, 2014.



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