

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

IN THE MATTER OF)
) **FE DOCKET NO. 13-04-LNG**
Trunkline LNG Export, LLC)
)

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 Trunkline LNG Export, LLC (“Trunkline”) 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. Trunkline 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 Trunkline’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. In Sierra Club’s view, the Answer of Trunkline LNG Export, LLC to the Protests of the American Public Gas Association 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

Trunkline argues that Sierra Club's motion to intervene should be denied because the Sierra Club has not demonstrated a sufficient interest in this proceeding. Trunkline misstates both the standard for intervention under the Natural Gas Act ("NGA" or "Act") and the evidence regarding Sierra Club's interests.

On the first point, the Act allows intervention by "*any . . . person whose participation in the proceeding may be in the public interest,*" 15 U.S.C. § 717n(e) (emphasis added), and 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. 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 proposal before it. Accordingly, Sierra Club should be granted intervention so that DOE/FE may make a fully informed decision on Trunkline's proposal. There is no requirement – and Trunkline cites none – that the Sierra Club provide additional information regarding its interests or that it "identify [a] member that opposes [Trunkline's] proposal." Answer at 4. DOE's implementing regulation merely asks for a general statement of the would-be intervenor's "claim of interest," without requiring the sort of showing Trunkline demands. 10 C.F.R. § 590.303(b).

On the second point, the environmental and ratepayer protection 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 increased coal consumption in response to increased domestic prices and the effects of increased domestic natural gas production. Trunkline argues that "[t]he Sierra Club fails to explain what specific impact the proposed export from the Lake Charles terminal is alleged to have on its members in Louisiana or elsewhere," Answer at 4, but this is incorrect. The Sierra Club detailed at length the environmental 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.

DOE/FE must reject Trunkline's suggestion that Sierra Club's ability to participate in other proceedings precludes intervention here. Answer at 4. DOE/FE's own regulations require Sierra Club to intervene in *this* proceeding at *this* stage in order to protect its interests. 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 Trunkline 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, DOE/FE recently rejected Sierra Club's

effort to proceed in precisely this manner (*i.e.*, to intervene once DOE/FE began considering environmental impacts).¹ Accordingly, Sierra Club has a right to intervene here to preserve its right to seek judicial review of DOE/FE's decisions.

III. Trunkline's Proposal Is Contrary to the Public Interest

A. DOE/FE Is Not Bound By, and Should Not Follow, its Orders in the Freeport and Sabine Pass Proceedings

DOE/FE must reject Trunkline's argument that the Sierra Club's concerns have been resolved in DOE/FE's orders in the Sabine Pass and Freeport LNG export proceedings ("Sabine Order" and "Freeport Order"). Trunkline first asserts that the Sierra Club mounts an "improper collateral attack on DOE/FE's findings and rationale" in the Sabine and Freeport Orders. Answer at 6. But, as Sierra Club explained in its protest, DOE/FE is free to reconsider the analysis contained in the Sabine and Freeport Orders in subsequent proceedings, including this one. Sierra Club Protest at 29 n.83. 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; it does not aim to overturn the Sabine and Freeport Orders themselves.

Trunkline also criticizes Sierra Club for presenting to DOE/FE arguments that it has raised in other proceedings. Answer at 6. Trunkline does not provide any legal basis upon which DOE/FE should preclude Sierra Club from raising these issues in the current proceeding, however. Moreover, Trunkline fails to recognize that, in the other proceedings it mentions, DOE/FE did not analyze or account for much of the evidence that Sierra Club presented. For example, neither the Sabine Order nor the Freeport Order discusses Sierra Club's arguments that reliance on DOE's 1984 natural gas *import* policy is improper,² that DOE/FE's macroeconomic analysis overlooks important aspects of LNG transportation costs and LNG export contract structure,³ or that NEPA law precludes DOE/FE from issuing conditional authorizations in LNG export proceedings.⁴ Nor has DOE/FE provided an adequate response to Sierra Club's concerns related to the macroeconomic analysis underlying the Freeport Order, for the reasons explained in detail in the Sierra Club's protest.⁵ Finally, the Freeport Order did not address, and the Sabine Order did not adequately address, Sierra Club's central argument that analysis of the impacts of new gas production is required before exports can proceed.⁶ DOE/FE

¹ See DOE/FE Orders 2961A, 2961B.

² See Protest at 7 n.13.

³ See Protest at 14-15.

⁴ See Protest at 18.

⁵ See Protest at 62.

⁶ See Protest at 29-30.

must address all of these concerns before determining whether to authorize additional LNG export requests, including Trunkline's.

Trunkline also erroneously states that the Freeport Order addressed Sierra Club's concern related to cumulative impacts. Answer at 12. Quite the opposite is true. First, as Sierra Club explained in its protest, while DOE/FE has acknowledged the need to address the cumulative *economic* impact of pending export proposals, it has so far relied on the macroeconomic study prepared by NERA consulting to provide this assessment. Freeport Order at 112-13; Protest at 14 & nn. 25-26. Accordingly, DOE/FE, like NERA, has so far assessed the economic impacts of only a small slice of the overall volume of export proposals. The Sierra Club's protest describes in detail why this approach is inappropriate. Protest at 14. Moreover, neither the Freeport Order nor the Sabine Order, nor any related FERC order, addresses the full cumulative *environmental* impacts of authorizing exports, including the massive volumes of new gas production that exports would induce.

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

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 provides that "[w]hile 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." Accordingly, DOE/FE may not conditionally authorize the proposed project before the environmental impacts of the proposed exports have been analyzed fully.

Trunkline nonetheless attempts to argue that "[s]ection 1021.211 applies only when the DOE/FE itself is required to prepare a NEPA Environmental Assessment or Environmental Impact Statement," because the section 1021.211 refers only to DOE and not to other agencies that may prepare the NEPA document that ultimately supports DOE's decision. Answer at 15. In this case, Trunkline argues, *FERC* is preparing the NEPA document underlying DOE's decision, creating an exception to section 1021.211's requirements in this instance.

Trunkline's formalistic argument ignores the underlying purposes of section 1021.211 and of NEPA as a whole. "NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). Regulations such as 10 C.F.R. § 1021.211 – including, for example, a Council on Environmental Quality regulation at 40 C.F.R. § 1506.1 that prohibits actions during the NEPA process – fulfill that purpose by precluding interim action while alternatives are examined. *Cf. Cmte. For Preservation of Seattle Fed. Reserve Bank Bldg. v. Fed. Reserve Bank of S.F.*, 2010 WL 1138407, at *4 (W.D. Wash. 2010) (holding, after discussing 40 C.F.R. § 1506.1 and the purposes of NEPA, that the signing of a sale agreement while NEPA review was still in progress "constitute[d] a violation of NEPA"). To read a

“cooperating agency” exception to this principle into 10 C.F.R. § 1021.211 would run counter to NEPA’s core purpose.

The DOE/FE regulation allowing for conditional orders, 10 C.F.R. § 590.402, does not provide an exception to this basic NEPA prohibition against agency action pending NEPA review. Section 590.402 cannot trump NEPA, and thus must be read to allow for conditional orders only when NEPA permits.

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 both DOE/FE and FERC have recently recognized. *See Sabine Pass LNG*, FERC Docket No. CP11-72-001, 140 FERC ¶ 61,076 P 32 (July 26, 2012) (“DOE has separate statutory responsibilities with respect to authorizing the export of LNG from Sabine Pass; thus it has an independent legal obligation to comply with NEPA.”), DOE/FE Docket No. 10-111-LNG, Order 2961-A, 27 (Aug. 7, 2012) (DOE/FE recognizes that it is “responsible for conducting an independent review” of FERC’s analysis and determining whether “the record needs to be supplemented in order for DOE/FE to meet its statutory responsibilities under section 3 of the NGA and under NEPA.”). To ensure that this obligation is adequately fulfilled, DOE/FE can and must wait until NEPA review is completed before issuing an export authorization. As explained in Sierra Club’s protest, NEPA requires consideration of environmental impacts at the earliest possible time. Moreover, 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.

IV. Conclusion

The most important issue raised in Sierra Club’s protest is DOE/FE’s obligation to consider the impacts of induced production. Trunkline’s answer asserts that this and other issues raised by the Sierra Club have been resolved, but the Club has provided detailed analysis explaining why the orders purportedly resolving these issues do not in fact adequately address them.

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 Trunkline’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 Trunkline 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 Trunkline's request for a conditional authorization prior to completion of environmental review.

Dated: June 18, 2013

Respectfully submitted,



Ellen Medlin
Sierra Club Environmental Law Program
85 2nd St., Second Floor
San Francisco, CA 94105
(415) 977-5646
ellen.medlin@sierraclub.org

Nathan Matthews
Sierra Club Environmental Law Program
85 2nd St., Second Floor
San Francisco, CA 94105
(415) 977-5695
nathan.matthews@sierraclub.org

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CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to 10 C.F.R. § 590.103(b), I, Ellen Medlin, hereby certify that I am a duly authorized representative of the Sierra Club, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy, on behalf of the Sierra Club, the foregoing documents in the above captioned proceeding.

Dated at San Francisco, CA, this 18th day of June, 2013.



Ellen Medlin
Associate Attorney
Sierra Club Environmental Law Program
85 Second Street, Second Floor
San Francisco, CA 94105
Telephone: (415) 977-5646
Fax: (415) 977-5793
Email: ellen.medlin@sierraclub.org

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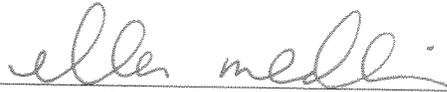
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FE DOCKET NO. 13-04-LNG

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 June 18, 2013.

Dated at San Francisco, CA, this 18th day of June, 2013.



Ellen Medlin
Associate Attorney
Sierra Club Environmental Law Program
85 Second Street, Second Floor
San Francisco, CA 94105
Telephone: (415) 977-5646
Fax: (415) 977-5793
Email: ellen.medlin@sierraclub.org

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VERIFICATION

SAN FRANCISCO §
CALIFORNIA §
§

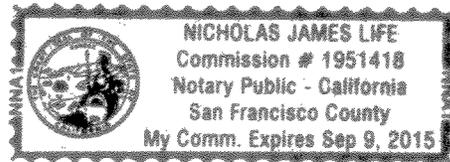
Pursuant to 10 C.F.R. §590.103(b), Ellen Medlin, being duly sworn, affirms that she is authorized to execute this verification, that she has read the foregoing document, and that facts stated herein are true and correct to the best of her knowledge, information, and belief.

ellen medlin

Ellen Medlin
Associate Attorney
Sierra Club Environmental Law Program
85 Second Street, Second Floor
San Francisco, CA 94105
Telephone: (415) 977-5646
Fax: (415) 977-5793
Email: ellen.medlin@sierraclub.org

Subscribed and sworn to before me this 18th day of June, 2013.


Notary Public



My commission expires: 09/09/2015