

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

IN THE MATTER OF:

**SABINE PASS LIQUEFACTION, LLC)
) **FE DOCKET NO. 13-121-LNG**
)**

**ANSWER OF SABINE PASS LIQUEFACTION, LLC,
IN OPPOSITION TO
MOTIONS TO INTERVENE, PROTESTS, AND COMMENTS**

Pursuant to Sections 590.302(b), 590.303(e), and 590.304(f) of the Department of Energy’s (“DOE”) regulations,¹ Sabine Pass Liquefaction, LLC (“SPL”) hereby submits this consolidated Answer in opposition to: the Motion for Leave to Intervene and Protest of the American Public Gas Association (“APGA Filing”); and Sierra Club’s Motion to Intervene, Protest, and Comments (“Sierra Club Filing”), both filed on April 14, 2014, in the above-captioned proceeding. In support of this Answer, SPL states the following:

**I
BACKGROUND**

A. SPL’s Existing Authorizations

On August 7, 2012, DOE’s Office of Fossil Energy (“DOE/FE”) issued a Final Opinion and Order granting SPL’s application under Section 3 of the Natural Gas Act (“NGA”)² for long-term, multi-contract authorization to export up to the equivalent of 803 billion cubic feet (“Bcf”) per year—2.2 Bcf per day (“Bcf/d”)—of liquefied natural gas (“LNG”) from the Sabine Pass LNG Terminal (“SPLNG Terminal”) in Cameron Parish, Louisiana, to nations with which the

¹ 10 C.F.R. §§ 590.302(b), 590.303(e), 590.304(f) (2014).

² 15 U.S.C. § 717b (2012).

United States has not entered into a free trade agreement (“FTA”) providing for national treatment for trade in natural gas (“non-FTA nations”).³ Previously, DOE/FE had issued a conditional order granting SPL such authorization in May 2011, specifically conditioning it upon the Federal Energy Regulatory Commission’s (“FERC”) “satisfactory completion” of its environmental review process under the National Environmental Policy Act (“NEPA”),⁴ and “on issuance by DOE/FE of a finding of no significant impact [(‘FONSI’)] or a record of decision pursuant to NEPA.”⁵ FERC issued an Environmental Assessment (“EA”) under NEPA for the Sabine Pass Liquefaction Project in December 2011,⁶ and DOE/FE—acting as a cooperating agency under NEPA⁷—issued a FONSI in August 2012.⁸

On February 27, 2013, SPL submitted an application to DOE/FE under Section 3 of the NGA, in FE Docket No. 13-30-LNG, for authorization to export up to an additional 101 Bcf per year of LNG from the SPLNG Terminal to both FTA nations and non-FTA nations, for a twenty-

³ *Sabine Pass Liquefaction, LLC, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations*, DOE/FE Order No. 2961-A, FE Docket No. 10-111-LNG (Aug. 7, 2012) [hereinafter Sabine Pass Final Non-FTA Order].

⁴ 42 U.S.C. §§ 4321–4347 (2012). FERC authorized the construction and operation of the Liquefaction Project consisting of four LNG production trains (Stages 1 and 2). *See Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.*, 139 FERC ¶ 61,039 (2012), *reh’g denied*, 140 FERC ¶ 61,076 (2012); *see also Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.*, 144 FERC ¶ 61,099 (2013); *Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.*, 146 FERC ¶ 61,117 (2014).

⁵ *Sabine Pass Liquefaction, LLC, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas From Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations* 43, DOE/FE Order No. 2961, FE Docket No. 10-111-LNG (May 20, 2011) [hereinafter Sabine Pass Conditional Non-FTA Order]. DOE/FE had also previously granted SPL authorization to export up to 803 Bcf per year of LNG from the SPLNG Terminal for a thirty-year term to any nation with which the United States currently has, or in the future enters into, an FTA providing for national treatment for natural gas (“FTA nations”). *See Sabine Pass Liquefaction, LLC, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Free Trade Nations*, DOE/FE Order No. 2833, FE Docket No. 10-85-LNG (Sept. 7, 2010).

⁶ *See* 77 Fed. Reg. 277 (Jan. 4, 2012).

⁷ *See* 40 C.F.R. §§ 1501.6, 1503.2, 1506.3 (2013) (detailing rights and responsibilities of cooperating agencies, including right to adopt lead agencies’ NEPA analyses).

⁸ DOE/FE, Finding of No Significant Impact for Sabine Pass Liquefaction, LLC Regarding Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG (Aug. 7, 2012).

year term, in accordance with an LNG Sale and Purchase Agreement (“SPA”) between SPL and Total Gas & Power North America, Inc. (“SPL Total Application”).⁹ On April 2, 2013, SPL submitted an application to DOE/FE in FE Docket No. 13-42-LNG for authorization to export up to an additional 88.3 Bcf per year of LNG from the SPLNG Terminal to both FTA nations and non-FTA nations, for a twenty-year term, in accordance with an LNG SPA between SPL and Centrica plc (“SPL Centrica Application”).¹⁰ Together, these two SPAs account for almost the entire liquefaction capacity of Train 5, for which—together with Train 6—SPL has requested FERC authorization to construct as “Stage 3” of the Sabine Pass Liquefaction Project, also referred to as the Liquefaction Expansion Project.¹¹ Both the SPL Total Application and the SPL Centrica Application included an appendix that addressed the public interest by discussing the projected need for the natural gas to be exported, addressing the 2012 study by NERA Economic Consulting (“2012 NERA Report”),¹² and explaining how the underlying SPAs had been structured to respect the competitive natural gas market.¹³ DOE/FE granted SPL authorization to export LNG to FTA nations pursuant to the SPAs in July 2013.¹⁴

⁹ Application of Sabine Pass Liquefaction, LLC for Long-Term Authorization to Export Liquefied Natural Gas, *Sabine Pass Liquefaction, LLC*, FE Docket No. 13-30-LNG (Feb. 27, 2013).

¹⁰ Application of Sabine Pass Liquefaction, LLC for Long-Term Authorization to Export Liquefied Natural Gas, *Sabine Pass Liquefaction, LLC*, FE Docket No. 13-42-LNG (Apr. 2, 2013).

¹¹ Application for Authorizations Under the Natural Gas Act, *Sabine Pass Liquefaction Expansion, LLC, Sabine Pass Liquefaction, LLC, Sabine Pass LNG, L.P. & Cheniere Creole Trail Pipeline, L.P.*, FERC Docket Nos. CP13-552-000 & CP13-553-000 (Sept. 30, 2013) [hereinafter Stage 3 FERC Application], available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13361086>.

¹² NERA Economic Consulting, *Macroeconomic Impacts of LNG Exports from the United States* (Dec. 3, 2012), available at http://energy.gov/sites/prod/files/2013/04/f0/nera_lng_report.pdf.

¹³ SPL Total Application, App. C; SPL Centrica Application, App. B.

¹⁴ *Sabine Pass Liquefaction, LLC, Order Granting Authorization to Export Liquefied Natural Gas by Vessel Pursuant to the Long-Term Contract with Total Gas & Power North America, Inc. from the Sabine Pass LNG Terminal to Free Trade Agreement Nations*, DOE/FE Order No. 3306, FE Docket No. 13-30-LNG (July 11, 2013); *Sabine Pass Liquefaction, LLC, Order Granting Authorization to Export Liquefied Natural Gas by Vessel Pursuant to the Long-Term Contract with Centrica plc from the Sabine Pass LNG Terminal to Free Trade Agreement Nations* DOE/FE Order No. 3307, FE Docket No. 13-42-LNG (July 12, 2013).

B. DOE/FE's Commissioning of Its LNG Export Study to Guide Subsequent Regulatory Action

In the May 2011 Conditional Sabine Pass Non-FTA Order, DOE/FE acknowledged that projections regarding supply of and demand for natural gas are “subject to change,” and stated that it “intend[s] to monitor those conditions in the future to ensure that the exports of LNG authorized herein and in any future authorizations of natural gas exports do not subsequently lead to a reduction in the supply of natural gas needed to meet essential domestic needs.”¹⁵ To further this approach, DOE/FE commissioned a two-part study of the economic impacts of granting applications for LNG exports (“LNG Export Study”), and issued it for public comment in December 2012.¹⁶ The first part, a study by the U.S. Energy Information Administration (“EIA”), assessed how specified scenarios of increased natural gas exports could affect domestic energy markets.¹⁷ The second part, the 2012 NERA Report, evaluated the macroeconomic impact of LNG exports on the U.S. economy using a general equilibrium macroeconomic model with an emphasis on the energy sector and natural gas in particular.¹⁸ DOE/FE announced that all timely comments received on the LNG Export Study would be “considered in the disposition of the dockets” for all pending applications for LNG export authorizations.¹⁹ Both the American Public Gas Association (“APGA”) and Sierra Club submitted comments on the LNG Export Study.

¹⁵ Sabine Pass Conditional Non-FTA Order at 32.

¹⁶ See 77 Fed. Reg. 73,627, 73,628 (Dec. 11, 2012).

¹⁷ *Id.* at 73,627; see EIA, *Effect of Increased Natural Gas Exports on Domestic Energy Markets* (Jan. 2012), available at http://energy.gov/sites/prod/files/2013/04/f0/fe_eia_lng.pdf.

¹⁸ See 77 Fed. Reg. at 73,627.

¹⁹ DOE/FE, Procedural Order, *Freeport Expansion, L.P., and FLNG Liquefaction, LLC* et al., FE Dockets No. 10-161-LNG et al. (Jan. 28, 2013).

Since issuing the LNG Export Study and reviewing comments thereon, DOE/FE has granted six additional applications for authorization to export LNG to non-FTA nations.²⁰ In evaluating the public interest, each order addressed the LNG Export Study and public comments thereon (including those of Sierra Club and APGA),²¹ and committed to DOE/FE's participation as a cooperating agency in FERC's NEPA process.²²

C. The Instant Application

On September 9, 2013, SPL submitted an application to DOE/FE under Section 3 of the NGA, in FE Docket No. 13-121-LNG, for authorization to export up to an additional 314 Bcf per year of LNG from the Sabine Pass Liquefaction Project to both FTA nations and non-FTA

²⁰ See *Freeport LNG Expansion, L.P. & FLNG Liquefaction, LLC, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations*, DOE/FE Order No. 3282, FE Docket No. 10-161-LNG (May 17, 2013) [hereinafter May 2013 Freeport Non-FTA Order]; *Lake Charles Exports, LLC, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Lake Charles Terminal to Non-Free Trade Agreement Nations*, DOE/FE Order No. 3324, FE Docket No. 11-59-LNG (Aug. 7, 2013) [hereinafter Lake Charles Non-FTA Order]; *Dominion Cove Point LNG, L.P., 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 No. 3331, FE Docket No. 11-128-LNG (Sept. 11, 2013) [hereinafter Cove Point Non-FTA Order]; *Freeport LNG Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC & FLNG Liquefaction 3, LLC, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations*, DOE/FE Order No. 3357, FE Docket No. 11-161-LNG (Nov. 15, 2013) [hereinafter November 2013 Freeport Non-FTA Order]; *Cameron LNG, LLC, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas Vessel from the Cameron LNG Terminal in Cameron Parish, Louisiana to Non-Free Trade Agreement Nations*, DOE/FE Order No. 3391, FE Docket No. 11-162-LNG (Feb. 11, 2014) [hereinafter Cameron Non-FTA Order]; *Jordan Cove Energy Project, L.P., Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Jordan Cove LNG Terminal in Coos Bay, Oregon to Non-Free Trade Agreement Nations*, DOE/FE Order No. 3413, FE Docket No. 12-32-LNG (Mar. 24, 2014) [hereinafter Jordan Cove Non-FTA Order].

²¹ See May 2013 Freeport Non-FTA Order at 30–109; Lake Charles Non-FTA Order at 42–121; Cove Point Non-FTA Order at 56–134; November 2013 Freeport Non-FTA Order at 31–57, 91–143; Cameron Non-FTA Order at 23–48, 71–125; Jordan Cove Non-FTA Order at 26–52, 82–136.

²² See May 2013 Freeport Non-FTA Order at 120–21; Lake Charles Non-FTA Order at 133; Cove Point Non-FTA Order at 150; November 2013 Freeport Non-FTA Order at 163–64; Cameron Non-FTA Order at 140; Jordan Cove Non-FTA Order at 152.

nations, for a twenty-year term.²³ The request corresponds to the volume of LNG that can be produced from the Liquefaction Expansion Project that is not already committed for export pursuant to the SPL Total Application or the SPL Centrica Application. The SPL Stage 3 Application included an appendix that addressed the public interest by discussing the projected need for the natural gas to be exported, as well as addressing the 2012 NERA Report.²⁴ On February 28, 2014, SPL supplemented the Stage 3 Application (as well as the SPL Total Application and the SPL Centrica Application) to augment the record with a 2014 study prepared by NERA Economic Consulting.²⁵

DOE/FE granted SPL authorization to export LNG to FTA nations pursuant to the SPL Stage 3 Application in January 2014,²⁶ and set a deadline of April 14, 2014, for protests and motions to intervene in the proceedings regarding SPL's request for authorization to export LNG to non-FTA nations.²⁷

²³ Application of Sabine Pass Liquefaction, LLC for Long-Term Authorization to Export Liquefied Natural Gas, *Sabine Pass Liquefaction, LLC*, FE Docket No. 13-121-LNG (Sept. 9, 2013) [hereinafter SPL Stage 3 Application].

²⁴ *Id.*, App. B.

²⁵ See Supplement to Applications of Sabine Pass Liquefaction for Long-Term Authorization to Export Liquefied Natural Gas, *Sabine Pass Liquefaction, LLC*, FE Docket Nos. 13-30-LNG, 13-42-LNG & 13-121-LNG (Feb. 28, 2014) [hereinafter SPL Supplement] (attaching NERA Economic Consulting, *Updated Macroeconomic Impacts of LNG Exports from the United States* (Feb. 20, 2014) [hereinafter 2014 NERA Report]).

²⁶ *Sabine Pass Liquefaction, LLC, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Sabine Pass LNG Terminal to Free Trade Agreement Nations*, DOE/FE Order No. 3384, FE Docket No. 13-121-LNG (Jan. 22, 2014).

²⁷ See 79 Fed. Reg. 8698, 8698 (Feb. 13, 2014).

II RESPONSES TO APGA FILING AND SIERRA CLUB FILING

A. Response to APGA Filing

1. APGA Has Not Set Forth an Interest Sufficiently Particular to the Instant Application to Warrant Intervention

DOE/FE's regulations require any person seeking to intervene in a natural gas export authorization proceeding to "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."²⁸ The definition of "interested person" is limited to persons "whose interest in a proceeding goes beyond the general interest of the public as a whole."²⁹ Furthermore, an intervenor's participation "shall be limited to matters affecting asserted rights and interests specifically set forth in the motion to intervene."³⁰ APGA should not be granted intervention under these standards.

The APGA Filing lacks specificity to SPL's instant application, except insofar as it notes the amount of LNG for which SPL seeks export authorization.³¹ For instance, APGA says that SPL may not rely on the record created in FE Docket No. 10-111-LNG to show that granting the SPL Stage 3 Application's request authorization for Non-FTA Nations would be consistent with the public interest,³² but makes no effort to acknowledge or address the public-interest-focused Appendix B to the SPL Stage 3 Application, the SPL Supplement, or the 2014 NERA Report. Rather than having any specific bearing on the SPL Stage 3 Application, the APGA Filing makes

²⁸ 10 C.F.R. § 590.303(b), (c) (2014).

²⁹ *Id.* § 590.102(h).

³⁰ *Id.* § 590.303(g).

³¹ *See* APGA Filing at 2.

³² *See id.* at 6–7.

generalized arguments concerning LNG “exports by SPL and others.”³³ Specifically, it reiterates arguments concerning the LNG Export Study that DOE/FE has repeatedly addressed, including: that the LNG Export Study shows that LNG exports will increase domestic natural gas prices;³⁴ that the LNG Export Study relied on outdated demand estimates;³⁵ that LNG exports will prevent natural gas from being used as a “bridge fuel”;³⁶ that LNG exports will suppress other domestic industries;³⁷ and that the United States lacks a competitive advantage in developing LNG export capacity.³⁸

Additionally, one of the APGA Filing’s purposes seems to be to argue that prior DOE/FE orders authorizing LNG exports under NGA Section 3 were wrongly decided. For instance, it notes that “[t]hroughout Order No. 3413, DOE/FE emphasizes its conclusion from the NERA Study that ‘the exports proposed in this Application are likely to yield net economic benefits to the United States,’”³⁹ and then argues that “such analysis is completely without merit.”⁴⁰ This proceeding is not the proper forum for asking DOE/FE to re-visit previously-issued orders that are unrelated to the SPL Stage 3 Application. DOE/FE’s procedural regulations allow persons to

³³ *Id.* at 6.

³⁴ *Compare id.* at 7–8 with Jordan Cove Non-FTA Order at 54–55 (“APGA cites the EIA Study . . . for the proposition that exporting domestic LNG will significantly increase domestic natural gas prices.”)

³⁵ *Compare* APGA Filing at 9 with Jordan Cove Non-FTA Order at 137 (“Both APGA and Sierra Club contend that Jordan Cove relied on outdated EIA projections from AEO 2011. . . . For several of the same reasons that we reject arguments that the LNG Export Study was based on outdated projections, we reject similar arguments raised by APGA and Sierra Club in this proceeding.”).

³⁶ *Compare* APGA Filing at 10 with Jordan Cove Non-FTA Order at 55 (“APGA contends that price increases associated with exports of LNG will jeopardize the viability of natural gas as a ‘bridge fuel’ . . .”).

³⁷ *Compare* APGA Filing at 11 with Jordan Cove Non-FTA Order at 59 (“According to APGA, economic data show that when domestic energy prices increase, the country loses manufacturing jobs . . .”).

³⁸ *Compare* APGA Filing at 17–18 with Jordan Cove Non-FTA Order at 60 (“APGA also argues that domestic natural gas is at a disadvantage in the world market . . .”).

³⁹ APGA Filing at 19 (quoting Jordan Cove Non-FTA Order at 5).

⁴⁰ *Id.*

intervene, protest against applications, and seek re-hearing of orders granting such applications.⁴¹ But the proper forum for doing so is in the particular docket at issue, not in a wholly different proceeding.

In sum, the APGA Filing does not contain arguments specific to the SPL Stage 3 Application, but rather contains criticisms of the LNG Export Study (on which APGA has already submitted comments to DOE/FE)⁴² and prior DOE/FE orders. Accordingly, intervention by APGA is not warranted.

2. APGA’s Protest Should Be Denied Because the APGA Filing Does Not Show that Granting the Instant Application Would Be Inconsistent with the Public Interest

APGA’s renewed, generalized arguments fail to overcome the presumption that authorizing SPL to export LNG to non-FTA nations pursuant to the SPL Stage 3 Application would be consistent with the public interest. Section 3 of the NGA requires that DOE/FE authorize exports to a foreign country “unless” there is a finding on the public record that such exports “will not be consistent with the public interest.”⁴³ In this regard, DOE/FE consistently has found that NGA Section 3 creates a statutory presumption that a proposed export of natural gas is in the public interest, which opponents bear the burden of overcoming.⁴⁴

⁴¹ See 10 C.F.R. §§ 590.303, 590.304, 590.501 (2014).

⁴² See *Comments of the American Public Gas Association on the NERA-Macroeconomic Impacts of LNG Exports from the United States (“2012 LNG Export Study”)* (Jan. 23, 2013), available at http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/Bertram_Kalisch01_24_13.pdf [hereinafter APGA Comments].

⁴³ 15 U.S.C. § 717b(a) (2012).

⁴⁴ See, e.g., Jordan Cove Non-FTA Order at 6; Sabine Pass Final Non-FTA Order at 28. See also *Phillips Alaska Natural Gas Corp., Order Extending Authorization to Export Liquefied Natural Gas from Alaska*, DOE/FE Order No. 1473 13, FE Docket No. 96-99-LNG (Apr. 2, 1999) (citing *Panhandle Producers and Royalty Owners Ass’n v. Econ. Regulatory Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

The APGA Filing fails to acknowledge this presumption, and incorrectly states that “the burden . . . falls on those supporting LNG exports.”⁴⁵ Perhaps for this reason, just as it has done in prior DOE/FE proceedings, APGA submitted a filing that is “not supported by any significant analysis.”⁴⁶ Regardless, to the extent the APGA Filing can be said to raise substantive arguments, APGA fails to overcome the statutory presumption.

Relying on the EIA’s *Annual Energy Outlook 2013* (“*AEO2013*”), APGA argues that DOE/FE has underestimated domestic demand for natural gas.⁴⁷ (This is an argument that APGA also made in its comments on the LNG Export Study.)⁴⁸ But as DOE/FE explained in the recent Jordan Cove Non-FTA Order, *AEO2013*’s “Reference Case projects domestic supply and demand conditions that are more, not less favorable to exports.”⁴⁹ Specifically, “although total natural gas consumption projected for 2035 was projected to increase by 6 Bcf/d between AEO 2011 and 2013 . . . total domestic dry gas production was projected to increase by more than twice that amount, increasing by 13.8 Bcf/d.”⁵⁰ Furthermore, a recently-released overview of EIA’s *Annual Energy Outlook 2014*⁵¹ projects significantly higher domestic production compared to consumption of natural gas than had been anticipated in either *Annual Energy Outlook 2011* (“*AEO2011*”) or *AEO2013*. Total 2035 production is projected in *AEO2014 Early Release Overview* to be 98.9 Bcf/d, an increase of 26.8 Bcf/d (or 37.1%), compared to 2035 projections in *AEO2011*, while total 2035 consumption is projected to be 83.4 Bcf/d, an increase

⁴⁵ APGA Filing at 24.

⁴⁶ May 2013 Freeport Non-FTA Order at 110; *see also* Lake Charles Non-FTA Order at 123.

⁴⁷ *See* APGA Filing at 8–10.

⁴⁸ *See* APGA Comments at 2–3.

⁴⁹ Jordan Cove Non-FTA Order at 89.

⁵⁰ *Id.*

⁵¹ EIA, *Annual Energy Outlook 2014 Early Release Overview* (Dec. 16, 2013) [hereinafter *AEO2014 Early Release Overview*], available at <http://www.eia.gov/forecasts/aeo/er/>.

of 10.7 Bcf/d, or 14.7%, more than had been projected in *AEO2011*.⁵² DOE/FE has properly found that “[t]hese post-AEO 2011 projections in no way undermine our conclusion regarding the consistency of the proposed exports with the public interest.”⁵³

Related to its argument that the LNG Export Study underestimated demand, APGA also argues that DOE/FE has understated the price increases that will result from natural gas exports, and their consequences on consumers and domestic industry.⁵⁴ (Again, these arguments are largely recycled from APGA’s comments on the LNG Export Study.)⁵⁵ As an initial matter, APGA’s focus on certain industry sectors is misplaced, because it is not DOE/FE’s role to favor one particular use of natural gas over another, or otherwise to select winners among various market sectors.⁵⁶ Indeed, 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 another.”⁵⁷ More fundamentally, the APGA Filing’s discussion on these points consists mainly of speculation rather than substantive analysis. For example, the APGA Filing fails to consider the *AEO2014 Early Release Overview*’s aforementioned projections of increased domestic supplies, or the fact that its projected 2035 Henry Hub price of \$6.92 per million British thermal units (“MMBtu”) is lower than what had

⁵² See Jordan Cove Non-FTA Order at 91.

⁵³ *Id.* at 90.

⁵⁴ See APGA Filing at 9–13.

⁵⁵ See APGA Comments at 3–7.

⁵⁶ DOE’s policy guidelines for natural gas imports and exports state: “The government, while ensuring that the public interest is adequately protected, should not interfere with buyers’ and sellers’ negotiation of the commercial aspects of import [and export] arrangements. The thrust of this policy is to allow the commercial parties to structure more freely their trade arrangements, tailoring them to the markets served.” 49 Fed. Reg. 6684, 6685 (Feb. 22, 1984). Recently, DOE/FE stated: “we continue to be guided by the long-standing principle established in our Policy Guidelines that resource allocation decisions of this nature are better left to the market, rather than the Department, to resolve.” Jordan Cove Non-FTA Order at 100.

⁵⁷ Jordan Cove Non-FTA Order at 100.

been projected in 2011.⁵⁸ The 2014 NERA Report, which APGA does not address, shows that greater exports and domestic demand can be supported at lower prices than had been presented in the 2012 NERA Report.⁵⁹ And while the APGA Filing speculates that LNG exports will thwart a “U.S. manufacturing renaissance,”⁶⁰ the *AEO2014 Early Release Overview* states that “[t]otal manufacturing shipments in the *AEO2014* Reference case . . . increase more rapidly than in the *AEO2013* Reference case,” and that “[t]he growth rate for total industrial energy consumption in the *AEO2014* Reference case is greater than in *AEO2013* as a result of lower natural gas prices, which boost industrial production, and greater availability of natural gas liquids,” even as “natural gas exports increase.”⁶¹ The 2014 NERA Report likewise finds no basis to contend that LNG exports would put U.S. manufacturing at a competitive disadvantage.⁶² Furthermore, APGA’s oversimplification of supply/demand dynamics renders its arguments internally inconsistent: on one hand, APGA argues that Environmental Protection Agency regulation of coal-fired power plants will increase demand for natural gas in the electric generation sector and reduce the elasticity of such demand, thus increasing the price of natural gas;⁶³ but on the other hand, APGA suggests that LNG exports will increase the price of natural

⁵⁸ See *id.* at 90, 91. The *AEO2014 Early Release Overview*’s projected 2035 price of \$6.92/MMBtu is higher than *AEO2013*’s price of \$6.43/MMBtu, see *id.* at 91, but the “price increase starting in 2033 is far less pronounced than was projected in *AEO2013*,” *AEO2014 Early Release Overview* at 7.

⁵⁹ See SPL Supplement at 2, 5; see also 2014 NERA Report at 12 (“These results imply that the United States can be expected to produce a greater level of LNG exports at a lower price than was estimated in the previous NERA study.”).

⁶⁰ APGA Filing at 12.

⁶¹ *AEO2014 Early Release Overview* at 9, 12.

⁶² See SPL Supplement at 9–10; see also 2014 NERA Report at 110–11 (“Our analysis suggests that there is no support for the concern that LNG exports, even in the unlimited export case, will obstruct a chemicals or manufacturing renaissance by moving the United States so far up the global supply curve that competitors in natural gas-importing regions will have lower costs.”).

⁶³ APGA Filing at 9.

gas and thereby ensure continued reliance on coal-fired generation.⁶⁴ (It should be noted that the *AEO2014 Early Release Overview* projects that “[r]eliance on natural gas-fired generation [will] remain[] strong.”)⁶⁵

Elsewhere, APGA takes issue⁶⁶ with the 2012 NERA Report’s conclusion that “[t]he benefits that come from export expansion more than outweigh the losses from reduced capital and wage income to U.S. consumers, and hence LNG exports have net economic benefits in spite of higher natural gas prices,”⁶⁷ and DOE/FE’s related statement that it has not been presented with compelling evidence of distributional consequences so negative as to outweigh those net benefits.⁶⁸ While APGA pronounces itself “hard-pressed to imagine a situation in which distributional consequences are more dire than here,”⁶⁹ it remarkably cites no evidence in support of this stated belief (whereas the 2014 NERA Report indicates that overall benefits would be even greater than had been estimated in the 2012 NERA Report).⁷⁰

B. Response to Sierra Club Filing

Sierra Club has repeatedly sought to intervene, comment, protest, and request reconsideration in proceedings relating to the Sabine Pass Liquefaction Project before both DOE/FE and FERC. SPL hereby refers to and incorporates by reference the numerous filings that have already been made by SPL and its fellow subsidiaries of Cheniere Energy, Inc., in

⁶⁴ *Id.* at 14.

⁶⁵ *AEO2014 Early Release Overview* at 8.

⁶⁶ See APGA Filing at 10–11, 19–23.

⁶⁷ 2012 NERA Report at 7–8.

⁶⁸ See, e.g., Jordan Cove Non-FTA Order at 103.

⁶⁹ APGA Filing at 19–20.

⁷⁰ See SPL Supplement at 12–13; see also 2014 NERA Report at 13 (“Our study suggests that for a given level of cumulative LNG exports, the new 2014 NERA study projects net benefits (as represented by the percentage change in welfare) to be relatively higher than corresponding cases simulated in the 2012 study.”).

response to Sierra Club in those proceedings.⁷¹ Sierra Club has also made filings in the dockets for several other proceedings before DOE/FE and FERC concerning export applications, and the Sierra Club Filing herein consists almost entirely of generalized assertions regarding the putative environmental effects of induced natural gas production as a consequence of LNG exports, rather than information specific to the SPL Stage 3 Application. In fact, as explained in the recently-submitted Stage 3 FERC Application, the environmental effects of the Liquefaction Expansion Project will be minimal, because it will be located entirely within the existing SPLNG Terminal site.⁷² SPL submits the following further responses to the Sierra Club Filing.

⁷¹ See Answer of Sabine Pass Liquefaction, LLC in Opposition to Out-of-Time Intervention of Sierra Club, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG (May 3, 2012); Answer of Sabine Pass Liquefaction, LLC in Opposition to Motion of Sierra Club for Stay, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG (Sept. 21, 2012); Answer of Sabine Pass Liquefaction, LLC in Opposition to Motion to Supplement the Record, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG (Nov. 13, 2012); Answer of Cheniere Marketing, LLC to Motions to Intervene, Protest and Comments, *Cheniere Marketing, LLC*, FE Docket No. 12-97-LNG (Jan. 10, 2013); Answer of Sabine Pass Liquefaction, LLC, in Opposition to Motions to Intervene, Protest, and Comments, *Sabine Pass Liquefaction, LLC*, FE Docket Nos. 13-30-LNG & 13-42-LNG (Oct. 8, 2013); see also Motion to Oppose Late Intervention of Sierra Club, *Sabine Pass Liquefaction, LLC & Sabine Pass LNG, L.P.*, FERC Docket No. CP11-72-000 (Mar. 23, 2012), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=12925559>; Answer of Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P. in Opposition to Motion for Stay, *Sabine Pass Liquefaction, LLC & Sabine Pass LNG, L.P.*, FERC Docket No. CP11-72-000 (May 29, 2012), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=12994824>; Answer of Cheniere Creole Trail Pipeline, L.P. in Opposition to Out-of-Time Motion to Intervene of Sierra Club and Response to Comments, *Cheniere Creole Trail Pipeline, L.P.*, FERC Docket No. CP12-351-000 (Nov. 1, 2012), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13101228>; Answer to Out-of-Time Motion to Intervene of Sierra Club and Response to Comments, *Sabine Pass Liquefaction, LLC & Sabine Pass LNG, L.P.*, FERC Docket No. CP13-2-000 (Feb. 19, 2013), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13184492>; Answer of Cheniere Creole Trail Pipeline, L.P. in Opposition to Motion for Stay, *Cheniere Creole Trail Pipeline, L.P.*, FERC Docket No. CP12-351-000 (Apr. 9, 2013), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13229191>; Answer of Sabine Pass Liquefaction Expansion, LLC, Sabine Pass Liquefaction, LLC, Sabine Pass LNG, L.P., and Cheniere Creole Trail Pipeline, L.P., to Sierra Club's Motion to Intervene, Protest, and Comments, *Sabine Pass Liquefaction Expansion, LLC, Sabine Pass Liquefaction, LLC, Sabine Pass LNG, L.P. & Cheniere Creole Trail Pipeline, L.P.*, FERC Docket Nos. CP13-552-000 & CP13-553-000 (Nov. 15, 2013), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13395513>; Answer of Sabine Pass Liquefaction, LLC, and Sabine Pass LNG, L.P., to Sierra Club's Motion to Intervene, Protest, and Comments, *Sabine Pass Liquefaction, LLC & Sabine Pass LNG, L.P.*, FERC Docket No. CP14-12-000 (Nov. 29, 2013), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13403910>.

⁷² See Stage 3 FERC Application at 16–17.

1. Sierra Club Should Be Denied Intervention

Sierra Club has failed to articulate a sufficient interest in the proceedings regarding SPL's instant application to warrant intervention. Sierra Club asserts that its interests include "[t]he environmental consequences of any gas exports from the Sabine Pass expansion project, including emissions associated with the liquefaction process [and] environmental damage associated with construction and operation of the facility and associated infrastructure," because "Sierra Club members live and work throughout the areas that will be affected by Sabine Pass's export proposals."⁷³ But the latter assertion is not borne out by the exhibit cited in support of it, a declaration that states only that Sierra Club had 2,954 members in Louisiana as of April 14, 2014.⁷⁴ Indeed, only three of Sierra Club's 133 exhibits have any specific relation to SPL's instant application.⁷⁵ Furthermore, to the extent that Sierra Club is attempting to claim an interest in the siting, construction, and operation of the Liquefaction Expansion Project, those matters are within the exclusive jurisdiction of FERC.⁷⁶ It would thus be duplicative and unnecessary to allow Sierra Club to intervene on the basis of its putatively-claimed interest in the siting, construction, and operation of the Liquefaction Expansion Project; and Sierra Club would in no way be "impair[ed] or impeded" in protecting that interest as a result of being denied

⁷³ Sierra Club Filing at 2.

⁷⁴ *See id.*, Ex. 1, ¶ 7.

⁷⁵ *See id.*, Ex. 9 (reproducing SPL's February 27, 2013, request to initiate FERC NEPA pre-filing review process); *id.*, Ex. 19 (reproducing draft resource report submitted to FERC by SPL as part of FERC NEPA pre-filing process for Liquefaction Expansion Project); *id.*, Ex. 117 (reproducing monthly construction progress report for Sabine Pass Liquefaction Project, filed by SPL with FERC on March 20, 2014). SPL notes that Exhibits 70, 71, 72, 89, 90, and 103 appear to be duplicates, and that Exhibits 27, 80, and 122 appear to be missing.

⁷⁶ *See* 15 U.S.C. § 717b(e)(1) (2012).

intervention here.⁷⁷ Indeed, Sierra Club has already submitted NEPA scoping comments to FERC, making many of the same points as in the Sierra Club Filing submitted to DOE/FE.⁷⁸

2. Sierra Club’s Protest Should Be Rejected

Sierra Club has failed to set forth any relevant studies or other evidence that granting the SPL Stage 3 Application, specifically, would be inconsistent with the public interest. Instead, the Sierra Club filing consists almost entirely of a repetition of arguments that have been rejected by DOE/FE.⁷⁹

a. Sierra Club Fails to Overcome the Presumption that SPL’s Application Is Consistent with the Public Interest

Sierra Club once again misstates the standard for evaluating export applications when it says that “Section 3 of the Natural Gas Act provides that DOE/FE cannot authorize exports unless it finds the exports to be in the public interest.”⁸⁰ As discussed above, however, Section 3 of the NGA requires that DOE/FE authorize exports to a foreign country “unless” there is a finding on the public record that such exports “will not be consistent with the public interest,”⁸¹ thereby “creat[ing] a statutory presumption in favor of approval of an export application.”⁸²

⁷⁷ Fed. R. Civ. P. 24(a)(2).

⁷⁸ See NEPA Scoping Comments, *Sabine Pass Liquefaction Expansion et al.*, FERC Docket No. PF13-8-000 (July 10, 2013), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13302755>.

⁷⁹ See Sabine Pass Final Non-FTA Order at 9–28, 5 (denying Sierra Club’s motion to intervene out-of-time, and concluding, “based on a review of the complete record in the FERC proceeding and the arguments raised in the instant proceeding by the Sierra Club, that there is no need or sufficient justification to supplement the environmental review conducted by the FERC”); see also Cove Point Non-FTA Order at 39–44, 45–55, 135–41 (addressing Sierra Club arguments in opposition to export application); November 2013 Freeport Non-FTA Order at 73–88, 147–52 (same); Cameron Non-FTA Order at 54–71, 125–35 (same); Jordan Cove Non-FTA Order at 60–66, 73–79, 137–41 (same).

⁸⁰ Sierra Club Filing at 3.

⁸¹ 15 U.S.C. § 717b(a); see *supra* at 9.

⁸² *Phillips Alaska Natural Gas Corp., Order Extending Authorization to Export Liquefied Natural Gas from Alaska*, DOE/FE Order No. 1473 13, FE Docket No. 96-99-LNG (Apr. 2, 1999) (citing *Panhandle Producers and Royalty Owners Ass’n v. Econ. Regulatory Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

While Sierra Club attempts to downplay the significance of this presumption,⁸³ DOE/FE has previously rejected Sierra Club’s attempts to rebut it by pointing to information that is not specific to a particular export application, finding this insufficient to “overcome the statutory presumption.”⁸⁴ Because Sierra Club relies on the same broad arguments and non-specific assertions, DOE/FE should follow its recent precedent and deny Sierra Club’s protest here, too. To the extent that Sierra Club is arguing for wholesale changes to DOE/FE’s NGA Section 3 process,⁸⁵ such arguments are beyond the scope of an individual application.⁸⁶

b. Sierra Club’s NEPA Arguments Should Be Dismissed

Much of the Sierra Club Filing is focused on issues that are not particularly germane to these proceedings, including environmental issues associated with “the construction and operation of trains 5 and 6, the pipeline extension and expansion, and any other associated infrastructure,”⁸⁷ as well as environmental issues associated with presumed induced shale gas production, and all presumptive direct, indirect and cumulative impacts associated with all proposed export projects. Many of these arguments are irrelevant, whereas others are misplaced because FERC—not DOE/FE—is the lead agency for purposes of conducting NEPA analyses. DOE/FE has agreed to participate as a cooperating agency in FERC’s environmental review process for the Liquefaction Expansion Project, in order to satisfy its NEPA responsibilities.⁸⁸

⁸³ See Sierra Club Filing at 7.

⁸⁴ Cove Point Non-FTA Order at 142; November 2013 Freeport Non-FTA Order at 152; Cameron Non-FTA Order at 133; Jordan Cove Non-FTA Order at 144.

⁸⁵ See, e.g., Sierra Club Filing at 6–7.

⁸⁶ SPL notes that Sierra Club has submitted a Petition for Rulemaking Regarding Natural Gas Export Policy to DOE pursuant to the Administrative Procedure Act, requesting that DOE “promulgate new regulations or guidance defining the process by which it will consider applications to export liquefied natural gas.” Letter from Craig Holt Segall, Sierra Club to Steven Chu, Sec’y, DOE 1 (Apr. 8, 2013), available at <http://www.sierraclub.org/pressroom/downloads/2013-03-LNG-rulemaking-petition.pdf>.

⁸⁷ Sierra Club Filing at 4.

⁸⁸ See 78 Fed. Reg. 35,625, 35,626 (June 13, 2013).

SPL has requested that DOE/FE issue conditional orders granting export authorization, pending completion of the NEPA process for the Liquefaction Expansion Project by FERC and subsequent issuance of a FONSI by DOE/FE.⁸⁹ Sierra Club once again takes issue with this request, asserting that DOE/FE may not issue a conditional order authorizing the export of LNG pending completion of the NEPA review process.⁹⁰ While acknowledging that DOE/FE has the authority to issue conditional orders, Sierra Club nonetheless states that the agency may not do so here because “[a] conditional approval would limit alternatives, and determine subsequent choices,” and would “violate 40 C.F.R. § 1506.1’s prohibition on actions that tend to limit the choice of reasonable alternatives.”⁹¹ Sierra Club’s position is inconsistent with Section 590.402 of the DOE regulations, which provides that “[t]he Assistant Secretary may issue a conditional order *at any time* during a proceeding prior to issuance of a final opinion and order.”⁹² Indeed, DOE/FE has repeatedly rejected Sierra Club’s argument that conditional export authorizations are inappropriate⁹³ (a conclusion that the Sierra Club Filing criticizes as having ignored DOE’s own regulations).⁹⁴

⁸⁹ See SPL Stage 3 Application at 4 & n.11 (citing 10 C.F.R. § 590.402); *see also* SPL Total Application at 4 & n.10; SPL Centrica Application at 4 & n.9.

⁹⁰ *See* Sierra Club Filing at 19–20.

⁹¹ *Id.* at 19.

⁹² 10 C.F.R. § 590.402 (2014) (emphasis added); *see also id.* (“The conditional order shall include the basis for not issuing a final opinion and order at that time and a statement of findings and conclusions. The findings and conclusions shall be based solely on the official record of the proceeding.”); *Ocean State Power, Final Order Granting Authorization to Import Natural Gas from Canada*, 1 ERA ¶ 70,810, DOE/ERA Order No. 243-A, ERA Docket No. 86-62-NG (Sept. 14, 1988) (granting the first conditional authorization by predecessor agency, the Economic Regulatory Administration (“ERA”), to import natural gas from Canada, conditioned upon a final opinion and order from ERA after review by DOE of the final EIS being prepared for the Ocean State Project by FERC); *Pub. Utilities Comm’n of Cal. v. FERC*, 900 F.2d 269, 282 (D.C. Cir. 1990) (stating that an agency can make a final decision, so long as it assesses the environmental data before the decision’s effective date).

⁹³ *See* Cove Point Non-FTA Order at 139; November 2013 Freeport Non-FTA Order at 152; Cameron Non-FTA Order at 130; Jordan Cove Non-FTA Order at 140–41.

⁹⁴ *See* Sierra Club Filing at 19. Specifically, Sierra Club relies on 10 C.F.R. § 1021.211. But that only applies “[w]hile DOE is preparing an EIS that is required under § 1021.300(a) of this part.” Here FERC is preparing an EA, and DOE is a cooperating agency. Furthermore, 10 C.F.R. § 1021.211 *allows* interim actions to be taken in

c. Sierra Club’s Environmental Arguments Are Substantively Flawed

Even assuming *arguendo* that Sierra Club’s environmental arguments were well taken as a procedural matter in the context of a DOE/FE proceeding regarding LNG export authorization, their substance is unsupported by facts, regulations, and precedent.

i. There Is No Basis for a Programmatic Environmental Impact Statement

Sierra Club is incorrect that DOE/FE must prepare a programmatic environmental impact statement (“EIS”) to consider the direct and indirect impacts of all proposed export projects.⁹⁵ As an initial matter, it is FERC’s common practice to evaluate the environmental impacts of proposed expansions that increase LNG terminal capacity—not to mention expansions of interstate pipelines and natural gas storage projects, which are routinely undertaken—through an EA under NEPA (even where the previously-approved project is still under construction).⁹⁶ Preparation of an EA for an expansion project is particularly appropriate where, as here, the proposed expansion facilities will be constructed entirely within previously-analyzed and impacted areas, such that additional impacts will not significantly affect the quality of the human environment and approval of the expansion consequently does not amount to a major federal action requiring an EIS.

accordance with CEQ’s regulations, which allow interim action unless it would “[h]ave an adverse environmental impact” or “[l]imit the choice of reasonable alternatives.” 40 C.F.R. § 1506.1(a) (2013). Neither concern is implicated by a conditional DOE/FE authorization under NGA Section 3.

⁹⁵ See Sierra Club Filing at 12–17.

⁹⁶ See, e.g., 68 Fed. Reg. 6911 (Feb. 11, 2013) (Elba Island Expansion Project); 71 Fed. Reg. 27,493 (May 11, 2006) (SPLNG Terminal Phase II Project); 71 Fed. Reg. 36,769 (June 28, 2006) (Freeport LNG Phase II Project); 71 Fed. Reg. 68,599 (Nov. 27, 2006) (Cameron Terminal Expansion Project); see also *Floridian Nat. Gas Storage Co.*, 140 FERC ¶ 61,167 (2012); *E. Cheyenne Gas Storage, LLC*, 140 FERC ¶ 62,083 (2012); *Monroe Gas Storage Co.*, 133 FERC ¶ 62,203 (2010); *MoBay Storage Hub, LLC*, 131 FERC ¶ 61,152 (2010); *PetroLogistics Nat. Gas Storage, LLC*, 130 FERC ¶ 62,273 (2010); *Midcontinent Express Pipeline, LLC*, 128 FERC ¶ 61,253 (2009); *Wyckoff Gas Storage Co.*, 124 FERC ¶ 62,192 (2008); *Empire Pipeline, Inc.*, 124 FERC ¶ 62,177 (2008); *Caledonia Energy Partners, L.L.C.*, 119 FERC ¶ 62,012 (2007).

Furthermore DOE’s NEPA regulations define a *programmatic* EIS as a “broad-scope EIS . . . that identifies and assesses the environmental impacts of a DOE program.”⁹⁷ Courts have stated that a programmatic EIS reflects the “broad environmental consequences attendant upon a wide-ranging federal program.”⁹⁸ The rationale for preparation of a programmatic EIS is that a coordinated federal program is likely to generate disparate but related impacts.⁹⁹ Numerous companies have proposed to site, construct, and operate LNG export facilities (their associated filings are pending before FERC and DOE/FE); however, these projects are not part of a coordinated federal program, and individually are not part of an orchestrated series of projects directed by a single decision-maker such as the federal government. DOE/FE does not “direct the development” of LNG or natural gas infrastructure on a regional or national basis,¹⁰⁰ and DOE/FE’s review and approval of projects under the NGA does not constitute a coordinated federal program.

ii. Sierra Club’s Position that the Effects of Induced Additional Production of Natural Gas Must Be Considered in the Environmental Analyses Should Be Rejected

Just as it has unsuccessfully alleged in other export authorization proceedings, Sierra Club argues that DOE/FE must consider the environmental effects of induced additional natural gas production from shale in its review of SPL’s instant applications.¹⁰¹ However, both FERC and DOE/FE have rejected this position, finding that impacts that may result from additional

⁹⁷ 10 C.F.R. § 1021.104(b) (2014).

⁹⁸ *Found. on Econ. Trends v. Heckler*, 756 F.2d 143, 159 (D.C. Cir. 1985) (quoting *Nat’l Wildlife Fed’n v. Appalachian Reg’l Comm’n*, 677 F.2d 883, 888 (D.C. Cir. 1981)).

⁹⁹ *Nat’l Wildlife Fed’n*, 677 F.2d at 888.

¹⁰⁰ *See Tex. E. Transmission, LP, and Algonquin Gas Transmission, LLC*, 141 FERC ¶ 61,043 (2012).

¹⁰¹ *See* Sierra Club Filing at 29–32.

shale gas production are not “reasonably foreseeable” indirect effects under NEPA.¹⁰² DOE/FE should reach the same conclusion here and reject Sierra Club’s attempt to evade its settled precedent.¹⁰³

Sierra Club contends that, because Appendix B to the SPL Stage 3 Application states “that the Liquefaction Expansion Project supports and encourages the continued development of natural gas resources,”¹⁰⁴ the NEPA analysis for the Liquefaction Expansion Project “must consider the broader constellation of indirect and cumulative effects” of “all pending export proposals,” including “that LNG exports will induce additional production in the United States.”¹⁰⁵ This argument hinges on the notion that the effects of induced natural gas production nationwide are “reasonably foreseeable” effects of the Liquefaction Expansion Project that must be considered in the NEPA analysis for the Liquefaction Expansion Project. “Indirect effects” under NEPA are those that “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”¹⁰⁶ Courts have emphasized that cognizable indirect effects “are those ‘which are *caused* by the action,’”¹⁰⁷ with the Supreme Court

¹⁰² See *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039, at PP 94–99 (2012) (“[I]mpacts which may result from additional shale gas development are not ‘reasonably foreseeable’ as defined by the [Council on Environmental Quality (‘CEQ’)] regulations.”); see also Sabine Pass Final Non-FTA Order at 28 (“DOE/FE accepts and adopts the Commission’s determination that induced shale gas production is not a reasonably foreseeable effect for purposes of NEPA analysis, for the reasons given by the Commission.”).

¹⁰³ Cf. Sierra Club Filing at 30 (arguing that, in Sabine Pass Conditional Non-FTA Order, DOE FE made “factual and legal errors” in agreeing with FERC that induced shale gas production is not a reasonably foreseeable effect of LNG exports for purposes of NEPA analyses).

¹⁰⁴ SPL Stage 3 Application, App. B at 13.

¹⁰⁵ Sierra Club Filing at 11, 12, 26.

¹⁰⁶ 40 C.F.R. § 1508.8(b) (2013). To the extent that Sierra Club couches its arguments in terms of the “cumulative impacts” of other LNG export projects inducing natural gas production, these too would be indirect effects that must be reasonably foreseeable to be cognizable under NEPA. “Cumulative impact” is defined as “the impact on the environment which results from the incremental impact of the proposed action when added to other past, present, or reasonably foreseeable future actions.” *Id.* § 1508.7. The terms, “impact” and “effect” are interchangeable. See *id.* § 1508.8. “Effects” can be both “direct” and “indirect.” See *id.* Thus, inducement of additional natural gas production would have to be a “reasonably foreseeable” indirect effect of a “reasonably foreseeable” LNG export project in order to be cognizable under NEPA.

explaining that “a ‘but for’ causal relationship is insufficient to make an agency responsible for a particular effect under NEPA.”¹⁰⁸ Instead, “a plaintiff mounting a NEPA challenge must establish that an alleged effect will ensue as a ‘proximate cause,’ in the sense meant by tort law, of the proposed agency action.”¹⁰⁹ Agencies need not consider “speculative” effects.¹¹⁰

FERC has had multiple other opportunities to consider Sierra Club’s argument that the environmental effects of induced production must be considered in the cumulative impacts analysis for proposed natural gas infrastructure projects—including with specific regard to the Sabine Pass Liquefaction Project—and has consistently rejected this position on the grounds that shale development and its associated effects were not sufficiently causally related to the proposed project.¹¹¹ Just as FERC has found previously that induced production was neither “‘reasonably foreseeable’” nor an “‘effect’” for purposes of a NEPA cumulative impacts analysis within the meaning of the CEQ regulations,¹¹² the same is true here.

¹⁰⁷ *City of Shoreacres v. Watersworth*, 420 F.3d 440, 452 (5th Cir. 2005) (quoting 40 C.F.R. § 1508.8(b)).

¹⁰⁸ *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004); *see also Met. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (stating that Congress intended that “the terms ‘environmental effect’ and ‘environmental impact’ in [NEPA] § 102 be read to include a requirement of a reasonably close causal relationship between a change in the physical environment and the effect at issue”).

¹⁰⁹ *City of Shoreacres*, 420 F.3d at 452.

¹¹⁰ *E.g., Webster v. USDA*, 685 F.3d 411, 429 (4th Cir. 2012) (citing *Wyoming v. USDA*, 661 F.3d 1209, 1253 (10th Cir. 2011)); *Sierra Club v. Marsh*, 976 F.2d 763, 768 (1st Cir. 1992).

¹¹¹ *See, e.g., Sabine Pass Liquefaction, LLC & Sabine Pass LNG, L.P.*, 144 FERC ¶ 61,099, at P 46 (2013) (reaffirming that “that impacts which may result from additional gas development are not reasonably foreseeable, as defined in CEQ regulations, and that any additional shale gas development is not an effect of the project for purposes of a cumulative impacts analysis”); *Cheniere Creole Trail Pipeline, L.P.*, 142 FERC ¶ 61,137, at P 54 (2013) (rejecting Sierra Club’s argument “that the resulting increase in gas production activities will be an indirect effect of the proposed project that the [EA] should have addressed”); *see also Transcontinental Pipe Line Co.*, 143 FERC ¶ 61,132, at PP 54–55 (2013) (citing *Pub. Citizen*, 541 U.S. at 767); *Tenn. Gas Pipeline Co., L.L.C.*, 139 FERC ¶ 61,161, at PP 182–93 (2012); *Tex. E. Transmission, LP*, 139 FERC ¶ 61,138, at PP 70–73 (2012); *Cent. N.Y. Oil & Gas Co.*, 137 FERC ¶ 61,121, at PP 81–107 (2011), *reh’g denied*, 138 FERC ¶ 61,104, at PP 33–56 (2012), *aff’d sub nom. Coal. for Responsible Growth and Res. Conservation v. FERC*, 485 Fed. App. 472 (2d Cir. 2012).

¹¹² *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039, at P 96 (2012).

d. Sierra Club’s Economic Arguments Should Be Rejected

Sierra Club alleges that the Liquefaction Expansion Project will “increase domestic gas prices,” “eliminate jobs,” “make most US families worse off,” “cause a net reduction in” gross domestic product (“GDP”), and “increase[] coal consumption.”¹¹³ But it fails to present sufficient evidence on any of these points to rebut the presumption that the Liquefaction Expansion Project is in the public interest. Indeed, Sierra Club’s contentions are based on long-term, nationwide domestic statistical estimates of aggregate natural gas market dynamics that were prepared for a different purpose. Regarding the positive economic effects of the Liquefaction Expansion Project specifically, the Stage 3 FERC Application noted that “Liquefaction Expansion Project will . . . stimulate the Louisiana state, regional, and national economies through job creation, increased economic activity and tax revenues, including the direct creation of approximately 3,000 engineering and construction jobs.”¹¹⁴ And even the broader studies that Sierra Club relies on contradict Sierra Club’s arguments, and contain positive key findings related to the macroeconomic impacts of LNG exports. The 2012 NERA Report, for instance, found that “[a]ll export scenarios are welfare-improving for U.S. consumers.”¹¹⁵

Sierra Club contends that “exports will . . . reduce employment.”¹¹⁶ This allegation is made without any reference to the Liquefaction Expansion Project itself, which—as noted above—is projected to create thousands of jobs. Much of the job-loss that Sierra Club contends will result from exports would theoretically be attributable to induced production of natural

¹¹³ Sierra Club Filing at 61, 21, 64, 68, 29.

¹¹⁴ Stage 3 FERC Application at 20.

¹¹⁵ 2012 NERA Report at 55.

¹¹⁶ Sierra Club Filing at 66.

gas,¹¹⁷ and therefore—as discussed above—would not be a cognizable indirect effect of the Liquefaction Expansion Project. In any event, the 2014 NERA Report concluded that, in all scenarios analyzed, LNG exports would reduce the rate of U.S. unemployment compared to scenarios in which exports did not occur.¹¹⁸

Sierra Club also argues that “exports will regressively transfer wealth from working class families to large corporations.”¹¹⁹ Sierra Club’s professed concern for the working class apparently does not prevent it from opposing a project that would support thousands of construction jobs. It is true that the 2012 NERA Report predicted that, “[a]t the same time that LNG exports create higher income in total in the U.S., they shift the composition of income so that both wage income and income from capital investment are reduced.”¹²⁰ But LNG exports would also create two additional sources of income, in the form of higher export revenues and higher natural gas income.¹²¹ Thus, the 2012 NERA Report concluded that “[t]he benefits that come from export expansion more than outweigh the losses from reduced capital and wage income to U.S. consumers, and hence LNG exports have net economic benefits in spite of higher natural gas prices.”¹²² This conclusion was further confirmed in the 2014 NERA Report, which found that U.S. households’ real income and welfare would consistently increase as the volume

¹¹⁷ *See, e.g., id.* at 64 (discussing “the ‘resource curse’ and boom-bust cycle that plagues extractive economies”). DOE/FE has responded that, “[t]o the extent that the ‘bust’ cycles Sierra Club envisions are brought on by price declines that render existing resources uneconomic to produce, we do not see compelling evidence that the exports will exacerbate this risk,” and that, “[i]f anything, it seems more likely that . . . export[s] to non-FTA countries will deepen and diversify the market for U.S.-produced natural gas, making the potential for a precipitous price-driven downturn in production activities less likely, not more likely.” Jordan Cove Non-FTA Order at 139.

¹¹⁸ *See* SPL Supplement at 13–14; *see also* 2014 NERA Report at 114 (“We find that, depending on the speed at which export capacity is built, the unemployment rolls could be reduced by as many as 45,000 workers on average over the period from 2013 to 2018.”).

¹¹⁹ Sierra Club Filing at 21.

¹²⁰ 2012 NERA Report at 7.

¹²¹ *See id.*

¹²² *Id.* at 7–8.

of LNG exports increase.¹²³ Like APGA, Sierra Club has not presented any evidence showing negative distributional consequences to any particular socioeconomic sector.¹²⁴

Finally, Sierra Club asserts that exports “may cause a net decrease in GDP,” which it claims was the 2012 NERA Report’s only measure of the public interest.¹²⁵ The premise is incorrect: as DOE/FE has explained, “the NERA study presented the macroeconomic impacts of LNG exports using the different statistical measures [of] price, welfare, GDP, aggregate consumption, aggregate investment, natural gas export revenues, sectoral output, and wages and other household incomes. NERA did not confuse the concepts of welfare growth and GDP growth.”¹²⁶ Nor is there any basis for the argument that LNG exports will reduce GDP, for which the 2012 NERA Report predicted positive impacts under all modeled scenarios.¹²⁷ The 2014 NERA Report confirms as much: it concludes that, in all of the scenarios analyzed, the United States would experience net economic benefits resulting from increased LNG exports relative to a case in which LNG exports do not occur, as measured by a broad metric of economic welfare, or by more common measures such as real household income or real GDP.¹²⁸ Indeed, as to GDP specifically the 2014 NERA Report’s scenarios projected potential increases of as much as \$86 billion by 2038.¹²⁹

¹²³ 2014 NERA Report at 7 (“Although there are costs to consumers in the form of higher energy prices and lower consumption ... these costs are more than offset by increases in export revenues, along with wealth transfers from overseas received in the form of payments for liquefaction services. The net result is an increase in U.S. households’ real income and welfare.”).

¹²⁴ *See supra* at 13. Indeed, DOE/FE has dismissed this same argument by Sierra Club, finding that Sierra Club had failed to present compelling evidence of distributional consequences “so negative as to outweigh net positive benefits to the U.S. economy as a whole.” Lake Charles Non-FTA Order at 87.

¹²⁵ Sierra Club Filing at 69.

¹²⁶ Lake Charles Non-FTA Order at 78.

¹²⁷ *See* 2012 NERA Report at 56–57.

¹²⁸ *See* 2014 NERA Report at 7.

¹²⁹ *Id.* at 94.

III
CONCLUSION

For the foregoing reasons, the intervention motions of APGA and Sierra Club should be denied, and their protests should be rejected.

Respectfully submitted,



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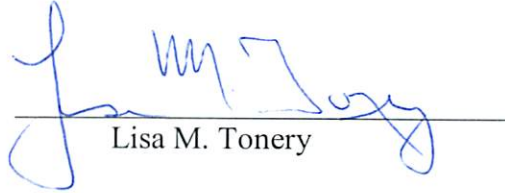
Dated: April 29, 2014

VERIFICATION

State of New York)

County of New York)

BEFORE ME, the undersigned authority, on this day personally appeared Lisa M. Tonery, who, having been by me first duly sworn, on oath says: that she is the Attorney for Sabine Pass Liquefaction, LLC, and is duly authorized to make this Verification; that she has read the foregoing instrument; and that the facts therein stated are true and correct to the best of her knowledge, information, and belief.



Lisa M. Tonery

SWORN TO AND SUBSCRIBED before me on the 29th day of April, 2014.

Name: 
Title: Notary Public


My Commission expires:

McCALLUM GEORGE DIONNE
Notary Public, State of New York
No. 01MC6249522
Qualified in Queens County
Commission Expires Oct. 11, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at New York, N.Y., this 29th day of April, 2014.


Dionne McCallum-George
*Legal Secretary on behalf of
Sabine Pass Liquefaction, LLC*