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DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

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IN THE MATTER OF)
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DELFIN LNG, LLC) FE DOCKET NO. 13-147-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 Delfin LNG LLC (“Delfin”) 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. Delfin 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 Delfin’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. Delfin’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 Delfin's project will have impacts that are similar to those of other proposed export projects. Delfin is mistaken, however, in arguing that this similarity provides any ground for denying Sierra Club's motion to intervene here. Answer at 10. 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 Delfin's project is approved are similar to injuries Sierra Club will suffer if other LNG export projects proceed, Delfin'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 Delfin'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 Delfin 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

On one hand, Delfin faults Sierra Club for raising arguments in this proceeding that have been raised elsewhere, Answer at 9-10, while on the other, Delfin argues that it would be inappropriate for DOE/FE to engage in consolidated review of these environmental issues, Answer at 26. Delfin cannot have it both ways.

Sierra Club agrees that DOE/FE's procedures for environmental review of LNG export projects are 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 filed before the lead NEPA agency. Under DOE/FE's current practice, 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. DOE/FE took a step in this direction with the macroeconomic study, where DOE/FE automatically included comments on that study in a subset of pending export dockets, but even there, DOE/FE should have gone further and responded to comments in an independent proceeding, rather than repeatedly addressing issues in individual export dockets. Failing that, at a minimum, DOE/FE should automatically include those studies and all comments thereon in the dockets for *all* individual LNG export applications.

² See DOE/FE Orders 2961A, 2961B.

Thus, while Delfin is correct that Sierra Club's protest raises many issues that Sierra Club has raised elsewhere, Answer at 11, 25, DOE/FE's current practice requires these issues to be raised and considered anew here.

Furthermore, as Sierra Club explained, it is settled law that agency decisions such as prior DOE/FE export authorizations do not establish precedent that binds DOE/FE in future adjudications. Delfin provides no contrary authority. Because DOE/FE is not bound to follow decisions concerning separate export applications, Sierra Club appropriately explained why DOE/FE should not choose to follow those decisions here. Delfin's argument that Sierra Club should appeal decisions Sierra Club disagrees with is irrelevant. Although Sierra Club retains the right to appeal DOE/FE authorizations, that possibility merely highlights the fact that DOE/FE should not treat its conditional authorizations as establishing precedent for purposes of this proceeding.

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. Delfin 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.

IV. Induced Gas Production

As Sierra Club explained, Delfin's project will induce additional gas production. Delfin does not dispute this fact: indeed, Delfin's answer unconditionally defends the EIA LNG Export Study and other analyses that model these impacts.

Nonetheless, Delfin 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. Delfin 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 23. Yet the language Delfin quotes from *Department of Transportation* clearly distinguishes that case from the 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 '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.

Delfin 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 Delfin's project will come from, Delfin 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 Delfin's gas demand. We note that the pertinent question is not where the specific gas molecules exported by Delfin's project are produced, but the potentially simpler question of where production will increase in response to Delfin's project. While the gas exported by Delfin may come from one field one week and another the next, changes in the location of new production are likely to be less flitting.

Delfin 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 Delfin's project—including emissions from production that the project would undoubtedly induce.

Finally, Delfin's attempted juxtaposition of LNG exports with EPA's recently proposed greenhouse gas emissions standards for existing power plants, Answer

at 18, mischaracterizes Sierra Club's argument. Sierra Club argues that NEPA and the Natural Gas Act require analysis of the extent to which LNG exports will induce additional gas production, and the harmful effects of this production must be weighed in the public interest assessment. EPA attempted precisely this type of analysis in its recent powerplant proposal. EPA discussed the extent to which gas production would increase in response to the rule; EPA considered, for example, the methane that would be emitted by this production; and EPA factored these effects into its ultimate assessment of the rule's benefit. This type of analysis and weighing is required here.

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

Sierra Club's protest shows that Delfin understates the adverse economic impact of the proposed project. Delfin'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. Delfin asserts that DOE/FE's conditional authorizations have rejected protestors' criticisms of the EIA study, Answer at 15, but Delfin 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. The discussion of "net" impacts in the NERA study, for example, is not an assessment of LNG exports' overall impacts on the public interest.

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 Delfin'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 Delfin 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 Delfin'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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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 27, 2014.

Dated at San Francisco, CA, this 27th day of June, 2014.



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VERIFICATION

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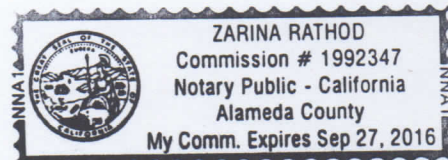
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Pursuant to 10 C.F.R. §590.103(b), Nathan Matthews, being duly sworn, affirms that he is authorized to execute this verification, that he has read the foregoing document, and that facts stated herein are true and correct to the best of his knowledge,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

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

Notary Public



My commission expires: 09-27-2016