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June 8, 2017

Via Email

fergas@hq.doe.gov; larine.moore@hq.doe.gov

Ms. Larine A. Moore
Office of Fossil Energy (FE-34)
U.S. Department of Energy
1000 Independence Ave., SW
Washington, D.C. 20585

Re: Golden Pass Products LLC, FE Docket No. 12-156-LNG

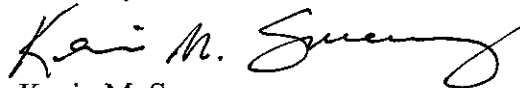
Dear Ms. Moore:

Transmitted herewith for filing in the referenced proceeding is the Motion for Leave to Answer and Answer of Golden Pass Products LLC to the Request for Rehearing and Motion for Stay of Sierra Club.

In addition to this e-mail submission, a hard-copy original has been transmitted to the Department of Energy by U.S. Mail. In accordance with 10 C.F.R. § 590.107(e), this submission will be served by mail to all persons listed on the attached Certificate of Service.

Please acknowledge receipt of this submission by email to ksweeney@jhenergy.com. Please contact me if you have any questions.

Sincerely,



Kevin M. Sweeney

Counsel for Golden Pass Products LLC

cc: John Anderson, Director, Office of Regulation and International Engagement
Amy Sweeney, Director, Division of Natural Gas Regulation
Benjamin Nussdorf, Senior Regulatory Advisor, Division of Natural Gas Regulation
Cassandra Bernstein, Attorney-Advisor, Office of the Assistant General Counsel for
Electricity & Fossil Energy
Kyle Moorman, Natural Gas Analyst, Division of Natural Gas Regulation

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

Golden Pass Products LLC

)

FE Docket No. 12-156-LNG

**MOTION FOR LEAVE TO ANSWER
AND ANSWER OF GOLDEN PASS PRODUCTS LLC
TO REQUEST FOR REHEARING AND
MOTION FOR STAY OF SIERRA CLUB**

Pursuant to Rules 302 and 505 of the Rules of Practice and Procedure of the Department of Energy (“DOE”), 10 C.F.R. §§ 590.302 and 590.505 (2016), Golden Pass Products LLC (“GPP”) hereby submits this Motion for Leave to Answer and Answer to the Request for Rehearing and Motion for Stay filed by Sierra Club in the captioned proceeding on May 25, 2017.¹ Sierra Club requests rehearing of Order No. 3978, in which DOE Office of Fossil Energy (“DOE/FE”) authorized GPP to engage in long-term, multi-contract export of liquefied natural gas (“LNG”) to Non-Free Trade Agreement countries, issued in the captioned proceeding on April 25, 2017.² Sierra Club’s Request for Rehearing for the most part does no more than reiterate generic arguments already considered and rejected by the DOE, both in Order No. 3978 and all other prior proceedings in which these same generic arguments have been made by Sierra Club. GPP respectfully requests that DOE/FE deny rehearing and the motion for stay.

BACKGROUND

On October 26, 2012, GPP filed an application under Section 3 of the Natural Gas

¹ Hereinafter “SC RR.”

² *Golden Pass Products LLC*, FE Docket No. 12-156-LNG, DOE/FE Order No. 3978 (April 25, 2017)(“Order No. 3978”).

Act (“NGA”)³ and Part 590 of the DOE Regulations for long-term, multi-contract authority to export up to 740 billion cubic feet equivalent of domestically produced natural gas per year in the form of LNG to non-Free Trade Agreement (“NFTA”) countries.⁴ GPP proposed to make these exports from facilities constructed and operated adjacent to and contiguous with the existing Golden Pass LNG import terminal in Sabine Pass, Texas.⁵

Order No. 3978 authorizes GPP to export 808 billion cubic feet (“Bcf”) per year of domestically produced natural gas as LNG by vessel from the proposed export terminal facilities near Sabine Pass, Texas, to NFTA countries.⁶ Order No. 3978 further granted GPP’s requested authority to (1) engage in natural gas purchases and LNG sales for export and (2) act as agent for third parties.⁷

³ 15 U.S.C. § 717b.

⁴ An NFTA country is any country: (1) that has or in the future develops the capacity to import LNG via ocean-going carrier; (2) with which the United States (“U.S.”) does not prohibit trade; and (3) does not have a Free Trade Agreement (“FTA”) requiring the national treatment for trade in natural gas.

⁵ The FERC authorized the construction and operation of the Golden Pass LNG import facilities in 2005. *Golden Pass LNG Terminal LP and Golden Pass Pipeline LP*, 112 FERC ¶ 61,041 (2005) (“Certificate Order”), *amended, Golden Pass Pipeline LP*, 117 FERC ¶ 61,015, and 117 FERC ¶ 61,332 (2006). The import facilities were placed in service in 2011. In addition to the import facilities, the FERC authorized Golden Pass Pipeline LLC (“GPPL”) to construct and operate an approximately 70-mile interstate pipeline to transport natural gas from the terminal to interconnections with several existing inter- and intrastate pipelines (“GPPL Pipeline”).

⁶ The authorized annual quantity of 808 Bcf exceeds the 740 Bcf stated in GPP’s application due to DOE/FE’s use of a different conversion factor to convert million metric tons to Bcf. Order No. 3978, pp. 1-2.

⁷ On September 27, 2012, in *Golden Pass Products LLC*, FE Docket No. 12-88-LNG, Order No. 3147, the DOE/FE granted GPP authorization under Section 3 of the NGA for long-term, multi-contract authorization to export domestically produced LNG to FTA countries, defined as any country: (1) with which the U.S. has, or in the future enters into, a Free Trade Agreement requiring national treatment for trade in natural gas; and (2) that has or in the future develops the capacity to import LNG via ocean-going carrier. The authorized annual export quantity is 740 Bcf.

Prior to issuance of DOE/FE Order No. 3978, the Federal Energy Regulatory Commission (“FERC”) issued an order on December 21, 2016, authorizing GPP under NGA Section 3 to site, construct and operate the facilities near Sabine Pass, Texas, for the export of LNG.⁸ GPP filed its application with the FERC on July 7, 2014.

The FERC’s authorization of GPP’s proposed export facilities under NGA Section 3 followed a mandatory National Environmental Policy Act of 1969 (“NEPA”) pre-filing review process that commenced in May 2013, more than a full year before GPP filed its formal application with the FERC. This environmental review continued following GPP’s filing of the formal application in July 2014, referred to above.⁹ Pursuant to the Energy Policy Act of 2005,¹⁰ the FERC served as the lead agency for the review, including the preparation of a draft and final environmental impact statement (“EIS”).¹¹ DOE/FE, along with the U.S. Environmental Protection Agency (“EPA”), the U.S. Army Corps of Engineers (“USACE”), the U.S. Department of Transportation (“DOT”), and the U.S. Coast Guard (“USCG”) all participated as cooperating agencies in the preparation of the EIS.¹²

⁸ *Golden Pass Products LLC, et al.*, FERC Docket Nos. CP14-517-000, *et al.*, 157 FERC ¶ 61,222 (December 21, 2016)(“FERC Order”). The FERC Order also authorized GPPL under NGA section 7(c) and Part 157 of the FERC’s regulations to construct and operate compression and looping facilities in Texas and Louisiana to enable GPPL to transport up to 2.5 Bcf/d of domestic natural gas supplies to the GPP Terminal for liquefaction and export.

⁹ *See*, 15 U.S.C. § 717b-1(a)(requiring that the formal process commence no sooner than six months after issuance of a notice that the pre-filing process has commenced).

¹⁰ 15 U.S.C. § 717n(b); Pub. L. 109-58, title III, §313(a), Aug. 8, 2005, 119 Stat. 688.

¹¹ The lead agency has primary responsibility for preparation of the required NEPA documents, and may request that other agencies having jurisdiction by law or special expertise serve as cooperating agencies. *See* 40 C.F.R. §§ 1501.5, 1501.6, 1508.5, 1508.16 (2016).

¹² The regulatory functions of NGA Section 3 were transferred to the Secretary of Energy in 1977 pursuant to section 301(b) of the Department of Energy Organization Act. 42 U.S.C. § 7151(b) (2006). The DOE Secretary subsequently delegated to the FERC the authority to approve or

(footnote continued on next page)

The FERC Staff issued the draft EIS for the GPP and GPPL Expansion Projects on March 25, 2016. Following further public meetings and submission of written comments on the draft EIS, the FERC Staff issued the FEIS on July 29, 2016. The FEIS addressed geology; soils; water resources; wetlands; vegetation; wildlife and fisheries; special status species; land use, recreation, and visual resources; socioeconomics; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives. The FEIS concluded that if the proposed facilities were constructed and operated in accordance with applicable laws and regulations, the adverse environmental impacts would be reduced to less-than-significant levels. To that end, the FEIS recommended the adoption of 83 Environmental Conditions. The FERC incorporated all of the Staff's recommended environmental conditions into the December 16, 2016 Order approving the proposed facilities.

The Sierra Club intervened in the FERC proceeding and protested the proposed LNG export facilities. However, the Sierra Club did not file a request for rehearing of the FERC Order. Consequently, pursuant to NGA Section 19(a), 15 U.S.C. §717r(a), the FERC's Order approving the construction and operation of the GPP and GPPL projects is now final and no longer subject to rehearing or review. In Order No. 3978, the DOE/FE conditioned GPP's LNG export authorization on, among other things, a requirement that GPP "shall ensure compliance with all terms and conditions established by the FERC in

disapprove the construction and operation of facilities for import or export of natural gas, the siting of such facilities, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports. The Secretary's current delegation of authority to the FERC relating to import and export facilities was renewed by the Secretary's DOE Delegation Order No. 00-044.00A, effective May 16, 2006. Thus, DOE/FE administers NGA 3(a) of the Natural Gas Act, which governs import/export authorizations, while FERC administers Section 3(e), which governs terminal siting authority, and other provisions.

the EIS, including the 83 conditions adopted in the FERC Order.” Order No. 3978, Condition H. GPP did not challenge any of these conditions, and it intends to comply fully with each of them.

MOTION FOR LEAVE TO ANSWER

If and to the extent necessary, GPP respectfully requests leave to file this Answer. The DOE/FE regulations at Section 590.505¹³ do not ordinarily permit answers to applications for rehearing filed under NGA Section 19(a). However, the Sierra Club accompanied its Application for Rehearing with a Motion for Stay. Moreover, the Sierra Club’s arguments in support of its Motion for Stay overlap with the arguments presented in its Application for Rehearing. Thus, the arguments set forth in this Answer also address the arguments posed by the Sierra Club’s Motion for Stay and are therefore permissible responses to the Motion for Stay. GPP therefore respectfully submits that this Answer will further the public interest by clarifying the positions of the parties and the issues presented by the Sierra Club’s arguments, and therefore should be considered by the DOE/FE in this matter. Moreover, this Answer will not unduly delay this proceeding and will not prejudice any party.

The DOE/FE has granted similar motions. *See, e.g., Cheniere Marketing, LLC, et al.*, FE Docket No. 12-97-LNG (May 26, 2016)(DOE/FE Order No. 3638-A), at p. 6 n 27 (referencing *Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC*, “Order Granting Motion for Leave to Answer for the Purpose of Further Consideration,” FE Docket No. 12-97-LNG (July 14, 2015); *Freeport LNG Expansion, L.P., et al.*, FE Docket No. 11-61-LNG (December 4, 2015) (DOE/FE Order No. 3357-C) at p. 9; and

¹³ 10 C.F.R. § 590.505 (2016).

Dominion Cove Point LNG, LP, FE Docket No. 11-128-LNG (July 14, 2015)(Order Granting Motion for Leave to Answer for the Purpose of Further Consideration). For the same reasons DOE/FE accepted the Answers filed in these previous proceedings, the DOE/FE should accept GPP's Answer in this proceeding. GPP accordingly requests that DOE/FE accept GPP's Answer and deny Sierra Club's request for rehearing and stay of Order No. 3978.

ANSWER

I. SIERRA CLUB'S APPLICATION FOR REHEARING FAILS TO OVERCOME THE NGA'S PRESUMPTION THAT GPP'S PROPOSED LNG EXPORT TO NFTA COUNTRIES IS IN THE PUBLIC INTEREST.

A. NGA Section 3(a) Establishes a Rebuttable Presumption Favoring Natural Gas Exports to NFTA Countries.

In Order No. 3978, DOE/FE held that NGA Section 3(a) creates a rebuttable presumption that a proposed export of natural gas is in the public interest, and found that the protestors, American Public Gas Association ("APGA") and Sierra Club, "failed to overcome the statutory presumption that the proposed export authorization is consistent with the public interest."¹⁴

Section 3(a) of the NGA¹⁵ sets forth the standard for approval of LNG exports to NFTA countries. It directs that "[t]he [Secretary] *shall issue such order* upon application, *unless*, after opportunity for hearing, it finds that *the proposed exportation or importation will not be consistent with the public interest.*"¹⁶ Thus, Section 3(a)

¹⁴ Order No. 3978, pp. 169; see also, *Id.*, p. 146. APGA did not file an application for rehearing of Order No. 3978.

¹⁵ 15 U.S.C. § 717b(a).

¹⁶ *Id.*, emphasis added.

establishes a rebuttable presumption that a proposed export of natural gas is in the public interest, and the DOE/FE must grant an export application unless the export is found to be inconsistent with the public interest. *Panhandle Producers and Royalty Owners Association v. Economic Regulatory Administration*, 822 F.2d 1105, 1111-1112 (D.C.Cir. 1987)(“*PPROA*”).

Opponents of an export application must make an affirmative showing of inconsistency with the public interest in order to overcome the rebuttable presumption favoring export applications. Sierra Club contends (at p. 1) that *PPROA* “did not hold that any such presumption was compelled by the statutory text,” but in fact the in *PPROA* court stated that “[a] presumption favoring import authorization, then, is completely consistent with, if not mandated by, the statutory directive.”¹⁷ Thus, DOE/FE’s interpretation of NGA Section 3(a) is consistent with the NGA and prior precedent in its application of the burden of proof, and Sierra Club’s burden of proof argument is without merit.

In evaluating an export application, the DOE/FE focuses on the following criteria:¹⁸

the domestic need for the gas; whether the proposed exports pose a threat to the security of domestic natural gas

¹⁷ *PPROA*, 822 F.2d 1111 citing, *Public Service Commission v. ERA*, 777 F.2d 31, 35 (D.C. Cir. 1985); *West Virginia Public Services Commission v. DOE*, 681 F.2d 847, 856 (D.C. Cir. 1982); *Cia Mexicana de Gas, S.A. v. FPC*, 167 F.2d 804, 806 (5th Cir. 1948). The court in *PPROA* noted that in *West Virginia*, the court had observed that the under a previous delegation order the burden had been placed on the applicant, 681 F.2d at 851, but observation does not withstand the actual wording of NGA Section 3(a) as subsequently and consistently interpreted by the courts.

¹⁸ *Sabine Pass Liquefaction*, Order No. 2961, at 29. This approach is consistent with DOE Delegation Order No. 0204-111, which previously guided DOE/FE decisions on export applications but is no longer in effect. *Id. See also, e.g., ConocoPhillips Alaska*, Order No. 2500, at 44-45; *Phillips Alaska*, Order No. 1473, at 13-14.

supplies; and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE/FE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements.

The DOE/FE “applies the principles described in the Secretary’s natural gas import policy guidelines[,] which presume the normal functioning of the competitive market will benefit the public.”¹⁹ Accordingly, the DOE/FE examines whether the proposed exports will be conducted on a market-responsive, competitive basis.²⁰ The DOE/FE gas import and export policies were “designed to establish natural gas trade on a market-competitive basis and to provide immediate as well as long-term benefits to the American economy from this trade.”²¹

Moreover, and as discussed in detail in Order No. 3978, DOE/FE did not rely on the statutory burden of proof under Section 3(a) in authorizing GPP’s export of LNG. DOE/FE commissioned multiple studies of the economic impacts of the proposed export in conjunction with other export authorizations, and also reviewed and discussed the economic studies GPP submitted as part of its application.²² In addition, DOE/FE reviewed the potential environmental impacts of the proposed export, both as a participating agency in the NEPA review conducted by the FERC and through reports it

¹⁹ *Phillips Alaska*, Order No. 1473, at 47 (citation omitted).

²⁰ “New Policy Guidelines and Delegation Orders Relating to the Regulation of Natural Gas,” 49 *Fed. Reg.* 6684-01 (Feb. 22, 1984) (hereinafter the “Policy Guidelines”). The DOE/FE has repeatedly reaffirmed the continued applicability of the guidelines and has consistently held that they apply equally to export applications (though written to apply to imports). *Yukon Pacific*, Order No. 350; *Phillips Alaska*, Order No. 1473; *ConocoPhillips Alaska*, Order No. 2500, *Sabine Pass*, Order No. 2961.

²¹ Policy Guidelines, at 6684

²² Order No. 3978, pp. 16 – 23, 136 - 139 (discussing studies by Deloitte MarketPoint and the Perryman Group, both commissioned by GPP and filed with GPP’s application).

commissioned on additional potential impacts, discussed below. Both the statutory presumption established by Section 3(a) and the weight of the evidence of the record amply supports the authorization. Indeed, Sierra Club did not present an affirmative evidentiary study in opposition to GPP's proposed export authorization, but instead focused on critiques of the evidence presented by GPP, and the studies commissioned by DOE/FE. Sierra Club's unfounded criticisms of the evidence in the record are wholly insufficient to overcome its obligation to present affirmative evidence to support its position.

B. NEPA is Essentially Procedural, and Does Not Modify the Section 3(a) Rebuttable Presumption.

Sierra Club contends on rehearing that DOE/FE had an “independent” and “affirmative” obligation to investigate “environmental impacts” of the proposed export, and to “weigh” those impacts in the NGA Section 3(a) “public interest” analysis. SC RR at p. 1. This argument misconstrues Section 3(a) of the NGA and NEPA. In addition to the public interest determination required under NGA Section 3(a), authorizations to export natural gas also require an environmental review under NEPA.²³ Thus, the NEPA review is additional to and apart from the public interest determination DOE is required to undertake pursuant to NGA Section 3(a).²⁴

NEPA is an “essentially procedural” statute intended to ensure “fully informed

²³ *Sierra Club v. Federal Energy Regulatory Commission*, 827 F.3d 36, 41 (D.C.Cir. 2016); *See* 42 U.S.C. § 4332(2)(C).

²⁴ Indeed, Sierra Club implicitly acknowledges the distinction between NGA Section 3(a) and NEPA in stating that “DOE has obligations under NEPA that are distinct from DOE’s Natural Gas Act obligations.” SC RR at p. 2.

and well considered” decision-making.²⁵ NEPA itself does not mandate particular results.²⁶ Citing *National Association for the Advancement of Colored People v. FPC*, 425 U.S. 662, 669-70 (1976), Sierra Club appears to contend that determination of the “public interest” under Section 3 includes an assessment of environmental impacts as an outcome-determinative consideration, rather than as a procedural requirement as provided for under NEPA.

The cited discussion, however, does not address the role of NEPA review in authorizing exports under NGA Section 3. Indeed, in *NAACP*, the Court noted that it has

consistently held that the use of the words “public interest” in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation

[T]o give content and meaning to the words ‘public interest’ as used in the Power and Gas Acts, it is necessary to look to the purposes for which the Acts were adopted. In the case of the Power and Gas Acts it is clear that the principal purpose of those Acts was to encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.

425 U.S. at 669-670. Viewed in this context, the Court’s statement that the FERC “has authority to consider conservation, environmental, and antitrust questions” does not alter the intent under Section 3, or modify NEPA and the body of precedent interpreting NEPA in the context of the NGA.

Sierra Club apparently seeks denial of GPP’s application to export LNG to NFTA

²⁵ *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978).

²⁶ *Robertson v. Methow Valley*, 490 U.S. 332, 350 (1989); *Sierra Club v. U.S. Army Corps of Eng’rs*, 803 F.3d 31, 36-37 (D.C. Cir. 2015). *Lemon v. Geren*, 514 F.3d 1312, 1315 (D.C.Cir. 2008)(citing *Robertson*, 490 U.S. at 349)(“Preparation of an environmental impact statement will never ‘force’ an agency to change the course of action it proposes. The idea behind NEPA is that if the agency’s eyes are open to the environmental consequences of its actions and if it considers options that entail less environmental damage, it may be persuaded to alter what it proposed.”)

countries to prevent or postpone an unquantified level of domestic natural gas production from unspecified and undefined locations purportedly due to the proposed export authorization.²⁷ Sierra Club apparently further seeks to prevent the construction and operation of the GPP LNG export facilities approved by the FERC (although, as noted above, Sierra Club did not request rehearing of the FERC's December 21, 2016 Order). For the reasons discussed above, and contrary to the arguments of Sierra Club, NEPA is not intended to mandate denial of an application in a circumstance such as this. NEPA is intended to ensure that the agencies responsible for the contemplated action have taken a hard look at the potential environmental effects. As demonstrated by the extensive environmental review, DOE/FE has complied fully with this requirement.

II. THE ENVIRONMENTAL ANALYSIS REFLECTED IN ORDER NO. 3978 COMPLIED FULLY WITH NEPA AND SUPPORTS THE EXPORT AUTHORIZATION.

A. DOE/FE Addressed Sierra Club's Contentions that GPP's Proposed LNG Exports Would Induce Emissions.

Contrary to the arguments of Sierra Club, in Order No. 3978, DOE/FE gave extensive consideration to the reasonably foreseeable environmental impacts of the

²⁷ Sierra Club is thus in effect arguing that DOE/FE should exercise authority under the NGA to regulate indirectly wellhead exploration, development and production, albeit in an unfocused manner that would not control decisions to engage in any particular exploration, development and production. Using Section 3 to discourage decisions to produce natural gas is at least arguably contrary to the intent underlying the Natural Gas Wellhead Decontrol Act of 1989 (Pub. L. No. 101-60, 102 Stat. 157 (1989)), which took the final step in the wellhead decontrol of natural gas by removing those price and non-price controls that remained in place following the partial wellhead decontrol implemented under the Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301, *et seq.* Through these NGPA and ultimately the Decontrol Act, Congress sought to *remove* the Federal government from the regulation of production of natural gas. Congress acted to repeal the remaining price and non-price controls because those controls were "not in keeping with the evolution of natural gas markets and the regulatory environment." S. Rep. No. 39, 101st Cong. 1st Sess. at 2 (1989). DOE/FE should reject Sierra Club's argument, which would result in DOE/FE regulating indirectly, through arbitrary export controls, exploration and production decisions DOE/FE cannot regulate directly.

proposed export authorization, as well as Sierra Club’s arguments concerning those impacts. NEPA requires federal agencies such as the DOE/FE to examine and report on the potential environmental consequences of their actions. NEPA requires that agencies take a “hard look” at those potential consequences, and provide for broad dissemination of relevant environmental information. DOE/FE fulfilled these requirements in Order No. 3978.

DOE/FE’s review, which includes the FEIS, the Environmental Addendum and the Life-Cycle Report, constitute the “hard look” required by NEPA and provided a reasonable basis for DOE’s determination under Section 3(a) that the potential adverse environmental impacts of GPP’s proposed export of LNG from its terminal facilities do not render the proposed exports contrary to the public interest.

1. DOE/FE Responded to Sierra Club’s Contentions Regarding the Purported Indirect Effects of the Proposed LNG Exports.

NEPA established the Council on Environmental Quality (“CEQ”) “with authority to issue regulations interpreting it.” The CEQ has defined major federal actions to include actions with “[i]ndirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” Ultimately, Sierra Club’s arguments that DOE/FE did not take a “hard look” at the potential impacts of GPP’s proposed exports largely turn on Sierra Club’s contention that induced upstream gas production is “reasonably foreseeable” within the meaning of the NEPA regulations. Sierra Club’s arguments do not address DOE/FE’s holdings and findings, and therefore cannot be a basis for overturning those holdings and findings.

The requirement to examine indirect effects “does not mean” that DOE/FE was required to “examine everything for which the [export] could conceivably be a but-for

cause.”²⁸ The CEQ regulations require NEPA review only for effects “caused by” agency action and “reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Accordingly, the connection between the proposed action and the environmental effect must be a “specific and causally linear indirect consequence.”²⁹ NEPA “requires a reasonably close causal relationship’ between the environmental effect and the alleged cause,” which is analogous to “the ‘familiar doctrine of proximate cause from tort law.’”³⁰

GPP’s application did not identify particular sources of supply for its proposed exports. As GPP stated in its Application, the GPP export facility will be well located to provide access to substantial quantities of natural gas from diverse domestic supply sources. The GPP export facility will be located close to the Onshore Gulf Coast, the Offshore Gulf of Mexico and the Mid-Continent producing regions, all of which have long been, and continue to be, significant U.S. natural gas supply areas. In addition, the GPP export facility will be connected, through the pipeline owned and operated by Golden Pass Pipeline LLC, to a well-developed pipeline and transportation infrastructure in the region. Thus, of necessity, GPP did not identify particular production as the source(s) of its proposed exports.

Sierra Club contends that DOE/FE appears to have “forecasting tools” that would enable it to determine where production will occur as a result of GPP’s proposed exports.

²⁸ *Sierra Club v. FERC*, 827 F.3d 36 (D.C.Cir. 2016) at 46 (affirming FERC orders authorizing construction and operation of the Freeport LNG Development, L.P. export project facilities), citing *Dep’t of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004); *Village of Bensenville v. FAA*, 457 F.3d 52, 65 (D.C. Cir. 2006) (“Even under NEPA, a ‘but for’ causal relationship is insufficient to make an agency responsible for a particular effect.”)

²⁹ *Sierra Club v. FERC*, 827 F.3d at 46; *National Audubon Society*, 422 F.3d at 186 (“[A]n agency’s obligations under NEPA are case-specific. A ‘hard look’ is necessarily contextual.”).

³⁰ *Public Citizen*, 541 U.S. at 767 (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

SC RR at pp. 8-9. DOE/FE has addressed this argument previously, explaining that the models referred to by Sierra Club do not enable DOE/FE “to identify with any confidence the marginal production at the wellhead or local level” that would be induced by a specific export application.³¹

DOE/FE correctly concluded that the public interest is better served by addressing the environmental concerns raised by Sierra Club “directly—through federal, state, or local regulation, or through self-imposed industry guidelines where appropriate—rather than by prohibiting exports of natural gas,” as Sierra Club seeks to do by opposing not only GPP’s export of LNG, but almost all exports of LNG.³² DOE/FE pointed out in Order No. 3978 that “environmental regulators have the legal authority to impose requirements on natural gas production that appropriately balance benefits and burdens, and to update these regulations from time to time as technological practices and scientific understanding evolve.” Order No. 3978 at p. 150.

2. Contrary to Sierra Club’s Assertions, DOE/FE Examined the Cumulative Effects of Golden Pass’ Export Authorization.

In addition to addressing reasonably foreseeable indirect effects, NEPA obligates DOE/FE to consider the "cumulative impact[s]" on the environment--that is, "the incremental impact of the [GPP export authorization] when added to other past, present, and reasonably foreseeable future actions[.]"³³ The cumulative impact analysis must

³¹ See, e.g., *Sabine Pass Liquefaction, LLC*, FE Docket Nos. 13-30-LNG, et al., DOE/FE Order No. 3669-A, May 26, 2016 at pp. 21-25.

³² Sierra Club has protested many, but not all, of the LNG NFTA export applications filed with DOE/FE under NGA Section 3(a) since 2011. In most instances, Sierra Club has filed for rehearing and judicial review of previous DOE/FE orders authorizing such exports.

³³ 40 C.F.R. § 1508.7.

identify (1) the "area in which the effects of the proposed project will be felt;" (2) the impact expected "in that area;" (3) those "other actions--past, present, and proposed, and reasonably foreseeable" that have had or will have impact "in the same area;" (4) the effects of those other impacts; and (5) the "overall impact that can be expected if the individual impacts are allowed to accumulate."³⁴

Sierra Club contends on rehearing that Order No. 3978 "does not distinguish between indirect and cumulative impacts." SC RR at p. 18. As with many of its arguments, Sierra Club's argument relies on acceptance of its argument that "induced production" attributable to the proposed export is reasonably foreseeable. GPP has addressed that argument above. The DOE/FE found that the NEPA review conducted by FERC took into account all reasonably foreseeable cumulative environmental impacts relating to the exports of LNG proposed in the proceeding. Order No. 3978 at p. 149.

The DOE/FE found in Order No. 3978 that Sierra Club seeks a programmatic EIS where no broad federal action such as the adoption of a new agency program had been proposed. *Id.* A federal agency is not required to prepare a programmatic EIS where no programmatic or regional action has been proposed. Preparing a programmatic EIS focused on discrete and independently proposed LNG export applications for projects that may or may not be constructed across the entire country would produce little more than a speculative study of potential environmental impacts. NEPA does not require DOE/FE to prepare such an analysis based on such speculative potential impacts; rather, where the agency lacks specific information regarding impacts because it cannot be

³⁴ *Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852, 864, (D.C. Cir. 2006) (quoting *Grand Canyon Trust v. FAA*, 290 F.3d 339 at 345 (D.C.Cir. 2002)).

obtained, the agency is required only to acknowledge in the EIS that the information is unavailable.

Thus, the FEIS prepared by the FERC as lead agency with the participation of DOE/FE properly fulfilled its purpose of disclosing the environmental impacts of GPP's proposed export authorization, including the construction and operation of the proposed export terminal and associated GPPL pipeline facilities, while also setting forth measures that would mitigate or minimize potential impacts. The DOE/FE reasonably adopted the FERC's findings and analysis.

3. DOE/FE Appropriately Commissioned the Environmental Addendum and NETL's LCA GHG Report to Allow Public Review and Comment.

While not required to do so under NEPA, DOE/FE prepared the Environmental Addendum³⁵ and Life-Cycle Analysis³⁶ to further inform its NGA Section 3(a) public interest review in connection with the potential effects of LNG exports to NFTA countries, and to allow public review and comment on the Addendum and the NETL Report. In addition to criticizing DOE/FE for its purported "failure" to consider the purported environmental impacts of the proposed GPP's exports, Sierra Club's Request for Rehearing also criticizes DOE/FE for what Sierra Club characterizes as methodological flaws in the Addendum and NETL Reports.

Sierra Club criticizes DOE/FE by arguing that the Environmental Addendum and the NETL Report are "not a substitute" for NEPA review. SC RR at pp. 4, 6, 10 and 12.

³⁵ U.S. Dep't of Energy, *Draft Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States*, 79 Fed. Reg. 32,258 (June 4, 2014) ("Draft Addendum").

³⁶ U.S. Dep't of Energy, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States*, 79 Fed. Reg. 32,260 (June 4, 2014) ("NETL Report").

This is a “straw man” argument -- DOE/FE stated repeatedly, both in Order No. 3978 and in posting the Addendum and the NETL Report, that they were not intended to constitute NEPA review, because the alleged indirect and cumulative environmental impacts of the GPP export authorization are too attenuated to be assessed under NEPA. As discussed above, DOE/FE clearly explained in Order No. 3978 that neither the Addendum nor the LCA GHG Report was required by NEPA.

The Addendum is a review pertaining to unconventional gas production in the lower forty-eight states. DOE/FE commissioned these studies and placed them in the record to inform its review of the public interest under NGA Section 3(a), and to be responsive to concerns raised by Sierra Club. The Addendum also provides additional information to the public concerning the potential environmental impacts of unconventional natural gas exploration and production activities, including hydraulic fracturing. It was not intended to be, and is not, an analysis of reasonably foreseeable impacts of NFTA exports from the GPP project. The NETL Report provides an analysis regarding life-cycle greenhouse gas (“GHG”) emissions from LNG exported from the United States.³⁷ The purpose was to determine: (1) how domestically produced LNG exported from the United States compares with regional coal (or other LNG sources) for electric power generation in Europe and Asia from a life-cycle GHG perspective; and (2) how those results compare with natural gas sourced from Russia and delivered to the same markets via pipeline.³⁸

Sierra Club presents a series of assertions to support its contention that the

³⁷ Order No. 3978, p. 6.

³⁸ *Id.*

Addendum and the NETL Report do not adequately address the purported climate impacts of GPP's proposed exports. SC RR at pp. 11-16. Order No. 3978 and previous DOE/FE orders responded in detail to these contentions,³⁹ and Sierra Club has not raised any new issues on rehearing. Much of Sierra Club's argument regarding the purported flaws in the studies appears premised on its argument that the impact of the proposed exports on upstream production can be quantified.⁴⁰ This argument is flawed for the same reason Sierra Club's basic argument regarding upstream production impacts is flawed, as discussed above. DOE/FE's commissioning of the studies and its extensive discussion of these studies in Order No. 3978, and its responses to Sierra Club show that DOE/FE made the required reasoned evaluation of the scientific facts then-available concerning the potential impacts of U.S. LNG exports on global GHG emissions.

4. DOE/FE Addressed the Issues Raised by Potential Changes in Fuel Use for Electric Generation.

Sierra Club, citing EIA's January 2012 LNG Export Study, contends that the study required DOE/FE to include in its NEPA analysis an examination of the purported increase in coal use that would result from the GPP export. Noting that the study stated that exports could result in electric generation switching from gas to coal, Sierra Club argues that "[b]ecause exports' impact on coal use has, in fact, already been foreseen by EIA and discussed in detail, it is plainly a reasonably foreseeable consequence of Golden Pass's proposed exports." SC RR at p. 16. However, EIA did not purport to undertake to consider the fuel-switching that might result from any particular LNG export. The chain

³⁹ Order No. 3978, pp. 117 – 130, 153 - 156.

⁴⁰ *See, e.g.*, SC RR at p. 15. "This hard look must include a quantification of the greenhouse gases that would be emitted by the production induced by Golden Pass's proposed exports."

of causation required to accept Sierra Club's argument is if anything more attenuated than its upstream production impact.

Moreover, DOE/FE in fact did examine the potential impact of LNG exports on electric power sector carbon dioxide emissions. Contrary to Sierra Club (SC RR at p. 17), DOE/FE does not "disregard" the EIA 2012 and 2014 studies in examining the impacts on emissions. DOE/FE correctly notes limitations to be applied to conclusions drawn from those studies, based on changing economic and regulatory circumstances. Order No. 3978, at pp. 153 – 156. Based on its review of the EIA 2012 and 2014 Export Studies, and well as different scenarios examined in EIA's 2017 Annual Energy Outlook, DOE/FE found that it could not conclude that gas exports would be likely to cause a significant increase in U.S. GHG emissions through (1) their effect on natural gas prices and (2) the use of coal for electric generation. Order No. 3978 at p. 156.⁴¹ Thus, contrary to Sierra Club's assertions, DOE/FE did consider the potential impact of the GPP export authorization on coal use, based on the most recent economic data available, under multiple scenarios.⁴²

⁴¹ DOE/FE separately found in Order No 3978 that the AEO 2017 Reference case, even more so than the AEO 2014, projects robust domestic supply conditions that are more than adequate to meet domestic needs and supply exports. Order No. 3978, at p. 75.

⁴² *Scientists' Institute for Public Information, Inc. v. AEC*, 41 F.2d 1079, 1097, cited by Sierra Club (SC RR at p. 17) addressed a circumstance in which an agency had not undertaken a comprehensive NEPA analysis of the Federally implemented and funded liquid metal fast breeder-reactor research ("LMFBR") and development program. Unlike the LMFBR program at issue in *Scientists' Institute*, DOE/FE does not have an NFTA "program" as such; it addresses individual applications filed under Section 3(a) of the NGA. Moreover, *Scientists' Institute* required the Atomic Energy Commission to consider reasonable estimates from which environmental effects of that program could be extrapolated. *Scientists' Institute* does not require an agency such as DOE/FE, which has already participated in the development of a lengthy and comprehensive FEIS in addressing GPP's application, to model every speculative scenario a protestor such as Sierra Club can conjure up, in addition to the multiple scenarios already examined in the Addendum, the NETL Report and the extensive FEIS.

III. SIERRA CLUB HAS NOT SATISFIED THE STANDARDS FOR A STAY.

Both Section 717(c) of the NGA and Rule 502 of the DOE/FE regulations provide that an application for rehearing of a DOE/FE order does not operate as a stay of that order unless otherwise ordered. 10 C.F.R. § 590.502. Sierra Club requests “an immediate order specifically staying DOE’s authorization,” and argues that a stay is warranted by application of the “general four-factor test used for stays of agency or judicial orders.”

Sierra Club summarizes those four factors as: (1) the movant’s showing of a substantial likelihood of success on the merits, (2) irreparable harm to the movant, (3) a lack of substantial harm to other parties, and (4) the public interest. Examined objectively, all four considerations require denial of Sierra Club’s motion. DOE/FE has consistently denied similar motions to stay LNG NFTA export authorizations.⁴³

A. Sierra Club has Not Demonstrated Irreparable Harm.

To obtain a stay, a movant must show “certain and great” harm and “proof indicating that the harm is certain to occur in the near future,” as well as that the harm will “directly result” from the action that the movant seeks to enjoin. Both DOE/FE and the FERC have held that the GPP Export Project, when constructed and operated in accordance with the required conditions, will have *no significant impact* on the environment. So, Sierra Club’s claim that DCP’s continued construction of the Liquefaction Project and its authorization to export LNG once the Project is completed

⁴³ See, e.g., *Cheniere Marketing, LLC, et al.*, FE Docket No. 12-97-LNG, DOE/FE Order No. 3638-A (May 26, 2016) at p. 46 n. 169 (noting denial of stay of NFTA authorization by operation of law); *Sabine Pass Liquefaction, LLC*, FE Docket No. 13-30-LNG, et. al., DOE/FE Order No. 3669-A, p. 48 n. 176 (same).

will irreparably harm the environment is directly contrary to both agencies' conclusions.

Sierra Club contends authorization of export will produce immediate and irreparable environmental impacts based on the assertions of "other" companies that purportedly asserted in their applications for export authorization that natural gas producers are "likely" to begin to increase their production in anticipation of export, so that the additional production is available for export when construction of the liquefaction facilities is completed and the terminal is ready to commence operation. SC RR at p. 22.⁴⁴ Simply put, this assertion does not constitute any showing whatsoever.

B. A Stay Would Harm GPP's Interests.

Sierra Club seeks to minimize the harm to GPP from the grant of a stay, arguing that because (1) "construction of the LNG export facilities is a multi-year process," (2) DOE/FE has an "obligation" to respond to a request for rehearing within 30 days, and (3) the circuit court's "obligation," which is not defined, but perhaps relates to resolution of the petition for review of Order No. 3978 under NGA Section 19(b) that Sierra Club envisions itself ultimately filing, resolution of the Sierra Club's challenge will impose "only a few additional months of delay." SC RR at p. 22.

Sierra Club's arguments overlook altogether the lengthy delay GPP has experienced in receiving this authorization. GPP filed its application for export authorization on October 12, 2012, more than four and one-half years ago. As discussed

⁴⁴ In support of this argument, Sierra Club cites the assertion of another company in that company's application for authorization to export LNG to NAFTA countries. Freeport LNG, Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, DOE Docket 11-161-LNG, at 20 (Dec. 19, 2011). As discussed above, however, GPP has not identified any particular source of supply for its proposed LNG exports. The statement of another applicant is irrelevant to GPP's separate application.

above, GPP received authorization from the FERC under Section 3(a) to construct and operate the necessary export facilities in an order issued December 16, 2016, two and one-half years after filing its formal application, and more than three and one-half years after the pre-filing NEPA review commenced. Significantly, despite its stated concerns regarding the impact of the GPP Export Project, Sierra Club did not seek rehearing or stay of the FERC's December 16, 2016 Order, which now is final.

C. The Public Interest Does Not Support a Stay.

Parties moving for a stay must demonstrate that a stay is required to protect the broader public interest. In the case of the NFTA authorization to GPP in Order No. 3978, the opposite is true; a stay would disserve the public interest under the NGA. As discussed above, Section 3(a) establishes a rebuttable presumption that natural gas exports to NFTA countries are in the public interest.

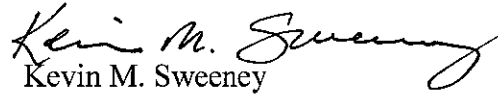
D. Sierra Club Has Not Shown a Likelihood of Success on the Merits.

For the reasons discussed above, the arguments presented Sierra Club's Request for Rehearing fail to show that it is likely to prevail on the merits, on rehearing or as a result of appellate review.

WHEREFORE, for the foregoing reasons, GPP respectfully requests that DOE/FE deny the Request for Rehearing and Motion for Stay filed by the Sierra Club.

Respectfully submitted,

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VERIFICATION

City of Washington :
: **SS**
District of Columbia :

I, Kevin M. Sweeney, being duly sworn, hereby affirm that I am a duly authorized representative of Golden Pass Products LLC; that I have read the foregoing Motion for Leave to Answer and Answer of Golden Pass Products LLC to Request for Rehearing and Motion for Stay of Sierra Club; and that the facts stated therein are true and correct to the best of my knowledge, information and belief.

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***Counsel for
Golden Pass Products LLC***

Subscribed and sworn to before me, this 8th day of June, 2017.

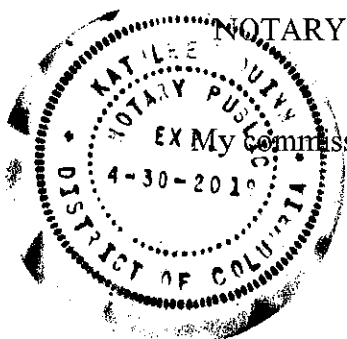
[Notary Seal:]

Kathleen Quinn
[signature of Notary]

KATHLEEN QUINN
[typed name of Notary]

NOTARY PUBLIC

My commission expires: April 30, 2019.



CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document filed with the DOE/FE on the designated representatives of all of the parties to this proceeding, in accordance with 10 C.F.R. § 590.107(a).

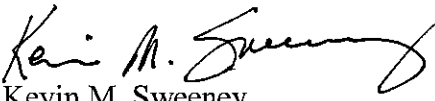
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