

nations with which the United States had entered into a free trade agreement (“FTA”).⁴ Subsequently, on May 12, 2015, DOE/FE issued an order authorizing CCL to export for a 20-year term up to the amount previously authorized (767 Bcf/y) to nations that have not entered into an FTA with the United States.⁵

B. The Instant Application

In conjunction with a proposed expansion of the CCL Project, on June 1, 2015, CCL submitted an application to DOE/FE under Section 3 of the NGA,⁶ in FE Docket No. 15-97-LNG, for authorization to export up to an additional 514 Bcf/y of LNG to both FTA and non-FTA countries (the “Application”).⁷ CCL requested this authorization for a period of 20 years, commencing from the earlier of the date of first export or eight years from the date of issuance of the authorization requested therein.⁸

Notice of the Application (“NOA”) was published in the Federal Register on August 26, 2015. The NOA provided, among other things, that protests and motions to intervene in this

⁴ *Cheniere Marketing, LLC, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Corpus Christi Liquefaction Project to Free Trade Agreement Nations*, DOE/FE Order No. 3164, FE Docket No. 12-99-LNG (Oct. 16, 2012); *Cheniere Marketing, LLC, Order Amending Application in Docket No. 12-97-LNG to Add Corpus Christi Liquefaction, LLC as Applicant, and Granting Request in DOE/FE Order No. 3164, Docket No. 12-99-LNG, to Add Corpus Christi Liquefaction, LLC as Authorization Holder*, DOE/FE Order Nos. 3538 and 3164-A, FE Docket Nos. 12-97-LNG and 12-99-LNG (Oct. 29, 2014).

⁵ *Cheniere Marketing, LLC & Corpus Christi Liquefaction, LLC, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Corpus Christi Liquefaction Project to Be Located in Corpus Christi, Texas to Non-Free Trade Agreement Nations*, DOE/FE Order No. 3638, FE Docket No. 12-97-LNG (May 12, 2015).

⁶ 15 U.S.C. § 717(b).

⁷ Concurrent with the Application, CCL requested that FERC initiate the Commission’s National Environmental Policy Act (“NEPA”) (42 U.S.C. § 4321 *et seq.* (2012)) pre-filing review of a proposed expansion of the CCL Project (the “Stage 3 Project”). On June 9, 2015, the Director of the Office of Energy Projects issued a letter order in Docket No. PF15-26-000 granting CCL’s request to participate in the pre-filing process for the Stage 3 Project. CCL anticipates filing an application under Section 3 of the NGA in early 2016 with FERC for authorization to site, construct and operate the Stage 3 Project.

⁸ *Application*, at 1-2.

proceeding be filed by no later than October 26, 2015.⁹ Sierra Club submitted its Motion on October 26, 2015.

II ANSWER

The arguments raised by the Sierra Club Motion consist almost entirely of a repetition of those raised previously by Sierra Club in opposition to other proposed export applications, including those of CCL and its affiliates, before both DOE/FE and FERC. Notably, these arguments have been rejected by both agencies and CCL hereby refers to and incorporates by reference the numerous filings that have already been made by CCL and its affiliates in response to Sierra Club in those proceedings.¹⁰ Additionally, the same day that it submitted the Sierra

⁹ 80 Fed. Reg. 51790, 51791 (Aug. 26, 2015).

¹⁰ 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>; Cheniere Marketing, LLC & Corpus Christi Liquefaction, LLC, Motion for Leave to Answer and Answer of

Club Motion that is the subject of this Answer, Sierra Club submitted an almost identical filing in the pending DOE/FE docket of CCL's affiliate, Sabine Pass Liquefaction, LLC.¹¹ The Sierra Club Motion here, like its prior filings, consists of generalized assertions regarding the putative environmental effects of induced natural gas production and economic harms that it asserts will follow from all LNG exports, rather than arguments specific to the current Application, and its arguments are contrary to DOE/FE's repeated conclusion that NEPA does not require DOE/FE to consider effects that are "speculative" and not "reasonably foreseeable."

CCL submits the following further responses to the Sierra Club Motion:

A. Sierra Club Should Be Denied Intervention

Sierra Club has failed to articulate a sufficient interest in the proceedings regarding the Application to warrant intervention. Sierra Club asserts an interest in the "environmental consequences of any gas exports from the Cheniere project, including emissions and other pollution" and "damage to air, land, and water resources caused by [] increasing development," because "Sierra Club members live and work throughout the area that will be affected by the export proposal," and in "the domestic gas fields that will likely see increased production."¹² But this sweeping assertion is not supported by the evidence on which Sierra Club relies. Instead, the single declaration on which Sierra Club relies indicates only that "[a]s of August 2015, Sierra Club has 23,220 members in Texas and 641,570 members overall."¹³ This does not remotely support Sierra Club's far more specific claim that its members live in the specific areas

Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC to Sierra Club's Requests for Rehearing and Stay, DOE/FE Docket No. 12-97-LNG (June 26, 2015).

¹¹ *In re Sabine Pass Liquefaction, LLC*, Motion to Intervene, Protest and Comments, FE Docket. No. 15-63-LNG (October 26, 2015).

¹² *Sierra Club Motion*, at 1-2.

¹³ *Id.* at 2.

relevant to this Application, and will therefore be impacted individually by the increased LNG export authorization requested in the Application.

Furthermore, to the extent that Sierra Club is attempting to claim an interest in the siting, construction, and operation of the Stage 3 Project, those matters are within the exclusive jurisdiction of FERC.¹⁴ It would thus be duplicative and unnecessary to allow Sierra Club to intervene on the basis of its claimed interest in the siting, construction, and operation of the Stage 3 Project, as it is a process over which DOE/FE has no control or authority; and Sierra Club would in no way be impaired or impeded in protecting that interest if denied intervention here.¹⁵

B. Sierra Club’s Protest Should Be Rejected

Sierra Club has failed to set forth any relevant studies or other evidence sufficient to overcome the presumption that granting the Application would be consistent with the public interest. Instead, the Sierra Club filing consists almost entirely of a recitation of arguments that have been previously rejected by DOE/FE and FERC,¹⁶ and of a mischaracterization of the NGA Section 3 standard for evaluating export applications.

¹⁴ See 15 U.S.C. § 717b(e)(1); cf. *Sierra Club Motion*, at 2 (listing the purported “environmental damage associated with construction and operation of the facility and associated infrastructure” as one of its interests).

¹⁵ Fed. R. Civ. P. 24(a)(2).

¹⁶ See *Corpus Christi Liquefaction LLC & Cheniere Corpus Christi Pipeline L.P.*, 151 FERC ¶ 61,098 (May 6, 2015) (FERC order denying rehearing and rejecting Sierra Club NEPA arguments); see also *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*] 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 *Dominion Cove Point LNG, LP, Final Opinion and Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Cove Point LNG Terminal in Calvert County, Maryland, to Non-Free Trade Agreement Nations*, at 35–43, 44–45, 46–100, FE Docket No. 11-128-LNG, DOE/FE Order No. 3331-A (May 7, 2015) [hereinafter *Cove Point Non-FTA Order*] (addressing Sierra Club arguments in opposition to export application); *Freeport LNG Expansion, L.P., et. al., Final Opinion and Order 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*, at 37–42, 43–44, 46–99, FE Docket No. 11-161-LNG, DOE/FE Order No. 3357-B (Nov. 14, 2014) [hereinafter *Freeport Non-FTA Order*] (same); *Cameron LNG LLC, Final Opinion and Order Granting Long-Term Multi-Contract Authorization to Export Liquefied*

1. Sierra Club Fails to Overcome the Presumption that the Application Is Consistent with the Public Interest

Sierra Club once again misstates the standard for evaluating export applications when it states 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.”¹⁷ That is not the standard. Section 3 of the NGA directs that DOE/FE “shall issue” an order authorizing the export to a foreign country “unless ... [DOE/FE] finds that the proposed exportation ... will not be consistent with the public interest.”¹⁸ As DOE/FE has recognized multiple times, this language “creat[es] a statutory presumption in favor of approval of an export application.”¹⁹

Sierra Club later grudgingly acknowledges this presumption, but argues that the presumption only applies to “purely economic impacts” and that “DOE cannot extend this presumption to environmental impacts.”²⁰ But, as noted, that is not what Section 3 of the Natural Gas Act provides. Rather, Section 3 directs that DOE/FE “shall issue such order” authorizing LNG export “unless” the “proposed exportation” is not “consistent with the public interest.”²¹ Both environmental and economic impacts are within the “public interest” inquiry, but, contrary to Sierra Club’s position, Section 3 of the NGA does not differentiate between the two; instead,

Natural Gas by Vessel from the Cameron LNG Terminal in Cameron Parish, Louisiana, to Non-Free Trade Agreement Nations, at 25-3133-34, 36-88, FE Docket No. 11-162-LNG, DOE/FE Order No. 3391-A (Sept. 10, 2014) [hereinafter *Cameron Non-FTA Order*] (same); *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*, at 60–66, 73–79, 136–41, FE Docket No. 12-32-LNG, DOE/FE Order No. 3413 (Mar. 24, 2014) [hereinafter *Jordan Cove Non-FTA Order*] (same).

¹⁷ See *Sierra Club Motion*, at 3.

¹⁸ 15 U.S.C. § 717b(a) (emphasis added).

¹⁹ *Phillips Alaska Natural Gas Corp. and Marathon Oil Co., 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)).

²⁰ See *Sierra Club Motion*, at 5-6.

²¹ 15 U.S.C. § 717b(a).

Section 3 provides that an application to export LNG “shall” be granted “unless” it is shown that “the proposed exportation” will not be consistent with “the public interest.”²²

Moreover, DOE/FE has previously rejected Sierra Club’s attempts to rebut this presumption by pointing to information that is not specific to the particular export application at issue, finding this insufficient to “overcome the statutory presumption.”²³ 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 as well. To the extent Sierra Club is arguing for wholesale changes to DOE/FE’s NGA Section 3 process,²⁴ such arguments are beyond the scope of an individual application.

2. Sierra Club’s NEPA Arguments Should Be Rejected

Sierra Club protests putative environmental and economic “harms” that it asserts would result from the Application’s requested 514 Bcf/y increase in LNG exports. Sierra Club relies heavily on environmental impacts associated with presumed induced shale gas production, and all presumptive direct, indirect and cumulative impacts associated with all proposed export projects.²⁵ It also relies on putative micro- and macro-economic harms that will supposedly be caused by LNG exports in general.²⁶ Many of these arguments are irrelevant, whereas others are misplaced because FERC—not DOE/FE—is generally the lead agency for purposes of conducting NEPA analyses. As noted, CCL is presently engaged in FERC’s NEPA pre-filing process for the Stage 3 Project.²⁷

²² *Id.*

²³ *See Cove Point Non-FTA Order, supra* note 16, at 81-100; *Freeport Non-FTA Order, supra* note 16, at 82-99; *Cameron Non-FTA Order, supra* note 16, at 71-88; *Jordan Cove Non-FTA Order, supra* note 16, at 136-146.

²⁴ *See, e.g., Sierra Club Motion, at* 6-7.

²⁵ *See id.* at 16-22.

²⁶ *See id.* at 22-27.

²⁷ Application, at 3; *see also, supra* note 7.

a. 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 acknowledges that DOE/FE has consistently refused to evaluate LNG export projects through a programmatic EIS, instead determining to “adjudicate each export application individually.”²⁸ To the extent Sierra Club continues to argue for a programmatic EIS, that request should be rejected for all the reasons on which DOE/FE has previously relied in refusing to require a programmatic EIS.

First, it is common practice for FERC to evaluate the environmental impacts of proposed expansions that increase LNG terminal capacity through an EA under NEPA in cases where the previously-approved project is still under construction.²⁹ 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.”³⁰ Courts have stated that a programmatic EIS reflects the “broad environmental consequences attendant upon a wide-ranging federal

²⁸ See *Sierra Club Motion*, at 10.

²⁹ 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).

³⁰ 10 C.F.R. § 1021.104(b) (2015).

program.”³¹ The rationale for preparation of a programmatic EIS is that a coordinated federal program is likely to generate “disparate yet related impacts.”³²

The Stage 3 Project is not part of a coordinated federal program that is directed by DOE/FE (or any other federal entity) on a regional or national level, they are not part of an orchestrated series of projects directed by a single decision-maker such as the federal government, and DOE/FE’s review and approval of projects under the NGA does not constitute a coordinated federal program.³³ Instead, CCL is just one of numerous companies that have proposed to site, construct, and operate LNG export facilities and to engage in LNG exports to FTA and Non-FTA nations. Therefore, there is no basis for a programmatic EIS in this instance.

ii. Sierra Club’s Objections to Authorization of the Stage 3 Project Should be Rejected

In the Sierra Club Motion, Sierra Club appears to object to construction of the Stage 3 Project.³⁴ But Sierra Club offers only conclusory arguments to support the purported “Local Environmental Impacts” that it alleges will occur; in fact, Sierra Club candidly admits that it is “presum[ing]” that these alleged harms will occur. Moreover, while this presumption appears to rest on Sierra Club’s view that the CCL Project currently imposes such alleged negative impacts,³⁵ FERC has already considered and rejected this argument, concluding that the CCL Project would have only “minimal environmental impacts.”³⁶

³¹ *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)).

³² *Nat’l Wildlife Fed’n*, 677 F.2d at 888.

³³ *See, e.g., Corpus Christi Liquefaction LLC & Cheniere Corpus Christi Pipeline L.P.*, 151 FERC ¶ 61,098, at ¶ 27 (2015) (declining to conduct a programmatic NEPA review of CCL Project).

³⁴ *See Sierra Club Motion*, at 15-16.

³⁵ *See id.* at 16.

³⁶ *Corpus Christi Liquefaction, LLC & Cheniere Corpus Christi Pipeline, L.P.*, 149 FERC ¶ 61,283, at ¶ 3 (2014); *id.* ¶ 22 (“[T]he environmental impacts of the Liquefaction Project are expected to be relatively small in number and well-defined.”).

In any event, Sierra Club’s objections to the Stage 3 Project are misplaced because authorization of the Stage 3 Project is within FERC’s jurisdiction. As Sierra Club is well-aware, FERC has been delegated the authority to authorize additional construction of LNG facilities,³⁷ and FERC is also the lead agency for ensuring compliance with NEPA. Thus, as the Application requests only additional export authorization—not authorization to construct the Stage 3 Project—Sierra Club’s protests are misplaced.

iii. 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 “NEPA and the NGA ... require DOE/FE to consider the effect” of increased LNG production as part of its assessment of the Application.³⁸ This same position has been consistently rejected, and should be here, too.

First, both FERC and DOE/FE have rejected the notion that induced gas production constitutes an “indirect effect” requiring consideration under NEPA because any such induced production is not reasonably foreseeable.³⁹ “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.”⁴⁰ Courts have emphasized that cognizable indirect effects “are those ‘which are

³⁷ See DOE, Delegation Order No. 00-004.00A, § 1.21A (May 16, 2006); see also 43 Fed. Reg. 47,769, 47,772 (Oct. 17, 1978).

³⁸ See, e.g., *Sierra Club Motion*, at 16 (“LNG exports will induce additional production in the United States.”).

³⁹ *In re Corpus Christi Liquefaction LLC & Cheniere Corpus Christi Pipeline L.P.*, 151 FERC ¶ 61,098, at P 12 (2015); see also *Sabine Pass Liquefaction, LLC & Sabine Pass LNG, L.P.*, 139 FERC ¶ 61,039, at PP 96 (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.”); *Sabine Pass Final Non-FTA Order*, *supra* note 16, 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.”).

⁴⁰ 40 C.F.R. § 1508.8(b) (2015). 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

caused by the action,”⁴¹ with the Supreme Court explaining that “a ‘but for’ causal relationship is insufficient to make an agency responsible for a particular effect under NEPA.”⁴² 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.”⁴³ Agencies need not consider “speculative” effects.⁴⁴ DOE/FE should follow this well-trodden path here and reject Sierra Club’s attempt to evade settled precedent.⁴⁵

Moreover, any induced natural gas production does not constitute a “cumulative impact” under NEPA that must be considered in an EIS. FERC has had multiple 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 the CCL Project—and has rejected this position on the grounds that shale development and its associated effects are not sufficiently causally related to the proposed project.⁴⁶ Just as

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 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.

⁴¹ *City of Shoreacres v. Waterworth*, 420 F.3d 440, 452 (5th Cir. 2005) (quoting 40 C.F.R. § 1508.8(b)).

⁴² *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”).

⁴³ *City of Shoreacres*, 420 F.3d at 452.

⁴⁴ *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)); *see also Sierra Club v. Marsh*, 976 F.2d 763, 768 (1st Cir. 1992).

⁴⁵ *Cf. Sierra Club Motion*, at 17 (noting that “DOE has previously stated that it is uncertain where additional production induced by exports would occur”).

⁴⁶ *See Corpus Christi Liquefaction LLC & Cheniere Corpus Christi Pipeline L.P.*, 151 FERC ¶ 61,098, at PP 29-30 (2015); *see also Sabine Pass Liquefaction, LLC & Sabine Pass LNG, L.P.*, 144 FERC ¶ 61,099, at P 46 (2013) (reaffirming “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*

FERC has found previously that the environmental effects of induced production were neither “reasonably foreseeable” nor an “effect” for purposes of a NEPA cumulative impacts analysis,⁴⁷ the same is true here. As FERC has noted, Sierra Club’s “cumulative impact” argument is really an argument for a programmatic NEPA analysis.⁴⁸ But as noted above, and as FERC has concluded, a programmatic NEPA analysis is not appropriate here.

Sierra Club attempts to support its position by arguing that the 2014 EIA Export Study⁴⁹ shows that “the exports at issue *in this application* will cause an increase in domestic gas production equivalent to ‘about 61% to 84% of the increase in natural gas demand from LNG exports.’”⁵⁰ That study says no such thing. Instead, the 2014 EIA Export Study—and particularly the portion that Sierra Club cites—refers to LNG exports nationwide, not to any particular LNG project, and certainly not to the specific authorization to export an additional 514 Bcf/y of LNG that is the subject of the current Application.⁵¹ Furthermore, the 2014 EIA Export Study “recognize[d] that projections of energy markets over a 25-year period are highly uncertain and subject to many events that cannot be foreseen,” and that this was “particularly true” as to LNG exports.⁵² Sierra Club cannot, and has not, established that the Stage 3 Project or the Application’s current request for additional export authorization, will cause any of the

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’x 472 (2d Cir. 2012).

⁴⁷ *Corpus Christi Liquefaction LLC & Cheniere Corpus Christi Pipeline L.P.*, 151 FERC ¶ 61,098, at PP 29-30 (2015).

⁴⁸ *Id.*

⁴⁹ See U.S. Energy Information Administration, *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets*, <http://www.eia.gov/analysis/requests/fe/> (Oct. 29, 2014) [hereinafter 2014 EIA Export Study].

⁵⁰ See *Sierra Club Motion*, at 16 (emphasis added) (citing 2014 EIA Export Study, at 12).

⁵¹ See 2014 EIA Export Study, *supra* note 49, at 12, 16-17.

⁵² *Id.* at 10.

predicted increase in natural gas production, much less any of the environmental harms that Sierra Club posits.⁵³ In short, Sierra Club does not point to any evidence to justify DOE/FE departing from its (and FERC's) long-followed understanding that induced natural gas production is not a "reasonably foreseeable" indirect or cumulative effect under NEPA.

Sierra Club suggests that CCL has acknowledged that increased production would be a reasonably foreseeable consequence of the Application.⁵⁴ This is not correct. Rather, the Application indicates that authorization to export an additional 514 Bcf/y of LNG from the CCL Project is consistent with the public interest because of the existing surplus of available LNG.⁵⁵ CCL did not assert that the additional amount of export authorization sought in the Application would induce additional LNG production.⁵⁶

b. Sierra Club's Economic Arguments Should be Rejected

Sierra Club raises numerous "economic harms" that will purportedly follow from increased LNG exports.⁵⁷ Sierra Club alleges that increased LNG exports will "decrease wages," "make most US families worse off," lead to "job losses" or "short-term jobs," "boom-bust cycle[s]," and "higher energy rates."⁵⁸

But Sierra Club fails to present sufficient evidence on any of these points to rebut the presumption that granting the Application is in the public interest. Indeed, Sierra Club's contentions are based on long-term, nationwide (or foreign) domestic statistical estimates of

⁵³ *Cf.*, *Sierra Club Motion*, at 16-21.

⁵⁴ *Id.*, at 16 ("Cheniere repeatedly asserts that the exports at issue in the pending application will cause a significant 'incremental' increase in natural gas production in the United States."); *id.* at 17 (arguing that CCL predicted increased production in Texas); *id.* at 19 (arguing that Cheniere has "identified the Eagle Ford shale play as a likely source of gas for the production and site of increased or incremental development).

⁵⁵ *Application*, Appx. B.

⁵⁶ *Cf. Sierra Club Motion*, at 16.

⁵⁷ *See id.* at 22-27.

⁵⁸ *See id.* at 22-25.

aggregate natural gas market dynamics that were prepared for a different purpose.⁵⁹ Contrary to these incorrect arguments, the reality is that the CCL Project as expanded by the Stage 3 Project is expected to produce significant economic benefits.⁶⁰ The 2012 NERA Report found that “[a]ll export scenarios are welfare-improving for U.S. consumers.”⁶¹ And a 2014 update to the 2012 NERA Report confirmed that “[a]cross the scenarios [analyzed], U.S. economic welfare consistently increases as the volume of natural gas exports increases. This includes scenarios in which there are unlimited exports.”⁶² As an appendix to the Application, CCL also provided a study of the CCL Project and Stage 3 Project by The Perryman Group,⁶³ which analyzed the potential economic benefits of the facilities and concluded that they “involve substantial economic benefits for the local area, state of Texas, and United States.” (the “Perryman Report”).⁶⁴

Sierra Club contends that exports will lead to “job losses.”⁶⁵ However, Sierra Club’s predictions of “job losses” and “‘resource curse’ effects” and the creation of “shorter-term” jobs (along with its other allegations) do not follow—and Sierra Club does not provide any support that they do follow—from the CCL Project or the Stage 3 Project, which (as noted above) are projected to be economically beneficial. And Sierra Club further does not provide support that

⁵⁹ See, e.g., *id.* at 23 n.47 (relying on a study of natural gas export impacts on the Australian economy).

⁶⁰ See Application, Appx. E, at 60 (concluding that the CCL projects will likely “lead to substantial economic stimulus. . .”) (The Perryman Group, *The Anticipated Impact of Cheniere’s Proposed Corpus Christi Liquefaction Facility on Business Activity in Corpus Christi, Texas, and the U.S.: 2015 Update* (Mar. 2015)) [hereinafter *Perryman Report*].

⁶¹ NERA Economic Consulting, *Macroeconomic Impacts of LNG Exports from the United States* (2012) at 55, available at http://energy.gov/sites/prod/files/2013/04/f0/nera_lng_report.pdf [hereinafter *2012 NERA Report*].

⁶² NERA Economic Consulting, *Updated Macroeconomic Impacts of LNG Exports from the United States*, at 7 (Mar. 24, 2014), available at http://www.nera.com/content/dam/nera/publications/archive2/PUB_LNG_Update_0214_FINAL.pdf [hereinafter *2014 NERA Report*].

⁶³ See *Perryman Report*, *supra* note 60.

⁶⁴ See *id.* at 1.

⁶⁵ See *Sierra Club Motion*, at 23.

the requested increase in export authorization *sought in the current Application* would cause these effects. Instead, much of the job-loss and other economic harms that Sierra Club contends will result from additional exports would theoretically be attributable to induced production of natural gas,⁶⁶ and therefore would not be cognizable indirect effects.⁶⁷ In any event, Sierra Club’s arguments are contradicted by the 2014 NERA Report, which 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.⁶⁸ Additionally, the Perryman Report predicted that CCL’s projects would result in 307,573 person-years of employment.⁶⁹

Sierra Club further argues that “LNG exports” will “benefit only a few Americans, who are generally already wealthy and who own shares of companies in a few industries[.]”⁷⁰ This is not the case—LNG exports would create two additional sources of income, in the form of higher export revenues and higher natural gas income.⁷¹ In fact, the 2014 NERA Report found that U.S. households’ real income and welfare would consistently increase as the volume of LNG exports

⁶⁶ See, e.g., *Sierra Club Motion*, at 23 (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*, *supra* note 16, at 139. See also *Sierra Club Motion*, at 23 (predicting “[d]omestic gas price increases”); *id.* at 23 (arguing that “gas producing regions” will be worse-off “despite short-term job growth as a result of increases in gas production”); *id.* (“the gas production jobs that exports will create are typically short-term jobs”); *id.* (predicting “adverse effects” on rate payers in “communities where production occurs”).

⁶⁷ See *Sierra Club Motion*, at 22-23.

⁶⁸ See *2014 NERA Report*, *supra* note 62, 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.”).

⁶⁹ Perryman Report, *supra* note 60, at 60.

⁷⁰ Cf. *Sierra Club Motion*, at 25.

⁷¹ *2012 NERA Report*, *supra* note 61, at 7.

increase.⁷² Sierra Club additionally attempts to pin predicted economic harms on the additional requested exports at issue in the Application,⁷³ but it does not provide any actual support for these claims. Thus, Sierra Club has not presented any evidence showing negative distributional consequences to any particular socioeconomic sector.⁷⁴ As the Perryman Report concluded, the CCL Project and the Stage 3 Project are likely to have significant, broad-based economic benefits, nationally as well as for the local economy.⁷⁵

Finally, Sierra Club asserts that “exports would cause a net reduction in GDP,” in part because NERA’s report reaching the opposite conclusion “excluded numerous other factors that would further drive down GDP.”⁷⁶ This is the same argument that Sierra Club has raised before, and it is wrong for the same reasons.⁷⁷ As DOE/FE has explained, “[t]he 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.”⁷⁸

⁷² 2014 NERA Report, *supra* note 62, 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.”).

⁷³ See, e.g., *Sierra Club Motion*, at 22-23 (“Available evidence, including the NERA Study DOE commissioned, indicates that the exports Cheniere proposes will decrease wages and make most US families worse off.”).

⁷⁴ 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 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* 87, FE Docket No. 11-59-LNG, DOE/FE Order No. 3324 (Aug. 7, 2013) [hereinafter *Lake Charles Non-FTA Order*].

⁷⁵ *Perryman Report*, *supra* note 60, at 60-61.

⁷⁶ See *Sierra Club Motion*, at 27.

⁷⁷ See *Sabine Pass Liquefaction, LLC, Sierra Club Motion to Intervene, Protest, and Comments*, at 68-69, FE Dkt. No. 13-121-LNG (Apr. 14, 2014).

⁷⁸ *Lake Charles Non-FTA Order*, *supra* note 74, at 78.

Nor is there any basis for the argument that LNG exports will reduce GDP, as the 2012 NERA Report predicted positive impacts under all modeled scenarios.⁷⁹ 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 scenario 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.⁸⁰ Indeed, as to GDP specifically the 2014 NERA Report's scenarios projected potential increases of as much as \$86 billion by 2038.⁸¹

III CONCLUSION

For the foregoing reasons, the Sierra Club Motion should be denied.

Respectfully submitted,

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Dated: November 10, 2015

⁷⁹ See 2012 NERA Report, *supra* note 61, at 56–57.

⁸⁰ See 2014 NERA Report, *supra* note 62, at 7.

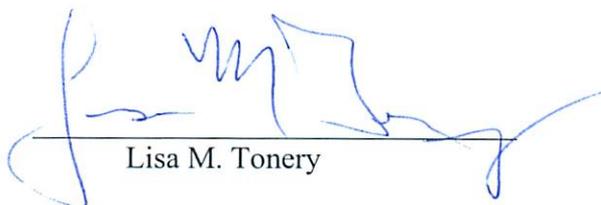
⁸¹ *Id.* at 94.

VERIFICATION

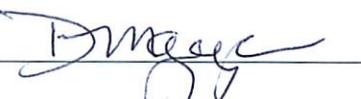
State of New York)

County of New York)

BEFORE ME, the undersigned authority, Lisa M. Tonery, on this day personally appeared, who, having been by me first duly sworn, on oath says: that she is the Attorney for Corpus Christi 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 10th day of November, 2015.

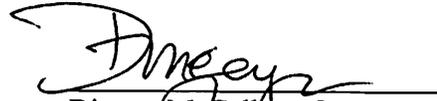
Name: 
Title: Notary Public

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

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 10th day of November, 2015.



Dionne McCallum-George
*Legal Secretary on behalf of
Corpus Christi Liquefaction, LLC*