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

Jordan Cove Energy Project L.P.	)	**FE Docket No. 12-32-LNG**

MOTION OF JORDAN COVE ENERGY PROJECT L.P. FOR LEAVE TO ANSWER AND ANSWER TO REQUEST FOR REHEARING

Pursuant to Section 302 of the Department of Energy's ("DOE") regulations,[1] Jordan Cove Energy Project L.P. ("JCEP") hereby requests leave to answer, and answers, the "Request for Rehearing" filed by the Sierra Club on August 5, 2020 in the captioned docket ("Rehearing Request").[2] The Sierra Club requests rehearing of the "Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations" issued by the Department of Energy's ("DOE") Office of Fossil Energy ("DOE/FE") on July 6, 2020.[3] The Rehearing Request improperly challenges DOE/FE's National Environmental Policy Act ("NEPA") analysis, arguing (among other things) that the analysis failed to consider impacts that are not under the scope of NEPA, and the Rehearing Request fails to overcome the Natural Gas Act's ("NGA") established presumption that natural gas exports are in the public interest. Accordingly, the Rehearing Request should be denied. In support of this Answer, JCEP states the following:

I. BACKGROUND

On March 23, 2012, JCEP filed an application with DOE/FE under Section 3(a) of the NGA. JCEP requested long-term, multi-contract authorization to export liquefied natural gas ("LNG") to any country with which the United States has not entered into a free trade agreement

[1] 10 C.F.R. § 590.302 (2019).
[2] Request for Rehearing of Sierra Club, FE Docket No. 12-32-LNG (Aug. 5, 2020) ("Rehearing Request").
[3] *Jordan Cove Energy Project L.P.*, DOE/FE Order No. 3413-A (July 6, 2020) ("Final Order").

("non-FTA nations") from its proposed export terminal to be located in unincorporated Coos County, Oregon ("LNG Terminal").

On November 15, 2019, the Federal Energy Regulatory Commission ("FERC") published its Final Environmental Impact Statement ("EIS") for the LNG Terminal and Pacific Connector Gas Pipeline, LP's proposed natural gas pipeline ("Pipeline", and together with the LNG Terminal, the "Project"). DOE/FE participated in the development of the EIS as a cooperating agency and adopted the findings and conclusions of the EIS.[4] On March 19, 2020, FERC issued an order approving JCEP's FERC application.[5] DOE/FE issued the Final Order, approving JCEP's Non-FTA Application on July 6, 2020. Sierra Club filed the Rehearing Request on August 5, 2020.

II. MOTION FOR LEAVE TO ANSWER

Although DOE's rules do not generally allow answers to requests for rehearing, DOE has permitted answers to requests for rehearing where the answer is "relevant to [DOE's] consideration of the issues" in the application for rehearing.[6] JCEP submits that this Answer is relevant to DOE's consideration of the Rehearing Request because the Answer responds directly to the assertions of fact and law that Sierra Club proffers in the Rehearing Request and may assist DOE

[4] *See* Fed. Energy Regulatory Comm'n, Final Environmental Impact Statement for the Jordan Cove Energy Project, Docket Nos. CP17-494-000 and CP17-495-000 (Nov. 15, 2019), *available at* https://elibrary.ferc.gov/IDMWS/file_list.asp?document_id=14814378 ("EIS").

[5] *Jordan Cove Energy Project L.P., et al.*, 170 FERC ¶ 61,202 (2020) ("FERC Order"), *reh'g granted in part and denied in part*, 171 FERC ¶ 61,136 (2020).

[6] *See Magnolia LNG, LLC*, DOE/FE Order No. 3909-A at n. 23 and Ordering Paragraph (A) (Mar. 30, 2018) (granting Motion for Leave to Answer because it "is relevant to our consideration of the issues raised in Sierra Club's Rehearing Request); *Golden Pass Products LLC*, DOE/FE Order No. 3978-A at n. 23 and Ordering Paragraph (A) (Mar. 30, 2018) (granting Motion for Leave to Answer because it "is relevant to our consideration of the issues raised in Sierra Club's Rehearing Request); *Cheniere Marketing, LLC, et al.*, DOE/FE Order No. 3638-A at Ordering Paragraph (A) (granting Motion for Leave to Answer Rehearing Request) (May 26, 2016); *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3331-B at n. 42 and Ordering Paragraph (A) (Apr. 18, 2016) (granting Motion for Leave to Answer "because the Answer is relevant to our consideration of the issues raised in Sierra Club's Rehearing Request"); *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3357-C at n. 36 and Ordering Paragraph (A) (Dec. 4, 2015) (granting Motion for Leave to Answer "because it provides additional relevant argument pertinent to our review of the record"); *Cameron LNG, LLC*, DOE/FE Order No. 3391-B at n. 25 and Ordering Paragraph (A) (Sept. 24, 2015) (granting Motion for Leave to Answer "because the Answer is relevant to our consideration of the issues raised in Sierra Club's Rehearing Request").

in fully considering all issues when acting on the Rehearing Request. Accordingly, JCEP submits that good cause exists to waive the general rule and accept this Answer.

III. ANSWER

A. DOE/FE's NEPA analysis for the Project was sufficient.

1. DOE/FE met NEPA's goals of informed decision-making and public involvement by adopting FERC's EIS and considering additional supplemental materials.

Notwithstanding D.C. Circuit precedent to the contrary, Sierra Club claims that DOE/FE violated NEPA because DOE/FE relied on supplemental analysis that was not presented in the FERC EIS.[7] In the Final Order, DOE/FE adopted the EIS[8] and permissibly relied on the following additional materials it incorporated into the record to meet its NEPA obligations:

- *Draft Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States*,[9]
- *Final Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States* (the "Addendum"),[10]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States* ("2014 LCA Report"),[11]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update* ("2019 LCA Update"),[12] and
- *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* ("2018 LNG Export Study);[13]
- Public comments submitted during the notice and comment periods and agency responses provided for the above reports.

Sierra Club's arguments are wrong on multiple fronts. First, Sierra Club is incorrect that DOE/FE's review of indirect effects related to upstream production and downstream combustion of exported LNG violated NEPA because that analysis was not contained in FERC's EIS. Sierra

[7] Rehearing Request at 1-2.
[8] Final Order at 106-07.
[9] 79 Fed. Reg. 32,258 (June 4, 2014).
[10] 79 Fed. Reg. 48,132 (Aug. 15, 2014) ("Addendum").
[11] 79 Fed. Reg. 32,260 (June 4, 2014) ("2014 LCA Report").
[12] 84 Fed. Reg. 49,278 (Sept. 19, 2019) ("2019 LCA Update").
[13] 83 Fed. Reg. 27,314 (June 12, 2018) ("2018 LNG Export Study").

Club asserts that NEPA requires that all analysis of impacts be presented in a single environmental impact statement, lest the analysis be "fragmented across multiple documents,"[14] but this is simply not true. The Council on Environmental Quality's ("CEQ") NEPA regulations identify myriad ways where NEPA analysis may be found across multiple documents without being directly included in an original environmental impact statement. For example, NEPA allows agencies to append to an environmental impact statement materials that are not circulated with it,[15] to prepare supplements to an environmental impact statement,[16] to tier to other NEPA analyses,[17] and to incorporate material by reference.[18] There is no blanket requirement that all analysis be included in a single environmental impact statement document.

Second, DOE/FE has met NEPA's "hard look" requirement. NEPA's twin purposes are to ensure "that agency decisions include informed and careful consideration of environmental impact," and to ensure "that agencies inform the public of that impact and enable interested persons to participate."[19] DOE satisfied both of these goals here when it prepared and made publicly available the Addendum, the 2014 LCA Report, the 2019 LCA Update, and the 2018 LNG Export Study, and when it solicited and considered public comments on each. DOE/FE's Final Order explicitly incorporated the public comments and the underlying studies into the record and reflects that DOE/FE considered them.[20]

The D.C. Circuit previously found that DOE/FE met its NEPA "hard look" requirement on essentially identical facts. In *Sierra Club v. U.S. Department of Energy* (here, "*Freeport*"),[21] the D.C. Circuit reviewed DOE/FE's adoption of a FERC environmental impact statement to support

[14] Rehearing Request at 1.
[15] 40 C.F.R. § 1502.18.
[16] 40 C.F.R. § 1502.9(c).
[17] 40 C.F.R. § 1502.20.
[18] 40 C.F.R. § 1502.21.
[19] *Sierra Club v. U.S. Army Corps of Eng'rs*, 803 F.3d 31, 36-37 (D.C. Cir. 2015).
[20] Final Order at 23.
[21] 867 F.3d 189 (D.C. Cir. 2017) ("*Freeport*").

a non-FTA approval for the export of LNG, where that environmental impact statement did not discuss indirect effects related to upstream production and downstream combustion of exported natural gas, but where DOE/FE supplemented its review with the Addendum and the 2014 LCA Analysis.[22] The court concluded that, with the environmental impact statement and the supplemental materials, DOE/FE conducted the requisite "hard look."[23] The same reasoning applies here and demonstrates the adequacy of DOE/FE's reliance on the environmental impact statement and the supplemental materials to meet its NEPA obligations and to support DOE/FE's determination that its non-FTA approval is not inconsistent with the public interest.[24] Indeed, DOE/FE specifically noted the D.C. Circuit's rejection of Sierra Club's arguments brought in *Freeport* and explained that the court's conclusions and reasoning guided its review in this proceeding.[25]

Sierra Club claims *Freeport* does not foreclose its claim, arguing that the court assumed but explicitly did not decide that DOE/FE could rely on the supplemental materials outside the environmental impact statement.[26] In fact, the issue the Court reserved in *Freeport* was whether DOE's reliance on the supplemental materials created concerns about "defective notice," because Sierra Club had not preserved such an argument.[27] Here, there are no plausible notice concerns, because DOE/FE made the relevant materials publicly available and allowed notice and public comment on the same. Moreover, the D.C. Circuit has previously found this type of supplementation permissible under NEPA. Recognizing that "[t]he [environmental impact statement] . . . is not an end in itself, but rather a means toward the goal of better decisionmaking,"[28]

[22] *Id.* at 195.
[23] *Id.* at 197, 199-202.
[24] Final Order at 106.
[25] *Id.*at 25-27, 108.
[26] Rehearing Request at 2.
[27] *Freeport*, 867 F.3d at 197.
[28] *Friends of the River v. FERC*, 720 F.2d 93, 106 (D.C. Cir. 1983) (citing *North Slope Borough v. Andrus*, 642 F.2d 589, 599-600 (D.C. Cir. 1980)).

the D.C. Circuit has upheld agency action when the agency—outside of the environmental impact statement—undertook the requisite investigations, received and responded to public comments, and incorporated its findings in a publicly accessible order.[29] DOE/FE did all of this here and more, making the Addendum, the 2014 LCA Report, and the 2019 LCA Update available for public review and comment in the same manner as the EIS[30] and fully meeting NEPA's goals of public involvement and informed decision-making. DOE/FE specifically considered Sierra Club's and others' arguments that DOE/FE should consider the environmental effects of induced natural gas production and increased greenhouse gas ("GHG") emissions both domestically and globally.[31] DOE/FE discussed them and the reasoning for its conclusions in the Final Order and in DOE's response to comments on the 2019 LCA Update, which DOE/FE incorporated into this proceeding.[32]

Sierra Club suggests in passing that the supplemental materials did not satisfy NEPA's requirements to consider, among other things, alternatives, project purpose and need, and mitigation.[33] Sierra Club does not identify any specific deficiency in any of the supplemental documents in question, and its conclusory argument can be rejected on that basis.[34] In any event, the question is whether the materials taken as a whole—including the EIS, which unquestionably

[29] *Friends of the River*, 720 F.2d at 106 (upholding agency action despite insufficient analysis in the environmental impact statement on a power purchase alternative, which the agency addressed in a post-license supplementation of its record of decision). *See also Nat. Res. Defense Council v. U.S. Nuclear Reg. Comm'n*, 879 F.3d 1202, 1210-12 (D.C. Cir. 2018) (finding "permissible" an agency's reliance on post- environmental impact statement supplements to augment its decision-making); *Atchafalaya Basinkeeper v. U.S. Army Corps of Eng'rs*, 894 F.3d 692, 699 (5th Cir. 2018) (noting that an agency decision should be upheld when the agency's "path [can] 'reasonably be discerned' from the [NEPA documents] and *other publicly available documents*" (emphasis added)).
[30] *See* 40 C.F.R. § 1506.6.
[31] Final Order at 41, 43, 60, 67.
[32] Final Order at 107-10.
[33] Rehearing Request at 3.
[34] *See, e.g.*, *Forest Guardians v. U.S. Forest Serv.*, 495 F.3d 1162, 1170-71 (10th Cir. 2007) (holding that claims must be presented to the agency in sufficient detail to allow the agency to rectify the alleged violation); *see also Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 553-54 (1978) ("[A]dministrative proceedings should not be a game or a forum to engage in unjustified obstructionism by making cryptic and obscure reference to matters that 'ought to be' considered, and then, after failing to do more to bring the matter to the agency's attention, seeking to have that agency determination vacated on the ground that the agency failed to consider matters 'forcefully presented.'").

does address each of the NEPA requirements identified by Sierra Club—satisfy NEPA.[35] The answer to that question is yes.

2. DOE/FE did not segment its review of the non-FTA approval.

Sierra Club claims that FERC's EIS is deficient because it fails to address the impacts of DOE/FE's non-FTA approval as a "connected action," and that, consequently, DOE/FE's adoption of the EIS, purportedly without any further NEPA process, also violates NEPA.[36] Under NEPA, "connected actions" are those that are closely related and therefore should be discussed in the same environmental impact statement.[37] An agency impermissibly segments its NEPA review when it divides connected actions into separately reviewed projects, and "thereby fails to address the true scope and impact of the activities that should be under consideration."[38] Sierra Club's concerns about connected actions are unfounded.

To begin with, this is not a case where an environmental impact statement failed to consider related actions that each had impacts within the agency's regulatory authority, such as occurred in the case to which Sierra Club cites, *Delaware Riverkeeper Network v. FERC*. There, the court held that FERC segmented its review of four related pipeline upgrade projects because FERC did not adequately consider the combined environmental impacts of the multiple projects within its jurisdiction.[39] Here, the EIS properly acknowledged DOE/FE's review of JCEP's amended non-FTA application as one of the many major federal actions being considered in the EIS.[40] In the Final Order, DOE/FE adopted the EIS, which fully considered the effects of FERC's action, and DOE/FE augmented the EIS with its own analysis to ensure that any additional effects of its non-FTA approval were also addressed. Simply put, DOE/FE has not segmented its review of the non-

[35] *See Freeport*, 867 F.3d at 197.
[36] Rehearing Request at 3-4.
[37] 40 C.F.R. § 1508.25(a)(1).
[38] *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).
[39] *Id.* at 1314.
[40] *See* EIS at 1-11 to 1-12, 1-22.

FTA approval, and there is no segmented federal action with impacts within the purview of DOE/FE that was omitted from DOE/FE's NEPA review, which encompassed both FERC's action approving the terminal facilities and DOE/FE's action approving the non-FTA approval. Put differently, Sierra Club's argument relating to alleged segmentation collapses into its argument relating to the adequacy of DOE/FE's NEPA review.

Sierra Club's ultimate claim—that decisionmakers and the public lacked an adequate view of the total project consequences and could not appropriately weigh project benefits and harms—is wrong.[41] DOE is the only agency with responsibility to assess the indirect effects of approving LNG exports, to the extent such effects are caused by DOE's non-FTA authorization and are reasonably foreseeable, and it had the whole picture in view through the adopted EIS and the supplemental materials. FERC and each of the other agencies could properly rely on the EIS, even though it did not include DOE's supplemental analysis, because the EIS satisfied those agencies' NEPA obligations. Drawing on the Supreme Court's decision in *Department of Transportation v. Public Citizen*, the D.C. Circuit has held in the context of review of LNG exports that DOE's "independent decision to allow exports—a decision over which [FERC] has no regulatory authority—breaks the NEPA causal chain and absolves [FERC] of responsibility to include in its NEPA analysis considerations that it 'could not act on' and for which it cannot be 'the legally relevant cause.'"[42] Each agency therefore had the whole picture of effects relevant to its regulatory authority, and Sierra Club's use of the connected actions argument to suggest otherwise is misguided.

Sierra Club's argument also fails because it incorrectly assumes that an environmental impact statement is rendered deficient simply because a cooperating agency determines that it must

[41] Rehearing Request at 5.
[42] *Sierra Club v. FERC*, 827 F.3d 36, 48 (D.C. Cir. 2016) (*quoting Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 769 (2004)).

consider additional materials to address potential impacts not fully addressed in the environmental impact statement. Sierra Club understandably cites no authority for this claim, which misapprehends NEPA's requirements for cooperating agencies and is belied by CEQ's NEPA regulations. The CEQ's regulations contemplate scenarios where a lead agency may prepare an environmental impact statement that, in the opinion of a cooperating agency, requires the cooperating agency to prepare additional analysis. This is the purpose of the requirement that DOE, as a cooperating agency, independently reviews an environmental impact statement before adopting it.[43] If additional review is necessary to consider impacts that were, for example, not addressed within the scope of the lead agency's NEPA review, DOE as a cooperating agency can permissibly augment its review.[44]

Sierra Club also over-reaches in suggesting that the "One Federal Decision" executive order and related memorandum of agreement render DOE's reliance on the EIS and its supplemental materials improper under NEPA.[45] As an initial matter, the "One Federal Decision" framework does not have the force and effect of law, and is not enforceable in court by third parties.[46] Moreover, the "One Federal Decision" Executive Order does not require a single environmental impact statement, but rather speaks to a single record of decision, and even then, it contemplates that not occurring unless "the final [environmental impact statement] includes an adequate level of detail to inform agency decisions pursuant to their specific statutory authority

[43] 40 C.F.R. § 1506.3(c).
[44] *See, e.g.*, *Natural Res. Def. Council*, 879 F.3d at 1210-12. Sierra Club does not argue here—because they cannot—that DOE was required to supplement the EIS under the standard that NEPA regulations establish for supplementation: i.e., "substantial changes in the proposed action that are relevant to environmental concerns" or any "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1).
[45] Rehearing Request at 4.
[46] Exec. Order No. 13,807, 82 Fed. Reg. 40463, 40469 (Aug. 15, 2017) ("Nothing in this order shall be construed to impair or otherwise affect: (i) the authority granted by law to an executive department, agency, or the head thereof;" "[t]his order shall be implemented consistent with applicable law and subject to the availability of appropriations;" and "[t]his order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person").

and requirements."[47] Here, DOE/FE determined that, as the agency responsible for assessing the impacts of approving LNG exports, it needed to consider supplemental materials in its proceeding. Claims that DOE/FE failed to meet its NEPA obligations because the final EIS did not include that supplemental analysis, as per a memorandum of agreement entered into by federal agencies to implement the executive order, fail. The agreement among agencies lacks the force of law, as disclaimed by the agreement itself, and it cannot provide any basis for determining the adequacy of the DOE's NEPA analysis.[48]

3. DOE/FE analyzed potential induced production and GHG impacts associated with LNG exports, and NEPA does not require additional project-specific analysis.

Sierra Club repeats another argument that was rejected in *Freeport*, that DOE's NEPA analysis is deficient because DOE/FE did not tailor its environmental impacts analysis to the specific volume of exports in JCEP's request for non-FTA approval.[49] DOE explains in the Addendum that "[f]undamental uncertainties constrain the ability to predict what, if any, domestic natural gas production would be induced by granting any specific authorization or authorizations to export LNG to non-FTA countries."[50] DOE further explains that the environmental impacts resulting from production activity induced by LNG exports to non-FTA countries are not "reasonably foreseeable" within the meaning of CEQ's NEPA regulations because DOE cannot meaningfully estimate where, when, or by what method any additional natural gas would be produced, or meaningfully analyze the specific environmental impacts of such production, or

[47] *Id.* at 40466.
[48] *See* OFF. OF MGMT. & BUDGET & COUNCIL ON ENVTL. QUALITY, EXEC. OFF. OF THE PRESIDENT, NO. M-18-13, MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES, ONE FEDERAL DECISION FRAMEWORK FOR THE ENVIRONMENTAL REVIEW AND AUTHORIZATION PROCESS FOR MAJOR INFRASTRUCTURE PROJECTS UNDER EXECUTIVE ORDER 13807, at A-13 (Mar. 20, 2018) ("Nothing contained in this MOU is intended to or should be construed to limit or affect the authority or legal responsibilities of the undersigned agencies;" "[t]his MOU shall be implemented consistent with applicable law," and "[t]his MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States").
[49] Rehearing Request at 5.
[50] Addendum at 1.

meaningfully consider alternatives or mitigation measures as they relate to that natural gas production since they are beyond DOE's regulatory reach.[51] The D.C. Circuit agreed that DOE offered a reasonable explanation supporting its conclusion that indirect effects from increased gas production in response to a specific non-FTA approval were not reasonably foreseeable.[52]

Sierra Club claims that *Freeport* is factually distinct because there, DOE recognized that interstate pipeline system connections with the Gulf Coast facility made it difficult to predict where export-induced production might occur.[53] Sierra Club then posits that here, an export terminal in Oregon has fewer plausible sources of gas.[54] However, the court's analysis in *Freeport* applies equally here, and its conclusions and reasoning properly guided DOE's review.[55] The court noted that "every natural-gas-producing region in the country is a potential source for new gas wells in order to meet export-induced natural gas demand" given the interconnected pipeline system.[56] The court further noted that any forecasting would require an economic model that used the price elasticity of each potentially productive area at the local level throughout the county.[57] Sierra Club claims there are fewer plausible sources of gas in this instance, but DOE reasonably "assumed that production could occur anywhere across the country and examined the effects with that in mind,"[58] and that analysis considered water resources impacts, air quality impacts, upstream GHG emissions, induced seismicity, and land use impacts. Being guided by these findings, DOE reasonably concluded that upstream natural gas production did not establish that the non-FTA approval is inconsistent with the public interest.[59]

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[51] Addendum at 2.
[52] *Freeport*, 867 F.3d 189, 198, 201 (D.C. Cir. 2017)..
[53] Rehearing Request at 5. Sierra Club also claims that if *Freeport* is not factually distinct, it was wrongly decided, but *Freeport* is precedential and binding on subsequent D.C. Circuit panels. *See id.* at 5-6.
[54] Rehearing Request at 5.
[55] *See* Final Order at 108.
[56] *Freeport*, 867 F.3d at 199.
[57] *Id.*
[58] *Id.* at 201 (citing the Addendum at 13-14).
[59] Final Order at 108.

DOE's Final Order similarly discusses the 2014 LCA Report, the 2019 LCA Update, and DOE's response to comments on the 2019 LCA Update to explain why an analysis of the effect of U.S. LNG exports on net global GHG emissions would be too speculative, noting the need to predict how fuel sources would be affected in each LNG-importing nation, and what the market dynamics and government interventions would be in each country over several decades.[60] DOE has found that even considering U.S. LNG exports in the aggregate, such projections are too speculative to help inform DOE's decision-making, and thus any projection based on only one project's potential non-FTA approval would similarly be too speculative. NEPA only requires the analysis of reasonably foreseeable effects,[61] which are those that are "sufficiently likely to occur that a person of ordinary prudence would take [them] into account in reaching a decision."[62] It does not require agencies "to engage in speculative analysis" or "to do the impractical, if not enough information is available to permit meaningful consideration."[63] DOE/FE did not violate NEPA by concluding it could not meaningfully consider the speculative effects of the individual project.

B. DOE/FE's analysis adequately addressed the potential for gas production in Canada.

1. DOE/FE was not required to forecast the amount of exported gas that would be produced in Canada.

The source of gas to be exported over the multi-decade term of the authorization cannot be reasonably determined and is speculative at best. Contrary to Sierra Club's assertions,[64] the source

[60] *Id.* at 110 (citing U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update – Response to Comments, 85 Fed. Reg. 72 (Jan. 2, 2020)).
[61] *See* 40 C.F.R. § 1508.8(b).
[62] *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955 (D.C. Cir. 2016) (citation omitted).
[63] *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011) (internal citation omitted).
[64] Rehearing Request at 6-7 (arguing that various tools provide a reasonable forecast of where gas production would likely increase).

of exported gas is not reasonably foreseeable.[65] The current forecasting programs are not adequate to predict where gas will be produced, and JCEP's commercial model for the LNG Terminal means that it will not have control over the source of gas for export.

While Sierra Club argues that DOE/FE must engage in reasonable forecasting,[66] NEPA does not require agencies "to engage in speculative analysis" or "to do the impractical, if not enough information is available to permit meaningful consideration."[67] The precise sources of the gas that will travel in the Pipeline are unknown, are likely to change over the multi-decade term of the authorization and cannot be determined with the specificity that Sierra Club asserts DOE/FE should analyze. Such effects are simply not reasonably foreseeable.

JCEP intends to use a tolling model for its LNG exports, under which an individual customer that holds title to natural gas will have the right to deliver the natural gas to the LNG Terminal for liquefaction service. This means that JCEP's customers, not JCEP, will source feed gas for the LNG Terminal. As DOE/FE notes, these customers may seek out U.S. or Canadian supply, or a combination of both, as the source of their feed gas.[68] In addition, customers' preferences may change over time as a result of price differences and market forces, making predictions regarding the source of gas even more speculative over the likely 20-year terms of tolling agreements. DOE/FE, therefore, does not have "the tools to predict where . . . exporters are likely to source their gas."[69]

[65] An impact is "reasonably foreseeable" when it is "sufficiently likely to occur . . . that a person of ordinary prudence would take [them] into account in reaching a decision." *Birckhead v. FERC*, 925 F.3d 510, 516-517 (D.C. Cir. 2019); *see* 40 C.F.R. § 1508.8(b); *Sierra Club v. FERC*, 827 F.3d 36, 46-47 (D.C. Cir. 2016); *City of Shoreacres v. Waterworth*, 420 F.3d 440, 452 (5th Cir. 2005); *N. Plains Res. Council, Inc.* 668 F.3d 1067 at 1078(agencies are not required "to engage in speculative analysis").
[66] Rehearing Request at 6.
[67] *N. Plains Res. Council, Inc.*, 668 F.3d at 1078.
[68] Final Order at 97.
[69] Rehearing Request at 6.

In any event, DOE/FE considered whether or not the exported gas would be sourced in Canada and was not persuaded that sourcing gas in Canada would undermine the public benefits of the Project. DOE/FE noted that there are robust imports and exports of natural gas between the U.S. and Canada and determined that "even if [JCEP] were assumed to import 100% of the Terminal's liquefaction capacity from Canada . . . the volume at issue in this proceeding (395 Bcf/yr) would represent only a small portion of the U.S.-Canadian natural gas market."[70] DOE/FE also found that, regardless of the source of the gas, the United States will experience benefits from LNG exports in the form of jobs and infrastructure investment.[71] In fact, Canadian production benefits the United States by increasing potential gas supplies available for U.S. markets, thereby reducing prices for all U.S. domestic gas consumers, a counter to Sierra Club's claim that LNG exports will increase gas prices for consumers.[72] DOE/FE's study of the macroeconomic effects of LNG exports "accounts for pipeline trade in natural gas with . . . Canada, and the potential build-up of liquefaction plants for exporting LNG."[73] DOE/FE's studies previously concluded that the biggest costs of LNG exports to the U.S. economy would be as a result of higher energy prices and lower consumption, plus higher costs to supply the natural gas for exports. However, this impact, for gas produced in Canada, would be limited. Even if most of the LNG exports from the LNG Terminal are Canadian gas, which is not a given, the U.S. will still realize benefits.

2. NEPA does not require DOE/FE to evaluate foreign environmental effects.

DOE/FE is not obligated to assess the environmental impacts of gas production in Canada, notwithstanding Sierra Club's claims to the contrary.[74] As an initial matter, Sierra Club attempts to fault DOE/FE for not including in its NEPA analysis potential environmental effects associated

[70] Final Order at 94.
[71] *Id.* at 95.
[72] *See* Rehearing Request at 8.
[73] Final Order at 98 (citing 2018 LNG Export Study).
[74] Rehearing Request at 7.

with gas production in Canada, despite Sierra Club not raising this issue in its extensive comments, protests, and other filings. Parties "challenging an agency's compliance with NEPA must 'structure their participation so that it . . . alerts the agency to the [parties'] position and contentions,' in order to allow the agency to give the issue meaningful consideration."[75] By failing to raise the issue and give DOE/FE an opportunity to examine Sierra Club's claims regarding claimed effects from Canadian gas production, Sierra Club has forfeited its objections.[76]

In any event, as discussed above and further explained in the Addendum, DOE/FE has already determined that it cannot meaningfully measure the environmental impacts of production induced by an individual LNG export project because those effects are not reasonably foreseeable. That determination is reasonable because DOE/FE does not know where, when, or by what method such additional production might occur.[77] More granular analysis of any difference between U.S. and Canadian production impacts would simply add an additional layer of speculation and would not meaningfully contribute to DOE's analysis.

The same applies to lifecycle GHG impacts, also discussed above, where DOE/FE has concluded that it cannot determine the effect that U.S. LNG exports would have on net global GHG emissions given necessary speculation on numerous variables.[78] DOE/FE reasonably concluded that it would be too speculative to attempt to estimate each of these factors in a way that would provide a helpful analysis for U.S. LNG exports in total, and thus Sierra Club's argument that DOE/FE should drill even further down into that analysis and determine the GHG impacts of just one aspect of a project (*i.e.*, possible upstream production in Canada, versus production in the

[75] *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 764–65 (2004) (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U. S. 519, 553 (1978)).
[76] *See id.*
[77] *See* Addendum at 2.
[78] Final Order at 109-10.

United States) would require yet another layer of speculation. NEPA requires no such speculative exercises.

Moreover, NEPA does not require DOE/FE to assess foreign natural gas production by foreign companies in a foreign jurisdiction, as it flies in the face of the presumption against extraterritorial application of statutes in American jurisprudence.[79] For NEPA to apply, courts generally require "some measure of legislative control" over the area (unless it is part of the "global commons" not subject to the jurisdiction of another sovereign), as well as the absence of overriding policy concerns such as national security and foreign policy.[80]

Sierra Club presents no arguments explaining why the presumption against extraterritorial application should be overcome with respect to NEPA in this case. Indeed, the circumstances present here weigh against it. As DOE/FE observed, "[t]he United States and Canada are part of a thriving, integrated North American natural gas market, as evidenced by the recently-signed United States-Mexico-Canada Agreement (USMCA) and ongoing high levels of trade."[81] The USMCA exhibits a strong foreign policy interest in protecting this integrated market, to which NEPA must yield. This is to say nothing of national security interests in maintaining energy security, given DOE's considerable expenditures ensuring U.S. energy security, adequate supply, and infrastructure resiliency.[82] These factors illustrate why NEPA does not apply extraterritorially here, as Sierra Club urges.

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[79] *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 188 (1993) ("Acts of Congress normally do not have extraterritorial application unless such an intent is clearly manifested."). *See also Consejo de Desarrollo Economico de Mexicali, AC v. United States*, 438 F. Supp. 2d 1207, 1234 (D. Nev. 2006), *vacated on other grounds*, 482 F.3d 1157 (9th Cir. 2007) ("Nothing in NEPA's language suggests Congress intended NEPA to apply outside United States territory.").

[80] *See, e.g., Envtl. Def. Fund, Inc. v. Massey*, 986 F.2d 528, 534-35 (D.C. Cir. 1993) (analyzing applicability of NEPA to an action with effects on Antarctica, a part of the global commons).

[81] Final Order at 94 (citing *United States-Mexico-Canada Agreement*, INT'L TRADE ADMIN., https://www.trade.gov/usmca (last visited Aug. 18, 2020)).

[82] *Energy Security*, DEP'T OF ENERGY, OFFICE OF CYBERSECURITY, ENERGY SEC., & EMERGENCY RESPONSE. https://www.energy.gov/ceser/activities/energy-security (last visited Aug. 14, 2020).

Even assuming some upstream Canadian production[83] and corresponding GHG emissions as they might affect the domestic environment, DOE/FE has already explained why it is too speculative for DOE/FE to determine the effect that U.S. LNG exports would have on net global GHG emissions. Given the numerous intervening factors that render potential impacts of increased Canadian production speculative and attenuated, such impacts do not have the "reasonably close causal relationship" with the DOE's action on this specific non-FTA approval that would require the NEPA review Sierra Club demands.[84] The decisions to produce natural gas would be made by others in Canada, not under the purview of either DOE/FE or JCEP, and any DOE/FE analysis of those decisions would require the same type of speculative inquiries into market and internal financial circumstances that DOE/FE addressed in its lifecycle analyses.[85] NEPA does not require analysis of these claimed extraterritorial impacts, much less an analysis based on such speculation.

3. DOE/FE's economic and public interest analyses correctly found that benefits of the Project would occur even if a portion of the feed gas is imported from Canada.

In the NGA, Congress established a rebuttable presumption that a proposed export of natural gas is in the public interest, and DOE will accordingly grant applications for export to non-FTA nations "unless DOE finds that the proposed exportation will not be consistent with the public interest".[86] Sierra Club fails to make an "affirmative showing of inconsistency with the public

[83] DOE has noted potential minor additional contribution from increased imports from Canada. *See* Addendum at 2 n.2 (citing U.S. ENERGY INFO. ADMIN., EFFECT OF INCREASED NATURAL GAS EXPORTS ON DOMESTIC ENERGY MARKETS, *available at* https://www.eia.gov/analysis/requests/fe/pdf/fe_lng.pdf (Jan. 2012)); Final Order at 12-13 (citing U.S. ENERGY INFO. ADMIN., EFFECT OF INCREASED LEVELS OF LIQUEFIED NATURAL GAS EXPORTS ON U.S. ENERGY MARKETS, *available at* https://www.eia.gov/analysis/requests/fe/pdf/lng.pdf(Oct. 2014)).

[84] *E.g.*, *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (citing *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766,774, n.7 (1983) (courts must "draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not.")).

[85] *Friends of the Earth, Inc. v. Mosbacher*, 488 F. Supp. 2d 889, 908-09 (N.D. Cal. 2007) (finding analysis of impacts caused by extraterritorial activities appropriate because there was evidence of control over the decisions and manner in which the extraterritorial activities operated).

[86] Final Order at 28 (citing *Freeport*, 867 F.3d 189, 203 (D.C. Cir. 2017) 203 ("We have construed [NGA section 3(a)] as containing a 'general presumption favoring [export] authorization.'") (quoting *W. Va. Pub. Serv. Comm'n v. U.S. Dep't of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982)).

interest"[87] required to deny an application. DOE/FE's economic and public interest analyses determined that there was no inconsistency with the public interest, even if some or all of the exported gas is sourced in Canada.

Sierra Club's argument that the Project benefits will not occur if the exported gas is sourced in Canada is built on a faulty factual premise.[88] As addressed above, DOE/FE was unpersuaded that gas exported through the LNG Terminal will be sourced primarily outside the United States. Nor, DOE/FE found, would such a fact negate the conclusion that the proposed exports are in the public interest.[89]

DOE/FE specifically analyzed whether benefits would occur if gas production occurred outside of the United States,[90] and still determined that benefits from the Project "will accrue locally, regionally, and nationally, even if some or all of the feed gas is imported from Canada."[91] Further, DOE/FE notes that "[t]he United States and Canada are part of a thriving, integrated North American natural gas market, as evidenced by the recently-signed United States-Mexico-Canada Agreement (USMCA) and ongoing high levels of trade."[92] Given that DOE/FE considered a situation in which all of the feed gas was imported from Canada, and still determined the Project is not inconsistent with the public interest, Sierra Club's argument that such benefits will not occur falls flat.

[87] *Freeport*, 867 F.3d at 203.
[88] Rehearing Request at 8.
[89] Final Order at 95.
[90] *See* Final Order at n. 517 and n. 518; *see also* Application of Jordan Cove Energy Project L.P. for Long-Term Authorization to Export LNG to Non-FTA Nations at 9-10 and Appendices A-F, FE Docket No. 12-32-LNG (Mar. 23, 2012); Answer of Jordan Cove Energy Project L.P. to Protests at Section II, FE Docket No. 12-32-LNG (Aug. 29, 2012); EIS at Section 4.9.1.4 (discussing employment creation and tax revenue generation related to the Project).
[91] *Id.* .
[92] *Id.* at 94 (internal citations omitted).

C. DOE/FE Took the Requisite "Hard Look" at GHG Impacts

Sierra Club next argues that DOE/FE failed to take a "hard look" at greenhouse gas emissions. According to Sierra Club, DOE/FE should have (1) conducted a detailed analysis concerning the potential displacement of renewables by imported LNG, (2) addressed the effects of LNG exports on the ability of the United States to meet its purported GHG "reduction commitments," and (3) more fully considered emissions attributable to the transport of LNG after it arrives at the receiving port. As explained in detail below, each of these arguments is mistaken.

1. DOE's Analysis Concerning Displacement of Renewables Was Reasonable and Has Been Approved by the D.C. Circuit.

Sierra Club first contends that the 2014 LCA Report and its 2019 Update are "incomplete" because they fail to "address the impacts that will occur if LNG displaces renewables" and instead focus on "comparing the lifecycle emission of [American] LNG with coal or other sources of natural gas."[93] But, as DOE/FE reasonably explained in the Final Order, it was not required to speculate as to the impacts that may occur if exported LNG displaces renewable energy in importing nations.

The 2014 LCA Report and its 2019 Update explain that LNG exports are likely to ***reduce*** GHG emissions in the many countries where LNG imports will be preferred over coal, and that exports will have only a "small impact" in countries where American LNG will displace other forms of imported natural gas.[94] The Reports also recognize that, in certain countries, American LNG imports may "compete with renewable energy, nuclear energy, petroleum-based liquid fuels," imported coal, "indigenous natural gas, [or] synthetic natural gas."[95] In the Final Order, DOE/FE explained that it would be functionally impossible to model the effects of displacing these

[93] Rehearing Request at 9.
[94] *See* Final Order at 109.
[95] *Id.* at 109-10.

fuels—including not just renewables but also traditional fossil fuels such as oil—because such an analysis would require country-specific energy-use projections and speculation about issues such as government intervention and market dynamics.[96] Given the "uncertainty associated with estimating each of these factors," DOE/FE found that any analysis concerning potential displacement of renewables by LNG would be "too speculative to inform the public interest determination."[97]

Although Sierra Club complains in general terms that DOE's analysis of this issue was "misleading" or otherwise unsatisfactory,[98] it offers no response at all to DOE's detailed explanation that such an analysis—were it even possible—would be too uncertain and hypothetical to be useful. Indeed, Sierra Club's claim that DOE/FE must "address the impacts that will occur if LNG displaces renewables or conservation, even if . . . it cannot determine the proportion of LNG that will displace renewables"[99] is puzzling given that, absent dependable information concerning the type or extent of displacement that could occur, it is unclear how DOE/FE would undertake the analysis that Sierra Club desires.

In *Freeport*, the D.C. Circuit held that there was "nothing arbitrary" about DOE's decision not to evaluate potential displacement of renewables, crediting the agency's determinations that such an analysis would be "too speculative" to be useful given that it "would require consideration of the dynamics of all energy markets in LNG-importing nations" and "many uncertainties in modeling."[100] Sierra Club attempts again to explain away *Freeport* as having held that "it is not unreasonable for DOE/FE to provide an illustrative comparison of the lifecycle impact of LNG

[96] *Id.*
[97] *Id.* at 110.
[98] Rehearing Request at 9.
[99] *Id.*
[100] *Freeport*, 867 F.3d 189, 202 (D.C. Cir. 2017)..

with other fossil energy sources," while purportedly leaving open the question whether DOE/FE must address impacts from displacement of renewables.[101] But that is not what *Freeport* says. Sierra Club presented the exact same arguments in its *Freeport* briefs that it now rehashes here—*i.e.*, that DOE/FE "should have provided comparisons of the effect of electricity generation using [American] LNG with the effect of wind, solar, or other renewables," and that DOE's claim that such an analysis would be too speculative is incorrect because "these impacts are foreseeable."[102] The *Freeport* panel flatly—and unanimously—rejected Sierra Club's argument that DOE/FE "should have evaluated" displacement of renewables, reasoning that "Sierra Club's complaint falls under the category of flyspecking."[103]

In lieu of engaging with *Freeport*, Sierra Club instead claims that "research concludes that [American] LNG exports are likely to play only a limited role in displacing foreign use of coal."[104] There are several problems with this argument.

First, DOE/FE conducted its own exhaustive review of the available research and evidence, and reached a conclusion contrary to that of Sierra Club. DOE/FE is entitled to considerable deference when resolving potentially competing evidence,[105] and the fact that Sierra Club has marshalled a handful of cherry-picked sources that purportedly support its contentions does not mean that DOE's decision was arbitrary.

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[101] Rehearing Request at 9.
[102] Opening Br. of Pet'r Sierra Club at 7, 76, *Freeport*, 867 F.3d 189 (D.C. Cir. 2017) (No. 15-1489), 2016 WL 3612095, at *7.
[103] *Freeport*, 867 F.3d at 202 (citation omitted).
[104] Rehearing Request at 10.
[105] *Islander E. Pipeline Co., LLC v. McCarthy*, 525 F.3d 141, 162 (2d Cir. 2008) ("Where reasonable minds might thus differ on a point, an agency's resolution of competing evidence cannot be deemed arbitrary and capricious"); *see also Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951) (agency's choice between two "two fairly conflicting views" may not ordinarily be disturbed).

Second, Sierra Club has not offered any explanation of what methodology DOE/FE might use to account for renewables displacement or to generate an analysis that would be anything other than hopelessly speculative. The fact that some sources may suggest as a general matter that coal is unlikely to be displaced by imported LNG does nothing to disturb DOE's conclusion that various geopolitical factors—including the possibility of government intervention and various other nation-specific idiosyncrasies concerning market and energy dynamics—would prevent a meaningful analysis concerning potential displacement of renewables.

Third, the basic premise of Sierra Club's argument—that DOE/FE was apparently required to "provide[] evidence suggesting that LNG exports will primarily compete with coal or other sources of gas"[106]—is mistaken. DOE/FE did not make any specific quantitative claims concerning which foreign fuels would be displaced; instead, it based its decision on the specific complications attending a potential analysis of displacement of renewables. Sierra Club offers no response at all to this explanation.

Fourth, even the sources cited by Sierra Club in its attempt to second-guess DOE's expert determinations do not support its contentions. For example, the IEA Report on which Sierra Club relies heavily before claiming that "LNG exports are likely to play only a limited role in displacing foreign use of coal"[107] confirms that China has been the largest importer of LNG in recent years, and that this change has been driven by the fact that China intends to curb air pollution by "forcing coal-to-gas switching in the residential and industrial sectors."[108]

As a final matter, Sierra Club claims that, "if DOE refuses to engage in any analysis of the extent to which LNG displaces renewables, then DOE cannot then conclude that exports will not

[106] Rehearing Request at 10.
[107] *Id.*
[108] Int'l Energy Agency, *Global Gas Security Review* at 23 (2019).

increase global GHG emissions."[109] This misrepresents what DOE has said. DOE/FE found, "[b]ased on the evidence" that exists concerning this complex question, that there was "no reason to conclude that [American] LNG exports will increase global GHG emissions in a material or predictable way."[110] That conclusion was based on the general observation that "many LNG-exporting nations rely heavily on fossil fuels," and was provided with the caveat that "there is substantial uncertainty on this point."[111] There is no tension between DOE's conclusion that a detailed analysis of renewables displacement would be too speculative to be useful and its general conclusion that, based on the limited evidence that does exist, there is no persuasive reason to believe that American LNG exports will increase GHG emissions in a "predictable" way.

2. DOE/FE Was Not Required to Address the UNFCCC Scheme Governing Offsets for Foreign GHG Emissions.

Sierra Club next claims that LNG exports may indirectly result in increased production of natural gas in the United States, which in turn will lead to increased emissions that "will make it more difficult for the U.S. to meet its international commitments for [GHG] reductions" under the United Nations Framework Convention on Climate Change ("UNFCCC").[112] According to Sierra Club, DOE/FE was required to account for the fact that the UNFCCC does not permit the United States to "claim offsets for emissions increases resulting from displacement of foreign emissions," as will occur when American LNG substitutes for coal.[113]

This argument fails at the outset because the United States has no "reduction commitments" under the UNFCCC. The UNFCCC "did not establish binding limits on emissions of greenhouse

[109] Rehearing Request at 10.
[110] Final Order at 110.
[111] Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update—Response to Comments, 85 Fed. Reg. 72, 86 (Jan. 2, 2020).
[112] Rehearing Request at 10.
[113] *Id.*

gases"[114]; instead, it (1) memorialized an amorphous commitment by developed countries to provide financial and technological assistance in an effort to help reduce global emissions and (2) called on the international community to craft a binding agreement in the future.[115] The Kyoto Protocol—a 1997 supplement to the 1992 UNFCCC agreement—***did*** contemplate binding emissions reductions for its signatories, but the United States never ratified the Kyoto Protocol.[116] Given that there are no legally enforceable emissions reductions under the UNFCCC, DOE/FE cannot have erred by failing to account for the ways in which LNG exports might affect such "reductions commitments."

Sierra Club candidly concedes, as it must, that its true complaint is that the United States has not agreed to enforceable emissions reductions and a reporting scheme under which it would be required "to account for production-related emissions of all fuel produced in the U.S.," even if that fuel is "ultimately consumed elsewhere."[117] Sierra Club believes that adopting such commitments would be "a sound policy judgment" and would reflect the fact that "the U.S. ***should*** be held to account" for emissions that are purportedly attributable to domestically produced energy.[118] Whatever the merits of these normative claims may be, Sierra Club has failed to show that DOE/FE was actually required by the terms of the UNFCCC—or any other binding source of law—to undertake the type of analysis it believes "should" occur.

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[114] Robert V. Percival, Massachusetts v. EPA*: Escaping the Common Law's Growing Shadow*, 2007 SUP. CT. REV. 111, 154 (2007); *see* Timothy Meyer, *Power, Exit Costs, and Renegotiation in International Law*, 51 HARV. INT'L L.J. 379, 425 n.172 (2010).

[115] *See* Harro van Asselt & Joyeeta Gupta, *Stretching Too Far? Developing Countries and the Role of Flexibility Mechanisms Beyond Kyoto*, 28 STAN. ENVTL. L.J. 311, 319 (2009); Krishna Prasad, Note, *The Truth Behind International Climate Agreements: Why They Fail and Why the Bottom-Up Model Is the Way Forward. A Game Theory Analysis*, 28 COLO. NAT. RES., ENERGY & ENVTL. L. REV. 217, 220 (2017).

[116] Jaclyn Lopez, *The New Normal: Climate Change Victims in Post*-Kiobel *United States Federal Courts*, 8 CHARLESTON L. REV. 113, 127 (2013).

[117] Rehearing Request at 11.

[118] *Id.* (emphasis added).

In any event, Sierra Club's argument fails because DOE/FE ***did*** consider the environmental effects that may be attributable to induced production caused by export, and found that those effects were likely to be "modest" and did not establish that gas exports were inconsistent with the public interest.[119] To the extent that Sierra Club argues that DOE/FE was required to do more, its theory fails for the reasons explained above: The type of robust, quantitative analysis that Sierra Club would apparently prefer simply is not possible given that the manner in which LNG will be consumed in receiving nations cannot reasonably be foreseen or predicted.

3. DOE/FE Reasonably Analyzed Emissions Relating to Further Transportation of LNG After It Reaches the Receiving Port.

Finally, Sierra Club suggests that DOE/FE understated the lifecycle impacts of American LNG exports by "failing to address" the fact that "[l]arge volumes of LNG are transported via truck" or "by extended pipeline" or are "repackaged and further transported as LNG" after arriving at the receiving port."[120] Sierra Club's two-sentence argument is too cursory to adequately present this issue to the agency or to warrant rehearing.[121] Even so, Sierra Club's argument is mistaken. DOE reasonably addressed this issue in its response to comments on the 2019 LCA Update,[122] which has been incorporated by reference into the record for this proceeding.[123]

In that document, DOE explained that its modeling demonstrated that transporting gas via pipelines between regasification facilities near the receiving port and off-site powerplants was likely to lead to increases in lifecycle emissions of less than two percent, and that "such a small

[119] Final Order at 107-08.
[120] Rehearing Request at 11.
[121] *See* 10 C.F.R. § 590.501 (rehearing requests "must set forth specifically the ground or grounds upon which the application is based").
[122] Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update – Response to Comments, 85 Fed. Reg. 72, 84 (2020).
[123] Final Order at 19.

increase would not change" DOE's conclusions in the 2019 LCA Update.[124] DOE also explained that it did not account for the effects of trucking because "truck transport of LNG is still relatively new," because "transport by pipeline remains the dominant way to move LNG," and because limitations on available data concerning truck transport made it difficult to determine how much trucked LNG was originally imported as opposed to having been domestically liquefied.[125] And as to secondary sales, DOE found that re-exports represented only a "very small percentage of global LNG trade" and did not alter DOE's analysis.[126] Sierra Club—which does not even mention these explanations in its rehearing request—has not established that DOE's analysis of this issue as part of the 2019 LCA Update was unreasonable.

D. DOE/FE appropriately analyzed the benefits resulting from construction and operation of the LNG Terminal.

DOE/FE properly fulfilled its role as a cooperating agency under NEPA. While DOE/FE has delegated its authority over the siting, construction, and operation of an LNG terminal's infrastructure to FERC, the benefits of this infrastructure construction are still appropriate for consideration as an economic benefit of the LNG Terminal. Sierra Club misconstrues the concurrent reviews of FERC and DOE, arguing that this "fragmented analysis" results in a "double-counting of benefits".[127] This is incorrect.

DOE/FE has appropriately delegated to FERC the authority to approve or deny an application for the siting, construction, expansion, and operation of an LNG terminal, while retaining authority over the export of natural gas as a commodity.[128] FERC, as the lead agency for

[124] Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update – Response to Comments, 85 Fed. Reg. 72, 84 (2020).
[125] *Id.*
[126] Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update – Response to Comments, 85 Fed. Reg. 72, 85 (2020).
[127] Rehearing Request at 11-12.
[128] *See* 42 U.S.C. §§ 717b(a),(e) (2019); *EarthReports, Inc. v. Fed. Energy Reg. Comm'n*, 828 F.3d 949, 952-53 (D.C. Cir. 2016).

purposes of review of the Project under NEPA, issued the EIS. A cooperating agency "may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied."[129] As a cooperating agency, DOE/FE conducted an independent review of the EIS, including the potential environmental impacts outlined therein, determined that its comments and suggestions were satisfied, and incorporated the reasoning of the EIS into the Final Order.[130] This independent review of the EIS considered both the benefits and the potential environmental impacts, therefore neither was "double counted".[131]

As DOE/FE has explained, completion of the NEPA review through cooperating agency status avoids duplication of efforts by the agencies.[132] NEPA permits cooperating agencies to adopt a joint environmental review,[133] and to disallow DOE's adoption of FERC's analysis of the benefits and impacts of the Project, through the EIS, is inconsistent with the obligations of NEPA.

[129] 40 C.F.R. § 1506.3(c) (2019).
[130] Final Order at 106-07.
[131] Sierra Club raised numerous concerns in the record related to the potential environmental impacts stemming from construction of the LNG Terminal, which DOE considered in the Final Order. *See* Final Order at 40-42. DOE also independently reviewed and incorporated the EIS into the record, which considered, in depth, the potential environmental impacts stemming from the LNG Terminal.
[132] *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3331 at 150 (Sept. 11, 2013).
[133] 40 C.F.R. § 1506.3.

IV. CONCLUSION

For the foregoing reasons, JCEP respectfully requests that DOE/FE deny the Rehearing Request and fully reaffirm its final authorization for JCEP to export LNG to non-FTA nations.

Respectfully submitted,

/s/ John S. Decker
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Attorneys for Jordan Cove Energy Project L.P.

Dated: August 20, 2020

Appendix A

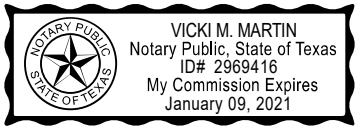
VERIFICATION

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared John S. Decker, who, having been by me first duly sworn, on oath says that he is an Attorney for Jordan Cove Energy Project L.P., and is duly authorized to make this Verification on behalf of Jordan Cove Energy Project L.P.; that he has read the foregoing instrument and that the facts therein stated are true and correct to the best of his knowledge, information and belief. This notarial act was an online notarization.

John S. Decker

SWORN TO AND SUBSCRIBED before me on the 19th day of August, 2020.



Name: Vicki M. Martin
Title: Notary Public

My Commission expires:

January 9, 2021

CERTIFICATE OF SERVICE

I hereby certify that, on the 20th day of August, 2020, I caused a copy of the **Motion of Jordan Cove Energy Project L.P. for Leave to Answer and Answer to Request For Rehearing** filed by Jordan Cove Energy Project L.P. on the same day, in FE Docket No. 12-32-LNG to be served by email or U.S. first class mail on the individuals listed on the Service List for that docket as follows:

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