UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	)	
	)	**DOCKET NO.**
Alaska LNG Project LLC	)	**14-96-LNG**
	)	

Request for Rehearing

Pursuant to Section 19(a) of the Natural Gas Act, 15 U.S.C. § 717r(a), and 10 C.F.R. § 590.501, the Sierra Club hereby requests rehearing of the Department of Energy Office of Fossil Energy's "Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations" ("Order"), DOE/FE Order No. 3643-A, issued August 20, 2020.

Sierra Club asks that this order be withdrawn and the underlying application denied, or in the alternative, that the order be withdrawn pending further inquiry and public process regarding the impact of the proposed exports.

All communications regarding this motion should be addressed to and served upon Nathan Matthews, Senior Attorney, and Meral Basit, Legal Assistant, at Sierra Club, 2101 Webster St., Suite 1300, Oakland, California 94612.

I. Concise Statement of Alleged Errors

A. NEPA Requires DOE to Take A Hard Look at Impacts Related to Producing and/or Sourcing the Gas to Be Exported

1. NEPA Requires A Hard Look at All Reasonably Foreseeable Effects Caused by the Approved Action

DOE violated NEPA by relying on an Environmental Impact Statement that did not examine the impacts of producing the gas that would be used to supply the approved exports (as well as additionally reasonably foreseeable increased production that would be enabled by the pipeline and that would be used in the State of Alaska).

NEPA requires federal agencies to provide a "detailed" environmental impact statement that addresses "the environmental impacts of the proposed action." 42 U.S.C. § 4332(C). In determining what effects can be attributed to the proposed action, and that therefore must be included in the scope of NEPA review, courts have analogized the concept of "proximate cause" in tort law. *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 754 (2004). Thus, at a minimum, NEPA requires analysis of the "normal consequence[s]" of the action under review, regardless of whether a link in the chain of events is a third party acting predictably. Restatement (Second) of Torts §§ 440-443 (1965). NEPA regulations in effect at the time the Alaska LNG project was reviewed and approved reflect this principle by requiring analysis of "reasonably foreseeable" indirect effects, including "growth inducing" effects. 40 C.F.R. § 1508.8. And the D.C. Circuit, in applying these laws and principles to FERC's review of pipelines under Section 7 of the Natural Gas Act, has confirmed that this NEPA analysis must include the reasonably foreseeable impacts of producing, transporting, and using the gas to be transported. *Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) ("*Sabal Trail*"). *See also Scientists' Inst. for Pub. Info. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C. Cir. 1973) (NEPA requires agencies to engage in "[r]easonable forecasting and speculation.").

2. In Prior Cases, Unlike for Alaska LNG, DOE Has Not Entirely Refused to Consider Effects of Additional Gas Production—Instead, DOE Has Relied on General Studies Addressing Environmental Effects

This case is nothing like prior cases specifically concerning Sierra Club's challenges to DOE approval of LNG exports. In those cases, the D.C. Circuit held that DOE had provided the required "hard look" regarding the impacts of export-induced gas production and use by preparing an Environmental Addendum and study on lifecycle greenhouse gas emissions that discussed the nature of these impacts and provided general information about their extent, even though, on the facts before DOE at the time, the D.C. Circuit held that DOE was not required to provide further project-specific analysis. *Sierra Club v. United States Dep't of Energy*, 867 F.3d 189, 197 (D.C. Cir. 2017) ("*Freeport*").[1]

[1] In *Freeport*, the D.C. Circuit held that Sierra Club had waived arguments as to whether these documents prepared alongside the EIS and outside the formal NEPA process could nonetheless be used to satisfy DOE's NEPA obligations. Here, Sierra Club reiterates that such reliance on non-NEPA documents is improper: NEPA requires the analysis to be presented to the public *in the EIS*. *See Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998):

Here, the environmental addendum and life cycle analysis that the D.C. Circuit upheld in prior cases are not included in DOE's docket for this proceeding,[2] are not cited in DOE's order, and do not appear to have played any part in DOE's decisionmaking. Nor could DOE have relied on these documents to inform analysis of the effects of producing the gas that would supply this project, because DOE's prior analyses are all specific to gas production onshore in the lower 48 states. These studies recognize regional variability in the ways gas is produced and the environmental impacts thereof. Indeed, production that will supply the Alaska LNG project is likely to be *vastly* different than the types of production considered in these prior analyses. Thus, because DOE did not rely on these analyses to provide even a general discussion of the impact of gas production that would be caused by the approved exports, nor could DOE have done so, the basis for DOE's approval here is nothing like the facts that the D.C. Circuit upheld in *Freeport* and subsequent unpublished cases.

DOE argues, Order at 33, that its failure to address upstream impacts of gas production is justified for the reasons stated in Golden Pass Products LLC, DOE/FE Order No. 3978, FE Docket No. 12-156-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Golden Pass LNG Terminal Located in Jefferson County, Texas, to Non-Free Trade Agreement Nations, 147-49 (Apr. 25, 2017). However, that decision, like the one at issue in *Freeport*, relied on the Environmental Addendum to provide an analysis of the environmental impacts of export-induced gas production. *Id.* It did not argue that the impacts of gas production were entirely unforeseeable, nor could it have: instead, *Golden Pass* merely argued that DOE could not foresee the impacts of export-induced gas production in sufficient detail to provide a more specific analysis than what DOE had already provided in the addendum. *Id.* DOE's failure to recognize that the primary justification offered in *Golden Pass* is absent here renders DOE's reliance on *Golden Pass* arbitrary.

3. Here, Effects on Gas Production, And Environmental Impact Thereof, Are Reasonably Foreseeable

The effects of the Alaska LNG export project on gas production are arguably more plainly

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Dubois v. U.S. Dept. of Agriculture, 102 F.3d 1273, 1287 (1st Cir. 1996), *cert. denied sub nom. Loon Mountain Recreation Corp. v. Dubois*, 117 S. Ct. 2510 (1997).

[2] https://www.energy.gov/fe/downloads/alaska-lng-project-llc-fe-dkt-no-14-96-lng (last visited Sept. 21, 2020).

foreseeable than for any other major export or pipeline project approved in recent memory. For other projects, while applicant statements and available modeling allowed forecasts of where gas supplies would likely come from, the fact remained that the projects were generally connected to the interstate pipeline network and therefore had flexibility in gas sourcing. Here, in contrast, the proposed project provides the *only* market outlet for gas produced on Alaska's North Slope. That gas will be sold commercially if and only if the Alaska LNG project moves forward; conversely, although the Alaska LNG project may draw small amounts of gas from other Alaska regions as well, the Alaska LNG project cannot move forward without gas supplied from the North Slope. Order at 13, 15-16.

DOE also has the tools to foresee the nature and extent of this production, its types, and thus its potential impacts. The applicant states that initially, gas supplies will be derived from "associated" gas produced alongside North Slope oil production. *See, e.g.,* NERA Report at 20; EIS 4-1160 to 4-1162. Much of this gas is presently produced from existing wells but then "reinjected into the crude oil reservoirs to help maintain pressure and sustain production rates." Order at 29. However, neither DOE nor FERC have provided any analysis of the consequences of diverting this gas for export, including how this will impact oil production, what steps oil producers will take to maintain pressure and production without the reinjected gas, and the environmental impact of those steps (*e.g.*, more aggressive or energy intensive oil production efforts, need to construct additional infrastructure, *etc.*). EIS 4-1160 to 4-1163; *See, e.g.* Tim Bradner, *BP and ExxonMobil Seek More Prudhoe Gas*, Alaska Journal of Commerce (July 29, 2015).[3]

DOE also has the ability to reasonably foresee the nature, if not precise extent, of the impacts of additional gas production that will need to occur to supply the Alaska LNG project in later years. EIS 4-1160. DOE cannot simply dismiss these impacts as speculative; NEPA requires DOE "to at least *attempt* to obtain the information necessary" to determine where the wells will be drilled, how many will be required, and the impacts thereof. *Birckhead v. FERC*, 925 F.3d 510, 510 (D.C. Cir. 2019) (emphasis in original). These questions are likely to be much easier to answer here than for other gas infrastructure projects, where the Alaska LNG project is will need

[3] *Available at* https://www.alaskajournal.com/business-and-finance/2015-07-29/bp-exxonmobil-seek-more-prudhoe-gas (last visited Sept. 21, 2020).

to draw gas from the North Slope, where North Slope gas will not be marketed other than to the Alaska LNG project, and where there are relatively few players, with long histories of operation, in the area.

Analysis of the effects of supplying the project with gas must extend beyond discussion of greenhouse gas impacts. *See Freeport*, 867 F.3d 189, 195 (D.C. Cir. 2017) (explaining that the Environmental Addendum "disclosed the various ways shale gas production might impact the water, air, and land resources surrounding production activities."), *id.* at 201 (explaining that this discussion of water contamination, ground-level ozone, and other specific risks satisfied NEPA). Here, in addition to evaluating greenhouse gas impacts, DOE must consider gas production's impacts on polar bears and other wildlife, permafrost, and other aspects of North Slope ecosystems.

4. Other Entities' Regulation of Gas Production Does Not Relieve DOE of Its NEPA Obligations

DOE contends that the impacts of gas production is best addressed through regulation of production, rather than prohibiting exports. Order at 33. Whatever the wisdom of this view, this is no excuse for excluding the impacts of gas production from DOE's NEPA analysis. DOE does not contend—nor could it—that it lacks authority to consider the impacts of export-induced gas production when making the decision to approve or deny exports to non-Free Trade Agreement nations under 15 U.S.C. § 717b. NEPA therefore requires DOE to consider these impacts. *Sabal Trail*, 867 F.3d at 1373. Indeed, NEPA analysis is essential to making an informed decision about *whether* these impacts can prudently be left to other entities to address.

B. NEPA Further Requires A Hard Look at the Greenhouse Gas Impacts of End Use of Exported LNG

DOE's approval here similarly diverges from prior approvals by entirely failing to consider the impact of using LNG after it has been exported. It is indisputable that LNG exported by the Alaska LNG project will primarily be burned, and that this combustion will release foreseeable—and tremendous—volumes of greenhouse gases. Transporting and regassifying exported LNG will result in additional emissions.

In prior proceedings, DOE has not disputed this fact, but DOE has concluded that *if* LNG exports displace use of other fossil fuels, then the net impact on global GHG emissions will be

minor. *Freeport*, 867 F.3d at 195. Specifically, DOE supported this claim regarding displacement of "downstream" impacts with Lifecycle Greenhouse Gas Reports. *Id.* Here, these reports are not included in DOE's docket for the Alaska LNG project, and were not cited or discussed in the EIS or DOE's Order. Accordingly, DOE has entirely failed to provide any analysis of the issue; the fact that the D.C. Circuit upheld the analysis DOE did provide in *Freeport* does not permit DOE to refuse to provide any such analysis whatsoever.

DOE cannot simply adopt these life cycle reports to inform its analysis of the climate impact of the Alaska LNG project. The lifecycle reports DOE has issued to date only consider the impacts of gas production, transportation, liquefaction, and export from the lower 48 states. Alaska involves significantly different issues relating to production, pipeline transportation, liquefaction, *etc*., and requires analysis that addresses these specific factors. Thus, DOE has failed to provide any parallel to the analysis of downstream impacts that the D.C. Circuit found to be sufficient in *Freeport*.

Moreover, the fundamental approach of the studies DOE has used previously—comparing the lifecycle emissions of US LNG with coal or other sources of natural gas—remains incomplete; even if the D.C. Circuit upheld that analysis previously, subsequently available information shows that a more searching analysis is required. Contrary to DOE's dismissal of Sierra Club's arguments about LNG displacing renewable energy or conservation as "conclusory," Order at 34, DOE has never doubted that such substitution will occur, or provided any reason to believe that it wouldn't. *See, e.g.*, DOE/FE Order 3143a at 108-09. Although, as *Freeport* held, it is not unreasonable for DOE to provide an illustrative comparison of the lifecycle impact of LNG with other fossil energy sources, DOE must *also* address the impacts that will occur if LNG displaces renewables or conservation, even if DOE contends that it cannot determine the proportion of LNG that will displace renewables. Providing only one comparison but not the other presents a misleadingly incomplete picture, especially where DOE concedes that *some* displacement of renewables has occurred.

Indeed, DOE has never engaged with post-*Freeport* evidence showing that added US LNG exports, insofar as they find any buyers at all, are most likely to supply new markets, who are not simply choosing between existing fossil fuels and LNG. *See* Sierra Club Comments on

2019 Lifecycle Greenhouse Gas Update at 3 (Oct. 21, 2019).[4] According to the International Energy Agency, "Demand from traditional LNG buyers, namely Japan and Korea, is likely to be flat or decline gradually depending on use in power generation;"[5] "demand from traditional buyers is expected to be stagnant."[6] Any growth in Asian LNG demand "is being driven by newer importers"[7] or "non-traditional emerging buyers, namely Bangladesh, China, India and Pakistan."[8] The Energy Information Administration also uses tools to estimate the extent to which foreign markets are actually likely to buy US LNG.[9] Peer reviewed research concludes that US LNG exports are likely to play only a limited role in displacing foreign use of coal, and such that US LNG exports are likely to increase net global GHG emissions.[10] Thus, while DOE may have thought that common sense suggested that LNG would primarily compete against other fossil fuels in 2014, when the first life cycle analysis report was published, the available evidence shows that this is not the case now, and DOE has not provided any evidence suggesting that LNG exports will primarily compete with coal or other sources of gas.

A separate issue, also not addressed by *Freeport*, is that even if exports do not produce a net increase in global greenhouse gas emissions, they change the allocation of those emissions—increasing U.S. emissions while decreasing those of other countries—in a way that has significant ramifications for coordinated global efforts to address climate change. Insofar as exports increase U.S. gas production and associated emissions, those exports will make it more difficult for the U.S. to meet its international commitments for greenhouse gas emission reductions. Under the reporting scheme that the U.S. has agreed to under the auspices of the United Nations Framework Convention on Climate Change ("UNFCCC"), the U.S. cannot claim offsets for emission increases resulting from displacement of foreign emissions, such as when US LNG substitutes for

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[4] *Available at* https://fossil.energy.gov/app/DocketIndex/docket/DownloadFile/604.
[5] International Energy Agency, *Global Gas Security Review 2019* at 10 (Sept. 2019), *available at https://webstore.iea.org/download/direct/2832?fileName=Global_Gas_Security_Review_2019.pdf.*
[6] *Id.* at 4.
[7] *Id.*
[8] *Id.* at 11.
[9] *See, e.g.*, https://www.eia.gov/outlooks/aeo/assumptions/pdf/natgas.pdf at 4.
[10] Gilbert, A. Q. & Sovacool, B. K., *US liquefied natural gas (LNG) exports: Boom or bust for the global climate?*, Energy (Dec. 15, 2017), *available at* https://doi.org/10.1016/j.energy.2017.11.098.

other sources of gas or for coal.[11] The guidelines for the UNFCC reporting program instruct countries to report emissions within their borders.[12] Requiring the U.S. to account for production-related emissions of all fuel produced in the U.S., regardless of whether the fuel is ultimately consumed elsewhere, is a sound policy judgment. The U.S. can only directly regulate emissions within its borders. DOE has asserted that the U.S. will derive economic benefits from this additional gas production, so the U.S. should be held to account for the associated environmental cost. Estimates of emissions from activities within the U.S. are also likely to be more accurate than estimates that seek to trace the lifecycle of fuels combusted in an end use country.

Although we agree that DOE can consider whether domestic emission increases are likely to be offset by foreign decreases in fact, DOE must also address the impact of additional exports on the U.S.'s ability to meet these commitments.

C. DOE Failed to Meaningfully Consider A No-Action Alternative

DOE arbitrarily adopted the EIS's conclusion that refusing to approve the project—the "no-action" alternative—would not actually avoid or reduce environmental impacts, because (the EIS assumed) some comparable project would take Alaska LNG's place to provide market access to North Slope gas. Order at 47-48 (citing EIS 3-2 to 3-3). This conclusion is legally and factually absurd, and violated the letter and intent of NEPA's requirement to rigorously explore the no action alternative.

A no action alternative "allows policymakers and the public to compare the environmental consequences of the status quo to the consequences of the proposed action." *Ctr. for Biological Diversity v. U.S. Dep't of the Interior*, 623 F.3d 633, 642 (9th Cir. 2010). When an agency evaluates a proposal, "'no action' . . . mean[s] the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward." 46 Fed. Reg.

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[11] United States Framework Convention on Climate Change, Compilation of economy-wide emission reduction targets to be implemented by Parties included in Annex I to the Convention (June 7, 2011), *available at* http://unfccc.int/resource/docs/2011/sb/eng/inf01r01.pdf.

[12] *See, e.g.,* 2006 IPCC Guidelines for National Greenhouse Gas Inventories, Vol. 1, p. 8.4 (corrected as of June 2010), available at http://www.ipcc-nggip.iges.or.jp/public/2006gl/pdf/1_Volume1/V1_8_Ch8_Reporting_Guidance.pdf. The other chapters and volumes of this report are available at http://www.ipcc-nggip.iges.or.jp/public/2006gl/index.html.

18,026, 18,027 (Mar. 23, 1981). Here, adopting the EIS's conclusion that an equivalent project would occur even if DOE were to deny the project prevented the EIS's no-action alternative analysis from fulfilling this essential purpose.

This treatment of the no-action alternative also ignores DOE's legal authority: any substitute project would *also* require approval of DOE and other agencies. DOE cannot conclude that DOE's approval of this project has no meaningful consequences on the ground that if DOE were to deny this project, DOE would simply approve an alternative instead: NEPA analysis must inform DOE of the consequences of refusing to approve any non-FTA exports from Alaska altogether.

Nor is there any factual support for the assumption that, if Alaska LNG's request for non-FTA authorization is denied, some other equivalent project will take its place. To the contrary, the long history of failed efforts to provide a market outlet for North Slope gas demonstrates that if the Alaska LNG project does not proceed, there is unlikely to be any viable alternative (indeed, it is unclear whether Alaska LNG is itself viable). Accordingly, all available evidence indicates that if either DOE and/or FERC were to adopt the no-action alternative here and deny their respective applications, this would prevent commercial production of North Slope gas.[13]

Courts have consistently rejected agency efforts to "assum[e] that, no matter what, [the proposed] activities would surely occur," explaining that in doing so, an agency "neglect[s] to consider what would be a true 'no action' alternative." *Conservation Council of Haw. v. NMFS*, 97 F. Supp. 3d 1210, 1236 (D. Haw. 2015). *See, e.g.*, *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 870 F.3d 1222, 1228, 1234 (10th Cir. 2017) (rejecting EIS for coal mining lease project in which the Bureau of Land Management (BLM) concluded, without support, that there was no emissions difference between the preferred and no action alternative because "even if it did not approve the proposed leases, the same amount of coal would be sourced from elsewhere"); *N.C. Wildlife Fed'n v. N.C. Dep't of Transp.*, 677 F.3d 596, 603 (4th Cir. 2012) ("[C]ourts not infrequently find NEPA violations when an agency miscalculates the 'no build'

[13] We note that neither DOE, FERC, nor applicants have indicated that the project would be likely to go forward with FTA but not non-FTA authorization. There is no support for such a contention here, and such a contention would ultimately be unsupportable: not a single major U.S. LNG export facility has proceeded solely on the basis of FTA authorization, and the only Asian FTA nations that import LNG are not expected to increase their LNG exports or seek significant new sources of supply.

baseline or when the baseline assumes the existence of a proposed project."); *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1026-27 (9th Cir. 2008) ("[W]e conclude that the SEIS violates NEPA because the "no-action" alternative assumed the existence of the very plan being proposed."). DOE's adoption of an EIS that makes this error here is arbitrary.

II. Conclusion

Based on the foregoing, Sierra Club respectfully requests that DOE grant this request for rehearing.

Respectfully submitted,

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VERIFICATION

OAKLAND	§
	§
CALIFORNIA	§

Pursuant to 10 C.F.R. § 590.103(b), I, Nathan Matthews, swear and affirm that I am authorized to execute this verification, that I have read the foregoing document, and that facts stated herein are true and correct to the best of my knowledge, information, and belief.

Sworn this 21st day of September, 2020.

Nathan Matthews
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2020, I caused a copy of the above Request for Rehearing of Sierra Club in DOE/FE Docket 14-96-LNG to be served by email on the individuals listed on the Service List for that docket, as indicated by https://fossil.energy.gov/fergas-fe/#/serviceList, reproduced below:

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