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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF Alaska LNG Project LLC	))	Docket No. 14-96-LNG

MOTION OF ALASKA GASLINE DEVELOPMENT CORPORATION FOR LEAVE TO ANSWER AND ANSWER TO SIERRA CLUB'S REQUEST FOR REHEARING

Pursuant to the Department of Energy's ("DOE") Rules of Procedure, the Natural Gas Act ("NGA"), 15 U.S.C. § 717r(a), and 10 C.F.R. § 590.501, Alaska Gasline Development Corporation ("AGDC") respectfully moves for leave to answer, and to answer, Sierra Club's Request for Rehearing of the "Final Opinion and Order Granting Long-Term Authorization to Export Liquified Natural Gas to Non-Free Trade Agreement Nations" issued by DOE's Office of Fossil Energy's ("DOE/FE") on August 20, 2020. ("Order").

I. BACKGROUND

On July 18, 2014, Alaska LNG Project LLC ("Alaska LNG") sought authority under Section 3 of the Natural Gas Act to enter into long-term multi-contracts to export 20 million metric tons per annum of liquid natural gas ("LNG"), in aggregate, for a term of 30 years. The exports would be achieved by the construction of facilities designed to treat, transport, and liquefy natural gas that is currently shut in on the North Slope of Alaska, including a natural gas treatment plant located on the North Slope, and a roughly 800-mile pipeline to transfer natural gas from the treatment plant to a liquefaction facility for liquefaction and export (the "Project"). Application at 2, 7-8.

Alaska LNG sought authority to export LNG from the liquefaction facility to both countries with which the United States currently has, or in the future may enter into, a free trade agreement ("FTA") requiring national treatment for trade in natural gas, and to any country with which the United States does not have a free trade agreement ("Non-FTA") requiring national treatment. On May 28, 2015, DOE/FE conditionally granted the non-FTA portion of the Application in DOE/FE No. 3643 (Conditional Order), making preliminary findings on all but the environmental issues.[1]

AGDC is an independent, public corporation of the State of Alaska. Subsequent to Alaska LNG's filing of its application with DOE/FE for export authority, AGDC and the sponsors of the Project entered into agreements providing AGDC with the right to continue the Project in its own name. On April 17, 2017, after a "pre-filing" environmental review performed by the Staff of the Federal Energy Regulatory Commission ("FERC"), AGDC filed with FERC an application under NGA Section 3(a) to site, construct and operate the Project. After an exhaustive review process conducted by FERC Staff pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, *et seq.* ("NEPA"), FERC issued a final Environmental Impact Statement ("FEIS") on March 6, 2020. DOE/FE participated as a cooperating agency in FERC's NEPA analysis. On May 21, 2020, FERC granted AGDC authorization under NGA Section 3 to construct, site and operate the Project.[2]

[1] Under Section 3(c) of the NGA, applications to export natural gas to countries with which the United States has FTAs that require national treatment for trade in natural gas are deemed to be consistent with the public interest, and the DOE/FE must grant authorization without modification or delay. In the case of applications to export LNG to non-FTA nations, NGA Section 3(a) requires the DOE/FE to conduct a public interest review and grant authority to export unless the DOE/FE finds that the proposed exports would not be consistent with the public interest.

[2] *Alaska Gasline Dev. Corp.,* 171 FERC ¶ 61,134 (2020).

On August 20, 2020, DOE/FE granted the non-FTA portion of the Application for the full 929 Bcf/yr volume requested for a term of 30 years. In its Order, DOE/FE states that after conducting an independent review, it adopts the FEIS issued by FERC. On September 21, 2020, the Sierra Club requested rehearing of the Order.

AGDC is a party in this proceeding.[3] As noted in the Order, AGDC intends to make the required filings with DOE/FE for authorization of a change in control over ownership of the export license.[4] As the real party in interest, AGDC submits this opposition to the Sierra Club's request for rehearing to assist DOE/FE in its evaluation of the issues raised in the request and provide its position with respect to the request.

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 request for rehearing. AGDC submits that this Answer is relevant to DOE's consideration of Sierra Club's rehearing request because the Answer responds directly to the assertions of fact and law profferred by Sierra Club in its rehearing request and may assist DOE in fully considering all issues when acting on this request. Accordingly, AGDC submits that good cause exists to waive the general rule and accept this Answer.[5]

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[3] *See* Joint Motion to Intervene and Comments of the State of Alaska and AGDC in this docket filed on September 17, 2014.

[4] Order at n.7.

[5] *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

III. ANSWER

The Sierra Club raises three errors in its rehearing request, all of which lack merit. First, Sierra Club asserts that DOE failed to take the "hard look" required under NEPA at the production and sourcing of LNG because it did not examine all the environmental impacts of producing the gas that would be used to supply the exports. Sierra Club's attempt to distinguish on-point federal cases rejecting virtually identical challenges to DOE/FE's review of LNG exports is simply wrong as a matter of law. The existing caselaw establishes DOE/FE's NEPA obligations, and DOE/FE met those obligations here.

Next, Sierra Club argues that DOE failed to consider the environmental impacts of using LNG after it has been exported. The argument is disingenuous. DOE/FE makes clear in its Order that it relies upon reports in the FERC record to show that the post-export use of LNG would likely displace higher GHG-producing coal and oil and thereby reduce global GHG emissions. NEPA does not require DOE to perform additional and more particularized analyses of the potential impacts of consumption of exported LNG in foreign countries. While the Sierra Club would like to require location-specific reports for every project, that is simply not feasible, nor would it be foreseeable to determine global environmental impacts on a country-by-country basis, or to determine how such exports may compete with renewable energy projects globally. FERC's FEIS, adopted by DOE/FE, evaluated the overall potential impacts of climate change, and concluded after consultation with federal agencies with expertise, that evaluating the impacts from LNG Project-specific emissions

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);

was not feasible. Such an analysis is not required under NEPA, and would, contrary to the well-established foreseeability test, be speculative at best.

Lastly, Sierra Club asserts that DOE's adoption of the FERC FEIS's "no-action" analysis is arbitrary. Sierra Club misconstrues that analysis, painting it as an absurdity because it assumes a comparable project would take this Project's place if rejected. Rather, the entire analysis undertaken by FERC in Section 4 of its FEIS is dedicated to comparing the status quo – the current environmental conditions absent the Alaska LNG Project – to the environmental impacts of the Project. Moreover, Sierra Club fails to recognize that the FEIS compared the status quo with the Project and various potential alternatives, and concluded that the status quo would not meet the stated policy goals set forth in the NGA. For the reasons stated herein, Sierra Club's request for rehearing should be denied.

A. DOE TOOK THE REQUISITE HARD LOOK AT PRODUCING AND SOURCING EXPORTED GAS.

1. DOE Complied With the Requisite NEPA Review Standards and Cooperating Agency Protocols.

The D.C. Circuit has addressed DOE's obligations under NEPA with respect to applications to export gas to non-FTA countries under the NGA. The Court has stated that in meeting its NEPA obligations, DOE should consider "the action's 'indirect' environmental effects that 'are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable."' *Sierra Club v. DOE*, 867 F.3d 189, 193 (2017) (*Freeport*) (citing 40 C.F.R. § 1508.8). DOE must also consider the "cumulative impact[s] on the environment, meaning the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of

what agency (Federal or non-Federal) or person undertakes such other actions." *Id.* (internal quotation marks omitted; *citing* 40 C.F.R. § 1508.7).

When FERC is the "lead agency", DOE may incorporate its analysis of environmental impacts for purposes of NEPA compliance. *Id.* This means that DOE can adopt FERC's analysis as its own "for purposes of any additional NEPA review triggered by an export authorization request" as long as the DOE independently reviews FERC's work and determines that its comments have been satisfied. *Id.* (internal quotation marks omitted).

In *Freeport*, Sierra Club, as here, had argued that DOE did not take the requisite "hard look" because DOE did not perform a tailored analysis of the indirect and cumulative environmental effects of LNG exports, relying instead on general reports evaluating generic amounts of LNG exports, entitled "Lifecycle Reports." Based on its analysis of those reports, DOE explained that it "deliberately did not perform a quantitative impact analysis — that is, tying an incremental increase in exports to an incremental increase in gas production, and in turn, to an impact on specific environmental resources[,]" and that "such indirect effects were not reasonably foreseeable." *Id.*

The Court agreed with DOE, finding that attempting to determine the indirect effects of LNG exports would require DOE to "foresee the unforeseeable" and that DOE's "determination that an economic model estimating localized impacts would be far too speculative to be useful is a product of its expertise in energy markets and is entitled to deference." *Id.* (citations omitted). The Court concluded that, because DOE "could not estimate the locale of production, it was in no position to conduct an environmental analysis of corresponding local-level impacts, which inevitably would be more misleading than informative." *Id.* (quotation marks and citations omitted). Here, Sierra Club similarly contends that DOE was required to analyze these indirect impacts. Put differently, Sierra Club argues that "but for" the project, the exports would not happen.

The Supreme Court, however, has rejected a "but for" test for determining when an agency must evaluate indirect impacts of an action.[6] In *Public Citizen, supra,* the Supreme Court held:

> a "but for" causal relationship is insufficient to make an agency responsible for a particular effect under NEPA and the relevant regulations. As this Court held in *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983), NEPA requires "a reasonably close causal relationship" between the environmental effect and the alleged cause. The Court analogized this requirement to the "familiar doctrine of proximate cause from tort law." *Ibid*. In particular, "courts must look to the underlying policies or legislative intent in order to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not."[7]

In this case, it cannot fairly be concluded that the Project is the proximate cause of any indirect impacts of upstream gas production or downstream LNG consumption. The approval of Non-FTA exports is not causing gas to be produced or LNG to be consumed. The major purpose of the Project is to bring gas to market that would otherwise be stranded. Approving the export of gas on the North Slope renders the project financially viable. The ability to meet the demand for clean-burning natural gas is clearly a desirable benefit of the Project. But the proximate cause of any incremental emissions, or more likely net emission reductions due to substituting natural gas for other fuels, that may result from gas production or LNG export consumption is not DOE's approval of the Project. Rather, the proximate cause of any additional production or consumption that may result in the future is the need to bring otherwise stranded supply to market. In other words, the need to free natural gas from the North Slope that would otherwise be shut in is driving the Project, not

[6] On July 15, 2020, the Council for Environmental Quality issued a Final Rule that, among other things, codified the Supreme Court's holding as stated above. *See Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*, 85 Fed. Reg. 43304 (July 15, 2020), *amending* 40 C.F.R § 1508.1(g)(2).

[7] *Department of Transp. v. Public Citizen*, 541 U.S. 752, at 774, n. 7 (2004) (other citations omitted).

the other way around. DOE/FE's grant of export authorization facilitates that objective; it does not cause the impacts to occur. In short, neither the construction of the Project, nor the DOE/FE's approval of exports, is a sufficient legal cause to require the examination of these impacts.

As the Court noted in *Freeport*, a "rule of reason" applies to NEPA decision-making. DOE/FE's incorporation of FERC's extensive FEIS was a reasonable action under NEPA given the DOE's limited jurisdiction over the Project – an approval of exports – and in light of the extensive analysis contained in the FERC's FEIS.

DOE's role as a cooperating agency, and the adoption of a FERC FEIS is a well-trodden path with ample precedent. Sierra Club's assertion that DOE's adoption and incorporation of the FERC FEIS lacked sufficient analysis of the impacts of producing the gas that would be used to supply the approved exports is without support in the record. DOE/FE adopted the extensive FERC FEIS and evaluated the source of the gas in its Order. *See* Order at 15-16. Moreover, the Application addressed the issue of the source of the gas relative to Section 3 of the Natural Gas Act. *See* Application at 12-13. Caselaw interpreting NEPA and DOE precedent make clear that no more is required. *See, e.g., Freeport*, *supra; Sabine Pass Liquefaction LLC*, DOE/FE Order No. 2833 at 5 (Sept. 7, 2010).

It is well-established DOE protocol to participate as a "cooperating agency in the FERC proceeding." This avoids duplication of effort and overlapping environmental reviews. DOE's adoption of FERC's FEIS continued this well-established practice. Hence, the DOE's 2015 Order conditionally granting the export authorization to non-FTA countries was conditioned on FERC's completion of the NEPA review and approval of the Project's construction.

Here, FERC's FEIS is comprehensive and thorough, and contrary to Sierra Club's assertion, referenced numerous reports in the record, and consulted with federal agencies with expertise in modeling greenhouse gases ("GHG") impacts. The FEIS is based on over 55,000 pages of data in the application, supplemented by 1,910 FERC data requests and over 45,000 pages of responses, representing the culmination of three years of substantial review by FERC staff, other federal cooperating agencies, and an independent third-party contractor. It undoubtedly took the required "hard look" at the environmental impacts of both the Project and potential alternatives. The result of FERC Staff's analysis is a comprehensive FEIS that details the project's direct, indirect, and cumulative environmental impacts. The FEIS also utilized the 2018 U.S. Army Corps of Engineers' (COE) Alaska Stand Alone Pipeline Project, Final Supplemental Environmental Impact Statement, which is a detailed impact assessment of a similar pipeline project in the same corridor. Sierra Club's contention that FERC has not properly examined potential impacts of the project is simply not an accurate portrayal of the extensive analysis in the FEIS, nor the DOE Order adopting it.

2. Upstream Induced Gas Production Is Not Foreseeable

Sierra Club argues that DOE erred in adopting FERC's FEIS because it did not adequately address the indirect impacts that the Project will cause in the form of increased greenhouse gas emissions ("GHG") resulting from induced upstream gas production. Sierra Club mischaracterizes DOE/FE's analysis as a refusal to assess GHG emissions. This mischaracterization is contradicted by the FEIS, the factual record, and DOE/FE's Order. Sierra Club's assertion that this analysis is legally deficient finds no support in the law.

Contrary to Sierra Club's contentions, the FEIS does not conclude, nor does the evidence establish, that the construction of the Project will lead to, cause or induce reasonably foreseeable impacts from additional gas production. Sierra Club assumes that the GHG impacts of long-term

export contract authorization is "reasonably foreseeable" and that DOE has the tools to foresee the nature and extent of this production, its effects, and thus its potential impacts." Sierra Club Request at 4. It offers no support for such conclusory statements. *Id.* For example, Sierra Club states, without support, that "DOE has the ability to foresee the nature, if not the precise extent, of the impacts of additional gas production…" and "DOE also has the tools to foresee the nature and extent of this production…" Sierra Club Request at 4.

Sierra Club acknowledges that presently much of this gas is produced from existing wells and then "reinjected into the crude oil reservoirs to help maintain pressure and sustain production rates." *Id.*, *citing* Order at 29. Although admitting that the gas is currently produced from existing operations, Sierra Club further argues that "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…" *Id.* Nevertheless, Sierra Club admits that DOE does not have the ability to foresee the "precise extent" of these alleged impacts.

First, the record established, and the Sierra Club does not dispute, that gas is currently being produced and reinjected into the ground due to a lack of infrastructure to deliver that gas to market. This process currently requires the combustion of turbines to inject the gas back into the ground. Turbine combustion, in turn, currently results in GHG emissions. As this reinjection process is phased out when the gas produced is instead treated, delivered and liquefied by the project facilities, these emissions will be significantly reduced.

Sierra Club conveniently omits that AGDC submitted resource reports demonstrating the emission reductions resulting from the phasing out of the reinjection process would completely offset the limited new wells identified as part of the Project. In Resource Report 9, Appendix G,

Non-Jurisdictional Facilities Air Quality Report, AGDC set forth net emissions that would result from the reduction in emissions associated with phased decommissioning of existing PBU gas compression and injection turbines. Specifically, Table 3 in that report shows a net negative emission after the second year of PBU MGS operations (Year 8 of Project schedule). The net negative emissions would result in the reduction of existing PBU emissions by up to 3.2 million tons per year of CO2e, which would significantly offset emissions from the GTP.[8] These reports are included in the FERC record, and inform the environmental analysis contained in the FEIS that DOE adopted in its Order.

Moreover, FERC determined in the FEIS that any production "induced" by the project would not occur for at least twenty years and, therefore any impacts of such production are not reasonably foreseeable. As stated in the FEIS, "the need for additional gas wells to be drilled on the North Slope, the number of wells, and the timing of such drilling, would be market driven and not reasonably foreseeable. Thus, any analysis beyond this 20-year time frame would be speculative." FEIS at 4-1160.

Second, the FERC FEIS addressed the potential impacts of GHG emissions in relation to the foreseeable impacts in or around the project area. *See* FEIS 4-1221. The FERC FEIS concluded that "there is no universally accepted methodology to attribute discrete, quantifiable, physical effects on the environment to the Project's incremental contribution to GHGs." *Id.* The FERC FEIS evaluated atmospheric modeling used by the Environmental Protection Agency, National

[8] Table 3 in Resource Report 9 is interpreted in the FEIS at Table 4.19.4-5. However, it appears that the negative signs appearing before all the numbers were not recognized. As corrected, the negative emission values as shown in this table demonstrate the significant offset in GHG emissions that would result from the project.

Aeronautics and Space Administration, the Intergovernmental Panel on Climate Change, and others, and determined that these models are not reasonable for Project-level analysis. Their scale and complexity, the FEIS concluded, simply did not lend itself to the project-level analysis needed to determine the GHG impact from a single project over a 30-year span, nor were simpler mathematical models suited to the task. Even looking to the expertise and existing modeling of the federal agencies best positioned to provide such modeling, the FERC could not identify a viable model. It is thus absurd to conclude, as Sierra Club does, that DOE possesses the tools or resources to conduct such an analysis.

Third, Sierra Club's reliance on *Freeport*, 867 F.3d at 195, for the proposition that such an analysis must extend beyond discussion of greenhouse gas impacts, is misplaced. There, the Court noted that an addendum had "disclosed the various ways shale gas production might impact the water, air, and land resources surrounding production activities." *Id*. The Court did not hold that an FEIS must go beyond a discussion of greenhouse gas impacts; but, even if it had, the FEIS goes into significant detail on the cumulative impacts of the project on climate change. Like *Freeport*, the FEIS here relied on external reporting – here, for example, the USGCRP's Fourth Assessment Report – to identify the likely impacts of climate change, even though the FEIS could not identify with specificity the incremental effect emissions from the Project could have. These identified impacts include:

- Average annual temperatures of 6 to 12°F by 2050, and 8 to 16°F by 2100 depending on the level of future GHG emissions.
- Annual precipitation increases of 15 to 30 percent across all seasons, but increases in evaporation due to higher temperatures and longer growing seasons are anticipated to reduce water availability.
- Arctic-wide sea ice loss is expected to continue through the twenty-first century, very likely resulting in nearly sea ice-free summers by the 2040s; and

.

- Ocean acidification in Coastal Alaska.

While it could not tie incremental GHG emissions – whether from the Project operation or projected downstream use of LNG – to the degree of the anticipated climate change impacts, FERC nevertheless identified the potential impact of GHG emissions generally on climate change.

Sierra Club makes much hay of the fact that FERC lacks jurisdiction over contract approvals for LNG exports to Non-FTA nations, and, therefore, FERC need not consider the upstream or downstream GHG emissions that may be indirect effects of the export itself when determining whether the related LNG export facility satisfies section 3 of the NGA. *See Freeport,* 867 F.3d at 46-47*; Sierra Club v. FERC,* 867 F.3d 1357, 1373 (D.C. Cir. 2017) *("Sabal Trail").* Sierra Club incorrectly argues that this leaves a gap in the environmental analysis. However, Sierra Club omits that, as discussed above, the Project will not induce new production for at least 20 years, and neither DOE, nor FERC, is required under NEPA to perform a speculative impact analysis of potential and unknown indirect impacts that might occur at that time. Sierra Club further fails to note that the FERC FEIS did evaluate the potential environmental impacts of GHG emissions on climate change generally, as noted above.

3. Downstream Gas Consumption

Sierra Club also contends that DOE failed to consider the impact of increased emissions resulting from LNG exported to foreign countries. Sierra Club argues that in prior proceedings, DOE concluded that if LNG exports displaced other fossil fuels, the net impact on global GHG emissions would be minor, and that DOE reached that conclusion based on Lifecycle Greenhouse Gas Reports such as those identified in *Freeport*.

Here, DOE met its NEPA obligations in a manner similar to *Freeport*. The Project is not susceptible to the detailed level of scrutiny that the Sierra Club demands in its request for rehearing. The Project seeks authorization from DOE to enter into long-term export contracts for LNG. What countries will enter into those contracts and for what purposes remains to be seen. The potential for competition in the global marketplace between LNG and renewable energy sources is unforeseeable at this time, and it is not reasonable to expect DOE to include such an analysis in its decision on an application under Section 3 of the NGA.

Sierra Club inaptly cites *Sabal Trail* for the proposition that a NEPA analysis must include the reasonably foreseeable impacts of producing, transporting, and using the transported gas. Sierra Club Request at 2. This case is more analogous to *Freeport* than *Sabal Trail* in terms of the ability of FERC and the DOE to foresee and assess downstream impacts from consumption. Like the exports in *Freeport*, the impacts from the consumption of the LNG exported by Alaska LNG in the destination countries is not reasonably foreseeable. As the Court found in a challenge to a grant of export authority by DOE, projecting downstream impacts from LNG exports in foreign countries would require the agency to model the effect that U.S. LNG exports would have on net GHG emissions by projecting how other fuel sources such as coal, nuclear, or renewable energy would be affected in each potential LNG-importing nation. The Court determined that such an analysis would be "too speculative to inform the public interest determination."[9] In contrast, the pipeline to be constructed and certificated in the *Sabal Trail* case was designed and contracted to serve identified power plants. Thus, the environmental impacts of the gas consumed in those plants were not unknown or unknowable, as is the ultimate downstream use of the LNG here.

[9] *Sierra Club v. DOE*, 867 F.3d 189 (D.C. Cir. 2017)

As indicated in submissions in this proceeding, the countries that have indicated interest in purchasing LNG from the project include China and other nations in Asia, which rely heavily on coal to produce electric power.[10] To the extent LNG exports replace coal as a fuel source in these countries, GHGs will decrease. Studies have indicated that for this reason LNG exports will result in a net reduction in GHGs.[11] However, the extent to which this may happen is not reasonably foreseeable.

In a similar vein, and again without any authority or legal support, Sierra Club claims that the DOE, as part of its NEPA review, must evaluate the potential change in allocation of GHG emissions "in a way that has significant ramifications for coordinated efforts to address climate change." Sierra Club Request at 7. The Sierra Club references the United Nations Framework Convention on Climate Change and the manner in which the U.S. may claim offsets for GHG increases resulting from the displacement of foreign emissions. This argument is simply of no moment here. The U.S.'s future claimed emissions offsets under a United Nations convention do not factor into the DOE's NEPA review and approval of long-term LNG export contracts, and the Sierra Club offers no legal authority compelling the review of such coordinated foreign policy matters on a review of the LNG Project. In any event, usurping NEPA to steer the executive branch's management of foreign relations with respect to GHG emissions is far beyond the scope of this DOE proceeding, and, indeed, outside the DOE's or federal courts' jurisdiction. *Cf., e.g., Cent. Valley Chrysler-Jeep v. Witherspoon*, 456 F. Supp. 2d 1160, 1183 (E.D. Cal. 2006) (noting that the Supreme

[10] *See* AGDC Application at 13-14, 19.

[11] *See, e.g., API study on the environmental benefits of US LNG* (July 10, 2020) https://www.lngindustry.com/liquid-natural-gas/10072020/api-study-on-the-environmental-benefits-of-us-lng/

Court's foreign policy preemption jurisprudence forecloses the possibility of preemption of a generally applicable law that interferes with foreign policy).

B. DOE and FERC Adequately Evaluated the No-Action Alternative.

The Sierra Club incorrectly argues that the DOE and the FERC failed to consider, or improperly construed, a no-action alternative in FERC's FEIS. AGDC does not dispute that the no-action analysis allows decision-makers to compare the status quo to the impacts of the proposed action, as the Sierra Club suggests. Sierra Club Request at 8. However, Sierra Club omits a key reference in the no-action alternative, and, in so doing, misconstrues and misrepresents environmental review process. To wit, the FERC's FEIS states that "[b]ecause the impacts for any replacement project capable of exporting similar volumes *are likely to be comparable to those described in section 4.0 of this [F]EIS, we conclude that in addition to not meeting the Project objective, the No Action Alternative is also not likely to provide a significant environmental advantage*." FEIS Section 3.1. In other words, the subsequent section 4.0 of the FEIS compares, in hundreds of pages of detail, the environmental and other impacts of the LNG Project in comparison to the status quo. The no-action alternative analysis concludes that the no-action alternative would fail to meet the statutory goals of the Natural Gas Act, which find a presumption in favor of LNG exports unless inconsistent with the public interest.

This is not an instance of an agency miscalculating the no-action alternative by assuming another, similar project would take its place, but rather a well-reasoned determination that the status quo fails to meet the stated, statutory energy policy objectives, and that the environmental impacts set forth in section 4 of the FEIS are not sufficient to override this goal. *See Sierra Forest Legacy v. United States Forest Serv.*, 652 F. Supp. 2d 1065, 1084 (N.D. Cal. 2009) (finding that a brief discussion of the no-action alternative may be sufficient, especially where the agency's action was

prompted by dissatisfaction with the status quo) (citing *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998) and *Oregon Natural Resources Council v. Lyng*, 882 F.2d 1417, 1423 n.5 (1989), amended by 899 F.2d 1565 (9th Cir. 1990) ("The fact that the description of the no-action alternative is shorter . . . may only reveal that the forest service believed that the concept of a no-action plan was self-evident while the specific timber sale plans needed explanation.") The no-action alternative was sufficiently addressed here, and the Sierra Club's argument to the contrary does not support a grant of rehearing.

IV. CONCLUSION

For the above-stated reasons, the reasons stated in the DOE's Order, and any and all other reasons stated in the FEIS and in the record of this proceeding, the Sierra Club's request for rehearing should be denied.

Dated: October 6, 2020

Respectfully submitted,

/s/ *Howard L. Nelson*

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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

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

VERIFICATION

WASHINGTON	§
	§
DISTRICT OF COLUMBIA	§

Pursuant to 10 C.F.R. § 590.103(b), I, Howard L. Nelson, 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 6th day of October, 2020.

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	)	

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of October, 2020, I caused a copy of the above Motion for Leave to Answer and Answer to Sierra Club's Request for Rehearing of Alaska Gasline Development Corporation in DOE/FE Docket 14-96-LNG to be served by e-mail 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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