

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

ALASKA LNG PROJECT LLC)
_____)

FE DOCKET NO. 14-96-LNG

ORDER ON REHEARING

DOE/FE ORDER NO. 3643-B

APRIL 15, 2021

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FREQUENTLY USED ACRONYMS

AGDC	Alaska Gasline Development Corporation
Bcf/yr	Billion Cubic Feet per Year
DOE	U.S. Department of Energy
EIS	Environmental Impact Statement
E.O.	Executive Order
FE	Office of Fossil Energy, U.S. Department of Energy
FERC	Federal Energy Regulatory Commission
FTA	Free Trade Agreement
GHG	Greenhouse Gas
LCA	Life Cycle Analysis
LNG	Liquefied Natural Gas
NEPA	National Environmental Policy Act
NGA	Natural Gas Act

I. INTRODUCTION

On August 20, 2020, the Department of Energy’s (DOE) Office of Fossil Energy (DOE/FE) issued DOE/FE Order No. 3643-A¹ (the Alaska LNG Order) to Alaska LNG Project LLC (Alaska LNG)² under section 3(a) of the Natural Gas Act (NGA).³ DOE/FE authorized Alaska LNG to export liquefied natural gas (LNG) produced from Alaskan sources to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries).⁴ Alaska LNG is authorized to export this LNG in a volume equivalent to 929 billion cubic feet per year (Bcf/yr) of natural gas (2.55 Bcf per day), by vessel from a liquefaction facility to be constructed in the Nikiski area of the Kenai Peninsula in south central Alaska (Liquefaction Facility). According to Alaska LNG, this Liquefaction Facility will be part of the “largest integrated gas/LNG project of its kind ever designed and constructed,” called the Alaska LNG Project.⁵ Alaska LNG’s authorization is for a term of 30 years, with

¹ *Alaska LNG Project LLC*, DOE/FE Order No. 3643-A, FE Docket 14-96-LNG, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Aug. 20, 2020) [hereinafter *Alaska LNG Order*]. DOE/FE granted Alaska LNG’s application filed in 2014. *See Alaska LNG Project LLC*, Application for Long-Term Authorization to Export Liquefied Natural Gas, FE Docket No. 14-96-LNG (July 18, 2014) [hereinafter *Alaska LNG App.*].

² Alaska LNG is a Delaware limited liability company with its principal place of business in Anchorage, Alaska. *Alaska LNG Order* at 13. As of June 30, 2020, its member companies are: ExxonMobil Alaska LNG LLC, ConocoPhillips Alaska LNG Company, and Hilcorp Alaska, LLC. *See U.S. Dep’t of Energy*, Response to Notification Regarding Change in Control (*Alaska LNG Project LLC*), FE Docket No. 14-96-LNG, at 2 (Aug. 12, 2020).

³ 15 U.S.C. § 717b(a). The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. S4-DEL-FE1-2021, issued on March 25, 2021.

⁴ The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas. Alaska LNG also holds a separate authorization to export LNG to FTA countries, which DOE/FE granted in 2014 in Order No. 3554, pursuant to NGA section 3(c), 15 U.S.C. § 717b(c). That FTA order is not at issue.

⁵ *Alaska LNG App.* at 3.

export operations required to commence within 12 years of the date that the Alaska LNG Order was issued.⁶

Sierra Club—an intervenor in this proceeding⁷—timely filed a Request for Rehearing of the Alaska LNG Order.⁸ Alaska Gasline Development Corporation (AGDC)—also an intervenor in this proceeding⁹—filed a Motion for Leave to Answer and Answer to Sierra Club’s Request for Rehearing.¹⁰ For the reasons set forth below, DOE/FE: (i) grants AGDC’s Motion for Leave to Answer; (ii) grants Sierra Club’s Rehearing Request for the purpose of conducting two Alaska-specific environmental studies and related public process (collectively, the Alaska environmental study proceeding), in light of Executive Order (E.O.) 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*,¹¹ and other legal and policy considerations; and (iii) denies Sierra Club’s request for DOE/FE to withdraw the Alaska LNG Order, without prejudice to Sierra Club’s ability to request relief in the future, should circumstances change. Accordingly, the Alaska LNG Order will remain in effect pending completion of the Alaska environmental study proceeding and DOE’s issuance of an order under NGA section 3(a).

⁶ Alaska LNG Order at 36, 41. DOE/FE uses the terms “order” and “authorization” interchangeably.

⁷ See Sierra Club, Motion to Intervene and Protest, FE Docket No. 14-96-LNG (Nov. 17, 2014) [hereinafter Sierra Club Mot.].

⁸ Sierra Club, Request for Rehearing, FE Docket No. 14-96-LNG (Sept. 21, 2020) [hereinafter Sierra Club Rehearing Request]. Additional procedural background is set forth below. See *infra* § II.B.

⁹ State of Alaska and Alaska Gasline Dev. Corp., Joint Motion to Intervene and Comments in Support of the Requested Export Authorization, FE Docket 14-96-LNG (Nov. 17, 2014).

¹⁰ Alaska Gasline Dev. Corp., Motion for Leave to Answer and Answer to Sierra Club’s Request for Rehearing, FE Docket No. 14-96-LNG (Oct. 6, 2020) [hereinafter AGDC Answer].

¹¹ Exec. Order 13990 of Jan. 20, 2021, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan. 25, 2021), available at:

<https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis>.

II. BACKGROUND

A. Project Background

AGDC, an independent, public corporation of the State of Alaska, plans to site, construct, and operate the Alaska LNG Project.¹² As approved by the Federal Energy Regulatory Commission (FERC) on May 21, 2020,¹³ the Alaska LNG Project includes the following three elements:

- (i) Producing natural gas from stranded resources on the North Slope of Alaska at a proposed natural gas treatment plant to be located on the North Slope;¹⁴
- (ii) Transporting the natural gas on a proposed 800-mile long pipeline; and
- (iii) Liquefying the natural gas for export from the proposed Liquefaction Facility, which has a planned liquefaction capacity of 20 million metric tons per year of LNG (equivalent to approximately 929 Bcf/yr of natural gas).¹⁵

AGDC has stated that it is in negotiations with producer members of Alaska LNG to obtain an option to purchase Alaska LNG.¹⁶ Currently, however, AGDC holds the FERC authorization (for the Alaska LNG Project), and Alaska LNG holds the DOE authorization (for exports from the Alaska LNG Project).

To fulfill its obligations under the National Environmental Policy Act (NEPA),¹⁷ DOE/FE participated as a cooperating agency in FERC's review of the Alaska LNG Project.¹⁸ FERC issued the final Environmental Impact Statement (EIS) for the Alaska LNG Project on

¹² The Alaska State Legislature provided AGDC with the authority and primary responsibility for developing a LNG project on the State's behalf. *See* Alaska LNG Order at 1 n.6 (citing Alaska Stat. § 31.25.005).

¹³ *Alaska Gasline Dev. Corp.*, Order Granting Authorization Under Section 3 of the Natural Gas Act, 171 FERC ¶ 61,134, ¶¶ 1-2 (May 21, 2020) [hereinafter FERC Order].

¹⁴ Despite abundant supplies of natural gas on the North Slope, most of Alaska's natural gas production cannot be brought to market due to a lack of natural gas pipeline infrastructure. *See* Alaska LNG Order at 28.

¹⁵ *See* FERC Order at ¶¶ 3-4.

¹⁶ *See* Alaska LNG Order at 1 n.7 (citing FERC Order at ¶ 5).

¹⁷ 42 U.S.C. § 4321 *et seq.*

¹⁸ *See* Alaska LNG Order at 23, 32.

March 6, 2020.¹⁹ After an independent review, DOE/FE adopted the final EIS on March 16, 2020 (DOE/EIS-0512).²⁰ The final EIS contained 164 site-specific environmental mitigation measures, which FERC staff recommended that FERC attach as conditions to any authorization of the Alaska LNG Project.²¹

On May 21, 2020, FERC issued the FERC Order authorizing AGDC to site, construct, and operate the Alaska LNG Project subject to 165 environmental conditions—the recommended 164 environmental mitigation measures, plus one additional condition.²²

On August 20, 2020, DOE/FE issued the Alaska LNG Order under NGA section 3(a).²³ After reviewing an extensive record examining both environmental and non-environmental factors,²⁴ DOE/FE found that “the opponents of the Application have failed to overcome the statutory presumption that Alaska LNG’s proposed exports are consistent with the public interest under NGA section 3(a).”²⁵ DOE/FE conditioned the Alaska LNG Order on Alaska LNG’s compliance with the 165 environmental conditions adopted in the FERC Order, among other requirements.²⁶ Additionally, concurrently with its issuance of the Alaska LNG Order, DOE/FE issued a Record of Decision under NEPA.²⁷

¹⁹ Federal Energy Regulatory Comm’n, *Alaska LNG Project Final Environmental Impact Statement*, Docket No. CP17-178-000 (Mar. 6, 2020), available at: <https://www.ferc.gov/industries-data/natural-gas/final-environmental-impact-statement-0> [hereinafter final EIS].

²⁰ Letter from Amy Sweeney, DOE/FE, to Julie Roemele, U.S. Env’tl. Prot. Agency (Mar. 16, 2020) (adoption of final EIS), available at: <https://www.energy.gov/nepa/downloads/doeeis-0512-notice-adoption>.

²¹ See Alaska LNG Order at 24 (citing final EIS at 5-50 to 5-77).

²² See FERC Order at ¶¶ 249-250, 253; see also Alaska LNG Order at 24-27.

²³ Previously, in 2015, DOE/FE conditionally granted the non-FTA portion of Alaska LNG’s Application in DOE/FE No. 3643. In that Conditional Order, DOE/FE made preliminary findings on all issues except the environmental issues in this proceeding. Although the Alaska LNG Order (Order No. 3643-A) built on the Conditional Order, DOE/FE presented its findings and conclusions on all issues associated with Alaska LNG’s proposed exports—both environmental and non-environmental. See Alaska LNG Order at 3-4.

²⁴ See, e.g., *id.* at 20, 27 (summarizing the record examined, including filings submitted in response to Alaska LNG’s Application).

²⁵ See *id.* at 35-36. Additional procedural history and information about DOE/FE’s administrative record are discussed in the Alaska LNG Order.

²⁶ See *id.* at 42 (Ordering Para. H).

²⁷ U.S. Dep’t of Energy, Alaska LNG Project LLC, Record of Decision and Floodplain Statement of Findings, FE Docket No. 14-96-LNG (Aug. 20, 2020).

B. Procedural Background for Rehearing Proceeding

On September 21, 2020, Sierra Club timely filed a Request for Rehearing of the Alaska LNG Order.²⁸ On October 6, 2020, AGDC filed a Motion for Leave to Answer and Answer to Sierra Club's Request for Rehearing.²⁹

On October 20, 2020, DOE/FE issued a Notice Providing for Further Consideration of Request for Rehearing and Motion for Leave to Answer.³⁰ Citing *Allegheny Defense Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020), DOE/FE observed that, unless DOE acts upon a request for rehearing within 30 days after it is filed, the request may be deemed to have been denied for purposes of judicial review under NGA section 19(a).³¹ Nonetheless, DOE/FE stated that, "Sierra Club's Request for Rehearing and AGDC's Motion will be further considered and addressed in a future order."³² Finally, DOE/FE noted that, "[c]onsistent with NGA section 19(a), DOE/FE may modify or set aside DOE/FE Order No. 3643-A, in whole or in part, in such manner as it shall deem proper until the record in this proceeding is filed in a court of appeals."³³

On December 16, 2020, before DOE/FE issued any subsequent order addressing Sierra Club's Rehearing Request, Sierra Club filed a petition for review of the Alaska LNG Order (DOE/FE Order No. 3643-A) in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).³⁴ Additionally, Sierra Club and the Center for Biological Diversity petitioned for review of the FERC Order for the Alaska LNG Project, issued to AGDC.³⁵ Sierra

²⁸ See *supra* note 8.

²⁹ See *supra* note 10.

³⁰ *Alaska LNG Project LLC*, Notice Providing for Further Consideration of Request for Rehearing and Motion for Leave to Answer, FE Docket No. 14-96-LNG, at 2 (Oct. 20, 2020) [hereinafter DOE/FE Notice for Further Consideration].

³¹ 15 U.S.C. § 717r(a); see DOE/FE Notice for Further Consideration at 2 (citing *Allegheny Defense Project*, 964 F.3d 1).

³² DOE/FE Notice for Further Consideration at 2.

³³ *Id.*

³⁴ *Sierra Club v. U.S. Dep't of Energy*, Petition for Review, Case No. 20-1503 (D.C. Cir. Dec. 16, 2020).

³⁵ See *Center for Biological Diversity, et al., v. FERC*, Petition for Review, Case No. 20-1379 (D.C. Cir. Sept. 21, 2020).

Club and the Center for Biological Diversity moved to consolidate the DOE and FERC petitions for review, over the objection of both DOE and FERC.

On April 15, 2021, the D.C. Circuit issued a consolidated order in both cases resolving various procedural motions filed by the parties.³⁶ Among other action, the Court denied Sierra Club's and the Center for Biological Diversity's motion to consolidate the DOE and FERC cases. Additionally, DOE's certified index to the administrative record is now due on April 19, 2021.³⁷

III. SUMMARY OF REHEARING ARGUMENTS

A. Sierra Club's Arguments

In protesting Alaska LNG's Application, Sierra Club asserted that the proposed Alaska LNG Project will cause extensive environmental harm, including "inducing harmful natural gas production" and "likely increasing global greenhouse gas emissions."³⁸

In its Rehearing Request, Sierra Club states that a sufficient NEPA analysis "must include the reasonably foreseeable impacts of producing, transporting, and using the [natural] gas to be transported."³⁹ Sierra Club argues that, in this proceeding, DOE/FE violated NEPA by relying on an EIS that did not examine all of these reasonably foreseeable impacts of the Alaska LNG Project.⁴⁰

Sierra Club observes that DOE/FE previously has conducted environmental studies to inform its consideration of exports of LNG from the lower-48 states⁴¹: (i) an environmental addendum (the Addendum) that considered the potential environmental impacts of

³⁶ See Per Curiam Order, Case Nos. 20-1379 and 20-1503, Doc. 1894704 (Apr. 15, 2021).

³⁷ See *id.*

³⁸ Sierra Club Mot. at 1.

³⁹ Sierra Club Rehearing Request at 2 (citing, *e.g.*, *Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (*Sabal Trail*)).

⁴⁰ *Id.* at 1-2.

⁴¹ Because there is no natural gas pipeline interconnection between Alaska and the lower-48 states, DOE/FE generally views those LNG export markets as distinct. See Alaska LNG Order at 6.

unconventional natural gas production activities, and (ii) a life cycle analysis (or LCA) of GHG emissions associated with exports of U.S. LNG.⁴² Sierra Club further notes that, in a published decision issued in 2017 (*Sierra Club I*), the D.C. Circuit upheld a LNG export authorization issued by DOE/FE on the basis of these two environmental studies.⁴³ Sierra Club argues that, because DOE/FE has not conducted any similar studies specific to Alaska natural gas production and export, “the basis for DOE’s approval here is nothing like the facts that the D.C. Circuit upheld in [*Sierra Club I*] and subsequent unpublished cases.”⁴⁴ According to Sierra Club, DOE/FE thus has failed to satisfy NEPA’s “hard look” requirement in connection with the Alaska LNG Order.⁴⁵

Turning to natural gas production, Sierra Club argues that DOE/FE violated NEPA by relying on an EIS that did not examine the impacts related to producing the natural gas for Alaska LNG’s proposed exports.⁴⁶ Sierra Club contends that the effects of the proposed Alaska LNG Project are “more plainly foreseeable than for any other major export or pipeline project approved in recent memory.”⁴⁷ Sierra Club states that the Alaska LNG Project does not have the same “flexibility in gas sourcing” as LNG projects from the lower-48 states, such that the Alaska LNG Project “cannot move forward without [natural] gas supplied from the North Slope.”⁴⁸

Sierra Club further asserts that DOE/FE has the tools to foresee the nature and extent of the natural gas production, its types, and its potential impacts on the North Slope.⁴⁹ Citing the

⁴² Sierra Club Rehearing Request at 2-3. For a discussion of these studies, see *Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189, 195-97 (D.C. Cir. 2017) [hereinafter *Sierra Club I*].

⁴³ See *Sierra Club I*, 867 F.3d at 192, 203 (denying petition for review of the LNG export authorization issued to Freeport LNG Expansion, L.P., et al.). Sierra Club refers to this decision as *Freeport*. The Court subsequently issued a consolidated, unpublished opinion in which it rejected Sierra Club’s challenges to three other LNG export authorizations. See *Sierra Club v. U.S. Dep’t of Energy*, 703 Fed. App’x 1 (D.C. Cir. Nov. 1, 2017) (*Sierra Club II*).

⁴⁴ Sierra Club Rehearing Request at 3; see also *id.* at 6.

⁴⁵ *Id.* at 1-2, 5-6.

⁴⁶ *Id.* at 1-2.

⁴⁷ *Id.* at 3-4.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 4-5.

Alaska LNG Order, Sierra Club states that much of the natural gas on the North Slope is produced from existing crude oil wells, then reinjected into the oil reservoirs.⁵⁰ According to Sierra Club, however, DOE has not analyzed the impacts associated with diverting this natural gas for export.⁵¹ Sierra Club also maintains that any analysis of upstream natural gas production must include impacts on polar bears and other wildlife, permafrost, and other aspects of North Slope ecosystems.⁵²

Next, turning to downstream GHG emissions, Sierra Club asserts that NEPA requires DOE/FE to take a hard look at the GHG impacts resulting from the transport and usage of U.S. LNG overseas.⁵³ Sierra Club contends that, in this proceeding, DOE/FE has failed to provide a life cycle analysis of GHG emissions associated with exports from Alaska, and thus lacks an analysis of the Alaska LNG Project’s climate impacts.⁵⁴

Sierra Club further argues that “the fundamental approach of the studies DOE has used previously—comparing the lifecycle emissions of [U.S.] LNG with coal or other sources of natural gas—remains incomplete”⁵⁵ According to Sierra Club, DOE/FE 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.”⁵⁶ Sierra Club points to peer-reviewed research allegedly showing that U.S. LNG exports “are likely to play only a limited role in displacing foreign use of coal, such that [U.S.] LNG exports are likely to increase net global GHG emissions.”⁵⁷

⁵⁰ Sierra Club Rehearing Request at 4 (citing Alaska LNG Order at 29).

⁵¹ *Id.* at 4.

⁵² *Id.* at 5.

⁵³ *Id.*

⁵⁴ *Id.* at 6.

⁵⁵ *Id.*

⁵⁶ Sierra Club Rehearing Request at 6.

⁵⁷ *Id.* at 7.

Addressing a “separate issue” pertaining to GHG impacts, Sierra Club asserts that, even if exports of LNG do not produce a net increase in global GHG 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.”⁵⁸ According to Sierra Club, DOE/FE must address the impact additional U.S. LNG exports will have on the United States’ ability to meet its international commitments for GHG emission reductions.⁵⁹

Finally, Sierra Club argues that DOE/FE adopted an EIS that failed to meaningfully consider a no-action alternative under NEPA.⁶⁰ Sierra Club contends that the EIS improperly concluded that a no-action alternative would not avoid or reduce environmental impacts, based on an assumption that a “comparable project would take Alaska LNG’s place to provide market access to North Slope gas.”⁶¹ Sierra Club asserts that a proper NEPA analysis must inform DOE of the consequences of refusing to approve any non-FTA exports from Alaska altogether. Sierra Club also contends there is no factual support for the assumption that, if Alaska LNG’s non-FTA authorization were denied, a comparable project would take its place.⁶²

B. AGDC’s Answer

In response to Sierra Club’s Rehearing Request, AGDC disputes Sierra Club’s claim that DOE/FE failed to take a “hard look” under NEPA at the environmental impacts of producing natural gas to supply Alaska LNG’s exports. AGDC argues that, under existing caselaw, DOE/FE met its obligations under NEPA.⁶³ According to AGDC, the major purpose of the

⁵⁸ *Id.*

⁵⁹ *Id.* at 7-8.

⁶⁰ *Id.* at 8.

⁶¹ *Id.*

⁶² *Id.* at 8-9.

⁶³ AGDC Answer at 4, 5-13.

Alaska LNG Project is to bring natural gas to market that otherwise would be stranded.⁶⁴

Therefore, AGDC asserts, “neither the construction of the Project, nor ... DOE/FE’s approval of exports” is the proximate cause of any indirect impacts of upstream natural gas production or downstream LNG consumption.⁶⁵

In response to Sierra Club’s arguments about natural gas production and use on the North Slope, AGDC notes that it “submitted resource reports [in the FERC record] demonstrating the emission reductions resulting from the phasing out of the [natural gas] reinjection process would completely offset the limited new wells identified as part of the Project.”⁶⁶ AGDC argues that Sierra Club omits this evidence and other relevant information that was part of FERC’s environmental analysis.⁶⁷

Next, AGDC points to the final EIS, adopted by DOE/FE, in stating that the EIS considered the cumulative impacts of the Alaska LNG Project on climate change in “significant detail.”⁶⁸ Nonetheless, contrary to Sierra Club’s GHG-related arguments, AGDC maintains that NEPA does not require DOE to perform “more particularized analyses of the potential impacts of consumption of exported LNG in foreign countries,” including competition in the global marketplace between LNG and renewable energy sources.⁶⁹

Finally, AGDC argues that Sierra Club misconstrues the EIS’s analysis of a no-action alternative. According to AGDC, the EIS concluded that “the no-action alternative would fail to meet the statutory goals of the Natural Gas Act,” and thus was a well-reasoned determination.⁷⁰

⁶⁴ *Id.* at 7 (stating that “the proximate cause of any additional [natural gas] production or consumption ... is the need to bring otherwise stranded supply to market”—not DOE’s authorization).

⁶⁵ *Id.* at 7-8 (citing *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752 (2004)); *see also generally id.* at 5-13.

⁶⁶ *Id.* at 10.

⁶⁷ *Id.* at 10-11.

⁶⁸ *Id.* at 11-12.

⁶⁹ AGDC Answer at 4, 13-15 (citing *Sierra Club I*, 867 F.3d at 189).

⁷⁰ *Id.* at 5, 16-17.

IV. DISCUSSION

A. Procedural Matters

On October 6, 2020, AGDC filed a Motion for Leave to Answer and Answer to Sierra Club's Request for Rehearing.⁷¹ In DOE/FE's Notice for Further Consideration, DOE/FE stated that AGDC's Motion "will be further considered and addressed in a future order."⁷²

AGDC, an intervenor in this proceeding, is authorized by FERC to site, construct, and operate the proposed Alaska LNG Project.⁷³ AGDC's Answer is therefore relevant to DOE/FE's consideration of the issues raised in Sierra Club's Rehearing Request.⁷⁴ In addition, we note that Sierra Club did not oppose AGDC's Motion. Accordingly, we grant AGDC's Motion for Leave to Answer.⁷⁵

B. DOE's Authority to Act on Sierra Club's Rehearing Request

Under NGA section 19(a), a party aggrieved by an order issued by DOE may file a request for rehearing within 30 days after the issuance of the order.⁷⁶ When acting upon such request, DOE has the "power to grant or deny rehearing or to abrogate or modify its order without further hearing."⁷⁷

If DOE does not act upon an application for rehearing within 30 days after it is filed, "such application may be deemed to have been denied."⁷⁸ Accordingly, consistent with *Allegheny Defense Project*, Sierra Club was permitted to consider its Rehearing Request

⁷¹ See *supra* note 10.

⁷² DOE/FE Notice for Further Consideration at 2.

⁷³ See FERC Order at ¶¶ 1, 253. As noted above, AGDC also has stated that it is in negotiations with producer members of Alaska LNG—the authorization holder in this proceeding—to obtain an option to purchase Alaska LNG. See *supra* at 3.

⁷⁴ See AGDC Answer at 3 & n.5 (citing DOE/FE precedent).

⁷⁵ See *infra* § VI.A.

⁷⁶ 15 U.S.C. § 717r(a).

⁷⁷ *Id.*

⁷⁸ *Id.*; see also 10 C.F.R. § 590.504 (Denial by operation of law).

“deemed to have been denied” for purposes of judicial review when DOE did not issue an order on the Rehearing Request within 30 days.⁷⁹

NGA section 19(a) also states that:

Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), [DOE] may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.⁸⁰

Under this provision, “even if an applicant files a petition for review immediately after a deemed denial,” DOE will have additional time “to act on a rehearing application” until the administrative record is filed in court.⁸¹ Here, because DOE has not yet filed the certified index to the administrative record in the D.C. Circuit case,⁸² DOE/FE retains authority under NGA section 19(a) to act on Sierra Club’s Rehearing Request and, to the extent needed, modify or set aside the Alaska LNG Order, in whole or in part, upon reasonable notice and in a manner it deems proper.⁸³

C. Recent Executive Orders Requiring Agency Action

Since the issuance of the Alaska LNG Order⁸⁴ and while DOE/FE’s action on Sierra Club’s Rehearing Request was pending, the President issued Executive Order (E.O.) 13990,

⁷⁹ 15 U.S.C. § 717r(a); *see also Allegheny Defense Project*, 964 F.3d at 3, 18-19.

⁸⁰ 15 U.S.C. § 717r(a) (emphasis added); *see also* 15 U.S.C. § 717r(b) (“Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part.”) (emphasis added).

⁸¹ *Allegheny Defense Project*, 964 F.3d at 17; *see also id.* at 16 (“[E]ven when the agency takes no action during the thirty-day period, Section 717r(a) specifically gives [the agency] more time to decide”—until the record is filed in a court of appeals).

⁸² On February 12, 2021, the D.C. Circuit granted DOE’s Unopposed Motion for Extension of Time to File the Index to the Administrative Record (Doc. 1885093). On March 18, 2021, DOE filed a Second Motion for Extension of Time to File the Index to the Administrative Record (Doc. 1890567). On April 15, 2021, the Court granted that motion, such that the certified index to the administrative record is now due on April 19, 2021. *See supra* at 6.

⁸³ *See* DOE/FE Notice for Further Consideration at 2-3 (citing NGA section 19(a)); *Allegheny Defense Project*, 964 F.3d at 4-5, 16-17; *see also id.* at 21 (Griffith, T., concurring) (Katsas, G., and Rao, N., joining) (emphasizing that, under NGA section 19(a), when an agency “actually grants rehearing—as opposed to issuing a tolling order—it secures additional time to consider whether to alter or revoke the underlying order.”).

⁸⁴ *See supra* note 1.

*Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.*⁸⁵ E.O. 13990 directs agencies to “immediately review” all regulations, orders, and other actions issued after January 20, 2017, that may increase GHG emissions or have other impacts on climate change.⁸⁶ On January 27, 2021, the President issued E.O. 14008, *Tackling the Climate Crisis at Home and Abroad.*⁸⁷ E.O. 14008 sets forth additional policies to address climate change, specifically to “organize and deploy the full capacity of [Federal] agencies to combat the climate crisis.”⁸⁸ E.O. 14008 further requires the “Federal Government [to] drive assessment, disclosure, and mitigation of climate pollution and climate-related risks in every sector” of the U.S. economy.⁸⁹

D. Grant of Sierra Club’s Rehearing Request for the Purpose of Conducting the Study Proceeding

To comply with the Executive Orders discussed above, DOE/FE has determined that it is necessary to further evaluate the environmental impacts of exporting LNG from the proposed Alaska LNG Project to non-FTA countries. First, DOE/FE is commissioning a life cycle analysis to calculate the life cycle GHG emissions for LNG exported from Alaska by vessel to import markets in Asia (the markets targeted for exports from Alaska) and potentially in other regions. This study is necessary to enable DOE/FE to fully address Sierra Club’s arguments on

⁸⁵ Exec. Order No. 13990 of Jan. 20, 2021, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, 86 Fed. Reg. 7037 (Jan. 25, 2021), *available at*: <https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis>.

⁸⁶ *Id.* § 2.

⁸⁷ Exec. Order No. 14008 of Jan. 27, 2021, *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg. 7619 (Feb. 1, 2021), *available at*: <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>.

⁸⁸ *Id.* § 201.

⁸⁹ *Id.*

rehearing that “issues relating to production, pipeline transportation, [and] liquefaction” in Alaska are unique and require specific analysis.⁹⁰

Second, in response to Sierra Club’s arguments concerning natural gas production, DOE/FE has determined that it is prudent to commission an environmental study examining potential “upstream” impacts associated with any incremental natural gas production on the North Slope of Alaska due to exports of LNG. DOE/FE has determined that its conclusions regarding the study of potential upstream impacts in the lower-48 states—upheld by the D.C. Circuit in *Sierra Club I*—are largely inapplicable in this case.⁹¹ Upon reconsideration, DOE/FE believes that it is appropriate to examine potential upstream impacts here, where the natural gas for liquefaction and export will be produced at limited and identifiable areas on the North Slope.

As DOE/FE has observed, most of Alaska’s natural gas production on the North Slope is not brought to market due to the lack of an intrastate transmission system.⁹² Rather, the natural gas is extracted during crude oil production, then reinjected into the oil reservoirs to maintain reservoir pressure and to enhance oil recovery.⁹³ Therefore, DOE/FE’s study on natural gas production also is expected to evaluate potential environmental impacts associated with diverting North Slope natural gas for the purpose of liquefaction and export—a change in use that would be made possible by the construction of the Alaska LNG Project’s pipeline connecting the North Slope production fields to the planned Liquefaction Facility.

⁹⁰ Sierra Club Rehearing Request at 6. DOE previously has explained that a life cycle analysis is a method of accounting for cradle-to-grave GHG emissions over a single common denominator. In DOE’s life cycle analysis and a related update for the lower-48 states, DOE considered GHG emissions from all processes in the LNG supply chains—from the “cradle” when natural gas or coal is extracted from the ground, to the “grave” when electricity is used by the consumer. See 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, 76 (Jan. 2, 2020).

⁹¹ DOE/FE’s conclusions were based on the fact that “shale plays and other unconventional sources of natural gas are spread throughout the lower-48 states, and there is an interconnected pipeline system covering these states”—such that DOE could not identify where “export-induced production” in the lower-48 states would occur on a local level. *Sierra Club I*, 867 F.3d at 199.

⁹² See Alaska LNG Order at 29 (citation omitted); see also, e.g., final EIS at 4-1160, 4-1162, 4-1163.

⁹³ See *id.*

In sum, DOE/FE is granting Sierra Club’s Rehearing Request for the purpose of conducting two Alaska-specific environmental studies: (i) a life cycle analysis calculating the GHG emissions for LNG exported from Alaska and transported by vessel to markets in Asia and potentially in other regions, and (ii) an upstream study examining aspects of natural gas production on the North Slope of Alaska.

As with DOE/FE’s practice for its environmental and economic studies conducted to date for the lower-48 states, DOE/FE will provide notice of the availability of each Alaska study in the docket for this proceeding, as well as in the *Federal Register*. DOE/FE will invite the submission of public comments on both studies. The studies—as well as public comments received on each study and any responsive filings by existing parties to this proceeding—will inform DOE’s consideration of potential environmental impacts associated with Alaska LNG’s exports to non-FTA countries.

Once DOE/FE completes the Alaska environmental study proceeding, DOE/FE intends to issue an order under NGA section 3(a) in which DOE presents its findings and conclusions. As noted above, DOE retains the authority to modify or set aside the Alaska LNG Order, in whole or in part, upon completion of the study proceeding.⁹⁴ DOE/FE cannot, however, predict or forecast the results of the Alaska studies. The scope and outcome of a future order for Alaska LNG must await the conclusion of the study proceeding.

E. Denial of Sierra Club’s Request to Withdraw the Alaska LNG Order During the Study Proceeding

DOE/FE’s action today is to grant Sierra Club’s Rehearing Request for the purpose of conducting the Alaska environmental study proceeding. Sierra Club also asks “that the [Alaska

⁹⁴ 15 U.S.C. § 717r(a); *see supra* § IV.B.

LNG] order be withdrawn pending further inquiry and public process regarding the impact of the proposed exports.”⁹⁵ Upon review, however, DOE/FE finds no evidence demonstrating that leaving the Alaska LNG Order in effect during the pendency of the Alaska environmental study proceeding will harm or otherwise impact the interests and rights of Sierra Club or its members.⁹⁶

As an “integrated mega-project,” the Alaska LNG Project is unique due to its size, scope, costs, required upstream development, and project development timeline—which are all more significant than any LNG project in the lower-48 states.⁹⁷ According to AGDC, the cost of the Alaska LNG Project is now estimated to be \$38.7 billion.⁹⁸ Further, under the FERC Order, AGDC has until May 21, 2030, to construct the Alaska LNG Project and to make the facilities available for service.⁹⁹ Currently, the Alaska LNG Project remains in a proposed phase,¹⁰⁰ construction is not imminent (such that exports of LNG from the Project are not imminent), and the project sponsor—AGDC—has not yet made a final investment decision (FID) to proceed with the Project. Indeed, according to recent public reports, AGDC is seeking to reconfigure the Alaska LNG Project, to obtain a private partner, and to secure billions of dollars in funding options for the Project.¹⁰¹

⁹⁵ Sierra Club Rehearing Request at 1.

⁹⁶ We note that, under DOE’s regulations, “[t]he filing of an application for rehearing does not operate as a stay of the ... order, unless specifically ordered” by DOE. 10 C.F.R. § 590.502.

⁹⁷ Alaska LNG Order at 15 (quoting App. at 1, 5).

⁹⁸ Alaska Gasline Dev. Corp., “Alaska LNG Project Announces Updated \$38.7 Billion Project Construction Cost” (June 25, 2020), available at: <https://agdc.us/updated-38-7-billion-project-construction-cost>. AGDC announced this updated cost estimate in June 2020, which marks a reduction from the prior cost estimates provided in both the FERC and DOE proceedings. See, e.g., Alaska LNG Order at 17 n.87 (quoting FERC Order at ¶ 3).

⁹⁹ See FERC Order at ¶ 253(B) (ordering the proposed facilities to be constructed within 10 years from the date of the FERC Order).

¹⁰⁰ Elwood Brehmer, *Latest Gasline Effort Pitched by AGDC Leadership*, Alaska Journal of Commerce (Feb. 4, 2021), available at: <https://www.alaskajournal.com/2021-02-04/latest-gasline-effort-pitched-agdc-leadership>.

¹⁰¹ See *id.*; see also Kevin Dobbs, *Alaska LNG Project Lands Private Partner, Plans to Seek Federal Funding to Launch \$5.9B First Phase*, LNG INSIGHT (Feb. 8, 2021), available at: <https://www.naturalgasintel.com/alaska-lng-project-lands-private-partner-plans-to-seek-federal-funding-to-launch-5-9b-first-phase/>.

On March 31, 2021, Alaska LNG filed its Semi-Annual Report in this proceeding.¹⁰² Alaska LNG informed DOE/FE that, “[b]ased on AGDC’s FERC filing and the Final Environmental Impact Statement issued by FERC, the Project could be operational six years following commencement of construction.”¹⁰³ Further, as of the date of the Order, Alaska LNG had secured less than half of the total acreage needed for the Liquefaction Facility alone.¹⁰⁴ In its Semi-Annual Report, Alaska LNG also stated that it “has not yet entered into any long-term contracts associated with the long-term export of LNG or any long-term supply contracts.”¹⁰⁵

On the basis of this evidence, DOE/FE does not foresee a possibility that AGDC will commence construction of the Alaska LNG Project during the pendency of the study proceeding. As a result, potential LNG exports from the Project are still years away, at the earliest. Nonetheless, this Order does not foreclose Sierra Club from filing a motion asking DOE/FE to protect its interests on the basis of, for example, evidence that construction of the Project facilities is imminent or that other action associated with the Project could harm Sierra Club’s interests before DOE completes the study proceeding. We note that, as a condition of the FERC Order, AGDC is required to file with FERC an Implementation Plan at least 60 days before construction begins “for the review and written approval” of the Director of FERC’s Office of Energy Projects.¹⁰⁶ Therefore, Sierra Club (also a party to the FERC proceeding) will have sufficient notice and opportunity to seek additional relief from DOE in the future.

¹⁰² Alaska LNG Project LLC, Semi-Annual Report, FE Docket No. 14-96-LNG (Mar. 31, 2021), *available at*: <https://www.energy.gov/sites/default/files/2021-04/Alaska%20LNG%20Project%20LLC%20SemiAnnual.pdf> [hereinafter Alaska LNG Semi-Annual Report].

¹⁰³ *Id.* at 2 (emphasis added).

¹⁰⁴ *See* Alaska LNG Order at 15.

¹⁰⁵ Alaska LNG Semi-Annual Report at 2.

¹⁰⁶ FERC Order at 92 (Environmental Condition #7). The FERC Order imposes numerous additional pre-construction requirements on AGDC, including “receiv[ing] written authorization” from the Director of the [Office of Energy Projects] ... before commencing construction of any Project facilities.” *Id.* at 96 (Environmental Condition #12).

V. FINDINGS AND CONCLUSION

On the basis of the findings and conclusions set forth above, DOE/FE grants Sierra Club's Rehearing Request for the purpose of conducting the Alaska environmental study proceeding. Once the study proceeding is completed, DOE intends to issue an order under NGA section 3(a) in which DOE may exercise its authority to reaffirm, modify, or set aside the Alaska LNG Order. DOE/FE also finds that leaving the Alaska LNG Order in effect during the study proceeding will not harm or otherwise impact the interests and rights of Sierra Club or its members.

VI. ORDER

Pursuant to sections 3 and 19 of the Natural Gas Act, and for the reasons set forth above, it is ordered that:

- A. Alaska Gasline Development Corporation's Motion for Leave to Answer Sierra Club's Request for Rehearing is granted.
- B. Sierra Club's Request for Rehearing is granted for the purpose of conducting the Alaska environmental study proceeding.
- C. Sierra Club's request for DOE/FE to withdraw the Alaska LNG Order is denied. The Alaska LNG Order (DOE/FE Order No. 3643-A) remains in effect, subject to the terms and conditions set forth therein, pending DOE/FE's completion of the Alaska environmental study proceeding and DOE/FE's issuance of an order under

NGA section 3(a).

Issued in Washington, D.C., on April 15, 2021.



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