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Via Email
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Ms. Larine A. Moore
Docket Room Manager
Office of Fossil Energy and Carbon Management (FE-34)
U.S. Department of Energy
1000 Independence Avenue SW
Washington, D.C. 20585

Re: Golden Pass LNG Terminal LLC, FE Docket No. 12-156-LNG

Dear Ms. Moore:

Enclosed for filing in the above-referenced proceeding is Golden Pass LNG Terminal LLC's Motion for Leave to Answer and Answer to the Sierra Club's Request for Rehearing filed May 27, 2022 in the referenced proceeding.

In accordance with 10 C.F.R. § 590.107(e), this submission will be served to all persons listed on the attached Certificate of Service.

Please acknowledge receipt of this submission by email to jbrightbill@winston.com. Please contact me if you have any questions.

Sincerely,

/s/ Kevin M. Sweeney
Kevin M. Sweeney
Counsel for Golden Pass LNG Terminal LLC

cc: Amy Sweeney, Director, Office of Regulation, Analysis, and Engagement
Jennifer Wade, Director, Division of Natural Gas Regulation
Cassandra Bernstein, Attorney-Advisor, Office of the Assistant General Counsel for Energy Delivery and Resilience
Beverly Howard, Natural Gas Analyst, Division of Natural Gas Regulation

UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

Golden Pass LNG Terminal LLC	**)**	**FE Docket No. 12-156-LNG**

GOLDEN PASS LNG TERMINAL LLC'S MOTION FOR LEAVE TO ANSWER AND ANSWER TO THE SIERRA CLUB'S REQUEST FOR REHEARING

Pursuant to the Rules of Practice and Procedure of the Department of Energy ("DOE"), 10 C.F.R. § 590.505 (2022), and the Natural Gas Act ("NGA"), 15 U.S.C. § 717r, Golden Pass LNG Terminal LLC ("Golden Pass LNG") hereby submits this Motion for Leave to Answer and Answer to the Request for Rehearing filed by Sierra Club in the captioned proceeding on May 27, 2022.[1] Sierra Club requests rehearing of Order No. 3978-E. There, DOE's Office of Fossil Energy and Carbon Management ("FECM") granted Golden Pass LNG's requested amendment to increase Golden Pass LNG's non-FTA export volume to 937 Bcf/yr, or 2.57 Bc/d.[2] Golden Pass LNG respectfully requests that FECM grant this motion to answer and deny rehearing.

BACKGROUND

Under the Secretary of the Department of Energy's current delegation of his authority under Section 3 of the National Gas Act, 15 U.S.C. § 717b, the construction of liquefied natural gas ("LNG") facilities and the import or export of LNG are governed separately. [3] FECM administers Section 3(a) of the Natural Gas Act. This governs import/export authorizations. The

[1] Hereinafter "SC RR."

[2] *Golden* Pass *LNG Terminal LLC,* FE Docket No. 12-156-LNG, FECM Order No. 3978-E (April 27, 2022) ("Order No. 3978-E").

[3] *See* 42 U.S.C. § 7151(b) (2006); Delegation Order No. 00-044.00A, effective May 16, 2006.

Federal Energy Regulatory Commission ("FERC") separately administers Section 3(e). That section governs terminal siting authority, and other provisions.

In December 2016, FERC authorized the predecessor of Golden Pass LNG[4] to construct and operate facilities near Sabine Pass, Texas, for the export of LNG.[5] FERC's authorization of Golden Pass LNG's proposed export facilities under Section 3 of the NGA followed a mandatory National Environmental Policy Act of 1969 ("NEPA") pre-filing review process. As lead agency for the review,[6] FERC prepared a draft and final environmental impact statement ("FEIS").[7] The DOE, along with the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the U.S. Department of Transportation, and the U.S. Coast Guard all participated as cooperating agencies in preparing the FEIS.

To complete the FEIS, FERC issued drafts, held public meetings, and solicited comments. The Sierra Club itself intervened in the FERC proceeding and protested the proposed LNG export facilities. The FEIS ultimately concluded that if the proposed facilities were constructed and operated in accordance with applicable laws and regulations, the adverse environmental impacts would be reduced to less-than-significant levels. To that end, the FEIS recommended the adoption of 83 Environmental Conditions. FERC incorporated all 83 recommendations into the December

[4] As explained in its July 17 and December 20, 2019 filings, Golden Pass LNG Terminal LLC succeeded Golden Pass Products LLC as the owner and operator of Golden Pass import and export facilities. Statement of Change in Control, *Golden Pass LNG Terminal LLC*, FE Docket No. 12-156-LNG (July 17, 2019); Change in Control – Supplemental Filing (Dec. 20, 2019). For purposes of this motion, Golden Pass Products LLC is referred to as Golden Pass LNG.

[5] *Golden Pass LNG Terminal LLC*, *et al*., FERC Docket Nos. CP14-517-000, *et al*., 157 FERC ¶ 61,222 (Dec. 21, 2016) ("FERC Order"). The FERC Order also authorized Golden Pass Pipeline LLC ("GPPL") under NGA section 7(c) and Part 157 of the FERC regulations to construct and operate compression and looping facilities in Texas and Louisiana to enable GPPL to transport up to 2.5 Bcf/d of domestic natural gas supplies to the Golden Pass LNG terminal for liquefaction and export.

[6] 15 U.S.C. § 717n(b).

[7] The lead agency has primary responsibility for preparation of the required NEPA documents and may request that other agencies having jurisdiction by law or special expertise serve as cooperating agencies. *See* 40 C.F.R. §§ 1501.5, 1501.6 (2022).

16, 2016 Order approving the proposed facilities. Sierra Club did not file a request for rehearing.[8] Golden Pass LNG did not challenge any of these conditions.

In April 2017, FECM issued its import/export Order No. 3978.[9] That order authorized Golden Pass LNG to export 808 billion cubic feet ("Bcf") per year of domestically produced natural gas from the proposed export terminal facilities approved in the FERC Order, including to non-Free Trade Agreement [10] countries. [11] Order No. 3978 further granted Golden Pass LNG's requested authority to (1) engage in natural gas purchases and LNG sales for export and (2) act as agent for third parties.[12] In Order No. 3978, FECM conditioned Golden Pass LNG's LNG export authorization on, among other things, a requirement that Golden Pass LNG "shall ensure compliance with all terms and conditions established by FERC in the EIS, including the 83 conditions adopted in the FERC Order."[13]

[8] FERC's Order approving the construction and operation of the Golden Pass LNG and GPPL projects is now final and no longer subject to rehearing or review. *See* 15 U.S.C. § 717r(a).

[9] *Golden Pass LNG Terminal LLC,* FE Docket No. 12-156-LNG, FECM Order No. 3978 (April 25, 2017) ("Order No. 3978").

[10] An non-Free Trade Agreement country is any country: (1) that has or in the future develops the capacity to import LNG via ocean-going carrier; (2) with which the United States does not prohibit trade; and (3) does not have a Free Trade Agreement ("FTA") requiring the national treatment for trade in natural gas.

[11] FERC authorized the construction and operation of the Golden Pass LNG import facilities in 2005. *Golden Pass LNG Terminal LP and Golden Pass Pipeline LP*, 112 FERC ¶ 61,041 (2005) ("Certificate Order"), *amended*, *Golden Pass Pipeline LP*, 117 FERC ¶ 61,015, and 117 FERC ¶ 61,332 (2006). The import facilities were placed in service in 2011. In addition to the import facilities, FERC authorized Golden Pass Pipeline LLC ("GPPL") to construct and operate an approximately 70-mile interstate pipeline to transport natural gas from the terminal to interconnections with several existing inter- and intrastate pipelines ("GPPL Pipeline").

[12] On September 27, 2012, in *Golden Pass LNG Terminal LLC*, FE Docket No. 12-88-LNG, Order No. 3147, the DOE/FE granted Golden Pass LNG authorization under Section 3 of the NGA for long-term, multi-contract authorization to export domestically produced LNG to FTA countries, defined as any country: (1) with which the U.S. has, or in the future enters into, a Free Trade Agreement requiring national treatment for trade in natural gas; and (2) that has or in the future develops the capacity to import LNG via ocean-going carrier. The authorized annual export quantity was 740 Bcf.

[13] Order No. 3978, Condition H.

In May 2020, Golden Pass LNG sought permission from FERC to increase the capacity of the proposed Sabine Pass facility.[14] FERC issued a notice and awaited public comment. Nobody—including Sierra Club—opposed the application.[15] *Id.* at 29.

As before, FERC evaluated the environmental impact of the proposal—this time by preparing an environmental assessment, or EA. FERC once again determined that the Sabine Pass facility would not significantly affect the quality of the human environment.[16] The environmental assessment recommended approval of the Sabine Pass expansion subject to four additional conditions.[17] FERC ultimately did approve the expansion, finding that "the Amendment would not require new construction or modifications to the Terminal facilities, impact the existing Air Permit or the Hazard Analysis Report associated with the Terminal, or 'result in any significant adverse environmental impacts.'"[18]

In August 2020, Golden Pass LNG applied to FECM to increase the Sabine Pass facility's authorized non-FTA export volume from 808 Bcf to 937 Bcf. This increase would allow Golden Pass LNG to use the full capacity of the expanded Sabine Pass facility.[19] Just as with the FERC application, no commenters opposed the notice of application issued by FECM. The application to increase non-FTA export volume was uncontested.[20] On its own review, FECM concluded that granting the increase is *not* "inconsistent with the public interest."[21] Accordingly, FECM granted

[14] Order No. 3978-E at 1.

[15] *Id.* at 29.

[16] *Golden Pass LNG [Golden Pass LNG Terminal, LLC]*, Export Project Amendment, Environmental Assessment, FERC Docket No. CP20-459-000, 17 (Nov. 2020).

[17] *Id.*

[18] Order No. 3978-E at 4 (quoting *Golden Pass LNG Terminal, LLC*, Order Amending Section 3 Authorization, 174 FERC ¶ 61,053 at P 15 (Jan. 19, 2021)).

[19] *Id.* at 2.

[20] *Id.*

[21] *Id.* at 5.

the application in Order No.3978-E (the "Order"). Sierra Club now seeks reconsideration of that Order. SC RR at 19.

MOTION FOR LEAVE TO ANSWER

Golden Pass LNG respectfully requests leave to file this Answer. The FECM regulations do not permit answers to applications for rehearing filed under NGA Section 19(a) as of right. 10 C.F.R. § 509.505. "[H]owever, the Assistant Secretary may afford the parties an opportunity to file briefs or answers . . . ." *Id.* 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.[22] Golden Pass LNG's Answer is relevant to DOE's consideration of Sierra Club's rehearing request. Sierra Club did not comment on or object to Golden Pass LNG's modification application. Sierra Club thus raises novel objections to the Order based on recent developments in international relations. Sierra Club's reconsideration also raises questions about the Categorical Exclusion promulgated by DOE in late-2020 while this proceeding was pending.[23] Golden Pass LNG's Answer responds to and is relevant to the issues Sierra Club belatedly asserts in its rehearing request. Golden Pass LNG's answer may assist FECM when acting on this request. Good cause thus exists to accept this Answer.

Golden Pass LNG accordingly requests that FECM accept its Answer to Sierra Club's request for rehearing of Order No. 3978-E.

[22] 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 LNG Terminal LLC*, DOE/FE Order No. 3978-A at n. 23 and Ordering Paragraph (A) (Mar. 30, (2018) (granting Motion for Leave to Answer because it "is relevant to our consideration of the issues raised in Sierra Club's Rehearing Request); *Cheniere Marketing, LLC, et al.*, DOE/FE Order No. 3638-A at Ordering Paragraph (A) (granting Motion for Leave to Answer Rehearing Request) (May 26, 2016).

[23] 10 C.F.R. Part 1021, Subpt. D, App. B, Categorical Exclusion B5.7.

ANSWER

NGA Section 3(a) establishes a rebuttable presumption that a proposed export of natural gas is in the public interest. FECM must grant an export application unless the export is found to be inconsistent with the public interest. *Panhandle Producers and Royalty Owners Ass'n v. Econ. Regul. Admin.*, 822 F.2d 1105, 1111–12 (D.C. Cir. 1987) ("*PPROA*"). Sierra Club's reconsideration request—after failing to raise objections to Golden Pass LNG's modification application—does not overcome the statutory presumption that the proposed export authorization is consistent with the public interest. 15 U.S.C. § 717b(a). It should be denied.

I. RECONSIDERATION IS IMPROPER BECAUSE SIERRA CLUB WAIVED ITS ARGUMENTS BY FAILING TO TIMELY MAKE THEM

Golden Pass LNG filed its Application for Limited Amendment on August 14, 2020. FECM's public notice of Golden Pass LNG's export application then clearly and expressly limited the time for submitting "[p]rotests . . . , requests for additional procedures, and written comments." 85 Fed. Reg. 58,347 (Sept. 18, 2020); *see also* 10 C.F.R. § 590.304(e) (allowing FECM to limit time to file protests); 10 C.F.R. § 590.310 (allowing FECM to limit time to request additional procedures and prohibiting such requests after issuance of an order if FECM sets no earlier limit). Sierra Club had ample opportunity to make its arguments. *See* Fed. Reg. 58,347 (providing until Nov. 17, 2020). Instead, Sierra Club remained silent until May 27, 2022. This was well after the deadline to participate had expired, after FECM refused to consider an untimely comment about the implications of Russia's invasion of Ukraine, and after FECM had completed a nearly two-year evaluation of Golden Pass LNG's application.

Raising new arguments for the first time on rehearing—especially after choosing not to contest an application at all—is inappropriate for several reasons. *First*, it is "disruptive to the administrative process because it has the effect of moving the target for parties seeking a final

administrative decision." *Nevada Power Company*, 111 FERC ¶ 61111, 61616 (2005). This is contrary to the public interests in administrative efficiency and finality. *Second*, because parties are unable to answer a request for rehearing as a matter of right, a new argument in a request for rehearing "raises concerns of fairness and due process." *Omaha Public Power District*, 164 FERC ¶ 61238, at *3 (2018).

Both agencies and courts properly refuse "new arguments" in a "petition for rehearing" where the party "could have raised them earlier and there was no reasonable ground for not having done so." *Town of Norwood v. FERC*, 962 F.2d 20, 25 (D.C. Cir. 1992); *accord Tenn. Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1112 (D.C.Cir.1989). Sierra Club could have earlier opposed Golden Pass LNG's limited modification application. And letting Sierra Club raise post-order arguments about the Russian invasion of Ukraine—after FECM refused to consider pre-order arguments on the same issue due to their untimeliness—would only deepen the fairness concerns noted above. Sierra Club's request for rehearing should be denied outright for failure to timely oppose Golden Pass LNG's limited modification application. *See Town of Norwood*, 962 F.2d at 25; *Tennessee Gas*, 871 F.2d at 1112.

II. RECONSIDERATION IS IMPROPER BECAUSE FECM LACKS AUTHORITY UNDER THE NGA TO CONSIDER ENVIRONMENTAL EFFECTS ON SECTION 3(A) MODIFICATIONS.

Sierra Club's reconsideration contends "DOE's discussion of greenhouse gases and climate change falls short of what both NEPA and the Natural Gas Act require." SC RR at 2. To the contrary, reconsideration of the Order on account of the environmental effects that Sierra Club asserts would constitute legal error. As DOE has interpreted the statute when promulgating regulations, at most, "the only source of potential environmental impacts resulting from DOE's decision regarding authorizations under section 3 of the NGA" is any "associated transportation of natural gas by marine vessel." 85 Fed. Reg. 78,198/2 (quoting 10 C.F.R. Part 1021, Subpart D,

App. B5.7). DOE lacks statutory authority to reconsider the Order based on the environmental effects Sierra Club alleges.

A. FECM's "public interest" review must be limited to factors within the jurisdiction and statutory authority of DOE.

Congress requires persons exporting natural gas to secure an order of authorization from DOE. But DOE "shall" issue such order "unless . . . it finds that the proposed exportation or importation will not be consistent with the public interest." 15 U.S.C. § 717b(a). The term "public interest" is not defined in the NGA. Nevertheless, the broader context and structure of the NGA—including DOE's narrow jurisdiction over the "export" approval—reflect Congress's intended meaning for that term. There are limits to DOE's authority. And "[i]t is axiomatic" that an administrative agency's power "is limited to the authority delegated by Congress." *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (addressing authority to promulgate regulations).

Congress enacted the Natural Gas Act with the "principal purpose" of "encourag[ing] the orderly development of plentiful supplies of . . . natural gas at reasonable prices." *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669–70 (1976); *see also Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 192 (D.C. Cir. 2017) ("*Freeport II*"). Moreover, by the structure of NGA Section 3(a), Congress created a "general presumption favoring [export] authorization." *W. Va. Pub. Servs. Comm'n v. U.S. Dep't of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982); *Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 192 (D.C. Cir. 2017). DOE "shall" authorize exports to non-FTA nations "*unless* . . . it finds that the proposed exportation . . . will not be consistent with the public interest." 15 U.S.C. § 717b(a) (emphasis added).

In the years since first enactment, Congress has amended the NGA. These amendments further encouraged the import and export of plentiful quantities of natural gas. Congress did so by repeatedly limiting DOE's discretion to determine imports or exports are not consistent with the

public interest. Section 201 of the Energy Policy Act of 1992 amended NGA § 3(c) to require that applications to authorize the import of natural gas be ‘‘deemed to be consistent with the public interest, and . . . granted without modification or delay.’’ *See* 15 U.S.C. § 717b(c). Likewise, NGA Section 3(c) requires that "exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest." 15 U.S.C. § 717b(c). And under the NGA, "FERC has exclusive statutory authority to approve construction and operation of natural gas export facilities." 85 Fed. Reg. at 78,199; *accord* 15 U.S.C. § 717b(e)(1) ("The Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal."). DOE is thus left with jurisdiction and authority over just one narrow segment of the chain of commerce from natural gas extraction to transfer in a foreign country.

In evaluating an export application, FECM focuses on the following longstanding economic criteria:

> the domestic need for the gas; whether the proposed exports pose a threat to the security of domestic natural gas supplies; and any other issue determined to be appropriate, including whether the arrangement is consistent with FECM's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. [24]

FECM "applies the principles described in the Secretary's natural gas import policy guidelines[,] which presume the normal functioning of the competitive market will benefit the public."[25] Accordingly, FECM examines whether the proposed exports will be conducted on a market-responsive, competitive basis.[26] The FECM gas import and export policies were "designed to

[24] *Sabine Pass Liquefaction*, Order No. 2961, at 29. This approach is consistent with DOE Delegation Order No. 0204-111, which previously guided DOE/FE decisions on export applications but is no longer in effect. *Id. See also, e.g.*, *ConocoPhillips Alaska*, Order No. 2500, at 44–45; *Phillips Alaska*, Order No. 1473, at 13–14.

[25] *Phillips Alaska*, Order No. 1473, at 47 (citation omitted).

[26] "New Policy Guidelines and Delegation Orders Relating to the Regulation of Natural Gas," 49 *Fed. Reg*. 6684-01 (Feb. 22, 1984) (hereinafter the "Policy Guidelines"). The DOE/FE has repeatedly reaffirmed the continued

establish natural gas trade on a market-competitive basis and to provide immediate as well as long-term benefits to the American economy from this trade."[27]

Some judicial opinions have assumed that certain "subsidiary" considerations in other contexts of the NGA are permissible in DOE's Section 3(a) "public interest" determination. *See Freeport II*, 867 F.3d at 202 (referring to "environmental" limitations). But Golden Pass LNG finds no Supreme Court or appellate decision that specifically construed Section 3(a) to permit environmental considerations after a careful, contested review of the question. Certainly, there is no express textual authority for considering environmental factors.[28] And agencies are "limited to the authority delegated by Congress." *Georgetown Univ. Hosp.*, 488 U.S. at 471.

B. To the extent NGA review includes environmental considerations, these are limited to, at most, direct effects of import/export activity.

Sierra Club's rehearing argues that "DOE acted arbitrarily by failing to consider the impact of LNG export authorizations on U.S. emissions, commitments, and goals." SC RR at 2. Implicit in this argument is a contention that DOE's generalized consideration of "public interest" allows DOE to offset Congress's "principal purpose" for the NGA. *See NAACP*, 425 U.S. at 669–70. Specifically, Sierra Club suggests that DOE can determine that plentiful supplies of natural gas may not be in the public interest after all. SC RR at 7–8. Sierra Club claims that greenhouse gas emissions, after export, in foreign countries (without free trade agreements), stemming directly from natural gas's use for its intended purposes, can establish that a Section 3(a) authorization would not be consistent with the public interest. *Id.* That argument cannot be reconciled with the

applicability of the guidelines and has consistently held that they apply equally to export applications (though written to apply to imports). *Yukon Pacific*, Order No. 350; *Phillips Alaska*, Order No. 1473; *ConocoPhillips Alaska*, Order No. 2500, *Sabine Pass*, Order No. 2961.

[27] Policy Guidelines, at 6684.

[28] D.C. Circuit cases preceding *Freeport II* explicitly distinguished between public interest analysis and NEPA environmental review. *Sierra Club v. FERC*, 827 F.3d 36, 41 (D.C. Cir. 2016) ("*Freeport I*") ("In addition to those public-interest determinations, authorizations to export natural gas also require an environmental review under NEPA.").

purpose, structure, and history of the NGA. FECM's obligations under Section 3(a) must not be conflated with the requirements of NEPA.

First, the "principal purpose" of the NGA is "development of plentiful supplies of . . . natural gas" for combustion to produce energy. *NAACP*, 425 U.S. at 669–80. Courts interpret the NGA to impose a Congressional "presumption" in favor of "proposed exportation" of natural gas. *Freeport II*, 867 F.3d at 203. And authority to regulate the environmental effects of the combustion of natural gas is beyond the scope of DOE's jurisdiction. The jurisdiction over such activity instead lies within the province of other federal agencies, states and tribes, and foreign governments.

Sierra Club suggests the NGA nevertheless grants DOE broad discretion to disregard Congress's primary purpose. And not because of collateral or incidental environmental effects during the actual "export" of that gas. Sierra Club complains about upstream emissions, regulated by other agencies, and downstream greenhouse gas emissions from natural gas being used, in foreign countries, for its contemplated purpose. This makes no sense. Congress has long known that combustion of natural gas for energy creates air emissions. Yet Congress created the NGA to ensure "plentiful supplies" of natural gas without any textual indication that DOE should moderate Congress's primary purpose on account of those (or any other) environmental effects. And even if one assumes FECM is permitted to consider some environmental effects when assessing what is not consistent with the "public interest," *Freeport II*, 867 F.3d at 202, that cannot encompass environmental effects, occurring beyond DOE's jurisdiction, which then allow FECM to offset and contradict the "primary purpose" of the NGA to provide for "plentiful" gas. As Sierra Club would have it, Congress's primary purpose can be negated by FECM without any clearly

delegated, intelligible principle for doing so.[29] The Constitution does not allow that.[30] "Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). DOE's discretion to determine what is "not" in the "public interest" cannot be stretched to the limits Sierra Club demands.

Second, it is illogical to suppose that *if* Congress granted DOE this environmental-cancelling discretion, Congress would grant that discretion in only one segment of DOE's regulatory jurisdiction. Yet that is how Sierra Club inconsistently would read DOE's "public interest" authority. Congress has instructed DOE that applications to export natural gas to or import natural gas from free-trade nations "shall be granted without modification or delay." 15 U.S.C. § 717b(c). These provisions confirm Congress's general intent to maximize supplies and flow of natural gas. Against this, there is no logic for then inconsistently construing "public interest" to grant DOE unbounded discretion to decide there is *too* plentiful a supply of natural gas, *only* when flowing to non-free trade nations, that is not in the public interest, on account of the gas's subsequent combustion abroad for its intended use.

Third, interpretative canons of statutory construction bar Sierra Club's expansive reading of DOE's discretion. Based on "the principle of constitutional avoidance,"[31] Section 3(a) should be construed in a manner that avoids the nondelegation problem. And a nondelegation problem would arise if DOE can offset Congress's primary purpose for the NGA with no intelligible principle for instead prioritizing environmental effects. There is also the presumption against the

[29] *See F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 536 (2009) ("'Congress must 'lay down by legislative act an intelligible principle,' and the agency must follow it." (quoting *Mistretta v. United States*, 488 U.S. 361, 374 (1989))).

[30] *Id.*

[31] *Nw. Austin Mun. Util. Dist. No. 1 v. Holder*, 557 U.S. 193, 206 (2009).

extraterritorial application of federal law. *Morrison v. Nat'l Australia Bank*, 561 U.S. 247, 255 (2010). U.S. statutes do not apply in foreign territory unless Congress "clearly expressed" this intention. *Id.* That is precisely what Sierra Club seeks. It effectively asks DOE to restrict international use of U.S. LNG as incompatible with global climate goals by refusing authorization. SC RR at 5. Yet Sierra Club cites no language from the NGA that grants DOE discretion to deny authorization based on international environmental effects. To the contrary, the NGA expressly limits DOE's jurisdiction over the action of "export" from the country, 15 U.S.C. § 717b(a), not the uses beyond. And Sierra Club's reading also runs afoul of the Supreme Court's major questions doctrine.[32] Federal courts "expect Congress to speak clearly" if it wishes to assign to an executive agency a decision "of vast economic and political significance."[33] Allowing FECM to wield the expansive power Sierra Club alleges would do exactly that.

In sum, DOE has no statutory authority to regulate the construction or operation of LNG terminals (or otherwise) upstream. Nor can the NGA "public interest" inquiry be strained to grant discretion to retard "plentiful supplies" of natural gas based on post-export, downstream, international use solely in non-free trade agreement nations. *See NAACP*, 425 U.S. at 669–70. Sierra Club's request for reconsideration to further consider environmental effects invites legal error. It should be denied.

[32] *See Nat'l Fed'n of Indep. Bus. v. Dep't of Labor, O.S.H.A.*, 142 S. Ct. 661, 667 (2022) ("*NFIB*") (Gorsuch, J. concurring) ("'We expect Congress to speak clearl' if it wishes to assign and executive agency decisions 'of vast economic and political significance.'" (quoting *Ala. Ass'n of Realators v. Dep't of Health and Human Servs.*, 141 S. Ct. 2485, 2489 (2021))); *Util. Air Reg. Grp. v. E.P.A.*, 573 U.S. 302, 324 (holding that an agency's novel interpretation of a statute was "unreasonable because it would bring about an enormous and transformative expansion in [the agency's] regulatory authority without clear congressional authorization").

[33] *NFIB*, 142 S. Ct. at 667 (Gorsuch, J., concurring) (citations omitted).

C. DOE confirmed and incorporated limits to its section 3(a) approval authority in DOE's regulations.

Though DOE has no authority to consider environmental effects as part of a Section 3(a) review, even DOE admits that any such authority is limited, at best. And DOE has incorporated its limited interpretation of Section 3(a) into regulation by notice-and-comment rulemaking. FECM may have considered FERC's EA and supplemented it with FECM's own environmental studies before issuing the Order. These discussed greenhouse gas emissions upstream and downstream from DOE's jurisdiction. But it was improper for FECM to do so.

CEQ regulations authorize an agency to categorically exempt an action from the EIS requirement if it "[n]ormally does not have significant effects" for purposes of NEPA. 40 C.F.R. § 1501.3(a)(1). DOE promulgated such a categorical exclusion for "[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to export natural gas under section 3 of the Natural Gas Act and any associated transportation of natural gas by marine vessel." 10 C.F.R. Part 1021, Subpart D, App. B5.7. When doing so, DOE analyzed the limits of its statutory authority to deny such authorizations. That analysis is relevant here.

As DOE explained, its NEPA "review is properly focused on potential environmental impacts resulting from the exercise of its NGA section 3 authority." National Environmental Protection Act Implementing Procedures ("NEPA Rule"), 85 Fed. Reg. 78198 (Dec. 4, 2020). And "[t]he ***only*** decision ***for which DOE has authority*** is with respect to the export of the commodity itself." NEPA Rule, 85 Fed. Reg. 78199 (emphasis added). DOE acknowledged § 3(a) conveys no authority to review the environmental impact of the construction and operation of LNG terminals. That is typically the responsibility of FERC. *Id.* The NGA also conveys no authority to control the downstream "regasification and ultimate burning of LNG in foreign countries." NEPA Rule, 85 Fed. Reg. 78200. And DOE noted the NGA conveys no authority to enact environmental regulations, which are entrusted to the Environmental Protection Agency and are a

more efficient response to environmental concerns than the blunt instrument of denying export authorizations. *Id.* n.31.

After notice and comment, DOE interpreted NGA Section 3(a) as limiting its authority to deny such authorizations. DOE enshrined this interpretation in a regulation stating that its NEPA review of export applications should be similarly limited. Per DOE, that review is solely of "the potential environmental impacts starting at the point of delivery to the export vessel, and extending to the territorial waters of the receiving country." 85 Fed. Reg. 78199. And this followed from the text, structure, and history of the Natural Gas Act. *Id.* DOE's interpretation avoids usurping authority vested in other agencies. It avoids passing judgment on the same environmental effects as other agencies. And the interpretation prevents inappropriate extraterritorial regulation. DOE's *own* interpretation of the NGA thus reflects that—even if DOE has narrow Section 3(a) authority to consider certain environmental effects—DOE has no authority to reconsider the Order based on the upstream and downstream greenhouse gas emissions that Sierra Club argues.[34]

III. CONCRETE NATIONAL SECURITY AND OTHER BENEFITS ESTABLISH THE MODIFICATION IS NOT CONTRARY TO THE PUBLIC INTEREST

Beyond environmental effects, Sierra Club speculates that the Order is not consistent with the public interest because of "the timing of when these exports would occur (from 2026 through 2050) and of Europe's need for additional LNG (principally this year, then likely dramatically declining)." SC RR at 3. These arguments, too, fail to demonstrate FECM's decision is arbitrary and deserving of rehearing.

First, FECM's Discussion and Conclusions appropriately began by evaluating non-environmental issues, long recognized as central to a Section 3 "public interest" analysis. These

[34] Some cases predating DOE's interpretation of Section 3 incorrectly assume the opposite. *See, e.g.*, *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017) ("*Sabal Trail*"). Such cases are now obsolete because they were decided without the benefit of DOE's current regulations interpreting Section 3 of the NGA.

ranged from net benefits for U.S. households and the U.S. economy overall, to the global economic impact of an "efficient, transparent international market," to the strategic importance of energy security for the United States and its allies. Order No. 3978-E at 33–40. FECM's evaluation of these factors is largely undisputed. Sierra Club simply ignores the importance of energy security for U.S. allies outside Europe. *See* SC RR at 11–14. While FECM determined that "additional exports will improve energy security for many U.S. allies and trading partners" by helping to "diversify global LNG supplies and increase the volumes of LNG available *globally*." Order No. 3978-E at 39–40 (emphasis added). Given Russia's invasion of Ukraine, FEMC expressed particular concern for two regions that are especially dependent on Russian natural gas—Europe *and* Central Asia. *Id.* at 39. Yet Sierra Club focuses its arguments exclusively on Europe's need for natural gas. *See* SC RR at 11–14. It fails to consider the value of energy security for Central Asia and for other allies and trading partners around the world that are or may become dependent on Russia or other bad actors for natural gas. FEMC properly considered the global benefits that would follow from diversifying and increasing supply in a global market. Sierra Club's narrow arguments about Europe miss this bigger picture.

Second, Sierra Club relies on speculative predictions that—contrary to official projections and demonstrated market trends—Europe will largely eliminate its need for natural gas before Golden Pass LNG is ready to export it. *See* SC RR at 12–13. FEMC relied on the Energy Information Administration, or EIA's, "recent authoritative projections" to show that "market conditions . . . will accommodate increased exports of gas." Order No. 3978-E at 34–35 & n.178.[35] EIA projects "global natural gas consumption to continue growing through 2050 in absolute terms (and as a share of the world energy mix) because of its economics and lower carbon emissions

[35] *See also* U.S. Energy Info. Admin., *Annual Energy Outlook 2022* ("EIA Reference Case") at 2 (Mar. 3, 2022), https://www.eia.gov/outlooks/aeo/pdf/AEO2022_Narrative.pdf (noting that EIA's reference-case projections provide "the benchmark to compare with alternative policy-based cases").

relative to other sources of energy" and projects "global demand for U.S. natural gas to exceed current and announced LNG export capacity." *Annual Energy Outlook 2022*, U.S. ENERGY INFORMATION ADMINISTRATION (Mar. 3. 2022), https://www.eia.gov/outlooks/aeo/narrative/production/sub-topic-01.php. EIA also projects that high demand in Asia and Europe will continue. Order No. 3978-E at 39 & n.191 (citing U.S. Energy Info. Admin., *Today in Energy* (Apr. 20, 2022), https://www.eia.gov/todayinenergy/detail.php?id=52118).

Recent market activity confirms Europe's anticipated long-term demand for natural gas, with Europe making massive infrastructure investments and entering long-term contracts. For example, Dow Germany will soon begin constructing a billion-euro LNG terminal in Germany, and plans to build two additional LNG terminals in Germany are under way.[36] The German government is spending $3.2 billion on four floating storage and regasification units ("FSRUs"), and Poland is planning to open an FSRU in 2025.[37] Snam, an Italian gas transmission operator, recently purchased two floating LNG terminals—one of which cost $350 million and cannot go into use until it has undergone about two years of work to convert its functionality.[38] Other European companies are entering fifteen- and twenty-year contracts with U.S. exporters.[39] These

[36] Guy Chazan, *LNG Revolution: Germany's Plan to Wean Itself off Russian Gas Takes Shape*, FINANCIAL TIMES (June 5, 2022), https://www.ft.com/content/6c6352c3-cb60-48e5-aa5e-7cf02328f544.

[37] *See How Europe Plans to Cope as Russia Cuts off the Gas*, THE ECONOMIST (June 1, 2022), https://www.economist.com/graphic-detail/2022/06/01/how-europe-plans-to-cope-as-russia-cuts-off-the-gas?etear=nl_today_7.

[38] *See Italy Has Bought Two Floating LNG Terminals to Replace Russian Gas*, UKRAINE TODAY (June 3, 2022), https://ukrainetoday.org/2022/06/03/italy-has-bought-two-floating-lng-terminals-to-replace-russian-gas/.

[39] *See, e.g.*, Patty O. Mitchell, *Sempra Infrastructure and PGNiG Advance North American LNG Alliance*, SEMPRA (May 16, 2022), https://www.sempra.com/sempra-infrastructure-and-pgnig-advance-north-american-lng-alliance; Rob Nikolewski, *San Diego's Sempra Wigns LNG Deals with Germany, Poland, Which Are Looking to Replace Russian Gas*, San Diego Union-Tribune (May 26, 2022), https://www.sandiegouniontribune.com/business/ energy-green/story/2022-05-26/sempra-signs-lng-deals-with-germany-poland-who-are-looking-to-replace-russian-gas.

long-term contracts and infrastructure investments reflect market confidence that Europe has a long-term need to import natural gas beyond the next few years.

Sierra Club's citations for saying that Europe will not need more natural gas exports after this year do not withstand scrutiny. Sierra Club observes that the European Union "plans to cut *Russian* gas use" dramatically. SC RR at 12 (emphasis added). But this simply underscores that Europe will need alternative sources of gas.[40] Sierra Club then cites a variety of policy proposals, including an op-ed in The Independent, to suggest that Europe could drastically reduce its natural gas consumption within a year, within three years, or within five years. SC RR at 12. But even if these proposals are technically sound (*i.e.*, it "could" be done), that does not mean those timelines are economically or politically feasible. Nor does Sierra Club offer evidence that any of these proposals are being timely implemented. *See id.* Sierra Club also quotes aspirational policy statements by individual European and American politicians. *Id.* at 12–13. But this cheerleading isn't evidence that there will be no further need for expanded natural gas exports in a few years. Sierra Club also argues that FECM has recently authorized 45.54 bcf/d of non-FTA LNG exports. *Id.* at 13. By this, Sierra Club implies that this is more than sufficient to meet Europe's natural gas needs. But authorizations do not equate to actual exports, and exports do not go exclusively to Europe. In short, none of the factoids and quotes in Sierra Club's request substantiate that Europe will not need the additional gas authorized by the Order as a result of recent Russian aggression.

Third, Sierra Club's argument about the timing of the physical exports ignores the immediate impact on markets of the authorization itself. *See id.* at 14. Long-term contracts are a

[40] *See How Europe Plans to Cope as Russia Cuts off the Gas*, *supra* note 37 ("To wean themselves off Russian supplies, many European countries are turning to liquefied natural gas (LNG) imported from America and Asia. LNG imports increased by 47.7% year-on-year in April, and by 19.9% compared with March.").

common feature of the LNG market. Anticipated changes and entrants into the market are an important consideration in contract negotiations. Decisions made today to enter or renew contracts with suppliers—and the length of such contracts—are influenced by the market's understanding of what other supplies are or will be on the market in the foreseeable future. Thus, FECM's export authorization for future capacity can immediately impact the world market and Europe's strategy for reducing its energy dependence on Russia.

Fourth, Sierra Club's recommended condition is unsupported. SC RR at 14. It seeks to require that authorized exports go only to Europe. This is inconsistent with the U.S. interest in energy security outside Europe and with Sierra Club's own reasoning, as further discussed below. *See id.* at 14. Current European prices are so high that "traders of LNG cargoes would rather pay millions of dollars in penalties for non-delivery to other countries for the opportunity to sell the cargoes at a premium to European buyers."[41] Thus, a FECM condition requiring shipment to Europe would be redundant on market forces. There is no evidence such a condition is necessary to avoid effects contrary to the public interest. Moreover, if Europe reduces its need for gas as Sierra Club predicts, prices will drop. Market forces will draw Golden Pass LNG's exports to other parts of the global market. These other countries will also benefit from increased supply and diversification, as FECM determined. *See* Order No. 3978-E at 39–40. Sierra Club's proposed conditions are thus contrary to the "public interest." They would require Golden Pass LNG to ignore such market signals, contrary to the emphasis FECM appropriately placed on the value of an "efficient, transparent international market for natural gas." *Id.* at 39. Golden Pass LNG would be forced to export natural gas to Europe even if Europe did not need and value it as highly as the rest of the world—precisely what Sierra Club argues would be contrary to the public interest. *See*

[41] IER, *U.S. LNG Can Replace Russian Natural Gas*, IER INSTITUTE FOR ENERGY RESEARCH (Mar. 17, 2022), https://www.instituteforenergyresearch.org/international-issues/u-s-lng-can-replace-russian-natural-gas/.

SC RR at 11–14; 15 U.S.C. § 717b(a). U.S. allies and trading partners in Central Asia and other parts of the world would be inhibited in pursuing the energy security that FECM recognized would be in the public interest. *See* Order No. 3978-E at 39–40.

In sum, Sierra Club's speculative quibbling with FECM's energy-security analysis and second-guessing of various environmental factors does not withstand scrutiny. FECM's obligations under the Section 3(a) of the NGA are distinct from those of NEPA. Those reviews must not be conflated. In the NGA, Sierra Club has the burden to overcome the Section 3(a) presumption of authorization. Sierra Club must affirmatively demonstrate that the proposed exports "will not be consistent with the public interest" to justify rehearing. *See* 15 U.S.C. § 717b(a). It fails to do so. FECM's undisputed analysis of the many economic, market, and security factors consistent with the public interest are more than substantial evidence supporting FECM's Order.

IV. RECONSIDERATION OF FECM'S NEPA ANALYSIS IS IMPROPER AND NOT IN THE PUBLIC INTEREST

Sierra Club also seeks reconsideration of FECM's Finding of No Significant Impact ("FONSI") because "DOE failed to provide the analysis required by NEPA." SC RR at 3. That is not correct. Categorical exclusion B5.7 is the NEPA analysis. FECM should have gone no farther than that to support the Order. Regardless, the bulk of Sierra Club's concerns are alleged environmental effects beyond DOE's jurisdiction and authority to regulate. Under NEPA, an "agency has no obligation to gather or consider environmental information if it has no statutory authority to *act on that information*." *Sierra Club v. FERC*, 867 F.3d 1357, 1372 (D.C. Cir. 2017) ("*Sabal Trail*"). It would be improper, not in the public interest, and contrary to DOE's NEPA regulations to reconsider these unnecessary issues now.

A. The scope of a NEPA analysis depends on the scope of the agency's authority.

As described above, NGA Section 3(a) authorizes only a limited range of agency actions: orders and supplemental orders on applications to export or import natural gas. These applications "shall" be granted absent a finding that "the proposed exportation or importation will not be consistent with the public interest." 15 U.S.C. § 717b(a). By contrast, NEPA requires FECM to evaluate certain environmental effects. *See* 42 U.S.C. § 4332(2). FECM complied with NEPA by taking a "hard look" at the potential environmental effects of the proposed action. FECM did so by the promulgation of the categorical exclusion B5.7 regulation.

There are recognized limits to the scope of the environmental effects an agency must consider under NEPA. The Council of Environmental Quality "has promulgated regulations to guide federal agencies in determining what actions are subject to that statutory requirement." *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 757 (2004). If the proposed action would not "clearly require the production of an EIS," it may be categorically excluded from this requirement. Or it may be the subject of a more limited EA, depending on the significance of its likely effects. *Id.* (citing 40 C.F.R. § 1501.4(a)).

"In considering whether *the effects of the proposed action* are significant, agencies shall analyze the potentially affected environment and degree of the effects of *the action*." 40 C.F.R. § 1501.3(b) (emphasis added). Thus, the appropriate level of NEPA analysis—categorical exclusion, EA, EIS, or nothing—depends on what specific "action" is before an agency and what effects can be attributed to it.

The Supreme Court has made clear that "a 'but for' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA." *Pub. Citizen*, 541 U.S. 767. FECM is not required to "examine everything for which the [export] could conceivably be a but-

for cause."[42] The CEQ regulations require NEPA review only for effects "caused by" agency action and "reasonably foreseeable." 40 C.F.R. § 1508.8(b). Accordingly, the connection between the proposed action and the environmental effect must be a "specific and causally linear indirect consequence." [43] NEPA "requires a reasonably close causal relationship' between the environmental effect and the alleged cause," which is analogous to "the 'familiar doctrine of proximate cause from tort law.'"[44]

NEPA looks at "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." *Pub. Citizen*, 541 U.S. at 767. "NEPA's core focus" is "improving agency decisionmaking." *Id.* at 769 n.2. Under the "rule of reason," agencies must set the scope of their NEPA analyses "based on the usefulness of any new potential information to the decisionmaking process." *Id.* at 754.

The usefulness of information to the decisionmaking process, in turn, depends on what authority the agency has to make a decision. "Where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect. Hence, under NEPA and the implementing CEQ regulations, the agency need not consider these effects . . . ." *Id.* at 770. As the D.C. Circuit has put it, "a decision over which the [agency] has no regulatory authority" "breaks the NEPA causal chain and absolves the [agency] of responsibility to include in its NEPA analysis

[42] *Freeport I*, 827 F.3d at 46 (affirming FERC orders authorizing construction and operation of the Freeport LNG Development, L.P. export project facilities) (first citing *Pub. Citizen*, 541 U.S. at 764m 767 (2004); and then citing *Village of Bensenville v. FAA*, 457 F.3d 52, 65 (D.C. Cir. 2006) ("Even under NEPA, a 'but for' causal relationship is insufficient to make an agency responsible for a particular effect.")).

[43] *Freeport I*, 827 F.3d at 46; *Nat'l Audubon Soc'y v. Dep't of Navy*, 422 F.3d 174, 186 (4th Cir. 2005) ("[A]n agency's obligations under NEPA are case-specific. A 'hard look' is necessarily contextual.").

[44] *Pub. Citizen*, 541 U.S. at 767 (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

considerations that it 'could not act on' and for which it cannot be 'the legally relevant cause.'" *Sierra Club v. FERC*, 827 F.3d 36, 48 (D.C. Cir. 2016) ("*Freeport I*") (quoting *Pub. Citizen*, 541 U.S. at 769.

B. Sierra Club's environmental effects go beyond DOE's decisionmaking authority; it would be impermissible to reconsider on those grounds.

Sierra Club asserts that NEPA required a "comprehensive review" of environmental impacts, including greenhouse gas emissions, climate change, and other possible upstream and downstream concerns. SC RR at 1, 15–16. But NGA Section 3(a) grants DOE no authority to weigh environmental effects in a "public interest" review. At a minimum, Sierra Club's wide range of alleged environmental impacts are beyond "the potential environmental impacts starting at the point of delivery to the export vessel, and extending to the territorial waters of the receiving country." NEPA Rule, 85 Fed. Reg. 78199. "An agency has no obligation to gather or consider environmental information if it has no statutory authority to *act on that information*." *Sabal Trail*, 867 F.3d at 1372. Sierra Club fails to show that Congress gave FECM authority under Section 3(a) to act on information about upstream and downstream greenhouse gas emissions.

Preliminarily, FECM's Order says "its NEPA procedures [] provide for a categorical exclusion if neither an environmental impact statement (EIS) nor an EA is required." Order at 22. That is not correct. The Categorical Exclusion properly *is* and *should have been* the NEPA analysis for this decision. Categorical Exclusion B5.7 covers "[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to export natural gas under section 3 of the Natural Gas Act and any associated transportation of natural gas by marine vessel." 10 C.F.R. Part 1021, Subpart D, App. B5.7. After notice-and-comment rulemaking and based on "some 50 years of experience," DOE already determined that there is "no information to indicate that natural gas export authorizations pose the potential for significant environmental impacts." NEPA Rule, 85 Fed. Reg. 78201–02. It is "axiomatic . . . that an agency is bound by its own regulations." *Nat'l*

Env't Dev. Assoc's Clean Air Project v. E.P.A., 752 F.3d 999, 1009 (D.C. Cir. 2014) (quoting *Panhandle E. Pipe Line Co. v. FERC*, 613 F.2d 1120, 1135 (D.C.Cir.1979)). So FECM should have relied on Categorical Exclusion B5.7. FECM failed to explain why it did not do so. Nor did FECM justify the extra time and resources expended to conduct an unnecessary analysis. Certainly, now, FECM must not reconsider its NEPA FONSI and do even more review.

Second, Sierra Club's upstream environmental effects—which lie outside FECM's jurisdiction—are already addressed by FERC. The FEIS prepared by FERC as lead agency, with the participation of FECM, may be unrelated to DOE's duties under NEPA as a permitting authority. Nevertheless, the FEIS did disclose environmental effects beyond Golden Pass LNG's proposed export authorization, including the construction and operation of the proposed export terminal and associated GPPL pipeline facilities. The FEIS also set forth measures to mitigate potential impacts.

Third, Sierra Club claims that the analysis underlying Categorical Exclusion B5.7 is insufficient in this case. For this, Sierra Club argues that natural gas exports are inconsistent with the subsequent Executive Order 14,008 (the "EO"). SC RR at 19. But Sierra Club offers no explanation of how natural gas exports by Golden Pass LNG could possibly violate an executive order directed to government agencies rather than private parties. To the extent Sierra Club means to suggest that the executive order prohibited FECM from authorizing the exports, Sierra Club failed to support this argument. It identifies no provision in the EO that binds FECM and is contrary to Order No. 3978-E. *See id.* In fact, the EO makes no reference to exports of any kind, and its only directive about natural gas is directed to the Secretary of the Interior. *See Executive Order on Tackling the Climate Cirsis at Home and Abroad*, EO 14,008 § 208 (Jan. 27, 2021). Indeed, the Executive Order expressly makes itself subject to and subservient to law. *Id.* § 301(b) ("This order shall be implemented consisted with applicable law . . . ."). Thus, the EO provides

no basis for determining that the careful environmental analysis underlying Categorical Exclusion B5.7—let alone the supplemental FEIS—is inapplicable or inadequate here.

Fourth, Sierra Club claims that the analysis underlying Categorical Exclusion B5.7 is insufficient with respect to the proposed exports here. It says the EA indicates they have "the potential to impact listed species." SC RR at 19. This argument is based on a CEQ regulation requiring individualized assessment of actions that have "the potential to cause *significant* impacts on environmentally sensitive resources," such as listed species. 10 C.F.R. Part 1021, Subpart D, App. B(4) (emphasis added). But Sierra Club does not allege, and the EA does not suggest, that the proposed exports' potential impact on listed species would be "significant." *See* SC RR at 19, EA at 9–12; *Golden Pass LNG [Golden Pass LNG Terminal, LLC]*, Export Project Amendment, Environmental Assessment, FERC Docket No. CP20-459-000, 11–12 (Nov. 2020). Thus, Sierra Club makes no showing to trigger the CEQ regulation on which it relies.

Nor does Sierra Club acknowledge that the potential impact on listed species is already being addressed by other agencies. FERC responded to the EA's finding of potential impact on listed species by initiating an Endangered Species Act consultation with the National Marine Fisheries Service. FERC imposed an environmental condition that prohibits Golden Pass LNG from increasing its production until that consultation is completed.[45] Unlike Sierra Club, FECM appropriately recognized this fact as one of the grounds for its FONSI. Order No. 3978-E at 60–61.

* * *

Sierra Club's proposed NEPA considerations are improper. And reconsideration of FECM's Section 3(a) authorization would be contrary to law. FECM has no (but, at most, limited)

[45] *See Golden Pass LNG Terminal LLC*, Order Amending Section 3 Authorization, 174 FERC ¶ 61,053 at P 11 (Jan. 19, 2021).

authority under Section 3(a) to consider environmental effects. This, in turn, caps FECM's obligations under NEPA. Regardless, FECM adequately addressed Sierra Club's concerns. This not only occurred by FECM's analysis of Golden Pass LNG's application, but in Categorical Exclusion B5.7. Thus, Sierra Club fails to overcome the presumption of authorization.

WHEREFORE, Golden Pass LNG respectfully requests that FECM grant Golden Pass LNG's Motion to Answer and deny Sierra Club's Request for Rehearing.

Respectfully submitted,

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VERIFICATION

I, Jonathan D. Brightbill, being duly sworn, hereby affirm that I am a duly authorized representative of Golden Pass LNG Terminal LLC; that I have read the foregoing Motion for Leave to Answer and Answer of Golden Pass LNG Terminal LLC to Request for Rehearing and Motion for Stay of Sierra Club; and that the facts stated therein are true and correct to the best of my knowledge, information, and belief.

Executed in McClean, Virginia
On June 10, 2022

/s/ Jonathan D. Brightbill

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document filed with FECM on the designated representatives of all the parties to this proceeding, in accordance with 10 C.F.R. § 590.107.

Dated at Washington, D.C., this 10th day of June 2022.

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