

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT**

)	
In The Matter Of:)	
)	
New Fortress Energy Louisiana)	FE Docket No. 22-39-LNG
FLNG LLC)	
)	

ANSWER IN OPPOSITION TO MOTION TO INTERVENE AND PROTESTS

Pursuant to Sections 590.303(e) and 590.304(f) of the regulations of the United States Department of Energy (“DOE”),¹ New Fortress Energy Louisiana FLNG LLC (“NFE Louisiana”) hereby submits this answer in opposition (“Answer”) to the Motion to Intervene and Protest (“Public Citizen Protest”) of Public Citizen, Inc. (“Public Citizen”), and the late-filed Motion to Intervene and Protest (“Sierra Club Protest”),² of Sierra Club, Center for Biological Diversity, Healthy Gulf, and Louisiana Bucket Brigade (collectively, “Sierra Club”) filed in the above-captioned proceeding on July 11, 2022. The Sierra Club Protest and the Public Citizen Protest are referred to collectively herein as the “Protests.”

In support of the instant Answer, NFE Louisiana provides the following:

**I.
BACKGROUND**

On March 30, 2022, NFE Louisiana filed an application with DOE’s Office of Fossil Energy and Carbon Management (“DOE/FECM”) requesting authorization to engage in long-term, multi-contract exports of domestically-produced liquefied natural gas (“LNG”) from its

¹ 10 C.F.R. §§ 590.303(e), 590.304(f) (2021).

² As discussed below, Sierra Club’s Motion to Intervene and Protest was not received by the Docket Room until several minutes after 4:30 pm, and is therefore untimely. 10 C.F.R. § 590.105(a).

proposed deepwater port export terminal project located off the southeast coast of Grand Isle, Louisiana (“Project”), for a term extending through December 31, 2050 (“Application”). NFE Louisiana is seeking to export LNG to both free trade agreement (“FTA”) and non-FTA nations. NFE Louisiana’s Application is consistent with the application filed concurrently with the U.S. Department of Transportation’s Maritime Administration (“MARAD”) and the U.S. Coast Guard (“USCG”) for authorization to own, construct, operate and eventually decommission an offshore natural gas export deepwater port to be located in Federal waters off the southeast coast of Grand Isle, Louisiana.³

On May 12, 2022, DOE/FECM published notice of NFE Louisiana’s Application in the Federal Register, setting a July 11, 2022 deadline for filing protests, motions to intervene, notices of intervention, as applicable, and written comments.⁴ In response, multiple comments were filed in the docket, including the Protests. Both Public Citizen and Sierra Club ask DOE/FECM to reject NFE Louisiana’s Application, for varying reasons, and argue that the Application is not in the public interest. As explained herein, the arguments raised in the Protests paint an inaccurate picture of the current and future economic outlook for natural gas prices and misstate applicable legal and regulatory requirements, and should therefore be disregarded. Moreover, as explained below, the Sierra Club Protest is untimely and should be rejected in whole.

³ Deepwater Port License Application: New Fortress Energy Louisiana FLNG LLC, 87 Fed. Reg. 24,388 (Apr. 25, 2022) (“MARAD Application”).

⁴ *New Fortress Energy Louisiana FLNG LLC*, Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, 87 Fed. Reg. 29,151 (May 12, 2022) (“Notice of Application”).

II. ANSWER IN OPPOSITION

(A) **Sierra Club's Late Intervention Should Be Rejected.**

Sierra Club's Motion to Intervene and Protest is untimely and should be rejected by DOE/FECM. DOE's regulations provide that "[m]otions to intervene may be filed at any time following the filing of an application, *but no later than the date fixed for filing such motions or notices in the applicable FE notice or order...*"⁵ As DOE's Notice of Application made clear, and as Sierra Club is well aware, protests, motions to intervene, and written comments are to be filed "no later than 4:30 p.m., Eastern time, July 11, 2022."⁶ Moreover, the DOE regulations clearly state "[d]ocuments received after the regular business hours of 8 a.m. to 4:30 p.m. are deemed filed on the next regular business day."⁷ The Sierra Club Protest is time-stamped as being received "[b]y Docket Room at 4:33 pm, Jul 11, 2022."⁸ Accordingly, under DOE's regulations, Sierra Club's filing is deemed to have been submitted on July 12 and therefore is late filed. DOE's Notice of Application, which issued on May 12, 2022, established a *sixty-day* intervention period. Accordingly, Sierra Club was given ample opportunity to file a timely intervention and its late filing should not be permitted.⁹ As the Federal Energy Regulatory Commission ("FERC") has previously recognized when rejecting Sierra Club's late filings, laxly permitting late filings harms the administrative process by "[compromising] the certainty provided to entities interested in

⁵ 10 C.F.R. § 590.303(d) (*emphasis added*).

⁶ See 87 Fed. Reg. 29,151.

⁷ 10 C.F.R. § 590.105(a).

⁸ *Sierra Club Protest*, at 1.

⁹ *Cameron LNG, LLC and Cameron Interstate Pipeline, LLC*, 148 FERC ¶ 61,237 (2014), *pet. dismissed sub nom. Sierra Club v. FERC*, 2015 WL 1606900 (D.C. Cir. Mar. 16, 2015) (FERC denying Sierra Club's request for rehearing filed 25 seconds after the filing deadline and rejecting Sierra Club's argument that its late filing should be accepted as "de minimis").

Commission proceedings . . . and those that play by the rules would run a constant risk that the Commission might allow others to do otherwise.”¹⁰ Thus, DOE/FECM should treat all parties appearing before it in an even-handed manner. Finally, it is unlikely that any good cause exists for Sierra Club’s late-filing, as numerous other parties were able to timely file comments and protests.¹¹ Sierra Club provides no such justification.

Rejecting Sierra Club’s intervention would also be consistent with DOE/FECM precedent.¹² Therefore, DOE/FECM should reject Sierra Club’s late filing and treat it as late-filed comments. Nevertheless, NFE Louisiana provides responses to the Sierra Club Protest below.

(B) Upstream Ownership

Public Citizen’s argument with regard to the upstream ownership of NFE Louisiana is without merit. NFE Louisiana, as disclosed in its Application, is a wholly owned subsidiary of New Fortress Energy Inc. However, contrary to Public Citizen’s assertions, Fortress Investment Group LLC (“Fortress”) does not hold a controlling interest in NFE Louisiana. In fact, Fortress owns less than 10 percent of NFE Louisiana, and has no board designation rights or other means of control. As DOE has explained in the past, control of an applicant is presumed to “arise from the ownership or the power to vote, directly or indirectly, 10 percent or more of the voting

¹⁰ *Id.* at P 25.

¹¹ *Londonderry Neighborhood Coalition v. FERC*, 273 F.3d 416, 425 (1st Cir. 2001) (“[D]elivery delays occur with some frequency, and there was no reason why LNC had to wait until the last minute to file its petition.”).

¹² *See, e.g., Driftwood LNG LLC*, Order Dismissing Industrial Energy Consumers of America’s Motion to Intervene and Protest and Accepting Late-Filed Comments, DOE/FE Docket No. 16-144-LNG (Apr. 10, 2019) (rejecting a protest and motion to intervene filed after due date to respond to a supplemental filing); *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3357, DOE/FE Docket No. 11-161-LNG, at 88 (Nov. 15, 2013) (rejecting late-filed motions to intervene and protest); *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961-A, FE Docket No. 10-111-LNG (Aug. 7, 2012) (rejecting Sierra Club’s late motion to intervene); *Sabine Pass Liquefaction, LLC*, Procedural Order on Late-Filed Pleadings, DOE/FE Docket No. 10-111-LNG (Mar. 25, 2011) (rejecting late-filed motion to intervene).

securities of such entity.”¹³ Therefore, there is no control by Fortress or any upstream owner of Fortress over the applicant in this proceeding.

(C) Domestic Energy Prices and Supply

The Protests allege that NFE Louisiana’s Application is not in the public interest because the proposed level of exports will exacerbate currently high natural gas pricing.¹⁴ The Protests mischaracterize the current natural gas price volatility as being solely due to the rise in LNG exports of domestically-produced natural gas. This runs contrary to fact and to DOE/FECM’s express findings. DOE/FECM recently rejected the argument that proposed exports likely will have a negative impact on the U.S. economy by substantially increasing the price of natural gas.¹⁵

Contrary to Public Citizen and Sierra Club’s claims, a number of factors have contributed to the current natural gas price volatility, not the least of which is the global pandemic and resulting supply chain issues, and the war in eastern Europe. As the U.S. Energy Information Administration (“EIA”) noted in its most recent Short-Term Energy Outlook (“STEO”), “[n]atural gas price volatility resulted, in large part, from uncertainty in the global natural gas markets leading up to and following Russia’s full-scale invasion of Ukraine on February 24, as well as from weather-related fluctuations in natural gas demand.”¹⁶ Additionally, while the commodity price of natural gas has increased throughout the world during the COVID-19 pandemic, U.S. domestic natural gas prices are still well below the price in international markets, and are projected to

¹³ Procedures for Changes in Control Affecting Applications and Authorizations To Import or Export Natural Gas, 79 Fed. Reg. 65,541, 65,542 (Nov. 5, 2014).

¹⁴ *Public Citizen Protest*, at 2; *Sierra Club Protest*, at 8.

¹⁵ *Magnolia LNG, LLC*, Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, DOE/FECM Order No. 3909-C, at 49, DOE/FECM Docket No. 13-132-LNG (Apr. 27, 2022) (hereinafter “*Magnolia LNG, LLC*”).

¹⁶ U.S. Energy Info. Admin., *Short-Term Energy Outlook July 2022, Natural Gas* (Jul. 12, 2022), available at https://www.eia.gov/outlooks/steo/pdf/steo_text.pdf.

continue to decline from pandemic-related levels. The global market volatility caused by the pandemic and post-pandemic recovery, is not reflective of actual supply and demand, nor is it a reasonable projection of future prices or market activity.¹⁷

This is consistently confirmed by credible market projections. The EIA's July STEO forecasted that natural gas prices will continue to decline, averaging \$5.97 per MMBtu during the second half of 2022, but averaging \$4.76 per MMBtu for 2023,¹⁸ when Project exports are anticipated to commence. Furthermore, long term modeling also demonstrates that the current price volatility will likely abate. The EIA's 2022 Annual Energy Outlook ("AEO 2022") forecasts that natural gas production is expected to grow by 24%, "approximately twice as fast as consumption."¹⁹ The AEO 2022 also projects that by 2050, "approximately 25% more natural gas will be produced than consumed in the United States."²⁰ Thus, for the life of the authorization that NFE Louisiana requests, there is projected to be abundant natural gas supply, significantly exceeding domestic consumption. This is confirmed by AEO 2022's projection that "global demand for U.S. natural gas [will] exceed current and announced LNG export capacity; therefore, additional LNG export facilities will be economical to build."²¹

Sierra Club attempts to bolster its argument that LNG exports cause increases in domestic prices by pointing to projections released ahead of the 2021-2022 winter season. Notably, Sierra Club asserts that "FERC concluded that the increase [in natural gas prices for the winter of 2021-

¹⁷ See Int'l Energy Agency, *Gas Market Report, Q4 2021 including Global Gas Security Review 2021*, at p. 7 (Oct. 2021) (stating that the "combination of recovering economic activity, lower LNG availability and a succession of severe weather events has put the global gas system under strong pressure and sent market prices to new highs[.]"), available at <https://www.iea.org/reports/gas-market-report-q4-2021>.

¹⁸ U.S. Energy Info. Admin., *supra* n.16., at Forecast Highlights.

¹⁹ U.S. Energy Info. Admin., *Annual Energy Outlook 2022 with projections to 2050 – Narrative*, at p. 26 (Mar. 3, 2022), available at https://www.eia.gov/outlooks/aeo/pdf/AEO2022_Narrative.pdf.

²⁰ *Id.*

²¹ *AEO 2022*, at p. 28.

2022] was driven largely by competition with demand for LNG exports.”²² However, FERC’s Winter Energy Market and Reliability Assessment actually disproves Sierra Club’s allegations. FERC largely attributed the projected increase in prices during the winter at the Algonquin Citygate “to the winter-peaking New England region’s limited natural gas pipeline capacity.”²³ Moreover, FERC explained that LNG import terminals in the area normally dull the impact of winter prices; however, the rise of European demand for LNG caused New England futures prices to “ris[e] alongside European LNG prices in order to compete for global LNG cargoes.”²⁴ Thus, the rise in prices at the Algonquin Citygate were largely due to the increase in price of LNG *imports* (along with the limited natural gas pipeline capacity in the region), and not due to U.S. LNG exports. Furthermore, it is telling that Sierra Club only points to price projections occurring some nine months ago, before the 2021-2022 winter, when assessments during and after the 2021-2022 winter season show that natural prices did not come close to the initial projections.²⁵

Sierra Club’s unsupported claim that, due to current natural gas prices, DOE “cannot approve additional exports” without revisiting the validity of its previous modeling and macroeconomic studies on the impacts of LNG exports is unfounded.²⁶ In a recent set of orders, issued under very similar market conditions, DOE/FECM upheld the validity of the most recent

²² *Sierra Club Protest*, at 10 (citing FERC, *Winter Energy Market and Reliability Assessment 2021-2022*, at p. 2 (Oct. 21, 2021), available at <https://www.ferc.gov/media/winter-energy-market-and-reliability-assessment-2021-2022-report>.)

²³ FERC, *Winter Energy Market and Reliability Assessment 2021-2022*, at p. 12.

²⁴ *Id.*

²⁵ Data compiled by the EIA shows that both the spot market (Henry Hub) and Citygate average price decreased during winter, and that for all four months of the 2021-2022 winter season prices were lower than the prices during September and October of 2021. U.S. Energy Info. Admin., *Natural Gas Monthly*, at tbl. 3 (Jun. 2022) (Selected national average natural gas prices, 2017-2022), available at https://www.eia.gov/naturalgas/monthly/pdf/table_03.pdf; see also, e.g., Gerson Freitas, *A Record-Warm Winter Is Killing U.S. Natural Gas Prices*, BLOOMBERG (Dec. 5, 2021), available at <https://www.bloomberg.com/news/articles/2021-12-06/u-s-natural-gas-extends-collapse-as-warmer-weather-is-forecast>.

²⁶ *Sierra Club Protest*, at 13.

2018 LNG Export Study, and affirmed that exports “in volumes up to and including 52.8 Bcf/d of natural gas, will not result in economic consequences that would render additional exports to be inconsistent with the public interest.”²⁷ DOE/FECM also affirmed a number of key findings from the 2018 LNG Export Study, including that “[i]ncreasing U.S. LNG exports under any given set of assumptions about U.S. natural gas resources and their production *leads to only small increases in U.S. natural gas prices.*”²⁸

Sierra Club goes even further, claiming the recent incident at the Freeport LNG Terminal (“Freeport”) purportedly confirms a significant link between exports and domestic gas prices.”²⁹ Sierra Club’s argument is an opportunistic conclusion. While it is true that the commodity price of natural gas dropped, Freeport was an isolated incident. Although the sudden availability in the market of gas under contract for delivery to Freeport may have caused a short-term dip in the commodity price, prices will adjust to current market conditions. DOE/FECM’s evaluation of NFE Louisiana’s Application should be based on reliable long-term outlooks and not anomalous, temporary market activity.

Furthermore, contrary to Sierra Club’s naked assertion that “LNG exports are simply making most Americans worse off[.]”³⁰ DOE/FECM has appropriately concluded that “[e]ven the most extreme scenarios of high LNG exports outside the more likely probability range (exhibiting a combined probability of less than 3%) show higher overall economic performance in terms of

²⁷ See *Golden Pass LNG Terminal LLC*, Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, DOE/FECM Order No. 3978-E, at 51, Docket No. 12-156-LNG (Apr. 27, 2022) (hereinafter “*Golden Pass LNG Terminal LLC*”); *Magnolia LNG, LLC*, at 65.

²⁸ *Magnolia LNG, LLC*, at 16 (quoting U.S. Dep’t of Energy, Study on Macroeconomic Outcomes of LNG Exports; Response to Comments Received on Study, 83 Fed. Reg. 67,251, 67,273 (Dec. 28, 2018) (citations to 2018 LNG Export Study omitted)) (emphasis added).

²⁹ *Sierra Club Protest*, at 9.

³⁰ *Sierra Club Protest*, at 12.

[gross domestic product], household income, and consumer welfare than lower export levels associated with the same domestic supply scenarios.”³¹ Despite Sierra Club’s contention that few economically benefit from LNG exports,³² the 2018 LNG Export Study demonstrates widespread economic benefits from LNG exports, and DOE/FECM has expressly stated that it disagrees with the “contention that the net economic benefits projected in the 2018 LNG Export Study (and in DOE’s prior economic studies) will be limited to producers and exporters of natural gas.”³³ As DOE/FECM recounted, “U.S. households benefit from the additional wealth transferred into the United States, which increases the value of the dollar and reduces prices of other imported goods.”³⁴ Additionally, “households will receive labor income when they work and income from the capital and resources they own from natural gas-related activities, providing U.S. consumers with additional income to spend on goods and services.”³⁵

While Sierra Club contends that DOE/FECM must address distributional impacts, it fails to advance any strong evidence that the distributional impacts are so negative in this case that the Project would be inconsistent with the public interest. The D.C. Circuit has previously upheld DOE’s determination that, “given that exports will benefit the economy as a whole and absent stronger record evidence on the distributional consequences, [DOE] could not say that . . . exports were inconsistent with the public interest on these grounds.”³⁶ It was on this basis, that the Court held that concerns regarding distributional impacts had been “adequately addressed” by DOE.³⁷

³¹ See 83 Fed. Reg. at 67,255.

³² *Sierra Club Protest*, at 13.

³³ *Magnolia LNG, LLC*, at 49.

³⁴ *Id.* at 48.

³⁵ *Id.*

³⁶ *Sierra Club v. DOE*, 703 F. App’x 1, at *3 (D.C. Cir. 2017).

³⁷ *Id.*

Finally, because there is continuing uncertainty as to whether any or all of the proposed LNG export projects will be completed due to the “time, difficulty, and expense of commercializing, financing, and constructing LNG export terminals,” DOE/FECM continues to abide by the principle that, “under most circumstances, the market is the most efficient means of allocating natural gas supplies.”³⁸ Therefore, arguments set forth in the Protests should be afforded no weight in this regard.

(D) Global Considerations

Downplaying the impact of the Russia-Ukraine war and the significant sanctions imposed on one of the largest energy exporters in the world,³⁹ Sierra Club contends that the Project is not needed to assist European countries’ need for natural gas because “by the end of 2023, our European allies expect to have already made significant progress towards transitioning away from gas entirely[.]”⁴⁰ Sierra Club disregards direct evidence to the contrary, including President Biden’s March 25, 2022 announcement of a joint Task Force between the United States and European Commission “to reduce Europe’s dependence on Russian fossil fuels and strengthen European energy security.”⁴¹ Sierra Club also fails to note that the commitment to the European Commission envisions U.S. LNG increasing supply to Europe through *at least* 2030.

³⁸ *Magnolia LNG, LLC*, at 59-60 (citing New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6,684 (Feb. 22, 1984)).

³⁹ *See Golden Pass LNG Terminal LLC*, at 39 n.190 (“According to current EIA data, natural gas imports delivered by pipeline into Europe provide most imported volumes into Europe, with imports sourced from Russia comprising the largest share.”) (citation omitted).

⁴⁰ *Sierra Club Protest*, at 7. It bears noting that Sierra Club claims that the proposed timeline within which NFE Louisiana seeks to get its Project approved is unrealistic, despite the fact that NFE Louisiana merely proposes to receive authorization on the basis of the statutorily set timeline under the Deepwater Port Act. *See* 33 C.F.R. Part 148 (2021). Sierra Club similarly takes issue with NFE Louisiana’s projected construction duration. However, NFE Louisiana has intentionally designed the Project for rapid deployment by taking advantage of advancements in modular midsize liquefaction technology, among other things.

⁴¹ White House Briefing Room, FACT SHEET: United States and European Commission Announce Task Force to Reduce Europe’s Dependence on Russian Fossil Fuels (Mar. 25, 2022) (noting the goal of ensuring demand for approximately 50 bcm/year of natural gas is met by U.S. LNG until at least 2030), *available at*

Further to the point, DOE/FECM recently explained that “[a]n efficient, transparent international market for natural gas with diverse sources of supply provides both economic and strategic benefits to the United States and our allies.”⁴² Noting the Russian invasion of Ukraine, DOE/FECM concluded that approval of exports to non-FTA countries, including to U.S. allies in Europe and elsewhere, will “help mitigate energy security concerns” and would generally “improve energy security for many U.S. allies and trading partners.”⁴³ As DOE/FECM has consistently found, and recently affirmed, the benefits of international trade support the public interest determination under section 3(a) of the Natural Gas Act (“NGA”), and the Sierra Club Protest should be afforded no weight in this regard.⁴⁴

(E) Environmental Impacts

The Deepwater Port Act dictates that MARAD’s compliance with the National Environmental Policy Act (“NEPA”) “shall fulfill the requirement of all Federal agencies in carrying out their responsibilities under [NEPA].”⁴⁵ Sierra Club states that “DOE must therefore ensure that the NEPA document MARAD prepares is adequate to meet DOE’s needs, without the need for separate supplementation by DOE.”⁴⁶ Sierra Club fails to acknowledge that DOE will likely act as a cooperating agency in MARAD’s NEPA review of the proposed deepwater port, participating in the development of the environmental impact statement (“EIS”).

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/25/fact-sheet-united-states-and-european-commission-announce-task-force-to-reduce-europes-dependence-on-russian-fossil-fuels/>.

⁴² *Magnolia LNG, LLC*, at 53.

⁴³ *Id.*

⁴⁴ *Golden Pass LNG Terminal LLC*, at 39-40; *Magnolia LNG, LLC*, at 53.

⁴⁵ 33 U.S.C. § 1504(f).

⁴⁶ *Sierra Club Protest*, at 16.

(i) Categorical Exclusion

As an initial matter, the Sierra Club Protest contains an out-of-time collateral attack on the 2020 promulgation of the categorical exclusion for LNG exports.⁴⁷ The instant proceeding is about whether NFE Louisiana’s Project complies with Section 3 of the NGA, and DOE’s regulations and policies as they exist today. Additionally, Sierra Club made similar arguments in response to DOE’s notice of proposed rulemaking (“NOPR”) adopting the categorical exclusion.⁴⁸ However, DOE dismissed Sierra Club’s arguments, and concluded that it satisfied the requirements for a categorical exclusion, and “met its obligations under NEPA.”⁴⁹ Further, as in other recent orders,⁵⁰ because of NFE Louisiana’s proposed transport of LNG via ocean-going carrier to non-FTA countries in this proceeding, DOE is likely to supplement the record with the DOE’s Marine Transport Technical Support Document (“Technical Support Document”) to incorporate DOE’s consideration of how emissions associated with the ocean transport of U.S. LNG in tankers contribute to total life cycle GHG emissions.⁵¹

(ii) Lifecycle Analysis Generally

Sierra Club asserts that LNG exports cause “impacts occurring across the entire LNG lifecycle, which both the Natural Gas Act and NEPA require DOE to consider.”⁵² Sierra Club re-raises the same claims it has made for years, with no new support for its assertion. As the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) has confirmed, the scope of

⁴⁷ *Sierra Club Protest*, at 16.

⁴⁸ U.S. Dep’t of Energy, Comments of Sierra Club *et al.* on DOE-HQ-2020-0017-0001 (Jun. 1, 2020).

⁴⁹ National Environmental Policy Act Implementing Procedures, 85 Fed. Reg. 78,197, at 78,199 (Dec. 4, 2020).

⁵⁰ *See Magnolia LNG, LLC*, at 54; *see also Golden Pass LNG Terminal LLC*, at 23.

⁵¹ U.S. Dep’t of Energy, Technical Support Document, Notice of Final Rulemaking, National Environmental Policy Act Implementing Procedures (10 C.F.R. Part 1021) (Nov. 2020).

⁵² *Sierra Club Protest*, at 14.

DOE's NEPA review is limited to the reasonably foreseeable direct and indirect effects of its actions.⁵³

Despite this, Sierra Club claims that "DOE has broadly conceded that the climate impacts of upstream effects are foreseeable."⁵⁴ This is plainly incorrect. The D.C. Circuit, in rejecting Sierra Club's NEPA argument concerning the indirect effects of export-induced natural gas production, held that DOE "offered a reasoned explanation as to why it believed the indirect effects pertaining to increased gas production were not reasonably foreseeable."⁵⁵ In particular, the court recognized that DOE had described upstream natural gas impacts generally, while affirming DOE's explanation that particularized impacts are highly location-dependent, and could not be attributed to any given export application.⁵⁶ In this regard, there is significant natural gas pipeline infrastructure in Louisiana that transports natural gas sourced from production basins across the U.S. to supply hubs in Southeast Louisiana. It is anticipated that NFE Louisiana will source natural gas feedstock from multiple producing basins throughout the U.S. pipeline network, and thus, the particular source of natural gas supply is not reasonably foreseeable.

Sierra Club's continued insistence that DOE must consider the environmental impacts of the effect increased export volumes will have on gas production and use has been repeatedly rejected by DOE and the courts. Sierra Club cites to *Sierra Club v. FERC*, 867 F.3d 1357, 1373

⁵³ *Sierra Club v. DOE*, 867 F.3d 189, 198 (D.C. Cir. 2017) ("*Freeport*") (explaining that an agency "need not foresee the unforeseeable").

⁵⁴ *Sierra Club Protest*, at 17.

⁵⁵ *Freeport*, 867 F.3d at 198.

⁵⁶ *Id.* at 198-199. In this regard, DOE has noted that "[f]undamental uncertainties constrain [its] ability to foresee and analyze with any particularity the incremental natural gas production that may be induced by permitting exports of LNG to non-FTA countries[.]" *Delfin LNG LLC*, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from a Proposed Floating Liquefaction Project and Deepwater Port 30 Miles Offshore of Louisiana to Non-Free Trade Agreement Nations, DOE/FE Order No. 4028, at 147, FE Docket No. 13-147-LNG (Jun. 1, 2017).

(D.C. Cir. 2017) (“Sabal Trail”) to claim that “indirect climate impacts must be evaluated as part of the public interest inquiry under the NGA, and that for export approvals under section 3, DOE has exclusive authority to consider these issues.”⁵⁷ The court in *Sabal Trail* held that, because FERC balances the public benefits against the adverse effects of a project, and that FERC could deny a pipeline permit due to its harmful environmental impacts, FERC was the “legally relevant cause” and could not be excused from considering direct and indirect impacts. However, *Sabal Trail* left untouched the core tenant that “an agency has no obligation to gather or consider environmental information if it has no statutory authority to act on that information.”⁵⁸ As the D.C. Circuit noted in *Freeport*, “the Department’s obligation to drill down into increasingly speculative projections about regional environmental impacts is also limited by the fact that [DOE] lacks any authority to control the locale or amount of export-induced gas production, much less any of its harmful effects.”⁵⁹

With respect to downstream effects, Sierra Club similarly alleges that DOE “mistakenly asserted that some downstream impacts (downstream impacts relating to regasification and use of exported gas) were entirely outside the scope of NEPA analysis” and that “DOE has not shown that these impacts are so unforeseeable that they cannot be meaningfully discussed at all.”⁶⁰ However, the D.C. Circuit’s holding in *Freeport* also forecloses Sierra Club’s argument on this point. The *Freeport* court rejected Sierra Club’s challenge to DOE’s examination of the potential downstream emissions resulting from the transport and usage of U.S. LNG abroad, and upheld DOE’s use of the 2014 *Addendum to Environmental Review Documents Concerning Exports of*

⁵⁷ *Sierra Club Protest*, at 21.

⁵⁸ *Sabal Trail*, at 1372 (citing *Pub. Citizen v. Dep’t of Transp.*, 541 U.S. 752, 767-68 (2004)).

⁵⁹ *Freeport*, 867 F.3d at 200.

⁶⁰ *Sierra Club Protest*, at 18.

Natural Gas from the United States (“Addendum”)⁶¹ and 2014 Life Cycle Greenhouse Gas Analysis.⁶²

Sierra Club asserts that DOE’s 2014 and 2019 Life Cycle Greenhouse Gas (“GHG”) Analyses “both ask the wrong questions and do not reflect available science regarding LNG’s impacts.”⁶³ The 2019 Life Cycle Analysis concluded that the use of U.S. LNG exports for power production in European and Asian markets will not increase global GHG emissions from a life cycle perspective, when compared to regional coal extraction and consumption for power production.⁶⁴ Based on this, DOE found that the 2019 Life Cycle Analysis supports the proposition that exports of LNG from the United States will not be inconsistent with the public interest.⁶⁵ Moreover, the D.C. Circuit in *Freeport* upheld the DOE’s decision to use the 2014 Life Cycle Analysis, and held there was “nothing arbitrary about [DOE’s] decision.”⁶⁶ Sierra Club’s arguments here are nothing more than the exact “flyspecking” the D.C. Circuit previously dismissed.⁶⁷

Furthermore, the 2019 Life Cycle Analysis is not the only information considered by DOE in its review of the Project. In making the public interest determination, DOE is likely to review and consider, among other things, the 2018 LNG Export Study, the Addendum, the 2014 Life

⁶¹ 79 Fed. Reg. 48,132 (Aug. 15, 2014).

⁶² *Freeport*, 867 F.3d at 202.

⁶³ *Sierra Club Protest*, at 22.

⁶⁴ 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, 78, 85 (Jan. 2, 2020).

⁶⁵ *Magnolia LNG, LLC*, at 19 (citing U.S. Dep’t of Energy, *supra* n. 64).

⁶⁶ *Freeport*, 867 F.3d at 202.

⁶⁷ *Freeport*, 867 F.3d at 202 (“Sierra Club asserts that the [DOE] should have also considered the potential for LNG to compete with renewables Sierra Club’s complaint falls under the category of ‘flyspecking.’”) (quoting *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1324 (D.C. Cir. 2015) (internal quotation marks omitted)).

Cycle Analysis and 2019 Life Cycle Analysis, and the Technical Support Document, as well as the MARAD Record on Decision, the EIS and many other information sources, all of which will contribute relevant information with regard to environmental impacts of the Project.

III. **CONCLUSION**

For the reasons stated herein, the Protests should be rejected and Sierra Club's late-filed motion to intervene should be denied.

Respectfully submitted,

/s/ Lisa M. Tonery

Lisa M. Tonery

Mariah T. Johnston

Jacob I. Cunningham

Attorneys for New Fortress Energy FLNG LLC

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT**

In The Matter Of:)	
)	
)	
New Fortress Energy Louisiana FLNG LLC)))	FE Docket No. 22-39-LNG

CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to 10 C.F.R. § 590.103(b) (2021), I, Lisa M. Tonery, hereby certify that I am a duly authorized representative of New Fortress Energy Louisiana FLNG LLC, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy and Carbon Management, on behalf of New Fortress Energy Louisiana FLNG LLC, the foregoing documents and in the above captioned proceeding.

Dated at New York, N.Y., this 26th Day of July, 2022.

/s/ Lisa M. Tonery
Lisa M. Tonery
Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, N.Y. 10019-6142
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(212) 506-3710

Attorney for New Fortress Energy Louisiana FLNG LLC

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT**

In The Matter Of:)	
)	
)	
New Fortress Energy Louisiana FLNG LLC)))	FE Docket No. 22-39-LNG

CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to 10 C.F.R. § 590.103(b) (2021), I, Mariah T. Johnston, hereby certify that I am a duly authorized representative of New Fortress Energy Louisiana FLNG LLC, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy and Carbon Management, on behalf of New Fortress Energy Louisiana FLNG LLC, the foregoing documents and in the above captioned proceeding.

Dated at New York, N.Y., this 26th Day of July, 2022.

/s/ Mariah T. Johnston
Mariah T. Johnston
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(212) 506-3542

Attorney for New Fortress Energy Louisiana FLNG LLC

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT**

In The Matter Of:)	
)	
)	
New Fortress Energy Louisiana FLNG LLC)))	FE Docket No. 22-39-LNG

CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to 10 C.F.R. § 590.103(b) (2021), I, Jacob I. Cunningham, hereby certify that I am a duly authorized representative of New Fortress Energy Louisiana FLNG LLC, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy and Carbon Management, on behalf of New Fortress Energy Louisiana FLNG LLC, the foregoing documents and in the above captioned proceeding.

Dated at Washington, D.C., this 26th Day of July, 2022.

/s/ Jacob I. Cunningham
Jacob I. Cunningham
Orrick, Herrington & Sutcliffe LLP
1152 15th St. NW
Washington, D.C. 20005
jacob.cunningham@orrick.com
(202) 339-8454

Attorney for New Fortress Energy Louisiana FLNG LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at New York, N.Y., this 26th day of July, 2022.

/s/ Dionne McCallum-George
Dionne McCallum-George
Executive Assistant on behalf of
New Fortress Energy FLNG LLC

VERIFICATION

State of New York

County of New York

BEFORE ME, the undersigned authority, on this day personally appeared Cameron MacDougall, who, having been by me first duly sworn, on oath says: that he is duly authorized to make this Verification; that he has read the foregoing instrument; and that the facts therein stated are true and correct to the best of his knowledge, information, and belief.



Cameron MacDougall

New Fortress Energy Louisiana FLNG LLC

SWORN TO AND SUBSCRIBED before me on the 26th day of July 2022.

Name: _____



Title: Notary Public

My Commission expires:

11/5/22

