

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF )  
 )  
New Fortress Energy Louisiana ) FE Docket No. 22-39-LNG  
FLNG LLC )

**Motion to Intervene and Protest of Sierra Club, Center for Biological Diversity, Healthy Gulf, and Louisiana Bucket Brigade**

In the above-captioned docket, New Fortress Energy Louisiana FLNG LLC (“New Fortress” or “the Applicant”) requests authorization to export approximately 2.8 million tons per annum (mtpa), or approximately 0.4 billion cubic feet per day (bcf/d), of natural gas as liquefied natural gas (LNG) from a floating deepwater port located approximately 16 miles offshore of Grand Isle, Louisiana in the Gulf of Mexico.<sup>1</sup> Sierra Club and the undersigned groups move to intervene in this docket and protest this application, pursuant to 10 C.F.R. §§ 590.303(b) and § 590.304.

Sierra Club submits these comments at a time when the world’s attention is focused on Russia’s unprovoked and horrific invasion of Ukraine. As the Biden administration has repeatedly affirmed, our global strategic interests, including helping Ukraine and other European allies avoid reliance on Russian fossil fuels, requires the U.S. and the world to transition off of fossil fuels entirely as quickly as possible.<sup>2</sup> This transition is also essential to avoiding catastrophic climate change: the International Energy Administration has explained that further

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<sup>1</sup> U.S. DOE, Long Term Applications Received by DOE/FE to Export Domestically Produced LNG, etc. (as of Apr. 27, 2022) *available at* <https://www.energy.gov/sites/default/files/2022-04/Summary%20of%20LNG%20Export%20Applications.pdf>.

<sup>2</sup> *See, e.g.*, Remarks by President Biden Announcing U.S. Ban on Imports of Russian Oil, Liquefied Natural Gas, and Coal (Mar. 8, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/08/remarks-by-president-biden-announcing-u-s-ban-on-imports-of-russian-oil-liquefied-natural-gas-and-coal/>, and Jen Psaki, <https://twitter.com/PressSec/status/1500587980699971586?s=20>, (“real energy security comes from reducing our dependence on fossil fuels.”)

expansion of global LNG exports cannot be part of the path to net-zero emissions.<sup>3</sup> New Fortress’s FLNG proposal, which would not export gas until Q4 of 2023, and would be licensed until at least 2050, is not a part of any solution to our short, middle, or long term problems. This request to authorize LNG export is inconsistent with the public interest and should be denied. 15 U.S.C. § 717b(a).

## **I. Intervention**

DOE’s rules do not articulate any particular standard for timely intervention, and as such, intervention should be granted liberally. DOE merely requires would-be-intervenors to set out the “facts upon which [their] claim of interest is based” and “the position taken by the movant.” 10 C.F.R. § 590.303(b)-(c). As explained in the following section, Sierra Club and the undersigned organization’s position is that the application should be denied or, in the alternative, heavily conditioned.

### **A. Sierra Club**

Sierra Club’s interests are based on the impact the proposed additional exports will have on its members and mission.

The requested exports will harm Sierra Club its members by increasing the prices they pay for energy, including both gas and electricity. As DOE and the Energy Information Administration have previously explained, each marginal increase in export volumes is also expected to further increase domestic energy prices.

The proposed exports will further harm Sierra Club members by increasing gas production and associated air pollution, including (but not limited to) emission of greenhouse gases and ozone precursors. As DOE has recognized, increasing LNG exports will increase gas production,<sup>4</sup> and increasing gas production increases ozone pollution, including risking creation

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<sup>3</sup> International Energy Agency, Net Zero by 2050, at 102 (May 2021), *available at* [https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroBy2050-ARoadmapfortheGlobalEnergySector\\_CORR.pdf](https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroBy2050-ARoadmapfortheGlobalEnergySector_CORR.pdf) (attached).

<sup>4</sup> *See, e.g.*, U.S. EIA, Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets (Oct. 2014) at 12, *available at*

of new or expanded ozone non-attainment areas or exacerbating existing non-attainment.<sup>5</sup> Sierra Club has over 3,500 members in Louisiana, including many in the Barnett Shale and Haynesville Shale regions and other areas that will likely be impacted by increased gas production.

The proposed exports will also require significant shipping traffic for construction and operation. This vessel or tanker traffic will emit air pollutants such as carbon monoxide and ozone-forming nitrogen oxides. Increased ship traffic will also harm wildlife that each organization's members enjoy viewing, etc., including the recently-listed threatened giant manta ray,<sup>6</sup> threatened oceanic whitetip shark,<sup>7</sup> and endangered Rice's whale (formerly designated as the Gulf of Mexico population of the Bryde's whale).<sup>8</sup> Additionally, the location of the project—16 miles off of the coast of Louisiana within the Gulf of Mexico—pose additional environmental concerns that DOE must consider when authorizing export from this project.

Finally, increasing LNG exports will impact Sierra Club and its members because of the additional greenhouse gases emitted throughout the LNG lifecycle, from production, transportation, liquefaction, and end use. *See pages 20-26 below.* The impacts from climate change are already harming Sierra Club members in numerous ways. Coastal property owners risk losing property to sea level rise. Extreme weather events, including flooding and heat waves, impact members' health, recreation, and livelihoods. Increased frequency and severity of wildfires emits smoke that impacts members' health, harms ecosystems members depend upon,

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<https://www.eia.gov/analysis/requests/fe/pdf/lng.pdf> (explaining that “[n]atural gas markets in the United States balance in response to increased LNG exports mainly through increased natural gas production,” and “[a]cross the different export scenarios and baselines, higher natural gas production satisfies about 61% to 84% of the increase in natural gas demand from LNG exports,” with “about three-quarters of this increased production [coming] from shale sources.”).

<sup>5</sup> U.S. DOE, Final Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States (Aug. 2014) at 27-32, *available at* <https://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf>.

<sup>6</sup> Final Rule to List the Giant Manta Ray as Threatened Under the Endangered Species Act, 83 Fed. Reg. 2,916 (Jan. 22, 2018).

<sup>7</sup> Listing the Oceanic Whitetip Shark as Threatened Under the Endangered Species Act, 83 Fed. Reg. 4,153 (Jan. 30, 2018).

<sup>8</sup> Technical Corrections for the Bryde's Whale (Gulf of Mexico Subspecies), 86 Fed. Reg. 47,022 (Aug. 23, 2021).

and threatens members' homes. Proposals, such as this one, that encourage long-term use of carbon-intensive fossil fuels will increase and prolong greenhouse gas emissions, increasing the severity of climate change and thus of these harms.

In summary, the proposed LNG exports will harm Sierra Club its members in numerous ways. Sierra Club accordingly contends that the application should be denied or conditioned, as further described in the following protest.

Pursuant to 10 C.F.R. § 590.303(d), Sierra Club identifies the following people for the official service list:

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## **B. Center for Biological Diversity**

The Center for Biological Diversity is a non-profit, public interest environmental organization with more than 1.7 million members and supporters. The Center is dedicated to the protection of species and their habitats through science, policy, and environmental law. In support of its mission, the Center regularly works to protect our oceans and climate from numerous threats, including offshore oil and gas projects in the Gulf of Mexico and the fossil fuel exports.

Pursuant to 10 C.F.R. § 590.303(d), Sierra Club identifies the following person for the official service list:

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Center for Biological Diversity  
1212 Broadway, Ste. 800  
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KMonsell@biologicaldiversity.org

### **C. Healthy Gulf**

Healthy Gulf is a 501(c)(3) organization with several hundred members in Louisiana. Healthy Gulf also employs staff members, primarily based in Louisiana, who work to protect the integrity of wetlands, waters, wildlife, and other ecological resources throughout Louisiana and the Gulf Region. This work will be directly affected by the construction and operation of the proposed facilities. Healthy Gulf states that the exact name of the movant is Healthy Gulf, and the movant's principal place of business is 935 Gravier Street, Suite 700, New Orleans, LA 70112.

Pursuant to 10 C.F.R. § 590.303(d), Healthy Gulf identifies the following people for the official service list:

Naomi Yoder  
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### **D. Louisiana Bucket Brigade**

Louisiana Bucket Brigade states that the exact name of the movant is Louisiana Bucket Brigade, and the movant's principal place of business is 3416 B Canal Street, New Orleans, LA 70119. Louisiana Bucket Brigade is a 501(c)(3) organization with several hundred members in Louisiana. Louisiana Bucket Brigade, including members in the Lake Charles area who will be impacted by the Project.

It also employs staff members, primarily based in Louisiana, who work to inform Louisiana residents on the adverse environmental impacts of the petrochemical and oil and gas

industry. Louisiana Bucket Brigade also supports communities in Louisiana whose health and homes are devastated by the petrochemical industry as well as the oil and gas industry. This work is directly affected by the construction and operation of the Project.

Pursuant to 10 C.F.R. § 590.303(d), Healthy Gulf identifies the following person for the official service list:

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Louisiana Bucket Brigade  
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## **II. Protest**

The requested for authorization to export volumes should be denied because it is contrary to the public interest. 15 U.S.C. § 717b(a).

As DOE previously explained, “when reviewing an application for export authorization,” DOE evaluates “economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others.”<sup>9</sup> Here, all of these factors weigh against the application.

### **A. Global Strategic Interests**

Although DOE has historically given primary weight to the impact on domestic energy prices and supply, in light of recent events in Ukraine, we begin by discussing strategic concerns.

The proposed New Fortress FLNG project will not help reduce reliance on Russian gas in the short term. New Fortress’s application to MARAD states that New Fortress hopes to begin construction in “Q1 2023” and to complete construction in “Q4 2023.”<sup>10</sup> This is unrealistically optimistic with regard to both the potential start date and the construction duration. No other LNG project has been approved on such a rapid timeframe,<sup>11</sup> and even after projects are

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<sup>9</sup> DOE/FE Order No. 3357-B (Freeport LNG), at 9 (Nov. 14, 2014), *available at* <https://www.energy.gov/sites/prod/files/2014/11/f19/ord%203357-B.pdf>.

<sup>10</sup> MARAD Application Volume II, Topic Report 1, Section 1.4.1 (page 1-29), *available at* [https://downloads.regulations.gov/MARAD-2022-0076-0003/attachment\\_2.pdf](https://downloads.regulations.gov/MARAD-2022-0076-0003/attachment_2.pdf).

<sup>11</sup> The Deepwater Port Act establishes a specific time frame of 330 days from the date of

approved, there is typically a significant delay between approval and the applicant's final investment decision and start of construction. Similarly, although New Fortress asserts that construction for an offshore facility is quicker than for an onshore facility, New Fortress has not demonstrated that a less than twelve month timeframe is realistic. But even if New Fortress could enter operation by the end of 2023, this would not respond to Europe's immediate need for gas, because by the end of 2023, our European allies expect to have already made significant progress toward transitioning away from gas entirely, and by that time, the Calcasieu Pass facility, which is presently under construction, is expected to be completed.

On the more significant point, our allies are rapidly transitioning away from gas. For example, the United Kingdom's Energy & Climate Intelligence Unit has concluded that *all* of the UK's gas demand that was recently met by Russian gas could be eliminated through installation of heat pumps and better installation within five years.<sup>12</sup> More broadly, the International Energy Agency has concluded that heat pumps, building efficiency, and similar measures can significantly reduce the European Union's gas use, and thus the impact of Russian energy, within a year, with greater reductions each following year.<sup>13</sup>

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publication in the Federal Register (for notice of a complete application) for approval or denial of the deepwater port license. However, recent projects proposed for licensing under the DWPA have failed to meet this deadline, necessitating suspension of the regulatory timeline while further information is submitted by the applicants to the agencies. *See* Deepwater Ports and Licensing Pending Applications, U.S. Dep't of Trans., *available at* <https://www.maritime.dot.gov/ports/deepwater-ports-and-licensing/pending-applications> (noting suspension of the regulatory timeline for the Bluewater VLCC, GulfLink VLCC, SPOT VLCC, and West Delta LNG projects).

<sup>12</sup> Harry Cockburn, Heat Pumps and Insulation 'will end need for Russian gas faster than new North Sea drilling', the Independent, March 9, 2022, *available at* <https://www.independent.co.uk/climate-change/news/heat-pumps-russian-gas-north-sea-b2032017.html> and attached; *see also* Energy & Climate Intelligence Unit, Ukraine Conflict and Impacts on UK Energy, <https://eciu.net/analysis/briefings/uk-energy-policies-and-prices/briefing-ukraine-conflict-and-impacts-on-uk-energy> (last accessed Mar. 10, 2022 and attached).

<sup>13</sup> International Energy Agency, A 10-Point Plan to Reduce the European Union's Reliance on Russian Natural Gas (March 3, 2022), *available at* <https://www.iea.org/reports/a-10-point-plan-to-reduce-the-european-unions-reliance-on-russian-natural-gas> and attached.

The United States should encourage and facilitate these and other measures to reduce reliance on gas and other fossil fuels in the European Union and elsewhere, whether by producing and directly supplying additional heat pumps, investing in development of renewable energy, or taking other measures.<sup>14</sup>

Sierra Club contends that there is no strategic need for export capacity beyond that provided by existing facilities. But even if DOE disagrees, there is *clearly* no need for capacity beyond the *sixteen* approved projects that are not yet operational, including the thirteen that have not even started construction.<sup>15</sup> These not-yet-operational facilities have a combined capacity of over 30 bcf/d,<sup>16</sup> nearly three times the volume of US LNG exports EIA predicts for 2022.

## **B. Domestic Energy Prices and Supply**

DOE has historically given particular emphasis to “the domestic need for the natural gas proposed to be exported” and “whether the proposed exports pose a threat to the security of domestic natural gas supplies.”<sup>17</sup> As recent data shows, exports are increasingly linking domestic gas prices to prices in the global market. These increases harm American households and energy intensive industry. New Fortress’s application fails to address this data, which demonstrate that approving export from this project is not in the public interest.

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<sup>14</sup> See, e.g., Letter of Sierra Club and over 200 groups calling on Biden to use the Defense Production Act to help Ukraine by accelerating the clean energy transition (March 9, 2022), available at <https://www.stand.earth/BidenDPASignOn> and attached; see also Washington Post, *Heat pumps can counter Putin and the climate crisis, advocates say* (March 10, 2022), available at <https://www.washingtonpost.com/politics/2022/03/10/heat-pumps-can-counter-putin-climate-crisis-advocates-say/> and attached.

<sup>15</sup> FERC, North American LNG Export Terminals (Jul. 5, 2022), available at <https://cms.ferc.gov/media/north-american-lng-export-terminals-existing-approved-not-yet-built-and-proposed-8> and attached.

<sup>16</sup> *Id.*

<sup>17</sup> DOE/FE Order No. 3357-B at 10; 85 Fed. Reg. at 52,243 (“In evaluating the public interest, DOE takes seriously the potential economic impacts of higher natural gas prices.”).



**1. The Freeport LNG explosion further affirms that the New Fortress FLNG project will increase domestic gas prices, harming customers.**

A recent explosion and fire at the Freeport LNG facility—and the resulting drop in domestic gas prices—provided stark confirmation that increasing LNG exports will cause real and significant increases in domestic gas prices. Thus, the Freeport LNG explosion demonstrates that the requested export authorization is not in the public interest.

Less than a month ago, on June 8, 2022, an explosion and fire at the Freeport LNG facility caused an immediate shut down of operations.<sup>18</sup> Fortunately, no one was injured during the incident, but the initial report by the Pipeline and Hazardous Materials Safety Administration (PHMSA) concluded that “[c]ontinued operation of Freeport’s LNG export facility without corrective measures may pose an integrity risk to public safety, property or the environment.”<sup>19</sup> For these reasons, Sierra Club and over 130 other organizations recently sent a letter asking President Biden, among other things, to “[d]irect DOE to find gas exports not in the public interest due to their climate and safety repercussions and to stop approving new applications.”<sup>20</sup> Preliminary findings point to “excess pressure in an LNG transfer pipeline that moves LNG from the facility’s storage tank to the terminal’s dock facilities” as the source of the fire.<sup>21</sup> The facility cannot resume operations until an independent investigation of the extent of the damage to the facility and LNG storage tanks is conducted and PHMSA approves a plan to repair the damage.

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<sup>18</sup> U.S. Energy Information Administration, Fire Causes Shutdown of Freeport Liquefied Natural Gas Export Terminal (June 23, 2022), <https://www.eia.gov/todayinenergy/detail.php?id=52859> [hereinafter “EIA, Freeport Fire”] (attached).

<sup>19</sup> Gary McWilliams, U.S. Regulator Bars Freeport LNG Plant Restart Over Safety Concerns, REUTERS (July 1, 2022), [https://www.reuters.com/business/energy/us-regulator-finds-unsafe-conditions-freeport-lng-export-facility-bars-restart-2022-06-30/#:~:text=HOUSTON%2C%20June%2030%20\(Reuters\),an%20outside%20analysis%20is%20complete](https://www.reuters.com/business/energy/us-regulator-finds-unsafe-conditions-freeport-lng-export-facility-bars-restart-2022-06-30/#:~:text=HOUSTON%2C%20June%2030%20(Reuters),an%20outside%20analysis%20is%20complete) [hereinafter “U.S. Regulator Bars Freeport LNG Plant Restart”] (attached).

<sup>20</sup> Coalition letter to Biden on Freeport explosion, June 23, 2022 (attached).

<sup>21</sup> EIA, Freeport Fire, *supra* note 18.

<sup>22</sup> Thus, Freeport will not return to full service until at least late 2022, though partial operations may begin sooner.<sup>23</sup>

Most relevant here, the Freeport explosion demonstrates a clear and significant connection between US LNG exports and domestic gas prices. The EIA has estimated that the Freeport shutdown took roughly 17% (or 2 billion cubic feet per day) of the total U.S. LNG export capacity offline.<sup>24</sup> Immediately after the explosion was reported, domestic gas prices fell by 16 percent,<sup>25</sup> highlighting the direct connection between gas exports and domestic prices and supply. Despite this initial drop, domestic gas prices remain exceptionally high as a result of LNG exports, as discussed in the next section. DOE must address the Freeport LNG explosion, and the demonstrated connection between LNG exports and domestic prices, in its public interest analysis.

## **2. Winter 2021-2022 gas prices demonstrate that LNG exports are harming US consumers.**

The price impacts of LNG exports are harming Americans *now*. Wholesale gas prices for the winter of 2021-2022 were vastly higher than for the prior winter, and FERC concluded that the increase was driven largely by competition with demand for LNG exports.<sup>26</sup> The Wall Street

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<sup>22</sup> U.S. Regulator Bars Freeport LNG Plant Restart, *supra* note 19.

<sup>23</sup> *Id.*

<sup>24</sup> EIA, Freeport Fire, *supra* note 18.

<sup>25</sup> Pippa Stevens, Natural Gas Plummets as Freeport Delays Facility Restart Following Explosion, CNBC (June 14, 2022), <https://www.cnbc.com/2022/06/14/natural-gas-plummets-as-freeport-delays-facility-restart-following-explosion.html> (attached).

<sup>26</sup> FERC, Winter Energy Market and Reliability Assessment Presentation (Oct. 21, 2021) at 2, *available at* <https://ferc.gov/sites/default/files/2021-10/Winter%20Assessment%202021-2022%20-%20Report.pdf> (attached); *accord id. at 11*. See also Clark Williams-Derry, IEEFA U.S.: Booming U.S. natural gas exports fuel high prices, IEEFA.ORG (Nov. 4, 2021), <https://ieefa.org/ieefa-u-s-declining-demand-lower-supply-dont-explain-rapidly-rising-gas-prices/> (attached).

Journal,<sup>27</sup> S&P Global Platts Analytics,<sup>28</sup> the Institute for Energy Economics and Financial Analysis, and others agreed that LNG exports were driving up domestic gas prices. Indeed, FERC identified LNG exports as the “primar[y]” source of the additional demand that drove recent gas price increases.<sup>29</sup> And these price increases are severe. For the winter of 2021-2022, benchmark futures prices at the Henry Hub increased 103% relative to the prior winter,<sup>30</sup> with larger increases elsewhere, including more than quadrupling of the price at the Algonquin Citygate outside Boston,<sup>31</sup> as illustrated in this chart from FERC:<sup>32</sup>

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<sup>27</sup> Collin Eaton & Katherine Blunt, Natural-Gas Exports Lift Prices for U.S. Utilities Ahead of Winter, WALL ST. J., Nov. 7, 2021, <https://www.wsj.com/articles/natural-gas-exports-lift-prices-for-u-s-utilities-ahead-of-winter-11636281000>.

<sup>28</sup> Kelsey Hallahan, Henry Hub could reach \$12-\$14 this winter as capital discipline limits supply growth: Platts Analytics, S&P GLOBAL PLATTS, Oct. 14, 2021, <https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/101421-henry-hub-could-reach-12-14-this-winter-as-capital-discipline-limits-supply-growth-platts-analytics>.

<sup>29</sup> FERC, Winter Energy Market and Reliability Report, *supra* note 26 at 2.

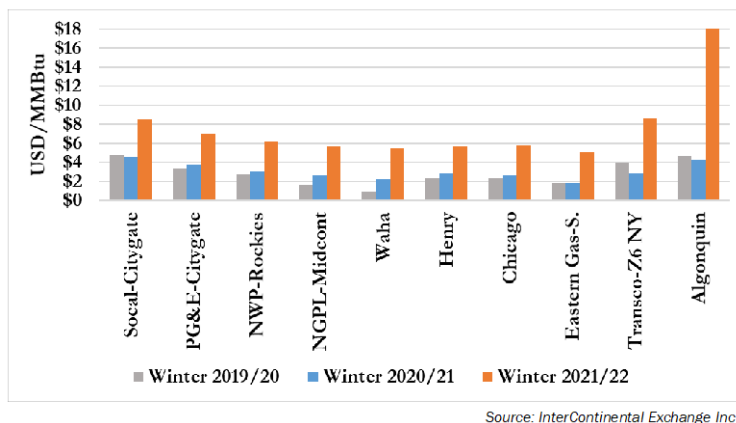
<sup>30</sup> *Id.* at 2, 11.

<sup>31</sup> *Id.* at 12.

<sup>32</sup> FERC, 2021-2022 Winter Energy Market and Reliability Assessment (Oct. 21, 2021) at 10, *available at* [https://ferc.gov/sites/default/files/2021-10/Winter%20Assessment%202021-2022\\_Presentation.pdf](https://ferc.gov/sites/default/files/2021-10/Winter%20Assessment%202021-2022_Presentation.pdf) (attached).

## Winter Futures Prices Increased at Nearly Every Major U.S. Trading Hub

Average U.S. Natural Gas Futures Prices Across Major Hubs for November - February



These price increases harm both households and industrial energy consumers. The EIA predicted that homes that use gas for heat would spend 30% more in the winter of 2021-2022 than they spent the prior winter.<sup>33</sup> The Industrial Energy Consumers of America, which represents manufacturers that use at least 1 million MMBtu of energy per year,<sup>34</sup> has repeatedly written to DOE about how export-driven gas prices increases are harming domestic industry.<sup>35</sup> From an economic perspective, LNG exports are simply making most Americans worse off: all Americans must pay energy bills, but few own shares (even indirectly, through pension plans and the like) in the gas companies that are benefiting from high gas prices and LNG sales.<sup>36</sup> DOE is

<sup>33</sup> Winter Fuels Outlook, *supra* note 26, at 1.

<sup>34</sup> “Membership Info,” IECA, <https://www.ieca-us.com/membership-info/> (last accessed Dec. 7, 2021).

<sup>35</sup> See, e.g., Letter from Paul N. Cicio to Jennifer Granholm (Nov. 22, 2021), available at [https://www.ieca-us.com/wp-content/uploads/11.22.21\\_LNG\\_-Why-a-Safety-Valve-is-Needed\\_FINAL.pdf](https://www.ieca-us.com/wp-content/uploads/11.22.21_LNG_-Why-a-Safety-Valve-is-Needed_FINAL.pdf).

<sup>36</sup> Synapse Energy Economics, Inc., *Will LNG Exports Benefit the United States Economy?* (Jan. 23, 2013) at 9, available at [https://fossil.energy.gov/ng\\_regulation/sites/default/files/programs/gasregulation/authorizations/export\\_study/Exhibits\\_1-20.pdf](https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/export_study/Exhibits_1-20.pdf) (attached) (Initially submitted as Exhibit 5 to Comments of Sierra Club *et al.* on the 2012 NERA macroeconomic report).

charged with protecting the “public” interest, 15 U.S.C. § 717b(a); that is, the interest “of ... all or most of the people” in the United States. *Public*, Merriam-Webster Unabridged Dictionary.<sup>37</sup> DOE has previously recognized that “the distributional consequences of an authorizing decision” may be so negative as to demonstrate inconsistency with the public interest despite “net positive benefits to the U.S. economy as a whole.”<sup>38</sup> Accordingly, unless DOE addresses distributional concerns, DOE will have failed to consider an important part of the problem. But to date, DOE has never grappled with the distributional impacts of LNG exports: DOE has acknowledged that LNG exports have some positive and some negative economic impacts,<sup>39</sup> but DOE has not addressed the fact that those who suffer the harms are not the same as those who enjoy the benefits, or that the former are more numerous and generally less advantaged than the latter. In particular, research shows that low-income, Black, Hispanic, and Native American households all face dramatically higher energy burdens—spending a greater portion of their income on energy bills—than the average household.<sup>40</sup> Increased gas prices will exacerbate the existing energy burden disparities, placing these households at even further risk. Especially in light of this administration’s emphasis on environmental justice, the distributional and equity impacts of export-driven gas price increases require careful consideration.

DOE has previously relied on modeling of how energy markets will balance in response to increased LNG exports, and on studies of the macroeconomic effects of such balancing. The current surge in gas prices calls those prior analyses into question, and DOE cannot approve additional exports without carefully examining the continuing validity of those analyses. We understand that DOE and the EIA is currently revisiting the 2012 and 2014 LNG export studies,

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<sup>37</sup> <http://www.merriam-webster.com/dictionary/public> (last visited Dec. 7, 2021).

<sup>38</sup> DOE/FE Order 3638-A (Corpus Christi) at 45 (May 26, 2016), *available at* [https://fossil.energy.gov/ng\\_regulation/sites/default/files/programs/gasregulation/authorizations/2012/applications/12-97-LNG\\_CMI\\_Corpus\\_Rehearing\\_May\\_26.pdf](https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2012/applications/12-97-LNG_CMI_Corpus_Rehearing_May_26.pdf)

<sup>39</sup> *See, e.g.*, NERA Economic Consulting, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (June 7, 2018) at 19, 21, 64, 67, *available at* <https://cms.doe.gov/sites/prod/files/2018/12/f58/2018%20Study.pdf>.

<sup>40</sup> American Council for an Energy-Efficient Economy, *How High are Household Energy Burdens?* (Sept. 2020), *available at* <https://www.aceee.org/sites/default/files/pdfs/u2006.pdf> (attached). *Accord* Eva Lyubich, *The Race Gap in Residential Energy Expenditures* (June 2020), *available at* <https://haas.berkeley.edu/wp-content/uploads/WP306.pdf> (attached).

with an updated analysis expected in the spring of 2022.<sup>41</sup> At a minimum, DOE should not approve further export applications until this study is complete.

DOE must be particularly cautious given DOE's refusal, to date, to exercise supervisory authority over already-approved exports. Although DOE retains authority to amend and/or rescind existing export authorizations, 15 U.S.C. § 717o, DOE has stated its reluctance to exercise such authority.<sup>42</sup> But if export applications are, in effect, a one-way ratchet on export volumes, DOE cannot issue such authorizations carelessly.

The Natural Gas Act's "principle aim[s]" are "encouraging the orderly development of plentiful supplies of natural gas at reasonable prices and protecting consumers against exploitation at the hands of natural companies," with the "subsidiary purposes" of addressing "conservation, environmental, and antitrust issues."<sup>43</sup> At present, LNG exports are not achieving these purposes. DOE's uniform approval of all export applications has not protected consumers from exploitation at the hands of gas companies, and LNG exports are not leading to reasonable gas prices. Accordingly, even putting aside the numerous and severe environmental impacts of increased LNG exports, New Fortress's FLNG application is inconsistent with the public interest and should be denied.

### **C. Environmental Impacts**

In addition to the immediate harms caused by price increases, LNG exports will cause environmental harm lasting for generations. These include impacts occurring across the entire LNG lifecycle, which both the Natural Gas Act and NEPA require DOE to consider. DOE must reject the prior administration's conclusion that LNG export approvals could be categorically

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<sup>41</sup> <https://www.energy.senate.gov/hearings/2021/11/full-committee-hearing-on-domestic-and-international-energy-price-trends> (testimony of Stephen Nalley at 47:50 to 48:15)

<sup>42</sup> See Policy Statement Regarding Long-Term Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries, 83 Fed. Reg. 28,841 (June 21, 2018). Although DOE has not exercised this authority yet, DOE *should* carefully consider doing so, given the severe impact already-authorized exports are having on domestic gas prices.

<sup>43</sup> *Minisink Residents for Envtl. Pres. & Safety v. FERC*, 762 F.3d 97, 101 (D.C. Cir. 2014) (cleaned up).

excluded from NEPA review, and DOE must revisit its deeply flawed analysis of the climate impacts of LNG exports.

### **1. DOE Must Analyze the Environmental Impacts of LNG Exports, and Allow the Public to Comment Thereon, *Using the NEPA Process***

In DOE's notice of New Fortress's application, DOE acknowledged that the National Environmental Policy Act (NEPA) applies to DOE's decision of whether authorize proposed exports.<sup>44</sup> However, until recently, DOE has failed to even attempt analyze and disclose foreseeable impacts of DOE's LNG export authorizations in the NEPA process. Instead, DOE has relied on EAs or EISs prepared by FERC that either ignored or explicitly refused to consider foreseeable effects on gas production and use, while DOE separately considered non-NEPA documents, such as the 2014 Environmental Addendum and the 2019 updated life cycle analysis that purport to address these issues. In a step in the right direction, DOE recently published a draft supplemental EIS for the Alaska LNG project that purports to address upstream and downstream issues in the NEPA process.<sup>45</sup> However, even that step only came after FERC completed principal NEPA review, and after Sierra Club petitioned for review of DOE's noncompliance with NEPA.

Here, DOE must not repeat past errors: DOE must ensure that all foreseeable effects of the proposed exports are analyzed and disclosed in the primary NEPA document for the proposed integrated project. The Deepwater Port Act is, if anything, even more explicit than the Natural Gas Act in calling for a single, comprehensive NEPA analysis that encompasses all related federal actions. 33 U.S.C. § 1504(f) (MARAD "shall comply with" NEPA and "[s]uch compliance shall fulfill the requirement of all Federal agencies."); *compare with* 15 U.S.C. § 717n(b)(1) (FERC "shall act as the lead agency" for coordinated federal review). And independent of these specific statutory commands, NEPA generally requires that interrelated federal authorizations be analyzed in a single NEPA document. 40 C.F.R. § 1501.9(e)(1) (requiring that "connected actions" be included within an EIS's scope); *Jones v. D.C.*

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<sup>44</sup> 87 Fed. Reg. at 29,152.

<sup>45</sup> *See* 87 Fed. Reg. 38,730 (June 29, 2022).

*Redevelopment Land Agency*, 499 F.2d 502, 510 (D.C. Cir. 1974) (holding that “the principles” of the prohibition on segmentation “are entirely applicable ... where decision-making is accomplished by three federal agencies ... acting seriatim.”). 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.

Nor can DOE claim that this application for export authorization can be categorically excluded from NEPA review. In December of 2020, DOE adopted a categorical exclusion for LNG export approvals, codified at 10 C.F.R. Part 1021 Part D Appendix B, B5.7. Adoption of this categorical exclusion was arbitrary and unlawful, and DOE cannot rely on this categorical exclusion here. Alternatively, this proposal lacks the integral elements of an exempt project, precluding reliance on a categorical exclusion here.

#### **a) The 2020 Categorical Exclusion Is Invalid**

Adoption of the 2020 categorical exclusion was arbitrary, capricious, and contrary to law. Most egregiously, in promulgating the 2020 exclusion, DOE improperly excluded from NEPA review *all* impacts occurring upstream of the point of export, based on a basic and fundamental legal error. The Notice of Proposed Rulemaking argued that DOE need not consider “environmental impacts resulting from actions occurring [before] the point of export” because “the agency has no authority to prevent” these impacts, citing *Sierra Club v. FERC*, 827 F.3d 36 (D.C. Cir. 2016) (“*Freeport I*”). 85 Fed. Reg. at 25,341; *accord* Final Rule, 85 Fed. Reg. 78,197, 78,198. This is the exact opposite of *Freeport I*’s explicit and central holding. *Freeport I* held that **FERC** had no authority prevent these impacts, specifically because **DOE** had retained “exclusive” authority to do so. 827 F.3d at 40-41, 46. FERC had “no authority” to consider the impacts of export-induced gas production because “the Natural Gas Act places export decisions squarely and exclusively within the Department of Energy’s wheelhouse.” *Id.* at 46.<sup>46</sup> Because

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<sup>46</sup> In finalizing the 2020 Categorical Exclusion, DOE also erred in asserting that its approval of exports is “not interdependent” with FERC’s approval of export infrastructure. 85 Fed. Reg. 78,197, 78,199. DOE’s export authorization cannot be effectuated without FERC approval of export infrastructure, and vice versa; even if FERC infrastructure could proceed solely on the basis of FTA export authorization, neither this project nor any other major project in fact seeks to do so.



DOE *has* such authority, the categorical exclusion was adopted unlawfully, cannot be relied upon here, and provides no evidence to suggest that all environmental effects occurring before the point of exports will be insignificant. While FERC is not the agency tasked with permitting the New Fortress FLNG project, the same concern remains: greenhouse gas emissions continue to remain unaccounted for. To date, NEPA review by the Maritime Administration (“MARAD”) and U.S. Coast Guard (USCG) has failed to disclose and analyze the true climate impacts of proposed deepwater port fossil fuel export projects, failing even to calculate the foreseeable upstream, downstream and cumulative greenhouse gas emissions as required by NEPA and the Council on Environmental Quality’s policy guidance.

Upstream impacts cannot be dismissed as unforeseeable. DOE has in fact foreseen them, with EIA modeling, an environmental addendum, and a lifecycle report that extensively, although at times incorrectly, discuss these impacts. In these, DOE has broadly conceded that the climate impacts of upstream effects are foreseeable. And DOE’s Environmental Addendum acknowledged that increased gas production “may” increase ozone levels and “may” frustrate some areas’ efforts to reduce pollution to safe levels.<sup>47</sup> But as DOE has acknowledged, it has not made any determination as to the likelihood or significance of such impacts—the Addendum made no “attempt to identify or characterize the incremental environmental impacts that would result from LNG exports” whatsoever.<sup>48</sup> Insofar as DOE contends that these impacts can be difficult to foresee, that affirms, rather than refutes, the need for case-by-case analysis. *See also Cal. Wilderness Coal. v. DOE*, 631 F.3d 1072, 1097 (9th Cir. 2011) (rejecting DOE argument that environmental impacts of designation of electric transmission corridors were too speculative to require NEPA analysis). Even if DOE determines that upstream impacts can only be discussed generally, in something like the Environmental Addendum, this does not entail the conclusion that the impacts are insignificant. Similarly, a conclusion that an agency can meet its NEPA obligations by tiering off an existing document (which may need to be periodically revised as

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<sup>47</sup> Addendum, *supra* note 5, at 27-28.

<sup>48</sup> DOE/FE Order No. 3638 (Corpus Christi LNG), at 193-194 (May 12, 2015), *available at* [https://fossil.energy.gov/ng\\_regulation/sites/default/files/programs/gasregulation/authorizations/2012/applications/ord3638.pdf](https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2012/applications/ord3638.pdf).

facts and scientific understanding change) is different than the conclusion that NEPA review simply is not required.

The 2020 Categorical Exclusion’s treatment of downstream impacts was also arbitrary. As with upstream impacts, 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. 85 Fed. Reg. at 78,202. This is again incorrect: DOE has authority to consider these impacts when making its public interest determination, and DOE has not shown that these impacts are so unforeseeable that they cannot be meaningfully discussed at all. Indeed, DOE has refuted this argument itself, discussing these impacts in the life cycle analysis.

For other impacts, relating to marine vessel traffic, the preamble to the 2020 final rule arbitrarily dismissed these impacts as *de minimus*, claiming that because LNG export has historically constituted only a small share of overall U.S. shipping traffic, the effects of future LNG export approvals could be ignored.<sup>49</sup> This is legally and factually incorrect. LNG exports are rapidly expanding, and this expansion depends upon and is caused by authorizations like the one New Fortress has requested here. In addition, noting that LNG traffic is a small share of the total does not demonstrate that the impact of LNG traffic in particular is insignificant: a small portion of a large problem can itself constitute a significant impact. And even if such a fractional approach could be justified, it would require a different denominator: the number of ships in the habitat of the species at issue. LNG traffic—now and in the future—constitutes a larger and growing share of traffic *in the Gulf of Mexico*, where many of the species that will be impacted by New Fortress’s proposed exports, including multiple listed species, live. Ship traffic to the West and East Coasts inflates the denominator but is irrelevant to many of these species.

**b) The Proposed Exports Do Not Satisfy the “Integral Elements”  
Necessary for a Categorical Exclusion**

Even if the 2020 Categorical Exclusion was valid, DOE would be unable to rely on it here. DOE cannot invoke a categorical exclusion without determining that the proposed action has the “integral elements” of excluded actions as defined in Appendix B to 10 C.F.R. Part 2021 Subpart D. Here, the proposal does not satisfy integral element 1, because it “threaten[s] a

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<sup>49</sup> The proposed rule ignored wildlife impacts entirely.

violation of applicable statutory [or] regulatory ... requirements for environment, safety, and health, or similar requirements of ... Executive Orders.” 10 C.F.R Part 1021 Subpart D Appendix B. This integral element is missing whenever a proposal *threatens* a violation; if there a possibility of such a violation, a project-specific NEPA analysis is required to evaluate that risk.

Here, increased exports threaten a violation of Executive Order 14,008, Tackling the Climate Crisis at Home and Abroad.<sup>50</sup> This order—like the Paris Accord, recent Glasgow Pact, and other commitments—affirms that “Responding to the climate crisis will require ... net-zero global emissions by mid-century or before.”<sup>51</sup> Increasing exports through mid-century (*i.e.*, 2050) is inconsistent with any plausible trajectory for achieving this goal, as recognized by the International Energy Agency.<sup>52</sup> Even if DOE somehow contends that expanded exports can somehow be reconciled with the President’s climate goals and policies, that surprising contention does not change the fact that expanded exports at least “threaten” a violation of those policies, such that integral element 1 is not satisfied.

The proposal also violates integral element 4, because it has “the potential to cause significant impacts to environmentally sensitive resources,” which “include ... Federally-listed threatened or endangered species or their habitat,” “state-listed” species, “Federally-protected marine mammals and Essential Fish Habitat,” and species proposed for listing.<sup>53</sup> Potentially impacted species include the black rail, giant manta ray,<sup>54</sup> oceanic whitetip shark,<sup>55</sup> and Rice’s whale (formerly designated as the Gulf of Mexico population of the Bryde’s whale).<sup>56</sup> These species are all at risk from ship strikes and noise from vessel traffic, impacts that will be increased by the proposed additional exports.<sup>57</sup> As with integral element 1, integral element 4 is

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<sup>50</sup> 86 Fed. Reg. 7619 (Jan. 27, 2021).

<sup>51</sup> *Id.* § 101, 86 Fed. Reg. at 7619.

<sup>52</sup> Net Zero by 2050, *supra* note 3, at 102-03.

<sup>53</sup> 10 C.F.R Part 1021 Subpart D Appendix B.

<sup>54</sup> 83 Fed. Reg. 2,916 (Jan. 22, 2018).

<sup>55</sup> 83 Fed. Reg. 4,153 (Jan. 30, 2018).

<sup>56</sup> 86 Fed. Reg. 47,022 (Aug. 23, 2021).

<sup>57</sup> The potential for impacts to these species further violates integral element 1, because it

precautionary: a categorical exclusion cannot be used if the proposed action would “have the potential to cause significant impacts,” even if it is unclear whether the action’s impacts will in fact rise to the level of significance. Fulfilling NEPA’s purpose requires investigating such potential impacts.

Ultimately, the potential to impact species and other protected resources is real. Ship strikes injure marine life, including listed whales,<sup>58</sup> sea turtles,<sup>59</sup> and giant manta rays.<sup>60</sup> Ship traffic also causes noise, which “can negatively impact ocean animals and ecosystems in complex ways.”<sup>61</sup> Noise interferes with animals’ ability to “communicate” and “to hear environmental cues that are vital for survival, including those key to avoiding predators, finding food, and navigation among preferred habitats.”<sup>62</sup> Unsurprisingly, many animals display a suite of stress-related responses to increased noise. Because the proposed export increase will increase these impacts, the proposal does not satisfy integral element 4.

## **2. DOE Must Consider the Entire LNG Lifecycle**

Both the Natural Gas Act and NEPA require DOE to take a hard look at environmental impacts occurring throughout the entire LNG lifecycle, and to consider such impacts in the public interest determination.

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threatens a violation of the Endangered Species Act and similar laws.

<sup>58</sup> David W. Laist et al., *Collisions Between Ships and Whales*, 17 MARINE MAMMAL SCIENCE 1, 35 (Jan. 2001) (describing ship strikes with large vessels as the “principal source of severe injuries to whales), *available at* <https://www.mmc.gov/wp-content/uploads/shipstrike.pdf> (attached).

<sup>59</sup> National Oceanic and Atmospheric Administration Fisheries, *Understanding Vessel Strikes* (June 25, 2017), *available at* <https://www.fisheries.noaa.gov/insight/understanding-vessel-strikes> (attached).

<sup>60</sup> National Oceanic and Atmospheric Administration Fisheries, *Giant Manta Ray*, <https://www.fisheries.noaa.gov/species/giant-manta-ray> (attached).

<sup>61</sup> National Oceanic and Atmospheric Administration, *Cetacean & Sound Mapping: Underwater Noise and Marine Life*, <http://cetsound.noaa.gov/index> (attached).

<sup>62</sup> *Id.*

Under the Natural Gas Act, DOE itself has recognized that a key consideration in its public interest determinations is the effect increased export volumes will have on gas production and use. DOE therefore must consider the environmental impacts of such effects. As the D.C. Circuit has affirmed, the Natural Gas Act’s public interest standards provide authority and obligation to consider indirect effects on gas production and use, and the environmental consequences thereof, as part of the public interest inquiry. *See Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (“*Sabal Trail*”) (holding that indirect impacts, including indirect climate impacts, must be evaluated as part of public interest inquiry under Natural Gas Act, and that for export approvals under section 3, DOE has exclusive authority to consider these issues).

Similarly, NEPA’s statutory text requires agencies to consider the “effects” of proposed actions. 42 U.S.C. § 4332(2)(F). This requirement is not limited to only some “effects,” and the statute demands a broad perspective, including consideration of the “worldwide and long-range character of environmental problems.” *Id.* Accordingly, cases have interpreted this language to mean that the statute itself requires consideration of both direct and indirect effects. *City of Davis v. Coleman*, 521 F.2d 661, 676–77 (9th Cir. 1975); *see also Kleppe v. Sierra Club*, 427 U.S. 390, 409-10 (1976) (noting that Congress’s mandate that agencies use “all practicable means” to “assure consideration of the environmental impact of their actions in decisionmaking,” requires consideration of cumulative effects) (citations omitted). The plain meaning of “effects” includes indirect but foreseeable or intended consequences, such as effects proximately caused by the action.<sup>63</sup> And here, the gas to be exported must come from somewhere and be used somewhere: these are plainly “effects” of the requested export authorization.

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<sup>63</sup> Courts interpreting NEPA have occasionally analogized to the tort doctrine of proximate cause. *E.g.*, *Sierra Club v. FERC*, 827 F.3d 36, 47 (D.C. Cir. 2016) (“*Freeport I*”) (quoting *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004)). There are two problems with this. One, proximate cause is itself a flawed concept: the authors of the Restatement of Torts argue that the concept should be excised even from the field of tort law. Restatement (Third) of Torts: Phys. & Emot. Harm 6 Spec. Note (2010). Two, the purpose of proximate cause—to assign legal responsibility and blame for events that have already occurred—is fundamentally different from the purpose of NEPA review, which is to inform the public and decisionmakers of effects that have not yet occurred, and which can still be avoided. Under NEPA, identifying an adverse effect is important, and can and should inform decisionmaking, even if that effect could, in the tort sense, be said to be someone else’s fault.

Accordingly, the reinstated NEPA regulations explicitly require consideration of “indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.1(g)(2) (2022). And even under the prior regulations adopted in September 2020, which omitted this explicit requirement, the Council on Environmental Quality had conceded that indirect effects that “have a reasonably close causal relationship to the proposed action” must be considered. Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304-01, 43,331 (July 16, 2020). Thus, while NEPA’s statutory text would require consideration of foreseeable effects across the lifecycle regardless of the Council on Environmental Quality’s position, here, the regulations and agency interpretations thereof support this view.

In summary, both the Natural Gas Act and NEPA require DOE to evaluate and weigh environmental impacts occurring through the LNG life cycle.

### **3. DOE’s Prior Life Cycle Greenhouse Gas Analyses Are Not a Substitute for NEPA Review, and Do Not Demonstrate that Greenhouse Gas Emissions Caused by the Proposal Are Consistent with the Public Interest**

One way or another, DOE must revisit its prior analyses of the greenhouse gas impact of LNG exports. Procedurally, the 2014 and 2019 lifecycle analyses are not a substitute for NEPA review, as DOE continues to recognize.<sup>64</sup> Although the lifecycle analyses can inform NEPA review, DOE must address the impacts of this and other LNG proposals within the NEPA framework.

More fundamentally, the lifecycle analyses both ask the wrong questions and do not reflect available science regarding LNG’s impacts.

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<sup>64</sup> *E.g.*, 85 Fed. Reg. at 78,202 (The life cycle “reports are not part of DOE’s NEPA review process.”).

### a) The Life Cycle Analyses Ask the Wrong Questions

New Fortress seeks authorization export gas from late 2023 through 2050.<sup>65</sup> DOE therefore must take a hard look at the environmental impact of expanded U.S. exports of LNG across that almost thirty-year time period, with the long-term gas production and use such exports necessarily entail. This includes addressing whether such impacts are consistent with the United States' climate goals. They are not. But the lifecycle analyses do not address this issue. That is, the analyses do not provide any discussion of whether increasing LNG export will help or hinder achievement of the long-term drastic emission reductions that are essential to avoiding the most catastrophic levels of climate change.

Instead, the environmental analyses DOE has conducted to date look only to the short term. The only questions asked by the analyses are “How does exported LNG from the United States compare with” other fossil fuels (coal or other gas) used in used “in Europe and Asia, from a life cycle [greenhouse gas] perspective?”<sup>66</sup> DOE has attempted to justify this narrow focus by arguing that in the present moment, LNG primarily competes with other sources of fossil fuel. But DOE has not contended, nor can it, that this will be true throughout the thirty-year requested authorization term.

Limiting global temperature rise to 1.5 degrees Celsius will require dramatic emission reductions in the near and long term, reductions which are inconsistent with further development of long-lived fossil fuel infrastructure in the U.S. or abroad, as confirmed by the International Energy Agency,<sup>67</sup> Intergovernmental Panel on Climate Change,<sup>68</sup> and others. Executive Order 14,008 appropriately instructs federal agencies to work to discourage other countries from “high carbon investments” or “intensive fossil fuel-based energy.”<sup>69</sup> The lifecycle analyses argue that

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<sup>65</sup> Application at 5.

<sup>66</sup> 84 Fed. Reg. 49,278, 49,279 (Sept. 19, 2019).

<sup>67</sup> Net Zero by 2050, *supra* note 3 at 101-02.

<sup>68</sup> Intergovernmental Panel on Climate Change, *Special Report: Global Warming of 1.5 C, Summary for Policymakers* at 13-17 (May 2019), *available at* [https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM\\_version\\_report\\_LR.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM_version_report_LR.pdf) (attached).

<sup>69</sup> Executive Order 14,008 at § 102(f), (h).

the infrastructure needed to receive and use U.S. LNG is not higher emitting than other sources of fossil fuel, but the analyses do not inform decisionmakers or the public whether facilities to use U.S. LNG are nonetheless such a “high-carbon,” “intensive” source of emission that they must be discouraged.

Even for the short term, the lifecycle analyses ignore important parts of the question of how DOE’s decision to authorize additional U.S. LNG exports will affect greenhouse gas emissions. DOE has recognized, for example, that increasing LNG exports will both cause some gas-to-coal shifting in the U.S. electric sector.<sup>70</sup> Similarly, DOE has acknowledged that “U.S. LNG Exports may ... compete with renewable energy ... as well as efficiency and conservation measures” in overseas markets.<sup>71</sup> Indeed, while DOE has refused to address the likely share of U.S. LNG exports that will be displaced by fossil fuels, peer reviewed research concludes that such exports are likely to play only a limited role in displacing foreign use of coal, and such that U.S. LNG exports are likely to increase net global GHG emissions.<sup>72</sup>

Finally, while it is important to address foreseeable overseas impacts of LNG exports, DOE also needs to examine the impact of increased exports specifically on domestic or territorial emissions. The world must transition away from fossil fuel development as quickly as possible. It is inappropriate, unfair, and nonstrategic for the U.S. to argue that it can nonetheless increase fossil fuel production, and enjoy the purported economic benefits thereof, because the associated emissions will be offset by foregone production elsewhere. Instead, nations’ commitments under the Paris Accord and similar agreements “should include greenhouse gas emissions and removals taking place within national territory and offshore areas over which the country has jurisdiction.”<sup>73</sup> Requiring nations to measure and report territorial emissions also ensures the reliability of emission calculations, as nations can only directly regulate emissions within their

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<sup>70</sup> EIA 2014, *supra* note 4, at 12, 19.

<sup>71</sup> DOE/FE Order 3638 at 202-03.

<sup>72</sup> Gilbert, A. Q. & Sovacool, B. K., *US liquefied natural gas (LNG) exports: Boom or bust for the global climate?*, Energy (Dec. 15, 2017), *available at* <https://doi.org/10.1016/j.energy.2017.11.098> (attached).

<sup>73</sup> Witi, J. & Romano, D., 2019 Refinement to the 2006 IPCC Guidelines for National Greenhouse Gas Inventories, Chapter 8: Reporting and Tables, *available at* [https://www.ipcc-nggip.iges.or.jp/public/2019rf/pdf/1\\_Volume1/19R\\_V1\\_Ch08\\_Reporting\\_Guidance.pdf](https://www.ipcc-nggip.iges.or.jp/public/2019rf/pdf/1_Volume1/19R_V1_Ch08_Reporting_Guidance.pdf), at 8.4.



borders. Estimates of emissions from activities within the U.S. are also likely to be more accurate than estimates that seek to trace the lifecycle of fuels combusted in an end use country. For all of these reasons, a hard look at the climate impact of increasing U.S. LNG exports must address the impact of such exports on domestic emissions specifically, in addition to including reasonable forecasting about global impacts.

### **b) The 2019 and 2014 Lifecycle Analyses Understate Emissions**

In addition to asking the wrong questions, DOE's prior lifecycle analyses are factually unsupported and understate emissions, as Sierra Club and NRDC have previously explained.

First, the 2019 analysis assumes that the "upstream emission rate" or "leak rate" of U.S. LNG exports—the amount of methane that is emitted to the atmosphere during production, processing, and transportation of gas to the export facility—is 0.7% of the gas delivered.<sup>74</sup> Studies measuring actual emissions find much leak rates: a 2020 study that found that oil and gas production in the Permian Basin had a leak rate of roughly 3.5% or 3.7%.<sup>75</sup> As we have previously explained, there are many reasons to believe these atmospheric measurements are more reliable than the "bottom up" estimates used by DOE—notably, the fact that bottom up estimates poorly represent the rare but severe major leaks that constitute a large fraction of upstream emissions.<sup>76</sup> Every year, new research further affirms that gas production emits greater amounts of methane than what DOE's analyses have assumed, despite ongoing efforts to reduce

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<sup>74</sup> Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update, 27, National Energy Technology Laboratory (Sept. 12, 2019), *available at* <https://www.energy.gov/sites/prod/files/2019/09/f66/2019%20NETL%20LCA-GHG%20Report.pdf>.

<sup>75</sup> See Yuzhong Zhang *et al.*, *Quantifying methane emissions from the largest oil-producing basin in the United States from space*, SCIENCE ADVANCES (Apr. 22, 2020), DOI: 10.1126/sciadv.aaz5120, *available at* <https://advances.sciencemag.org/content/6/17/eaaz5120/tab-pdf> (attached); *see also* Environmental Defense Fund: New Data: Permian Oil & Gas Producers Releasing Methane at Three Times National Rate (Apr. 7, 2020), *available at* <https://www.edf.org/media/new-data-permian-oil-gas-producers-releasing-methane-three-times-national-rate> (attached).

<sup>76</sup> Sierra Club, Comment on 2019 Update to Life Cycle Greenhouse Gas Perspective, at 6-8 (Oct. 21, 2019), *available at* <https://fossil.energy.gov/app/DocketIndex/docket/DownloadFile/604>.

methane emissions.<sup>77</sup> At a minimum, DOE must review and to respond to this research before approving any further LNG export applications.

### **III. Conclusion**

For the reasons stated above, Sierra Club et al.'s motion to intervene in this docket should be granted. The proposed export increase is not consistent with the public interest and should be denied. Recent events in Ukraine have demonstrated yet another reason why the world needs to transition away from fossil energy as quickly as possible; New Fortress's proposal for a project that will not start exports for several years is not part of a solution to current geopolitical problems. And DOE must not approve the application without reviewing whether current gas price spikes call into question DOE's prior analyses and assumptions about the effects of increased exports on domestic gas production and prices. Finally, DOE cannot approve the application without taking a hard look at foreseeable environmental impacts occurring throughout the LNG lifecycle.

Ultimately, the United States and nations around the globe have set ambitious but necessary goals for reducing greenhouse gas emissions during the proposed authorization period. Expanded gas exports and use cannot be reconciled with those goals, and this proposal should be denied.

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<sup>77</sup> See NRDC, *Sailing to Nowhere: Liquefied Natural Gas Is Not an Effective Climate Strategy* (Dec. 2020), available at <https://www.nrdc.org/sites/default/files/sailing-nowhere-liquefied-natural-gas-report.pdf> (attached); Kayrros, *U.S. Methane Emissions from Fossil Fuels at Risk of Worsening In 2022, Extending 2021 Trend* (June 2022) (attached).

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UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF )  
 )  
New Fortress Energy Louisiana ) FE Docket No. 22-39-LNG  
FLNG LLC )

**SIERRA CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE**

Pursuant to 10 C.F.R. § 590.103(b), I, Rebecca McCreary, hereby certify that I am a duly authorized representative of the Sierra Club, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy and Carbon Management, on behalf of the Sierra Club, the foregoing documents and in the above captioned proceeding.

Dated at Boulder, CO this 11<sup>th</sup> day of July, 2022

/s/ Rebecca McCreary  
Rebecca McCreary  
Associate Attorney  
1650 38th St., Ste. 102W  
Boulder, CO 80301  
rebecca.mccreary@sierraclub.org  
303-449-5595 ext. 103  
*Attorney for Sierra Club*

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF )  
 )  
New Fortress Energy Louisiana ) FE Docket No. 22-39-LNG  
FLNG LLC )

**SIERRA CLUB VERIFICATION**

Pursuant to 10 C.F.R. § 590.103(b), I, Rebecca McCreary, hereby verify under penalty of perjury that I am authorized to execute this verification, that I have read the foregoing document, and that the facts stated therein are true and correct to the best of my knowledge.

Executed at Boulder, CO on July 11, 2022

/s/ Rebecca McCreary  
Rebecca McCreary  
Associate Attorney  
1650 38th St., Ste. 102W  
Boulder, CO 80301  
rebecca.mccreary@sierraclub.org  
303-449-5595 ext. 103  
*Attorney for Sierra Club*

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	)	
	)	
New Fortress Energy Louisiana	)	FE Docket No. 22-39-LNG
FLNG LLC	)	

**HEALTHY GULF VERIFICATION**

Pursuant to 10 C.F.R. § 590.103(b), we, Naomi Yoder and Cynthia Sarthou, hereby verify under penalty of perjury that we are authorized to execute this verification, that we have read the foregoing document, and that the facts stated therein are true and correct to the best of our knowledge.

Dated at Houston, TX this 11th day of July, 2022

/s/ Naomi Yoder  
Naomi Yoder  
Staff Scientist  
PO Box 66226  
Houston, TX 77266  
naomi@healthygulf.org  
504-525-1528 ext. 213  
*Staff Scientist for Healthy Gulf*

/s Cynthia Sarthou  
Cynthia Sarthou  
Executive Director  
PO Box 2245  
New Orleans, LA 70176  
cyn@sierraclub.org  
504-525-1528  
*Executive Director for Healthy Gulf*

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF )  
 )  
New Fortress Energy Louisiana ) FE Docket No. 22-39-LNG  
FLNG LLC )

**HEALTHY GULF CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE**

Pursuant to 10 C.F.R. § 590.103(b), we, Naomi Yoder and Cynthia Sarthou, hereby certify that we are duly authorized representatives of Healthy Gulf, and that we are authorized to sign and file with the Department of Energy, Office of Fossil Energy and Carbon Management, on behalf Healthy Gulf, the foregoing documents and in the above captioned proceeding.

Dated at Houston, TX this 11<sup>th</sup> day of July, 2022

/s/ Naomi Yoder

Naomi Yoder  
Staff Scientist  
PO Box 66226  
Houston, TX 77266  
naomi@healthygulf.org  
504-525-1528 ext. 213

*Staff Scientist for Healthy Gulf*

/s Cynthia Sarthou

Cynthia Sarthou  
Executive Director  
PO Box 2245  
New Orleans, LA 70176  
cyn@sierraclub.org  
504-525-1528

*Executive Director for Healthy Gulf*

UNITED STATES OF AMERICA  
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IN THE MATTER OF )  
 )  
New Fortress Energy Louisiana ) FE Docket No. 22-39-LNG  
FLNG LLC )

**LOUISIANA BUCKET BRIGADE VERIFICATION**

Pursuant to 10 C.F.R. § 590.103(b), I, James Hiatt, hereby verify under penalty of perjury that I am authorized to execute this verification, that I have read the foregoing document, and that the facts stated therein are true and correct to the best of my knowledge.

Executed at Lake Charles, LA on July 11, 2022.

/s/ James Hiatt  
James Hiatt  
Southwest Louisiana Coordinator  
Louisiana Bucket Brigade  
PO Box 7262  
Lake Charles, LA 70606  
james@labucketbrigade.org  
337-515-0655



UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF )  
 )  
New Fortress Energy Louisiana ) FE Docket No. 22-39-LNG  
FLNG LLC )

**LOUISIANA BUCKET BRIGADE CERTIFIED STATEMENT OF AUTHORIZED  
REPRESENTATIVE**

Pursuant to 10 C.F.R. § 590.103(b), I, James Hiatt, hereby certify that I am a duly authorized representative of the Louisiana Bucket Brigade, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy and Carbon Management, on behalf of the Louisiana Bucket Brigade, the foregoing documents and in the above captioned proceeding.

Dated at Lake Charles, LA this 11<sup>th</sup> day of July, 2022

/s/ James Hiatt  
James Hiatt  
Southwest Louisiana Coordinator  
Louisiana Bucket Brigade  
PO Box 7262  
Lake Charles, LA 70606  
james@labucketbrigade.org  
337-515-0655

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF )  
 )  
New Fortress Energy Louisiana ) FE Docket No. 22-39-LNG  
FLNG LLC )

**CENTER FOR BIOLOGICAL DIVERSITY VERIFICATION**

Pursuant to 10 C.F.R. § 590.103(b), I, Kristen Monsell, hereby verify under penalty of perjury that I am authorized to execute this verification, that I have read the foregoing document, and that the facts stated therein are true and correct to the best of my knowledge.

Executed at Oakland, CA July 11, 2022,

/s/ Kristen Monsell  
Kristen Monsell  
Oceans Legal Director & Senior Attorney  
Center *for* Biological Diversity  
1212 Broadway, Ste. 800  
Oakland, CA 94612  
Phone: 510.844.7137  
Email: kmonsell@biologicaldiversity.org

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF )  
 )  
New Fortress Energy Louisiana ) FE Docket No. 22-39-LNG  
FLNG LLC )

**CENTER FOR BIOLOGICAL DIVERSITY CERTIFIED STATEMENT OF  
AUTHORIZED REPRESENTATIVE**

Pursuant to 10 C.F.R. § 590.103(b), I, Kristen Monsell, hereby certify that I am a duly authorized representative of the Center for Biological Diversity (Center), and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy and Carbon Management, on behalf of the Center, the foregoing documents and in the above captioned proceeding.

Dated at Oakland, CA July 11, 2022,

/s/ Kristen Monsell

Kristen Monsell  
Oceans Legal Director & Senior Attorney  
Center for Biological Diversity  
1212 Broadway, Ste. 800  
Oakland, CA 94612  
Phone: 510.844.7137  
Email: kmonsell@biologicaldiversity.org

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
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IN THE MATTER OF	)	
	)	
New Fortress Energy Louisiana	)	FE Docket No. 22-39-LNG
FLNG LLC	)	

**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 590.107, I, Rebecca McCreary, hereby certify that I caused the above documents to be served on the persons included on the official service list for this docket, as provided by DOE/FE, on July 11, 2022.

/s/ Rebecca McCreary  
Rebecca McCreary  
Associate Attorney  
1650 38th St., Ste. 102W  
Boulder, CO 80301  
rebecca.mccreary@sierraclub.org  
303-449-5595 ext. 103  
*Attorney for Sierra Club*