

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY**

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

**ANSWER OF ALASKA GASLINE DEVELOPMENT CORPORATION
IN OPPOSITION
TO MOTION FOR LATE INTERVENTION OF
COOK INLETKEEPER AND CENTER FOR BIOLOGICAL DIVERSITY**

Pursuant to 10 C.F.R. § 590.303(e), Alaska Gasline Development Corporation (“AGDC”), a party to this proceeding, hereby files its Answer (“Answer”) to the late-filed Motion to Intervene (“Motion”) of the Center for Biological Diversity (“CBD”) and Cook Inletkeeper (together “Movants”) in the above-captioned proceeding. As explained below, Movants have not shown good cause to intervene in this proceeding nearly eight years after it began. The granting of the Movants’ Motion would negatively impact the proceeding by introducing delay, and would prejudice AGDC and other parties by requiring them to engage with and address the positions of additional adverse parties on rehearing and on judicial review after the proceeding has already been underway for the better part of a decade. As demonstrated by the Movants’ recent filing of comments in the Draft Supplemental Environmental Impact Statement (“DSEIS”) jointly with an existing party, the Sierra Club, Movants’ interests are more than adequately represented by parties to this proceeding who intervened in a timely manner.¹ For these reasons, the Motion should be denied.

¹ Movants filed comments on the DSEIS jointly with the Sierra Club, which is a party to this proceeding, and Earthjustice, which is not a party and which has not moved to intervene at this late date.

I. MOVANTS HAVE NOT SHOWN GOOD CAUSE FOR MOVING TO INTERVENE NEARLY EIGHT YEARS AFTER THE PROCEEDING BEGAN

Section 590.303 of DOE's rules provides that motions for intervention must be filed by the date fixed in the applicable FE notice unless a later date is permitted by the Assistant Secretary for good cause shown and after considering the impact of granting the late motion. 10 C.F.R § 590.303 (2021). The Federal Register Notice in this docket established November 17, 2014 as the deadline for interventions.² Movants claim that there is good cause to grant their motion to intervene almost eight years after the deadline "because it was submitted during the DSEIS comment period and was prompted by issues and positions raised for the first time in the DSEIS." Motion at 3. Movants knew, or should have known, however, as early as 2014 when the application in this docket was first filed that the Department of Energy's Office of Fossil Energy ("DOE/FE") would address the environmental impacts of natural gas exports from the Alaska LNG Project.³ Movants' claim that they had no notice DOE/FE would consider lifecycle greenhouse gas ("GHG") emissions of the project. Motion at 3. Whether it was known at the deadline for intervention that DOE/FE would in fact examine this specific environmental impact is not the question. Movants knew, or should have known, that DOE/FE would review the environmental impacts of the exports for which authority was sought, which could include GHG emissions, as part of its NEPA analysis.⁴ Movants should have been aware that lifecycle greenhouse gas issues could be raised in a NEPA review, and as discussed below, CBD has specifically advocated that DOE is required

² 79 Fed. Reg. 55,764 (Sept. 17, 2014).

³ *Id.* at 55,765 (providing notice that DOE/FE would consider issues required by law or policy implicated by the application for approval from the Alaska LNG Project, and reciting Alaska LNG's note that DOE/FE typically completes a NEPA review as a cooperating agency)

⁴ *Id.*

to analyze these impacts. Movants had ample opportunity to intervene to protect its interests not only eight years ago, but at numerous stages of DOE's review process during the last eight years. It is much too late to allow such intervention at the 11th hour.

DOE/FE has rejected late-filed interventions based on the requirements of this regulation in similar circumstances. In *Sabine Pass Liquefaction, LLC*, Order No. 2961-A, FE Docket No. 10111-LNG (Aug 7, 2012), for example, DOE/FE denied the Sierra Club's motion to intervene filed 16 months after the due date for interventions. DOE/FE found that the Sierra Club was put on notice by the Notice of Application published in the Federal Register that DOE would consider environmental effects of its proposed decision. Order at 24-25. Considering the impact of allowing Sierra Club's late intervention as required by its rules, DOE/FE found that allowing such intervention would delay the issuance of final agency action and prejudice other parties in the proceeding. Order at 26.

In the instant case, Movants seek to intervene almost *eight years* out of time. It also should be noted that Movants have joined with the Sierra Club and Earthjustice in filing comments on the DSEIS. Thus, their comments will be considered by DOE/FE is issuing a final order and they will not be prejudiced by a denial of their motion. The purpose of Movants' motion is to provide it with the right and opportunity to seek rehearing of a final order and subsequently seek judicial review. This is precisely the type of delay and harm that will prejudice AGDC.

Movants further claim that DOE/FE should grant their request because Federal Energy Regulatory Commission ("FERC") "rules implementing NEPA specify that intervention is not late when prompted by an EIS." Motion at 4. Setting aside the fact that DOE/FE must abide by its

own rules and not those of another agency such as FERC,⁵ Movants' suggestion that FERC would grant late intervention in these circumstances is speculative at best, and in fact likely incorrect.

That is true for two reasons. First, FERC has clarified that while its regulations do allow for timely intervention based upon issuance of a draft EIS, a party may not automatically obtain late intervention in a *supplemental* environmental assessment context after the initial draft EIS, and instead must show good cause.⁶ Similar to how DOE/FE should find the situation presented here by Movants, FERC found that “[w]hen the Commission issues public notice of an application before it, as it did here, it is up to interested entities to decide whether the application presents issues of sufficient concern to warrant intervening in the proceeding” and denied the motion for late intervention. *Id.* at P 18. Thus, even if this FERC rule were to be applied by DOE/FE to its own proceedings, it should not apply to a draft *supplemental* EIS issued years after the intervention deadline, especially when Movants had for some time sufficient notice that their interests could be affected.

FERC's admonition that it is up to interested entities to decide whether an application presents issues of sufficient concern to warrant timely intervention is particularly applicable to CBD. CBD has been raising concerns over GHG emissions in connection with numerous energy infrastructure projects, including FERC's authorization of an NGA Section 3 license to construct this very same project.⁷ Moreover, over two years ago, CBD filed comments in which it contended

⁵ FERC's regulations include a full slate of procedures for proceedings involving the NEPA process separate from those of DOE/FE. *Compare* 18 C.F.R. § 380.1 *et seq.* with 10 C.F.R. § 590.301 *et seq.*

⁶ *City and County of Denver, Colorado*, 165 FERC ¶ 61,120 at P 14 (2018) (Order Denying Rehearing).

⁷ CBD has appealed FERC's grant of an NGA Section 3 license to construct the Alaska LNG Project and moved to consolidate the Sierra Club's appeal of DOE's grant of export authorization in this docket with that appeal. *See* Joint Motion to Consolidate Case Nos. 20-139 and 20-1503 dated January 19, 2021. CBD

that DOE is obligated to analyze GHG emissions from LNG exports. In Docket DOE-HQ-2020-0017, CBD filed comments on DOE’s proposal to update its procedures for implementing NEPA in connection with NGA Section 3 export authorizations. In these comments, CBD argued that DOE is required to analyze the environmental impacts of LNG exports “including the direct and indirect greenhouse gas emissions that will result from those export authorizations...”⁸ Given CBD’s position that DOE is required to analyze GHG emissions related to LNG exports, it is not credible to argue now that it did not know DOE/FE could in fact undertake the very analysis CBD said two years ago it was required to perform. Movants’ contention that its interest in this proceeding was prompted by the DSEIS is belied by its own words and should be given no weight. At a minimum, CBD should have sought to intervene no later than when it developed its position that DOE is required to analyze GHG emissions in NGA Section 3 export applications.

Second, FERC has adopted a more restrictive approach toward late interventions in NGA Section 3 LNG license and Section 7 project certificate proceedings. In *Tennessee Gas Pipeline Co.*, 162 FERC ¶ 61,067 at PP 45-51 (2018), FERC expressed its concern with the number of late interventions being filed in certificate proceedings without a showing of good cause. Due to the potential disruption these late-filed motions to intervene could cause, FERC adopted a policy of being “less lenient” in the grant of late interventions and stated its intention to require late movants to meet the requirements of its rules, including (1) a showing of good cause for the late filing; (2) that the late intervention would not disrupt the proceeding; (3) that the movant’s interest is not

was certainly aware of Sierra Club’s request for DOE to perform a GHG lifecycle analysis in its request for rehearing of Order No. 3643-A, and could have sought to intervene at that time as well.

⁸ See Comments of CBD in Docket No. DOE-HQ-2020-0017, dated June 1, 2020 at 1-3.

adequately represented by other parties in the proceeding; and (4) that late intervention would not prejudice, or impose burdens on, other parties to the proceeding. 18 C.F.R. § 385.214(d) (2021).

Applying these criteria, Movants' motion should be denied.

1. Movants Have Not Established Good Cause

As discussed above, Movants have not provided an adequate justification for failing to intervene by the due date, or at a minimum, much earlier than eight years later. Movants were surely aware of DOE/FE's NEPA obligations and could and should have intervened to protect their interests.

2. Movants' Interests in this Proceeding are Already Adequately Represented by the Sierra Club.

In their Motion, Movants make no reference to the fact that their interests are already more than adequately represented by Sierra Club—an organization with fundamentally similar goals, and similar, if not identical, positions in opposition to the sufficiency of the DSEIS in this proceeding.⁹ Indeed, Movants effectively concede as much when they state that, “[w]henver possible,” they “will endeavor to coordinate joint filings with Sierra Club”. Motion at 3. And, as stated above, Movants have in fact already filed comments on the DSEIS jointly with the Sierra Club.

Movants' argument that good cause exists in order to “serve NEPA's purposes by protecting movants' full participation in the NEPA process” simply ignores the fact that Sierra Club already represents the same interests as Movants, and, as Movants note, is already a party to this proceeding (and has been for over seven years). *Id.* AGDC notes that Sierra Club timely

⁹ Motion at 3; *See* Comments on the Draft Supplemental Environmental Impact Statement for the Alaska LNG Project, Sierra Club, Earthjustice, Center for Biological Diversity, and Cook Inletkeeper, at 1-2, FE Docket No. 14-96-LNG (Aug. 19, 2022) (“Sierra Club Comments”).

intervened in this proceeding on November 17, 2014.¹⁰ Accordingly, Movants' interests are already protected and their late intervention is not necessary.

3. Movants' Late Intervention Could Disrupt and Delay the Proceeding and Prejudice AGDC.

Movants' claim that "[t]heir intervention would not impact the proceeding," or "would have no undue impact on the proceedings because movants only seek to pursue issues raised in the NEPA process." Motion at 1, 3. The claim that their intervention would not impact the proceeding is simply not true and their representation that they would pursue only issues raised in the NEPA process does not ensure that AGDC and other parties will not be prejudiced by their participation. Limiting their participation to "issues raised in the NEPA process" would allow these parties to raise a wide variety of issues, including ones not already raised in the proceeding. In this connection, AGDC would note that the comments jointly filed by Movants include many arguments in the NEPA process that are beyond the scope of the limited purpose of the SEIS. The limitation to "issues raised in the NEPA process" will not prevent harm to existing parties because it will allow Movants to revisit issues already decided and/or to raise new ones. Even Movants' representation that it will coordinate joint filings with Sierra Club is caveated with the phrase "whenever possible." Motion at 3. This caveat reinforces the notion that Movants may very well seek to raise issues and arguments that Sierra Club does not, rendering it "not possible" for Movants to join a Sierra Club pleading. In such event, such additional pleadings will increase the complexity and volume of filings in this proceeding, and impose a burden on other parties, including AGDC, to respond to them.

¹⁰ Sierra Club's Motion to Intervene and Protest at 1-3, FE Docket No. 14-96-LNG (Nov. 17, 2014).

The potential harm to AGDC from any further delay in DOE's issuance of a final order is real and substantial. Due to recent global events, including Russia's invasion of Ukraine and subsequent economic sanctions imposed on Russia, Europe's consumption of natural gas produced in Russia has diminished and Europe's demand for LNG has correspondingly increased. This increase in LNG demand provides an enhanced window of opportunity for AGDC to secure LNG tolling agreements, as well as financing commitments, needed to proceed with construction of the project. Potential investors and customers rely on the existence of regulatory approvals needed for the project. Any delay in obtaining final approvals adversely affects AGDC's ability to obtain needed customer and financing commitments.

As noted, Movants state their intention to coordinate, and have in fact joined, with the Sierra Club (and Earthjustice) in the filing of comments on the DSEIS. If granted late intervention, it is not known whether Movants will join in future rehearing requests and potential appeals. Either way, however, late intervention should be denied. If Movants do intend to jointly file a rehearing request and appeal, they do not need to intervene because their interests are already adequately represented by the Sierra Club. If, on the other hand, if Movants file their own rehearing request(s) or appeal(s), AGDC will be unfairly prejudiced by having to respond to additional pleadings and arguments, and any delay resulting from action taken by these additional parties.

II. CONCLUSION

For the foregoing reasons, AGDC respectfully requests DOE/FE, or the Assistant Secretary, to deny Movants' Motion.

Respectfully Submitted,

/s/ Howard L. Nelson

Howard L. Nelson
Kenneth M. Minesinger
Jacques LeBris Erffmeyer
Greenberg Traurig, LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037
202-331-3163
nelsonh@gtlaw.com

Attorneys for Alaska Gasline Development Corporation

Dated: August 30, 2022

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY**

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

VERIFICATION

WASHINGTON §
§
DISTRICT OF COLUMBIA §

Pursuant to C.F.R. §590.103(b), Howard L. Nelson affirms that he is authorized to execute this verification, that he has read the foregoing document, and that facts stated herein are true and correct to the best of his knowledge, information, and belief.

/s/ *Howard L. Nelson*

Howard L. Nelson
Greenberg Traurig, LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037
202-331-3163
nelsonh@gtlaw.com

August 30, 2022

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY**

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

CERTIFICATE OF SERVICE

I hereby certify that I caused the above documents to be served on the applicant and all other parties in this docket, in accordance with 10 C.F.R. § 590.107, on August 30, 2022.

Dated at Washington, DC, this 30th day of August, 2022.

/s/ Howard L. Nelson

Howard L. Nelson
Greenberg Traurig, LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037
202-331-3163
nelsonh@gtlaw.com