

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

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Energía Costa Azul, S. de R.L. de C.V. ) **Docket No. 18-145-LNG**  
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**ANSWER OF ENERGÍA COSTA AZUL, S. DE R.L. DE C.V. IN OPPOSITION TO  
MOTION TO INTERVENE OF SIERRA CLUB AND PROTEST OF SIERRA CLUB  
AND CENTRO MEXICANO PARA LA DEFENSA DEL MEDIO AMBIENTE, A.C.**

Pursuant to Sections 590.303(e) and 590.304(f) of the Department of Energy’s (“DOE”) regulations,<sup>1</sup> Energía Costa Azul, S. de R.L. de C.V. (“ECA”) hereby submits this Answer to the motion to intervene of Sierra Club and protest of Sierra Club and Centro Mexicano para la Defensa del Medio Ambiente, A.C.’s (“DAN”) submitted to the DOE Office of Fossil Energy and Carbon Management (“DOE/FECM”)<sup>2</sup> on November 28, 2022, in the above-captioned proceeding.<sup>3</sup> For the reasons discussed below, ECA respectfully requests that the DOE/FECM deny Sierra Club’s intervention and Sierra Club’s and DAN’s protest. In support of this Answer, ECA states as follows:

**I. BACKGROUND**

On September 27, 2018, ECA filed an application in FE Docket No. 18-145-LNG requesting authorization to export 545 billion standard cubic feet per year (“Bcf/yr”) of natural gas by pipeline to Mexico, through any existing and future cross-border pipeline facilities interconnecting the United States and Mexico; and 475 Bcf/y in the form of LNG from Baja California, Mexico to (i) any other nation that currently has or in the future develops the capacity

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<sup>1</sup> 10 C.F.R §§ 590.303(e) & 590.304(f) (2022).  
<sup>2</sup> On July 4, 2021, during the pendency of this proceeding, the Office of Fossil Energy (“DOE/FE”) changed its name to the Office of Fossil Energy and Carbon Management.  
<sup>3</sup> Motion to Intervene of Sierra Club and Protest of Sierra Club and Central Mexicano para la Defense del Medio Ambiente, A.C., FE Docket No. 18-145-LNG (Nov. 28, 2022) [hereinafter “Sierra Club Filing”].

to import LNG and with which the United States currently has, or in the future enters into, a free trade agreement (“FTA”), and any nation with which the United States does not have an FTA requiring the national treatment for trade in natural gas (“Non-FTA” nations).<sup>4</sup> The Project will be located north of Ensenada, Baja California, Mexico and will be capable of receiving, processing, and liquefying the U.S.-sourced natural gas, storing the resulting LNG, and loading the LNG onto ocean-going LNG carriers for re-export to other countries. The Project is designed to meet the growing global demand for North American-sourced LNG over the next few decades.

On January 25, 2019, DOE/FECM issued Order No. 4318, granting ECA authorization to export natural gas to Mexico and to other FTA countries.<sup>5</sup> On March 29, 2019, DOE/FECM issued Order No. 4365, granting ECA authorization to re-export U.S. sourced natural gas from Mexico to Non-FTA countries.<sup>6</sup>

On September 18, 2020, ECA filed an amendment to its long-term FTA and Non-FTA authorizations, seeking to increase its authorized volume of total exports and/or re-exports by an additional (i) 182 Bcf/yr of natural gas to FTA countries, and (ii) 161 Bcf/yr to Non-FTA countries (“Design Increase Application”).<sup>7</sup> On October 13, 2020, DOE/FECM published Notice of the

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<sup>4</sup> Application for Long-Term, Multi-Contract Authorizations to Export Natural Gas to Mexico and to Export Liquefied Natural Gas from Mexico to Free Trade Agreement and Non-Free Trade Agreement Nations FE Docket No. 18-145-LNG, (Sept. 27, 2018).

<sup>5</sup> *Energía Costa Azul, S. de R.L. de C.V.*, DOE/FE Order No. 4318, FE Docket No. 18-145-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Natural Gas to Mexico and to Other Free Trade Agreement Nations (Jan. 25, 2019).

<sup>6</sup> *Energía Costa Azul, S. de R.L. de C.V.*, DOE/FE Order No. 4365, FE Docket No. 18-145-LNG, Opinion and Order Granting Long-Term Authorization to Re-Export U.S.-Sourced Natural Gas in the Form of Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Countries, (Mar. 29, 2019)

<sup>7</sup> Application to Amend Long-Term, Multi-Contract Authorizations to Export Liquefied Natural Gas to Mexico and to Export Liquefied Natural Gas from Mexico to Free Trade Agreement Nations and Non-Free Trade Agreement Nations, FE Docket No. 18-145-LNG (Sept. 18, 2020) [hereinafter “Design Increase Application”].

Design Increase Application in the *Federal Register*, setting a deadline of December 14, 2020, for interventions, protests, and comments.<sup>8</sup>

The FTA portion of the Design Increase Application was granted on June 11, 2021, in Order No. 4318-B.<sup>9</sup> On July 12, 2022, DOE/FECM issued notice that it would prepare an Environmental Assessment (“EA”) of the Design Increase Application under the National Environmental Policy Act (“NEPA”).<sup>10</sup> In that notice, DOE/FECM explicitly noted that because no protests or motions to intervene in opposition had been filed, the Design Increase Application is uncontested.<sup>11</sup> DOE/FECM issued the Environmental Assessment on October 28, 2022.<sup>12</sup>

On November 28, 2022—approximately two years after the close of the intervention and comment deadline set by DOE/FECM—Sierra Club filed its motion to intervene, and Sierra Club and DAN filed a protest.

## II. ANSWER

### A. *Sierra Club’s Late-Filed Motion to Intervene Fails to Show the Requisite Good Cause and Should Be Rejected*

DOE/FECM should reject Sierra Club’s out-of-time intervention. Sierra Club’s pleading is a late-filed motion to intervene that has been filed approximately two years after the close of the intervention period for the Design Increase Application. DOE/FECM’s Notice, issued on October 13, 2020, clearly stated that “[p]rotests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed . . . ***no later***

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<sup>8</sup> Department of Energy, *Energía Costa Azul, S. de R.L. de C.V.; Application To Amend Long-Term Authorization To Export Natural Gas to Mexico and To Re-Export Liquefied Natural Gas From Mexico to Non-Free Trade Agreement Nations*, Notice of Amendment, 85 Fed. Reg. 64452 (2020) [hereinafter “Notice”].

<sup>9</sup> *Energía Costa Azul, S. de R.L. de C.V.*, DOE/FE Order No. 4318-B, FE Docket No. 18-145-LNG, Order Amending Long-Term Authorization to Export Natural Gas to Mexico and to Other Free Trade Agreement Nations (June 11, 2021).

<sup>10</sup> *Energía Costa Azul, S. de R.L. de C.V.*, Docket No. 18-145-LNG, Notice of Environmental Assessment (July 12, 2022)

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Energía Costa Azul, S. de R.L. de C.V.*, Docket No. 18-145-LNG, Environmental Assessment (Oct. 28, 2022).

*than 4:30 p.m., Eastern time, December 14, 2020.*”<sup>13</sup> Sierra Club had ample opportunity to file a timely motion to intervene and failed to do so.

Sierra Club ignores the DOE’s rules by stating that there is no particular standard for *timely* intervention. This is wrong and in direct contravention of DOE/FECM’s specific instructions to Sierra Club about compliance with its procedural regulations. First, Sierra Club’s intervention, filed approximately two years after the December 14, 2020 deadline established by DOE/FECM’s Notice, is blatantly not a “timely intervention.” And second, DOE’s rules set out a clear standard for the treatment of untimely interventions. Section 590.303(d) of DOE’s rules clearly provides:

[m]otions to intervene may be filed . . . ***no later than the date fixed for filing such motions or notices in the applicable FE notice or order***, unless a later date is permitted by the Assistant Secretary for ***good cause shown*** and after ***considering the impact*** of granting the late motion of the proceeding.<sup>14</sup>

Sierra Club disregards each aspect of this regulation: it has failed to make its filing within the date fixed in DOE/FECM’s notice; it has not even attempted to demonstrate the requisite good cause to accept its extremely late filing (in fact, Sierra Club neither acknowledges the fact that its intervention is late-filed or the existence of rule 590.303(d)); and it makes no attempt to address the impacts of its late-filed intervention. Good cause does *not* exist to permit Sierra Club’s untimely motion to intervene and protest. As DOE/FECM has explained, it “provide[s] a 60-day notice period in recognition of the need to afford the public sufficient time to consider the import of th[e] proceeding.”<sup>15</sup> As DOE has explained, “at some point, the opportunity for interested persons to intervene as parties in a proceeding must close” to “ensure that the resolution of a proceeding and the issuance of a final order are not unduly delayed by inattentiveness or intentional

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<sup>13</sup> 85 Fed. Reg. 64452 (emphasis added).

<sup>14</sup> 10 C.F.R. § 590.303(d) (emphasis added).

<sup>15</sup> *Freeport LNG Expansion, L.P.*, DOE/FE Order No. 3357, FE Docket No. 11-161-LNG, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations, at 145 (Nov. 15, 2013).

delay.”<sup>16</sup> Sierra Club has moved to intervene in several export authorization proceedings before DOE/FECM and should be familiar with DOE procedures and regulations. Despite this, Sierra Club has neither acknowledged nor explained why it failed to comply with those procedures and regulations by filing its intervention and protest approximately *two years* after the close of the comment deadline. Nor has Sierra Club made any attempt to show that good cause exists to grant the intervention.

The impact of granting the late motion on the proceeding weighs strongly in favor of rejecting the filing—granting Sierra Club’s motion to intervene at this late stage of the proceeding will in fact be highly prejudicial to ECA and disruptive to the proceedings, particularly given that the comment period closed approximately two years ago, and the Environmental Assessment was issued over a month ago. Accordingly, ECA respectfully submits that Sierra Club’s motion to intervene and protest should be denied in its entirety.

**B. *Similarly, Sierra Club and DAN Fail to Show Good Cause Supporting Their Late-Filed Protest***

Sierra Club and DAN also fail to acknowledge the lateness of their protest and to demonstrate the good cause required to permit late-filed protests. As with interventions, the deadline for protests to the Design Increase Application was December 14, 2020.

Section 590.304(e) of DOE’s rules bars late-filed protests unless permitted by the Assistant Secretary for good cause shown:

[p]rotests may be filed at any time following the filing of an application, but *no later than the date fixed for filing protests in the applicable FE notice* or order, unless a later date is permitted by the Assistant Secretary *for good cause shown*.<sup>17</sup>

Sierra Club in particular should be well aware of this requirement as the DOE/FECM has

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<sup>16</sup> *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG, Procedural Order on Late Filed Pleadings, at 5 (Mar. 25, 2011).

<sup>17</sup> 10 C.F.R. § 590.304(e).

recently noted, “Sierra Club’s submissions in prior proceedings demonstrate its awareness of the requirement to timely file its protest opposing [an export] Application during the comment period set forth in the Notice . . .”<sup>18</sup> Despite this admonition from just five months ago, Sierra Club has again filed a protest more than **23 months after** the close of the comment period specified in the Notice in disregard of DOE/FECM’s regulations and instructions. Rather, Sierra Club and DAN fail to acknowledge that their protest is late-filed or to make any attempt to show the requisite good cause for accepting their protest.

Entertaining Sierra Club’s and DAN’s arguments at this extremely late hour would be highly prejudicial to ECA and disruptive to the proceedings, interfering with DOE/FECM’s ability to develop a record upon which it can render a final decision. As the DOE/FECM Notice stated, “A decisional record on [ECA’s] Application will be developed through responses to this Notice by parties, including the parties’ written comments and replies thereto.”<sup>19</sup> The lodging of a protest at this late stage has the effect of “undermining the public interest in administrative efficiency and finality and rendering [DOE’s] comment period meaningless. It would also exacerbate fairness and due process concerns for parties seeking finality in administrative decisions.”<sup>20</sup> Accordingly, the protest should be rejected.

**C. *Sierra Club and DAN Fail to Demonstrate that the Design Increase Application is Inconsistent with the Public Interest***

As shown above, Sierra Club’s intervention and Sierra Club’s and DAN’s protest should be rejected as late-filed submissions for which the requisite good shown has not been

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<sup>18</sup> *Magnolia LNG, LLC*, DOE/FECM Order No. 3909-D, FE Docket No. 13-132-LNG, Order Denying Request for Rehearing of Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 7 (June 24, 2022); *accord Golden Pass LNG Terminal LLC*, DOE/FECM Order No. 3978-F, FE Docket No. 12-156-LNG, Order Denying Request for Rehearing of Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 7 (June 24, 2022).

<sup>19</sup> 85 Fed. Reg. at 64453.

<sup>20</sup> *Magnolia*, DOE/FECM Order No. 3909-D, at 8 (citing *Tennessee Gas Pipeline Company v. Federal Energy Regulatory Commission*, 871 F.2d 1099 (D.C. Cir. 1989)).

demonstrated. However, even putting aside these procedural infirmities, the substantive arguments raised in Sierra Club’s and DAN’s pleading are meritless. In their protest, Sierra Club and DAN make a number of public interest and NEPA-related arguments that are unsupported and should be rejected.

**1. *Sierra Club’s and DAN’s Claims That the Proposed Exports are Inconsistent with the Public Interest are Baseless***

According to Sierra Club and DAN, the Design Increase Application is contrary to the public interest because the requested exports will allegedly have negative impacts on domestic energy prices and supply. Sierra Club’s and DAN’s arguments in this regard variously mischaracterize the public interest standard or make unsupported or illogical claims regarding the market impacts of LNG exports, and should therefore be rejected.

*a. Public Interest Standard and DOE LNG Export Studies*

The general standard for review of applications to export natural gas to Non-FTA countries is established by section 3(a) of the NGA.<sup>21</sup> In applying this provision, the DOE/FECM has consistently found that section 3(a) creates a rebuttable presumption that proposed exports of natural gas are in the public interest.<sup>22</sup> The DOE/FECM will grant a Non-FTA export application

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<sup>21</sup> 15 U.S.C. § 717b(a) (“[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary] authorizing it to do so. The [Secretary] shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.”).

<sup>22</sup> *Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017). *See also, e.g., Lake Charles Exports, LLC*, DOE/FE Order No. 3324-A, FE Docket No. 11-59-LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas By Vessel From the Lake Charles Terminal in Calcasieu Parish, Louisiana, to Non-Free Trade Agreement Nations at 13 (July 29, 2016); *Lake Charles LNG Export Co.*, DOE/FE Order No. 3868, FE Docket No. 13-04-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Lake Charles Terminal in Calcasieu Parish, Louisiana to Non-Free Trade Agreement Nations at 11 (July 29, 2016); *Cameron LNG, LLC*, DOE/FE Order No. 3846, FE Docket No. 15-90-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From Trains 4 and 5 of the Cameron LNG Terminal in Cameron and Calcasieu Parishes, Louisiana, to Non-Free Trade Agreement Nations at 10 (July 15, 2016); *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 3792, FE Docket No. 15-63-LNG, Final Opinion and Order Granting Long-Term, Multi-Contract

unless opponents of the application make an affirmative showing based on evidence in the record that the export would be inconsistent with the public interest.<sup>23</sup>

The DOE/FECM's prior decisions have looked to the 1984 Policy Guidelines setting out the criteria to be employed in evaluating applications for natural gas imports.<sup>24</sup> While nominally applicable to natural gas import cases, the DOE/FECM has found these Policy Guidelines applicable to natural gas export applications, as well.<sup>25</sup> The goals of the Policy Guidelines are to minimize federal control and involvement in energy markets and to promote a balanced and mixed energy resource system. The Policy Guidelines provide that:

The market, not government, should determine the price and other contract terms of imported [or exported] gas. . . . The federal government's primary responsibility in authorizing imports [or exports] should be to evaluate the need for the gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market.<sup>26</sup>

The DOE/FECM's analysis has also been guided by DOE Delegation Order No. 0204-111.<sup>27</sup> According to the Delegation Order, exports of natural gas are to be regulated primarily "based on a consideration of the domestic need for the gas to be exported and such other matters [found] in the circumstances of a particular case to be appropriate."<sup>28</sup> Although the Delegation

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Authorization to Export Liquefied Natural Gas by Vessel From the Sabine Pass LNG Terminal Located in Cameron Parish, Louisiana, to Non-Free Trade Agreement Nations at 13 (Mar. 11, 2016).

<sup>23</sup> *Phillips Alaska Nat. Gas Corp. & Marathon Oil Co.*, DOE/FE Order No. 1473, FE Docket No. 96-99-LNG, Order Extending Authorization to Export Liquefied Natural Gas from Alaska, at 13 n.42 (Apr. 2, 1999) (citing *Panhandle Producers & Royalty Owners Ass'n v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)); see also *Lake Charles Exports, LLC*, DOE/FE Order No. 3324-A at 13; *Lake Charles LNG Export Co.*, DOE/FE Order No. 3868 at 11; *Cameron LNG, LLC*, DOE/FE Order No. 3846 at 10; *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 3792 at 13-14.

<sup>24</sup> New Policy Guidelines and Delegation Orders From Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to the Regulation of Imported Natural Gas, 49 Fed. Reg. 6,684 (Feb. 22, 1984) [hereinafter Policy Guidelines].

<sup>25</sup> *Phillips Alaska Nat. Gas Corp.*, at 14, 42; see also *Lake Charles Exports, LLC*, DOE/FE Order No. 3324-A at 14; *Lake Charles LNG Export Company, LLC*, DOE/FE Order No. 3868 at 12; *Cameron LNG, LLC*, DOE/FE Order No. 3846 at 11; *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 3792 at 15.

<sup>26</sup> Policy Guidelines at 6,685.

<sup>27</sup> U.S. Department of Energy, Delegation Order No. 0204-111 (Feb. 22, 1982).

<sup>28</sup> *Id.* at para. (b).



Order is no longer in effect, the DOE/FECM’s review of export applications continues to focus on: (i) the domestic need for natural gas proposed to be exported; (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies; (iii) whether the arrangement is consistent with the DOE/FECM’s policy of promoting market competition; and (iv) any other factors bearing on the public interest.<sup>29</sup>

Analyses performed and commissioned by the DOE/FECM demonstrate that LNG exports from the United States would not result in adverse economic outcomes for U.S. consumers. In 2012, the DOE released a two-part study evaluating the effects on the U.S. economy of LNG exports to Non-FTA countries in volumes up to 12 Bcf per day. In 2014 and 2015, DOE/FECM released an updated two-part study assessing the economic effects of higher levels of U.S. LNG exports—*i.e.*, between 12 and 20 Bcf per day. Most recently, NERA published another study (“2018 Study”) examining the probability and macroeconomic impact of various lower-48 sourced LNG export scenarios.<sup>30</sup> Like the prior studies the DOE/FECM has commissioned, the 2018 Study examined the impacts of varying levels of LNG exports on domestic energy markets. However, the 2018 Study also assessed the likelihood of different levels of “unconstrained” LNG exports (defined as market determined levels of exports) and analyzed the outcomes of different LNG export levels on the U.S. natural gas markets and the U.S. economy as a whole, over the 2020 to 2050 time period. Specifically, the 2018 Study developed 54 scenarios by identifying various

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<sup>29</sup> See, *e.g.*, *Lake Charles Exports, LLC*, DOE/FE Order No. 3324-A at 15; *Cameron LNG, LLC*, DOE/FE Order No. 3846 at 11-12; *Cameron LNG, LLC*, DOE/FE Order No. 3391-A, FE Docket No. 11-162-LNG, Final Opinion and Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Cameron LNG Terminal in Cameron Parish, Louisiana, to Non-Free Trade Agreement Nations at 9-10 (Sept. 10, 2014); *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, FE Docket No. 10-111-LNG, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas From Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations at 29 (May 20, 2011).

<sup>30</sup> NERA Economic Consulting, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports*, at 14 (June 7, 2018), <https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf>.

assumptions for domestic and international supply and demand conditions to capture a wide range of uncertainty in the natural gas markets.<sup>31</sup> “Throughout the entire range of scenarios, [the 2018 Study found] that overall U.S. economic output is higher whenever global markets call for higher levels of LNG exports, assuming that exports are allowed to be determined by market demand.”<sup>32</sup> Further, the 2018 Study found that “[f]or each of the supply scenarios, higher levels of LNG exports in response to international demand consistently lead to higher levels of GDP. . . . Consumer welfare, expressed in dollar terms, is also higher when there is greater domestic oil and gas supply” and higher levels of LNG exports.<sup>33</sup>

In the Design Increase Application, ECA demonstrated that its proposed exports to Non-FTA countries are not inconsistent with the public interest because, among other things, there are ample volumes of natural gas to supply U.S. domestic natural gas markets, and increased LNG exports will have a minimal impact on U.S. gas prices.<sup>34</sup> Furthermore, the proposed exports will improve the U.S. balance of trade and diversify global energy supplies.<sup>35</sup> The proposed exports will also provide environmental benefits by facilitating the replacement of higher-emitting fuel sources with cleaner burning natural gas.<sup>36</sup> The claims Sierra Club and DAN raise in their protest fail to show that the proposed Non-FTA exports are inconsistent with the public interest.

The owner and operator of ECA—Sempra Infrastructure (“SI”)—has significant experience operating LNG facilities in both the United States and Mexico. For example, SI developed and is the majority owner of the currently operational Cameron LNG liquefaction and

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<sup>31</sup> The 2018 NERA Study analyzed “the robustness of unlimited market level determined LNG exports by examining different scenarios that reflect a wide range of natural gas market conditions, where robustness is measured using key macroeconomic metrics such as GDP, aggregate household income, and consumer welfare.” *Id.* at 13.

<sup>32</sup> *Id.* at 14.

<sup>33</sup> *Id.* at 18, 20.

<sup>34</sup> Design Increase Application at 34.

<sup>35</sup> *Id.* at 35.

<sup>36</sup> *Id.* at 35-36.

export facility in Hackberry, Louisiana. SI is also developing the Port Arthur LNG project in Jefferson County, Texas. Additionally, SI is the owner of the existing Energia Costa Azul regasification terminal (operational for over ten years) in Baja California, Mexico. SI will bring its extensive experience in operating LNG projects to bear in its development of the ECA facility and to realize the myriad benefits of the proposed exports.

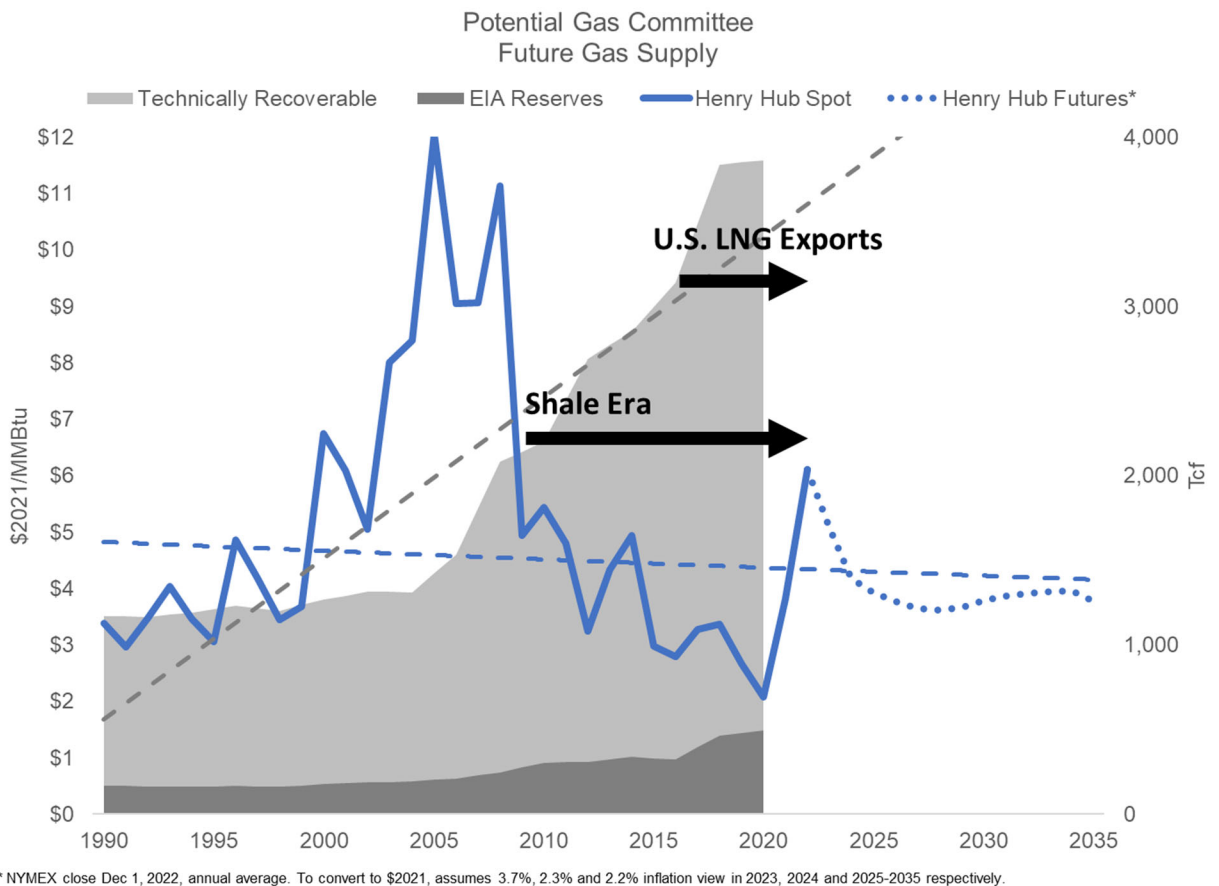
*b. Sierra Club's and DAN's Claims Regarding Rising Energy Prices are Unsupported*

Sierra Club and DAN claim that increased exports from the United States are linking domestic gas prices with global gas prices, to the detriment of U.S. households and industry. Sierra Club's and DAN's characterization of natural gas prices is misleading in several ways and fails to rebut the statutory presumption that the proposed exports are in the public interest.

For example, Sierra Club and DAN claim that gas prices during the winter of 2021-2022 were higher than previous years as a result of increased LNG exports. These arguments ignore the complexity of the domestic and global gas markets and the fact that various factors have had acute effects on gas prices over the past year. During the periods cited by Sierra Club and DAN, a global energy crisis precipitated by Russia's invasion of Ukraine and cuts to Russian-supplied gas to Europe have caused profound impacts on global natural gas prices. Moreover, the gas markets have experienced volatility due to a global pandemic, followed by a surge in demand as the world economy rebounded coming out of the crisis. Given these broad ranging impacts, the price increases cited to by Sierra Club and DAN were not solely driven by LNG exports, and Sierra Club and DAN have failed to show otherwise.

In selectively focusing on the winter 2021-2022 period in their protest, Sierra Club and DAN cherry picked data to serve their arguments while ignoring broader natural gas price trends. Sierra Club and DAN's protest misleadingly presents a snapshot of an outlier period during which

various global events had distortive effects on the natural gas markets. A comparison of natural gas prices (as shown on the chart below) demonstrates that the Henry Hub price has, in fact, been flat or declining over time. Sierra Club and DAN also ignore that natural gas inventory, as measured by reserves and resources, has substantially increased over this same period, resulting in significant available economic supply.



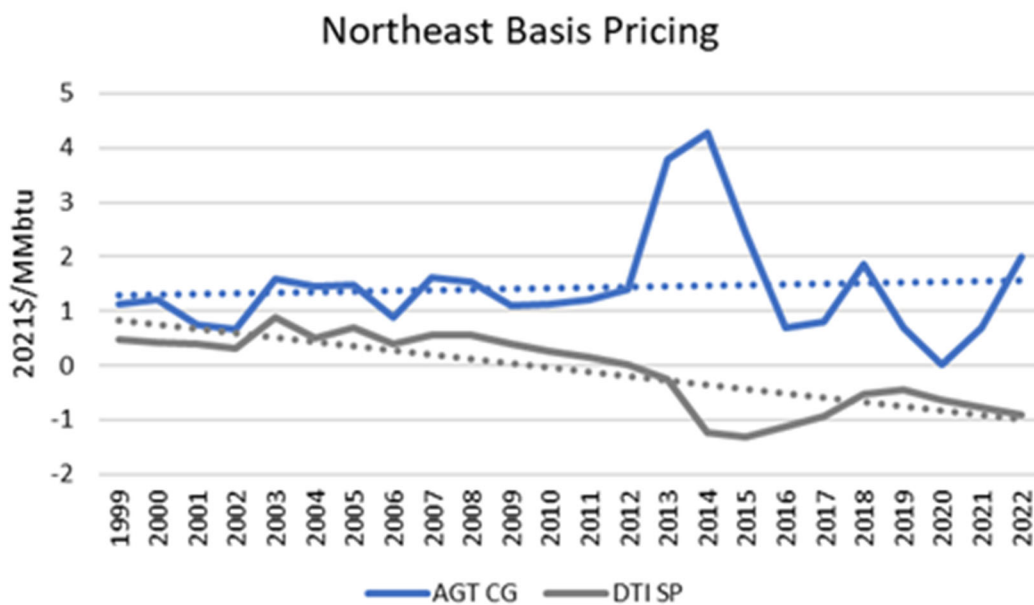
Sources: (1) Reserves Data—US Energy Information Administration, (2) Technically Recoverable Resources—Potential Gas Committee, (3) Henry Hub Prices—Chicago Mercantile Exchange and New York Mercantile Exchange close price as of December 1, 2022.

Sierra Club and DAN also misleadingly point to the explosion at the Freeport LNG as evidence that LNG exports are driving up prices because of a purported correlation between the incident and attendant reduced export capacity and a drop in domestic gas prices. This argument reveals a misunderstanding of how natural gas markets function. Short-term supply is inelastic

and cannot be turned on or off in a matter of hours or days. Excess supply can be diverted into storage in certain locations (e.g. the US Gulf Coast). The cited price drop of 16% in response to a loss of 17% of demand when Freeport went offline is to be expected and is not far out of line from the cost of storing the gas for several months. Such a price reaction would be expected of any sudden movement of demand in the market. Peak power generation demand from air conditioning load (or lack thereof) or peak residential/commercial demand in the winter (or lack thereof) have similar impacts on daily spot prices. In general, most consumers generally are not paying daily spot prices because baseload demand is supplied by longer-term contracts typically not tied to daily spot prices and market participants also have an ability to hedge prices reducing exposure to such sudden price movements. The benefit of the price signal generated by markets is that over time suppliers will respond to higher prices by bringing on more capacity (in addition to supplying volumes from storage) and consumers may respond by reducing demand. Conversely, a lower price signal induces suppliers to curtail investment (in addition to potentially storing natural gas with an eye toward selling at higher prices) and therefore decrease production or induce increased consumer demand. Given that the long-term supply/demand response is what will impact most consumers, it is not appropriate to relate a daily spot price response to a force majeure event to the long-term impact of LNG demand on North American gas prices paid by millions of consumers.

Sierra Club's and DAN's reference to increased Algonquin Citygate prices in winter 2021-2022 is similarly illogical. In support of its claim that LNG exports are increasing domestic prices, Sierra Club states that the price at the Algonquin Citygate outside of Boston more than quadrupled last winter. The figure below compares the Dominion South Path basis (the implied value of transport between the Henry Hub and the regional pricing point), which is a pricing point in the MidAtlantic Region near the Marcellus/Utica supply basin to the Algonquin City Gate basis. The

Dominion basis shows a decline trend while the Algonquin City Gate shows a rising trend. This divergence in basis trends supports that natural gas prices at Algonquin Citygate and in New England are in large part a function of limited pipeline capacity in that region. This dynamic routinely results in gas supply constraints and high gas prices in the region during the winter, as a result of which, New England is an *importer* of LNG. Sierra Club and DAN have not demonstrated how, if at all, U.S. LNG exports materially contributed to natural gas price increases in New England.



Key: AGT CG—Northeast Price (Algonquin City Gate), DTI SP—Dominion South Path Price (Mid Atlantic)

Source: Chicago Mercantile Exchange

Moreover, DOE/FECM has addressed the economic impacts of increased LNG exports on domestic markets in its LNG export studies. In particular, DOE/FECM considered the potential price impacts of increased natural gas exports and nonetheless concluded that the 2018 Study “consistently shows macroeconomic benefits to the U.S. economic in every scenario at the projected Henry Hub natural gas prices, as well as positive annual growth across the energy-

intensive sectors.”<sup>37</sup> Other than broadly arguing that current gas prices call the prior studies into question (all while ignoring the acute and singular effects of the global pandemic and energy crisis associated with Russia weaponizing its energy supplies to Europe which do not represent ordinary market conditions), Sierra Club and DAN do not point to specific flaws in the 2018 Study to rebut DOE/FECM’s conclusion that increased LNG exports have overall macroeconomic benefits to the U.S. economy. Accordingly, DOE Sierra Club’s and DAN’s arguments regarding the price impacts of LNG exports are unsupported and should be rejected.

*c. Sierra Club’s and DAN’s Distributional Impact Claims are Unsupported*

Sierra Club and DAN additionally raise concerns regarding the purported distributional impacts of LNG exports. In this regard, Sierra Club and DAN misinterpret the public interest standard and prior DOE/FECM precedent.

While Sierra Club and DAN claim that DOE is “charged with protecting . . . ‘all or most of the people’ in the United States,”<sup>38</sup> the public interest standard under the NGA is not in fact so broad. The Supreme Court has explained that: “[T]he use of the words ‘public interest’ in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation.”<sup>39</sup> The purpose of the Natural Gas Act, in turn, is to promote “the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”<sup>40</sup>

Moreover, Sierra Club and DAN mischaracterize prior DOE/FECM statements regarding potential distributional impacts. DOE/FECM has rejected Sierra Club’s arguments regarding

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<sup>37</sup> Department of Energy, *Study on Macroeconomic Outcomes of LNG Exports*, Notice of response to comments, 83 Fed. Reg. 67251, at 67268 (Dec. 28, 2018).

<sup>38</sup> Sierra Club Filing at 8-9.

<sup>39</sup> *NAACP v. FPC*, 425 U.S. 662, 669 (1976).

<sup>40</sup> *Id.* at 670.

distributional impacts several times in the past. In its response to comments on the 2018 Study, DOE/FECM concluded that the public interest “generally favors authorizing proposals to export natural gas that have been shown to lead to net benefits to the U.S. economy.”<sup>41</sup> While Sierra Club and DAN are correct that DOE/FECM has stated ““there could be circumstances in which the distributional consequences of an authorizing decision could be shown to be so negative as to outweigh net positive benefits to the U.S. economy as a whole,” they leave out the remainder of DOE/FECM’s analysis:

DOE had not been presented with sufficiently compelling evidence that those circumstances were present. . . . with respect to consumer well-being, the 2018 Study found that all scenarios within the more likely range of results are welfare-improving for the average U.S. household. This result is driven by households’ receipt of additional income from export revenues and take- or-pay tolling charges for LNG exports, and this additional income outweighs the income lost from higher energy prices.<sup>42</sup>

As DOE/FECM further explained, the Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) has rejected arguments from Sierra Club that DOE/FECM erred by failing to consider distributional impacts under the public interest standard in issuing certain export authorizations.<sup>43</sup> In *Sierra Club II*, the D.C. Circuit found DOE/FECM adequately addressed concerns regarding distributional impacts, upholding DOE/FECM’s determination that “given that ‘exports will benefit the economy as a whole’ and ‘absent stronger record evidence on the distributional consequences,’ [DOE/FECM] could not ‘say that . . . exports were inconsistent with the public interest on these grounds.’”<sup>44</sup> In its response to comments on the 2018 Study, DOE/FECM similarly found that Sierra Club and other commenters failed to provide a “*quantitative analysis* of the distributional consequences of authorizing LNG exports *at the*

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<sup>41</sup> 83 Fed. Reg. at 67266.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *See Sierra Club v. U.S. Dep’t of Energy*, 703 Fed. Appx. 1, at \*3 (DC Cir. Nov. 1, 2017).



*household level.* Absent stronger record evidence on these alleged distributional consequences, we cannot say that increased LNG exports are inconsistent with the public interest on these grounds.”<sup>45</sup>

Thus, DOE/FECM has provided clear guidance on the kind of specific, granular, and data-supported evidence that would be required to show there are adverse distributional impacts of LNG exports that might render an export authorization contrary to the public interest. Once again, Sierra Club and DAN ignore DOE/FECM’s clear directives. Instead, in their protest, Sierra Club and DAN simply rehash vague and generalized claims regarding alleged distributional impacts. Sierra Club and DAN have failed to provide a quantitative analysis showing the distributional consequences of LNG exports on the household level. Accordingly, Sierra Club and DAN have not provided the strong record evidence necessary to support a finding that the proposed exports are inconsistent to the public interest, and these arguments should once again be rejected.

**2. *Sierra Club’s and DAN’s Arguments Regarding Existing Pipeline Capacity are Unsupported***

Sierra Club and DAN claim that the EA provides no evidence of whether there is sufficient capacity to transport the incremental volume increases sought in the Design Increase Application. Sierra Club and DAN apparently make the unsupported assumption that no such capacity is available to ECA, with the apparent expectation that DOE/FECM should engage in speculation as to potential cross-border pipeline infrastructure that may be built in the future. This argument is misguided.

Sierra Club and DAN erroneously suggest that failure to consider potential future infrastructure projects may amount to improper segmentation under NEPA. Concerns regarding segmentation here are a red herring. As demonstrated in ECA’s application, there is

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<sup>45</sup> 83 Fed. Reg. at 67266 (emphasis added).

approximately 15 Bcf/d of cross-border capacity presently in the United States. Further, presupposing that additional pipeline infrastructure is necessary to serve exports ignores other opportunities shippers have to obtain pipeline capacity, such as through capacity releases, or simply to purchase natural gas from existing capacity holders. To the extent additional U.S.-Mexico cross-border infrastructure is proposed in the future, such facilities will be reviewed by the Federal Energy Regulatory Commission (“FERC”) under the NGA and NEPA at the appropriate time. The prohibition on segmentation “prevent[s] agencies from dividing *one* project into multiple individual actions each of which individually has an insignificant environmental impact but which collectively have a substantial impact.”<sup>46</sup> Segmentation is not implicated here where the agency actions involved (i.e., DOE/FECM’s authorization of ECA’s proposed exports and an unrelated infrastructure project reviewed by FERC in the future) are wholly separate decisions of two different agencies. In explaining the concept of segmentation, the D.C. Circuit emphasized the timing, linear and physical interdependence, functional interdependence, and financial interdependence of certain projects in concluding those projects were impermissibly segmented in FERC’s NEPA reviews.<sup>47</sup> These factors simply do not exist with respect to some speculative cross-border infrastructure that may be built at some time, at some location, by some unknown entity in the future.

**3. *Sierra Club’s and DAN’s Complaints Regarding the Preparation of an Environmental Assessment are Illogical and Unrooted in Relevant NEPA Regulations***

Finally, Sierra Club and DAN raise complaints regarding DOE/FECM’s review of indirect environmental effects that misunderstand agency procedures and authority under NEPA. Sierra Club and DAN inaccurately claim that DOE/FECM prejudged “all impacts from approving this

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<sup>46</sup> *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1314 (D.C. Cir. 2014) (emphasis added).

<sup>47</sup> *Id.* at 1314-1319.

export will be insignificant” when it prepared an EA rather than an Environmental Impact Statement (“EIS”). In fact, DOE’s regulations implementing NEPA indicate that “DOE may prepare an EA on any action at any time in order to assist agency planning and decisionmaking.”<sup>48</sup> The purposes of an EA include “providing sufficient evidence and analysis for determining *whether to prepare an EIS* or to issue a FONSI.”<sup>49</sup> DOE is well within its discretion to prepare an EA for a proposed export project. The decision to prepare an EA is therefore a procedural decision that does not presuppose or reflect any particular substantive conclusion. Sierra Club and DAN point to 10 C.F.R. Part 1021, Appendix D as suggesting EIS’s are required for “export[s] of natural gas involving major new facilities” or “export[s] of natural gas involving major operational change.” Putting aside the fact that the Design Increase Application involves no major new facilities or major operational changes in the United States, the cited regulation merely lists the classes of actions that “*normally*” require an EIS but does not impose a strict obligation on DOE to prepare an EIS for each such proposal. Nor does it suggest that DOE has made an improper predetermination of impacts if it chooses to commence with an EA rather than an EIS for the proposal.

In any event, DOE/FECM’s EA for the Design Increase Application did in fact consider the indirect effects of the proposed exports, including potential impacts of the proposed action associated with natural gas production, natural gas pipeline transportation, marine transport of LNG, and life cycle GHG emissions. In doing so, DOE/FECM relied on its analyses in the 2014 Addendum to Environmental Review Documents Concerning Imports of Natural Gas from the United States,<sup>50</sup> as well as its 2014 and 2019 analyses of the lifecycle greenhouse gas emissions of

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<sup>48</sup> 10 C.F.R. § 1021.321(a).

<sup>49</sup> *Id.* § 1021.321(b) (emphasis added).

<sup>50</sup> Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States (Aug. 2014), available at <https://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf>.

LNG exports,<sup>51</sup> an approach that is consistent with DOE/FECM's prior authorizations. To account for potential differences in life cycle emissions due to the ECA facility's location in Mexico, DOE/FECM provided revised estimates for certain categories of potential GHG emissions associated with the Design Increase Application. In addition, DOE/FECM analyzed a no action alternative. Having reviewed, considered, and disclosed detailed information regarding potential indirect effects, DOE/FECM has satisfied its obligations, and NEPA does not require any particular substantive results. Accordingly, Sierra Club's and DAN's arguments regarding DOE/FECM's NEPA review should also be rejected.

### III. CONCLUSION

For the foregoing reasons, ECA respectfully requests that DOE/FECM (1) dismiss Sierra Club's late-filed motion to intervene, and (2) dismiss Sierra Club's and DAN's late-filed protest. Should DOE/FECM permit the late-filed protest, ECA respectfully submits that each of Sierra Club's and DAN's arguments are meritless and should be rejected, as detailed above.

Respectfully submitted,

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Dated: December 13, 2022

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<sup>51</sup> U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States, 79 Fed. Reg. 32260 (June 4, 2014); Nat'l Energy Tech. Lab., Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update (DOE/NETL-2019/2041) (Sept. 12, 2019), <https://www.energy.gov/sites/prod/files/2019/09/f66/2019%20NETL%20LCA-GHG%20Report.pdf>.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding.

Dated at Washington, D.C. this 13<sup>h</sup> day of December, 2022.

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