UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	
Port Arthur LNG Phase II, LLC	**)**	**FE Docket No. 20-23-LNG**
	)	

Motion to Intervene and Protest Out of Time of Sierra Club

Sierra Club moves for leave to intervene and protest in this docket out of time, pursuant to 10 C.F.R. §§ 590.303(b) and § 590.304.

The facts regarding U.S. LNG exports have changed drastically since the Department of Energy (DOE) solicited interventions in this docket and provided notice of Port Arthur LNG Phase II's (Port Arthur) application, back in March 2020. As we summarize below, and as DOE has recognized elsewhere, global liquefied natural gas (LNG) markets have changed, Europe has rapidly transitioned away from fossil fuels, the DOE's prior analyses no longer apply, and increasing lower-48 LNG exports imposes real costs on American consumer and industry.

DOE can deny this application now. DOE's prior practice was to issue a "conditional order" assessing "all factors relating to the public interest other than environmental issues," DOE, *Procedures for Liquefied Natural Gas Export Decisions*, 79 Fed. Reg. 48,132, 48,133 (Aug. 15, 2014). That policy recognized that, if the non-environmental factors were not sufficient to support an application, there was no need to consider the environmental impacts. In most cases, Sierra Club supports DOE's current practice of not making any decision until after

environmental review.[1] Here, DOE can follow the logic of its old practice, and the letter of its current policy, and deny Port Arthur's application now.

The case for denial is straightforward. Additional LNG exports make *most* Americans worse off, for no good reason. Additional exports burden everyone, by raising energy prices everyone pays. But exports only benefit the minority of Americans who own or work in fossil fuel industries.[2] Moreover, the Americans who carry this burden without receiving any benefit are the ones least able to do so, as they are typically lower income households already impacted by high energy burdens. DOE should be particularly sensitive to this issue at this time, when American households have suffered several years of high inflation. Exacerbating this unfairness is unnecessary. Europe has rapidly transitioned away from gas, and has no need for additional US exports. The rest of the world is already amply-supplied by previously-approved U.S. exports. So while DOE has cited geopolitical strategic benefits in prior export approvals, Port Arthur's exports would provide no such significant benefits. The effect of additional exports would merely be regressively redistributing wealth from most Americans to a privileged few. Under the Natural Gas Act, DOE has broad authority to interpret the public interest; it is plainly within DOE's authority to reject exports for the benefit of the public as a whole.

---

[1] 10 C.F.R. § 1021.101 ("It is DOE's policy … to apply the NEPA review process early."); 40 C.F.R. § 1501.2 (commence the NEPA process "at the earliest reasonable time"), 10 C.F.R. § 1021.103 (explicitly adopting, *inter alia*, 40 C.F.R. § 1501.2).

[2] *See* Sierra Club, Initial Comment on the LNG Export Study (Jan. 24, 2013), *available at* https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/export_study/Sierra_Club01_24_13.pdf. Although this comment, and the study it commented on, are now out of date, the principle it describes is still true: most Americans do not own stock, whether directly or indirectly, and most Americans therefore do not share in fossil fuel profits.

And then there is the climate. Regardless of how exports will impact greenhouse gas emissions in the immediate or short term, in the long term, the United States, like the international community, has decided that avoiding catastrophic climate change will require a near-complete transition away from fossil fuels. Further increasing the already-astronomical volume of U.S. LNG exports is inconsistent with that goal. Non-climate reasons already justify denying Port Arthur's application, but DOE also has authority to simply decide that, in light of the overwhelming need to eliminate global fossil fuel use within the term of Port Arthur's requested authorization, it would be contrary to the public interest for the U.S. to further expand the global fossil fuel trade.

In the alternative, if DOE does not choose to deny Port Arthur's application now, then DOE should proceed to additional review, of both this project and of exports generally, with additional opportunities for public comment. Sierra Club's position is that such analysis will reveal additional harms to the public interest that conclusively tip the scale against the project and warrant denial.

For these reasons, and as further explained below, Sierra Club moves for leave to intervene in this docket and protest application out of time.

I. Sierra Club Has Good Cause for Intervening and Protesting Out of Time

DOE rules allow for intervention and protests after the established deadline if "good case" can be shown, and after consideration of the impact to the proceeding from granting the late motion. 10 C.F.R. §§ 590.303(d), 590.304(e). DOE should permit Sierra Club to intervene and protest out of time in this docket. Sierra Club has "good cause" for late intervention, and late

intervention will not have an adverse impact on this proceeding. Sierra Club also easily satisfies the other standards for intervention, as discussed *infra* part II. Sierra Club's protest is in part III.

DOE has emphasized that motions to intervene or protest out of time must explicitly acknowledge and attempt to show "good cause" for filing out of time.[3] FERC has as well.[4] But where applicants acknowledge and make good faith efforts to demonstrate compliance with this requirement, DOE has not been especially strict. DOE has recently granted other groups leave to intervene out of time in the Alaska LNG proceeding.[5]

More broadly, although DOE's regulations specify that persons seeking to intervene or protest out of time must provide good cause to do so, the regulations do not specify what constitutes good cause, 10 C.F.R. §§ 590.303(d), 590.304(e), nor do DOE's other regulations define the term. *See* 10 C.F.R. § 590.102. Accordingly, DOE should interpret the term with reference to FERC's interpretation of the rules it applies in administering the Natural Gas Act, and with reference to how federal courts interpret their rules on good cause to file out of time.

In interpreting these parallel standards, courts and FERC have focused their "good cause" inquiries on the amount of prejudice arising from the delay. "[T]he relevant issue is not how much prejudice would result from allowing intervention, but rather how much prejudice would result from the would-be intervenor's failure to request intervention as soon as he knew or should have known of his interest in the case." *Stallworth v. Monsanto Co.*, 558 F.2d 257, 267

---

[3] *See* Alaska LNG Project LLC, DOE/FECM Order No. 3643-C, Dkt. No. 14-96-LNG, at 17 n.87 (Apr. 13, 2023), *available at https://www.energy.gov/sites/default/files/2023-04/ord3643-C.pdf* (summarizing prior DOE orders).

[4] *See, e.g., Tennessee Gas Pipeline Co.*, 162 FERC ¶ 61,167 P46 (Feb. 27, 2018)

[5] DOE/FECM Order No. 3643-C, *supra* note 3, at 21.

(5th Cir. 1977); *see also AmerisourceBergen Corp. v. Dialysist West, Inc*., 465 F.3d 946, 953 (9th Cir. 2006) (in determining whether to allow amendment of a complaint under Fed. R. Civ. P. 15, looking to prejudice specifically attributable to the delay in seeking amendment and excluding costs that would have been imposed had the amendment been filed earlier). Under this approach, where there is no prejudice resulting from delay, that fact in itself can demonstrate "good cause" for purposes of deciding whether to allow late intervention. *Superior Offshore Pipeline Co.*, 68 FERC ¶ 61089 (July 19, 1994), *E. Am. Energy Corp. Columbia Gas Transmission Corp*., 68 FERC ¶ 61087 (July 19, 1994).

FERC, in administering its own Natural Gas Act proceedings, almost uniformly concludes that there would be no prejudice resulting from late intervention, and grants late motions to intervene, when the motion to intervene is filed before FERC issues its order on the merits. *Mountain Valley Pipeline, LLC & Equitrans, L.P.*, 161 FERC ¶ 61,043, P22 (Oct. 13, 2017) (summarizing this practice and granting motion filed two years after intervention deadline). Provided that applicants do not ignore their obligation to address good cause, *Double E Pipeline*, 173 FERC ¶ 61074, P18 (Oct. 15, 2020), FERC routinely grants motions to intervene filed at any time before the merits order, including a motion filed *after* the matter was put on the agenda for FERC's monthly meeting, *the night before* the FERC meeting at which the decision was announced, and *five days before* FERC published the merits order. *Northern Natural Gas Co.*, 175 FERC ¶ 61,052 (April 15, 2021).[6] And in some cases, FERC will even grant motions to

[6] More broadly, FERC has recently granted motions to intervene out of time in: *Spire STL Pipeline LLC,* 164 FERC ¶ 61,085 at P16 (August 3, 2018) (granting three untimely motions); *V enture Global Calcasieu Pass, LLC,* 166 FERC ¶ 61,144 at P13 (February 21, 2019) (granting one motion filed three year after notice of application); *Driftwood LNG LLC and Driftwood Pipeline,* 167 FERC ¶ 61,054 at P22 (April 18, 2019) (granting one untimely motion); *Rio*

intervene filed *after* a merits order is issued—that is, a motion seeking to intervene solely for participation in rehearing.[7]

As with FERC proceedings, here, there would be no prejudice in allowing Sierra Club to intervene and protest now, after the initial deadline but prior to DOE's issuance of a merits order. There have not been any proceedings in this docket that would have gone differently had Sierra Club moved to intervene or protested by the original deadline, as can be seen by comparing this docket[8] with one in which Sierra Club *did* move for timely intervention: Venture Global CP2 LNG, FE Docket No. 21-131-LNG.[9] The absence of such differences demonstrates that filing now will not cause any meaningful prejudice here. Moreover, while the inquiry must be about prejudice arising from *delay*, rather than disruption from having Sierra Club in this proceeding *at all*, *Stallworth*, 558 F.2d at 267, we note that the intervention and protest itself does not unduly

---

Grande LNG, LLC et al., 169 FERC ¶ 61,131 at P14 (November 22, 2019) (granting "several" untimely motions); *Texas Brownsville LLC*, 169 FERC ¶ 61,130 at PP8-9 (November 22, 2019) (granting undisclosed number of untimely motions); *Pacific Connector Pipeline*, 170 FERC ¶ 61,202 at P21 (Mar. 19, 2020) (granting "numerous" untimely motions); *Alaska Gasline Development Corporation*, 171 FERC ¶ 61,134 at P6 (May 21, 2020) (two untimely motions granted); *Evangeline Pass*, 178 FERC ¶ 61,199 at P17 (March 25, 2022) (granting two parties' untimely motions); *East 300 Upgrade Project*, 179 FERC ¶ 61,041 at P9 (Apr. 21, 2022) (granting three untimely motions); *Commonwealth LNG*, 181 FERC ¶ 61,143 at P7 (November 17, 2022) (granting ten motions over project developer's opposition); *Gas Transmission Northwest, LLC*, 185 FERC ¶ 61,035 at P7 (October 23, 2023) (granting two untimely opposed motions and one untimely unopposed motion); *Columbia Gas Transmission, LLC*, 182 FERC ¶ 61,171, at P7 (granting one untimely motion); *Saguaro Connector Pipeline, LLC*, 186 FERC ¶ 61,114 at P5 (February 15, 2024) (granting three untimely unopposed motions and three untimely opposed motions).

[7] *Algonquin Gas Transmission, LLC Maritimes & Ne. Pipeline, L.L.C.*, 175 FERC ¶ 61,958 at PP 3 (2021); *Kern & Tule Hydro LLC*, 174 FERC ¶ 61081 at PP 7-8 (2021).

[8] https://www.energy.gov/fecm/articles/port-arthur-lng-phase-ii-llc-fe-dkt-no-20-23-lng

[9] https://www.energy.gov/fecm/articles/venture-global-cp2-lng-llc-fe-dkt-no-21-131-lng

disrupt proceedings either. DOE will still have an obligation make an independent assessment of the public interest regardless of whether anyone has protested Port Arthur's application.

The lack of prejudice is itself sufficient to permit intervention here. But insofar as any further showing of good cause is required, Sierra Club has good cause for not having filed a motion to intervene and protest in response to DOE's initial solicitation. The basis for Sierra Club's protest consists of facts arising after the April 29, 2020 deadline set out in DOE's notice. As summarized below, these include:

- DOE's conclusion, in August 2024, that it is no longer clear whether long term exports are in the United States' interest, given how European nations have drastically and rapidly transitioned away from fossil fuels, and natural gas in particular, in response to Russia's 2022 invasion of Ukraine. *NFE Altamira FLNG*, DOE/FECM Order 5156 (Aug. 31, 2024).[10]
- DOE's argument, in May 2024, that reducing lower-48 exports will reduce domestic gas prices and thereby benefit the public.[11]
- DOE's conclusion, in January 2024, that its prior analyses no longer provide a sufficient foundation for analyzing export applications.[12]

Although Sierra Club has other interests in this proceeding as well, which were evident at the time DOE provided notice, Sierra Club did not foresee these changes in global energy

---

[10] https://www.energy.gov/sites/default/files/2024-08/ord5156_new.pdf

[11] *Sierra Club v. DOE*, Dkt. 20-1503, Doc. 1208621812, Final Brief of Respondent Department of Energy, at 44 (D.C. Cir. May 13, 2024).

[12] DOE, "Unpacking Misconceptions," (Feb. 8, 2024) *available at* https://www.energy.gov/articles/unpacking-misconceptions-surrounding-does-lng-update

markets and DOE's potential treatment thereof. *See Northern Natural Gas Co.*, 175 FERC ¶ 61,052 (granting motion filed on the literal eve of FERC's decision where claim of good cause rested on newly recognizing the possibility that FERC would announce a change in greenhouse gas policy). That fact, coupled with Sierra Club's acknowledgment of the obligation to address good cause and the lack of prejudice resulting from delay, justifies leave to intervene and protest out of time here.

II. Intervention

Aside from timeliness, DOE's rules do not articulate any particular standard for 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's position is that the application should be denied or, in the alternative, heavily conditioned. 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,[13] and increasing gas production increases ozone pollution, including risking creation of new or expanded ozone non-attainment areas or exacerbating existing non-attainment.[14] Sierra Club has over 19,900 members in Texas, including many living near the Port Arthur LNG terminal and others living throughout Texas' Haynesville Shale and Permian Basin. Furthermore, Sierra Club has over 3,500 members in Louisiana, including many in the Barnett Shale region and other areas that will likely be impacted by increased gas production.

The proposed exports will also require significant shipping traffic. 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,[15] threatened oceanic whitetip shark,[16] and endangered Rice's whale (formerly designated as the Gulf of Mexico population of the Bryde's whale).[17]

---

[13] *See, e.g.*, U.S. EIA, Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets, 12 (Oct. 2014), https://www.eia.gov/analysis/requests/fe/pdf/lng.pdf.

[14] 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.

[15] Final Rule to List the Giant Manta Ray as Threatened Under the Endangered Species Act, 83 Fed. Reg. 2,916 (Jan. 22, 2018).

[16] Listing the Oceanic Whitetip Shark as Threatened Under the Endangered Species Act, 83 Fed. Reg. 4,153 (Jan. 30, 2018).

[17] Technical Corrections for the Bryde's Whale (Gulf of Mexico Subspecies), 86 Fed. Reg. 47,022 (Aug. 23, 2021).

The proposed exports will also require new infrastructure with significant direct environmental impacts, including air pollution emissions. These emissions will impact Sierra Club members and others who live, work, or recreate in the vicinity of the proposed 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. 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, 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 persons for the official service list:

Nathan Matthews
Senior Attorney
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
nathan.matthews@sierraclub.org
(415) 977-5695

Rebecca McCreary
Staff Attorney
1650 38th Street, Suite 103W
Boulder, CO 80301
rebecca.mccreary@sierraclub.org
(303) 449-5595 ext. 103

III. 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."[18] Here, all of these factors weigh against the application.

A. Changed Facts Mean That DOE's Prior Export Approvals Do Not Support Approval Here.

As DOE has recognized, "a lot has changed" since DOE last updated its analyses about the economic and supply impacts of LNG exports.[19] Accordingly, those prior authorizations do not establish useful precedent supporting Port Arthur here.

DOE has recognized that the facts it considers in its authorizations, like the authorizations themselves, "may become stale," and that "DOE decisions regarding non-FTA exports . . . should be made on the basis of the latest market information and analytical approaches at the

---

[18] 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.

[19] https://www.energy.gov/articles/unpacking-misconceptions-surrounding-does-lng-update

time of DOE's decision." DOE, *Policy Statement on Export Commencement Deadlines in Authorizations To Export Natural Gas to Non-Free Trade Agreement Countries*, 88 Fed. Reg. 25,272, 25,277 (Apr. 26, 2023). Indeed, in response to prior Sierra Club filings in other dockets, DOE has argued that prior studies using the macroeconomic DOE has relied on to approve exports—studies conducted by the same contractor DOE itself used—were unpersuasive simply because they were too old. *Alaska LNG*, DOE/FE Dkt. 14-96-LNG, Order 3643-D at 51 (June 14, 2023) ("It defies explanation how a report issued nine years ago—when the U.S. and global LNG market were far less developed—could provide factual support for Intervenors' arguments about global market demand for U.S. LNG today.").

Thus, in reviewing Port Arthur's application, the fact that DOE previously granted other applications is not itself evidence that still further exports would be in the public interest.

B. DOE Can *Deny* Port Arthur's Application Now, Although DOE Could Not *Approve* It Without Additional Analysis

DOE cannot make a decision on an export application until "DOE has sufficient information on which to base a public interest determination." 79 Fed. Reg. 48,132, 48,135 (Dec. 10, 2014). But if, when all non-environmental factors are weighed, the balance already tips against the public interest, then DOE already has sufficient information to make a decision without considering environmental factors, at least for a project whose justification does not rest on purported environmental benefits. Indeed, this was the basis for DOE's prior practice of issuing conditional authorizations. Accordingly, if the project's benefits are already outweighed, DOE can deny the project without determining by precisely how much. And this is the case here.

C. Port Arthur's Exports Would Increase Domestic Energy Prices, Making Most U.S. Households Worse Off

In deciding whether an export application is in the public interest, DOE has recognized its obligation to "protect[] U.S. consumers and the Nation's economic competitiveness," among other considerations."[20]

Increasing exports increases gas prices, which in turn raises domestic energy prices generally. This fact is obvious from basic principles of supply and demand. It has also been affirmed by *every* study or analyses DOE has conducted or relied upon in considering the issue. In February 2024, DOE reiterated this basic price dynamic, drawing then on the Energy Information Administration's 2023 Annual Energy Outlook.[21] In general, these studies predicted that price increases would be low, because production would expand to meet the additional demand—a relatively flat supply curve.[22] Now that the United States has several years of experience as an LNG exporter, it is clear that LNG exports are driving up domestic gas prices, notwithstanding increased production. In 2021, FERC identified LNG exports as the "primar[y]" source of the additional demand driving gas price increases.[23] DOE recently argued, in defending

---

[20] Dep't of Energy, DOE to Update Public Interest Analysis to Enhance National Security, Achieve Clean Energy Goals and Continue Support for Global Allies (Jan. 26, 2024), *available at* https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals.

[21] https://www.energy.gov/articles/unpacking-misconceptions-surrounding-does-lng-update

[22] *See, e.g., Cheniere Marketing, LLC*, FE Dkt. No. 12-97-LNG, DOE/FE Order No. 3638-A, at 44 (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

[23] FERC, Winter Energy Market and Reliability Assessment (Oct. 21, 2021) at 2,

its decision to authorize exports from the Alaska LNG project, that that project would be in the public interest even if it did nothing but shift exports from the lower-48 states to Alaska, because *reducing* lower-48 exports would benefit American households by reducing gas and energy prices.[24]

The burden of higher prices is distributed unfairly, and is a reason to deny exports. Export-driven gas price increases harm every American household, by raising costs for in-home gas use and for electricity. Updated studies may change the size, but not the direction, of this impact: exports will increase prices, and most households will not receive any offsetting benefit.[25]

In comments on DOE's prior studies, Sierra Club has consistently pointed out exports make most households worse off.[26] DOE has never disputed this fact, or its unfairness.[27] Instead, DOE has argued that it did "not see sufficiently compelling evidence" that "the distributional consequences of an authorizing decision [were] so negative as to outweigh net positive benefits

---

available at https://ferc.gov/sites/default/files/2021-10/Winter%20Assessment%202021-2022%20-%20Report.pdf

[24] *Sierra Club v. DOE*, Dkt. 20-1503, Doc. 1208621812, Final Brief of Respondent Department of Energy, at 44 (D.C. Cir. May 13, 2024).

[25] Gas price increases also harm manufacturers and other industrial energy consumers, and the Americans with ties to those industries. The Industrial Energy Consumers of America, a trade association, has repeatedly written to DOE about how export-driven gas prices increases are harming domestic industry. *See, e.g.*, Letter from Paul N. Cicio to Jennifer Granholm (Jan. 25, 2024), available at https://www.ieca-us.com/wp-content/uploads/01.25.24_LNG-Letter-to-Granholm.pdf.

[26] *See e.g.*, Sierra Club, Initial Comment on the LNG Export Study, *supra* note 2.

[27] *See, e.g.*, DOE/FE Order No. 3639-A, *supra*, at 44.

to the U.S. economy as a whole."[28] But deciding whether the "public interest" is better represented by the gross domestic product (GDP) or by the median household's finances is a value judgment, not an evidentiary one. There is nothing sacred about the GDP, and DOE can and should choose to find the plight of ordinary Americans to be more compelling.

Prioritizing the majority of Americans, rather than the GDP, is particularly important at this moment in time, when the nation has suffered years of high inflation, and when income inequality is rapidly increasing.

DOE is charged with protecting the "public" interest. 15 U.S.C. § 717b(a). 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." *Minisink Residents for Envtl. Pres. & Safety v. FERC*, 762 F.3d 97, 101 (D.C. Cir. 2014) (cleaned up). 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, Port Arthur's application is inconsistent with the public interest and should be denied.

[28] *Id.*

D. America's Allies Do Not Need Additional LNG Exports, and Increased Exports Do Not Serve Strategic Interests

The global energy landscape is drastically different today than it was when DOE first began approving LNG export applications. America's allies no longer need additional gas.

Any discussion of need for exports must begin with the two facts: 1) the United States is already the world's largest exporter of LNG, and 2) additional projects already under construction and already approved by DOE and FERC will *double* this world's-largest capacity by 2030.[29] There is simply no evidence indicating that the United States' strategic interests are served by adding still further capacity beyond this.

The world is transitioning away from gas, our allies in particular. As DOE has noted, "the [October 2023] International Energy Agency (IEA) reference scenario shows global demand for natural gas peaking this decade."[30] In granting short-term approval for non-FTA exports from the NFE Altamira project (an already-constructed project that was already exporting LNG to FTA countries), DOE questioned whether increased exports would benefit "energy security" and "international trade" after 2029. *NFE Altamira FLNG*, DOE/FE Order No. 5156 at 25–26 (August 31, 2024).[31] DOE found that "across the globe there is both an unprecedented build-out of carbon-free energy and increased policies to advance clean energy development and implementation by U.S. allies that are expected to slow global natural gas demand in some

---

[29] https://www.energy.gov/articles/unpacking-misconceptions-surrounding-does-lng-update

[30] *Id.*

[31] *Available at* https://www.energy.gov/sites/default/files/2024–08/ord5156_new.pdf.

regions," and that "the use of natural gas for electricity generation in Western Europe is expected to peak in 2030 and decline thereafter." *Id.* at 26. Based on this uncertainty, the Department rejected that applicant's request for an authorization extending through 2050 and instead authorized non-Free Trade Agreement exports only until August 2029. *Id.* at 28. Similarly, in authorizing exports from Alaska LNG, DOE concluded that the more likely scenario would be that those exports would substitute for other sources of gas (including potentially displacing lower-48 exports that would otherwise occur), rather than serving additional gas demand.[32]

DOE's analysis must reflect this transition. But in addition to passively accepting this fact, DOE should actively encourage this trend. It may be that, if DOE were to continue approving export applications, other countries would continue increasing their gas use, rather than follow these predicted trajectories. But the existence of these trends and predictions demonstrates that the world does not *need* this gas, because alternatives are now available, such that limiting exports to the already-approved volumes does not risk leaving our allies in the dark. Thus, rather than taking a purely laissez-faire approach, DOE should encourage this transition along. Doing so will protect American consumers, the climate, *and* our strategic interests. After all, as Secretary Granholm has recognized, the best way to eliminate Europe's dependence on Russian gas is to get Europe off of gas entirely.[33]

---

[32] Order 3643-C, *supra* note 3, at 24-25.

[33] *See, e.g.*, Ben Lefebvre, DOE Declares an Energy War, POLITICO (Apr. 28, 2022), available at https://www.politico.com/newsletters/morning-energy/2022/04/28/doe-declares-an-energy-war-00028380 (quoting Sec. Granholm's statement that "Perhaps renewable energy is the greatest peace plan this world will ever know.").

The fact that Port Arthur has receive commercial interest in its export capacity does not refute the argument that the U.S. would not need or benefit from Port Arthur's additional export capacity. Commercial interest merely demonstrates that some companies are willing to bet that *either* these predictions of declining gas demand are wrong *or* that Port Arthur will outcompete other exporters for a share of an export market that cannot accommodate everyone. The fact that Port Arthur and its customers hope to profit from exports does not demonstrate that the United States' partner nations need the capacity, or that exports meaningfully further any strategic interest. Even if commercial interest provides some evidence of need, that evidence is outweighed by the numerous predictions of declining gas demand and by the public's interest in steering, rather than passively serving, global energy use.

E. Alternatively, DOE Cannot Approve Port Arthur's Application Without Additional Analysis of Environmental Impacts

Both the Natural Gas Act and the National Environmental Policy Act ("NEPA") prohibit DOE from ignoring the harmful environmental effects of exports. Courts have consistently interpreted the "public interest" at issue in Natural Gas Act section 3 to include environmental concerns. And both the Natural Gas Act and NEPA require a broad perspective. DOE must therefore consider exports' foreseeable indirect environmental effects relating to changes in gas production and use.

Under the Natural Gas Act, DOE 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).

Accordingly, if DOE does not deny Port Arthur's application based purely on non-environmental factors, DOE must consider environmental effects, and that consideration must be informed by a NEPA analysis. This must be an environmental impact statement: the categorical exclusion DOE adopted for large LNG export proposals is both unlawful and inapplicable here. DOE's analysis of indirect greenhouse gas emissions must do more than merely update DOE's prior lifecycle analyses, and confront the fact that increased LNG exports are incompatible with the U.S.'s climate goals and commitments.

1. DOE Must Comply With NEPA, and Cannot Rely on a Categorical Exclusion

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.[34] Because 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.

Nor can upstream impacts 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

[34] 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.

some areas' efforts to reduce pollution to safe levels.[35] 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.[36] 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 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

---

[35] Addendum, *supra* note 14, at 27-28.

[36] DOE/FE Order No. 3638 (Corpus Christi LNG), at 193-194 (May 12, 2015), https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2012/applications/ord3638.pdf.

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.[37] This is legally and factually incorrect. LNG exports are rapidly expanding, and this expansion depends upon and is caused by authorizations like the one Port Arthur 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 is 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 Port Arthur's proposed exports, including multiple listed species, live. And more specifically, Port Arthur would be one of a large number of export projects concentrated in a small region in southeast Texas and nearby in southwest Louisiana; LNG traffic constitutes a much larger share of total ship traffic in this region. Ship traffic to the West and East Coasts inflates the denominator but is irrelevant to many of these species.

[37] The proposed rule ignored wildlife impacts entirely.

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 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.[38] 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."[39] 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

---

[38] 86 Fed. Reg. 7619 (Jan. 27, 2021).

[39] *Id.* § 101, 86 Fed. Reg. at 7619.

threatened or endangered species or their habitat," "state-listed" species, "Federally-protected marine mammals and Essential Fish Habitat," and species proposed for listing.[40] Potentially impacted species include the black rail, giant manta ray,[41] oceanic whitetip shark,[42] and Rice's whale (formerly designated as the Gulf of Mexico population of the Bryde's whale).[43] These species are all at risk from ship strikes and noise from vessel traffic, impacts that will be increased by the proposed additional exports.[44] As with integral element 1, integral element 4 is 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.

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. DOE's old analyses of greenhouse gas lifecycle emissions are stale, and were incomplete to begin with.

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

---

[40] 10 C.F.R Part 1021 Subpart D Appendix B.

[41] 83 Fed. Reg. 2,916 (Jan. 22, 2018).

[42] 83 Fed. Reg. 4,153 (Jan. 30, 2018).

[43] 86 Fed. Reg. 47,022 (Aug. 23, 2021).

[44] The potential for impacts to these species further violates integral element 1, because it threatens a violation of the Endangered Species Act and similar laws.

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 Sabal Trail,* 867 F.3d at 1373.

NEPA also requires a broad perspective. Regulations that DOE has adopted 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(i)(2); *accord* 40 C.F.R. § 1508.8(b) (1978 to Sept. 2020); *see also* 10 C.F.R. § 1021.103 (DOE adopting these regulations). 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.*

DOE has published two prior analyses of the lifecycle greenhouse gas emissions of U.S. LNG exports, in 2014 and 2019. But both were flawed in that they only compared the emissions of the U.S. LNG export lifecycle with emissions from other fossil fuel sources, without any reasonable forecasting on the big picture question of whether expanding exports will, in the long term, increase fossil fuel use or hinder U.S. and global efforts to transition away from fossil fuels. These studies were also prepared outside the NEPA process, [45] and (even if fresh) could not themselves meet DOE's NEPA obligations.

[45] *E.g.,* 85 Fed. Reg. at 78,202 (The life cycle "reports are not part of DOE's NEPA review process.").

Because Port Arthur seeks export authorization through 2050, DOE's environmental analyses must look at the long term, rather than looking at the effect of increasing U.S. exports today. This includes addressing whether such impacts are consistent with the United States' climate goals. They are not. But DOE's prior 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 analyses 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?"[46]

A long-term perspective can resolve the difficulty DOE has identified with modeling how markets would respond to increased U.S. exports. Limiting global temperature rise to 1.5 degrees Celsius will require dramatic emission reductions in the near and long term. Regardless of how markets respond to additional exports now, it is clear that in order to meet the U.S.'s climate goals, the total volume of LNG traded and used must fall below the level of exports DOE has already authorized. Executive Order 14,008 appropriately instructs federal agencies to work to discourage other countries from "high carbon investments" or "intensive fossil fuel-based energy."[47] The lifecycle analyses argue that 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

[46] 84 Fed. Reg. 49,278, 49,279 (Sept. 19, 2019).

[47] Executive Order 14,008 at § 102(f), (h).

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.

Moreover, any uncertainty over how importing markets will respond to U.S. exports does not prevent DOE from foreseeing domestic emissions. The U.S.'s climate commitments require us to reduce domestic emissions; it is inappropriate, unfair, and unstrategic for the U.S. to argue that we can increase fossil fuel production, and enjoy the purported economic benefits thereof, because our 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."[48]

IV. Conclusion

For the reasons stated above, Sierra Club's motion to intervene and protest in this docket out of time should be granted. The Department of Energy should deny Port Arthur Phase II's application.

Nathan Matthews
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5695
nathan.matthews@sierraclub.org
Attorneys for Sierra Club

Rebecca McCreary
Staff Attorney
1650 38th Street, Suite 103W
Boulder, CO 80301
rebecca.mccreary@sierraclub.org
(303) 449-5595 ext. 103

[48] 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, at 8.4.

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	
Port Arthur LNG Phase II, LLC	**)**	**FE Docket No. 20-23-LNG**
	)	

CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to 10 C.F.R. § 590.103(b), I, Nathan Matthews, 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 Oakland, CA this 25th day of November, 2024.

/s/ Nathan Matthews
Nathan Matthews
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5695
nathan.matthews@sierraclub.org
Attorney for Sierra Club

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	
Port Arthur LNG Phase II, LLC	**)**	**FE Docket No. 20-23-LNG**
	)	
	)	

VERIFICATION

Pursuant to 10 C.F.R. § 590.103(b), I, Nathan Matthews, 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.

Dated at Oakland, CA this 25th day of November, 2024.

Nathan Matthews
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5695
nathan.matthews@sierraclub.org
Attorney for Sierra Club

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	
Port Arthur LNG Phase II, LLC	**)**	**FE Docket No. 20-23-LNG**
	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 590.107, I, Nathan Matthews, 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 at https://www.energy.gov/fecm/service-list-download, on November 25, 2024. In addition to providing paper service, electronic service was provided by cc'ing every person on the service list in the email submitting this filing to fergas@hq.doe.gov.

/s/ Nathan Matthews
Nathan Matthews
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5695
nathan.matthews@sierraclub.org
Attorney for Sierra Club