December 12, 2024

Port Arthur LNG Phase II, LLC, Docket No. 20-23-LNG

The Department of Energy's (DOE) Office of Fossil Energy and Carbon Management (FECM) is providing notice that Port Arthur LNG Phase II, LLC (PALNG2) attempted to submit the attached Answer in Opposition to Motion to Intervene and Protest Out of Time of Sierra Club (Answer) via email to fergas@hq.doe.gov on December 11, 2024, at 3:31 p.m. Eastern Time (ET).

PALNG2's counsel explained to FECM that, due to an apparent technical issue within DOE, the email was not able to be delivered to the FECM email inbox, and repeated attempts to email the filing on December 11th also failed. Subsequently, FECM confirmed the existence of this technical issue.

Following DOE's resolution of this technical issue, PALNG2 resubmitted the Answer on December 12, 2024 at 9:40 a.m. ET.

Because PALNG2's inability to file its original email was due to a DOE error, FECM is posting the Answer in the docket with the date stamp of the original email – December 11, 2024, at 3:31 p.m. ET – together with the supporting email of the submission.

From:	Snyder, Brett
To:	FERGAS; Sweeney, Amy
Cc:	Rahman, Lamiya
Subject:	[EXTERNAL] FW: Port Arthur LNG Phase II, LLC - Docket No. 20-23-LNG - Answer in Opposition to Motion to Intervene and Protest Out of Time of Sierra Club
Date:	Thursday, December 12, 2024 9:43:43 AM
Attachments:	PALNG Phase II - Answer Opposing SC Late Intervention & Protest.pdf

RESENDING

Brett A. Snyder | BLANKROME
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O: 202.420.2656 | F: 202.379.9027 | brett.snyder@blankrome.com

From: Rahman, Lamiya <lamiya.rahman@blankrome.com>
Sent: Wednesday, December 11, 2024 3:31 PM
To: fergas@hq.doe.gov
Cc: amy.sweeney@hq.doe.gov; Snyder, Brett <brett.snyder@blankrome.com>
Subject: Port Arthur LNG Phase II, LLC - Docket No. 20-23-LNG - Answer in Opposition to Motion to Intervene and Protest Out of Time of Sierra Club

To the Department of Energy, Office of Fossil Energy and Carbon Management ("DOE/FECM"):

Enclosed for filing with DOE/FECM in Docket No. 20-23-LNG, Port Arthur LNG Phase II, LLC hereby submits an Answer in Opposition to Motion to Intervene and Protest Out of Time of Sierra Club.

Please kindly confirm receipt with a date-stamped copy of the attached submission.

Best regards,

Lamiya Rahman | BLANKROME
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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

Port Arthur LNG Phase II, LLC	)	**Docket No. 20-23-LNG**

ANSWER OF PORT ARTHUR LNG PHASE II, LLC IN OPPOSITION TO MOTION TO INTERVENE AND PROTEST OUT OF TIME OF SIERRA CLUB

Pursuant to sections 590.303(e) and 590.304(f) of the Department of Energy's ("DOE") regulations,[1] Port Arthur LNG Phase II, LLC ("PALNG2") hereby submits this Answer to the out-of-time motion to intervene and protest of Sierra Club[2] filed with the DOE Office of Fossil Energy and Carbon Management ("DOE/FECM") on November 26, 2024,[3] in this proceeding. The November 26 filing—deployed nearly ***five years*** past DOE/FECM's comment deadline in this proceeding—is the latest in a series of late interventions and protests filed by Sierra Club that flagrantly disregards DOE's regulations and procedural requirements, threatens to unfairly prejudice applicants, and attempts to disrupt the orderly administration of DOE/FECM's export proceedings. For the reasons discussed below, and consistent with DOE/FECM's long-standing practice of rejecting similar out-of-time submissions, PALNG2 respectfully submits that DOE/FECM must deny Sierra Club's grossly delayed out-of-time motion to intervene and dismiss Sierra Club's out-of-time protest.

In support of this Answer, PALNG2 states as follows:

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[1] 10 C.F.R §§ 590.303(e) & 590.304(f) (2024).

[2] Motion to Intervene and Protest Out of Time of Sierra Club, Docket No. 20-23-LNG (Nov. 26, 2024) [hereinafter "Sierra Club Filing"].

[3] Sierra Club submitted the Sierra Club Filing after DOE closed on November 25, 2024. DOE deemed and date-stamped the filing to have been made on November 26, 2024. This answer is timely under 10 C.F.R. §§ 590.303 and 590.304.

I. BACKGROUND

On February 28, 2020, PALNG2 filed with DOE/FECM in Docket No. 20-23-LNG an application for long-term, multi-contract authorizations to export up to 13.5 million tonnes per annum (MTPA) (equivalent to 698 billion cubic feet (Bcf) per year) of LNG from two new liquefaction trains—Trains 3 and 4—to be constructed at the Port Arthur LNG terminal in Jefferson County, Texas (i.e., the Expansion Project), for export to Free Trade Agreement ("FTA") and Non-Free Trade Agreement ("Non-FTA") nations (the "Application").[4]

On March 30, 2020, DOE/FECM issued notice of the Application in the *Federal Register*, setting a deadline of April 29, 2020, for protests, interventions and comments.[5] Neither Sierra Club nor any other party filed a protest, intervention or comment by the deadline.

On July 14, 2020, DOE/FECM granted the FTA portion of the Application in Order No. 4562.[6] The Non-FTA portion of the Application before DOE/FECM remains pending.

PALNG2 filed its application to construct and operate the Expansion Project with the Federal Energy Regulatory Commission ("FERC") on February 19, 2020, in FERC Docket No. CP20-55-000. Pursuant to the National Environmental Policy Act ("NEPA"), FERC initially

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[4] Application for Long-Term, Multi-Contract Authorizations to Export Liquefied Natural Gas from the United States to Free Trade Agreement and Non-Free Trade Agreement Nations, Docket No. 20-23-LNG (Feb. 28, 2020) [hereinafter "Application"]. PALNG2's affiliate, Port Arthur LNG, LLC, previously received authorizations from DOE to export LNG to FTA and Non-FTA nations from Trains 1 and 2 of the Port Arthur LNG terminal (i.e., the Base Project). *See Port Arthur LNG, LLC*, DOE/FE Order No. 3698, FE Docket No. 15-53-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Port Arthur LNG Project in Port Arthur, Texas, to Free Trade Agreement Nations (Aug. 20, 2015); *Port Arthur LNG, LLC*, DOE/FE Order No. 3698-A, FE Docket Nos. 15-53-LNG & 18-162-LNG, Order Amending Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Port Arthur LNG Project in Port Arthur, Texas, to Free Trade Agreement Nations (Nov. 20, 2018); *Port Arthur LNG, LLC*, DOE/FE Order No. 4372, FE Docket No. 15-96-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (May 2, 2019).

[5] U.S. Dep't of Energy, Port Arthur LNG Phase II, LLC, Notice of Application, 85 Fed. Reg. 17568 (Mar. 30, 2020).

[6] *Port Arthur LNG Phase II, LLC*, DOE/FECM Order No. 4562, Docket No. 20-23-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement Nations (July 14, 2020).

issued an Environmental Assessment ("EA") for the Expansion Project on January 15, 2021.[7] Subsequently, FERC prepared a Supplemental EA that responded to comments filed on the EA and considered the Expansion Project's impacts on air quality, environmental justice communities, and climate change. The Supplemental EA was issued on April 28, 2023.[8] DOE was a cooperating agency under NEPA in both the EA and Supplemental EA. FERC issued an order authorizing construction and operation of the Expansion Project on September 21, 2023.[9]

On November 26, 2024—approximately 4 years and seven months after the close of the intervention and comment deadline set by DOE/FECM—Sierra Club filed its out-of-time motion to intervene and protest in the instant proceeding.

II. ANSWER IN OPPOSITION TO LATE MOTION TO INTERVENE AND LATE PROTEST

A. Sierra Club's Late-Filed Motion to Intervene Patently Fails to Show the Requisite Good Cause Required by DOE/FECM and Should Be Rejected

1. The late motion to intervene fails to meet the requirements of DOE's regulations and precedent.

DOE/FECM should reject Sierra Club's out-of-time motion to intervene. Sierra Club's pleading is filed ***more than 4 1/2 years (55 months)*** after the close of the intervention period. DOE/FECM's Notice, issued on March 30, 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 than 4:30 p.m., Eastern time, April 29, 2020.***"[10] Sierra Club had ample opportunity to file a timely motion to intervene and failed to do so.

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[7] Port Arthur LNG Expansion Project Environmental Assessment, FERC Docket No. CP20-55-000 (Jan. 15, 2021) (Accession No. 20210115-3014).

[8] Port Arthur LNG Expansion Project Supplemental Environmental Assessment, FERC Docket No. CP20-55-000 (Apr. 28, 2023) (Accession No. 20230428-3014).

[9] *Port Arthur LNG Phase II, LLC*, 184 FERC ¶ 61,184 (2023).

[10] 85 Fed. Reg. at 17568 (emphasis added).

Sierra Club ignores the DOE's rules by stating that there is no particular standard for timely intervention or what constitutes "good cause." This is wrong and in direct contravention of DOE/FECM's specific instructions directed notably to Sierra Club itself about compliance with DOE/FECM's procedural regulations.[11] First, Sierra Club's intervention, filed approximately 4.5 years after the April 29, 2020 deadline established by DOE/FECM's Notice, is blatantly not a "timely intervention." Second, DOE's rules set out a clear standard for the treatment of untimely interventions. Section 590.303(d) of DOE's rules 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 orde***r, 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.[12]

Sierra Club disregards each aspect of this regulation: it has egregiously failed to make its filing within the date fixed in DOE/FECM's Notice or even within any reasonable time period thereafter; it has made only a token effort to demonstrate the requisite good cause to accept its extremely late filing; 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 and disruptive motion to intervene and protest. As DOE/FECM has explained, it "provide[s] a . . . notice period in recognition of the need to afford the public sufficient time to consider the import of th[e] proceeding."[13] However, "at

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[11] *Magnolia LNG*, *LLC*, DOE/FECM Order No. 3909-D, 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 5-9 (June 24, 2022); *Golden Pass LNG Terminal LLC*, DOE/FEMC Order No. 3978-F, 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 6-10 (June 24, 2022); *Energía Costa Azul, S. de R.L. de C.V.*, DOE/FECM Order No. 4365-B, Docket No. 18-145-LNG, Order Amending 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 Nations, at 50-53 (Dec. 20, 2022); *Vista Pacifico LNG, S.A.P.I. de C.V.*, DOE/FECM Order No. 4929, Docket No. 20-153-LNG, 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 Nations, at 50-53 (Dec. 20, 2022).

[12] 10 C.F.R. § 590.303(d) (emphasis added).

[13] *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).

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 delay."[14] Sierra Club has moved to intervene in numerous export authorization proceedings before DOE/FECM and is familiar with DOE procedures and regulations. Despite this, Sierra Club has not adequately explained why it failed to comply with those procedures and regulations, nor has Sierra Club made any substantial attempt to show that good cause exists to grant the intervention.

It is particularly problematic that Sierra Club is seeking to intervene late in this proceeding because it participated in the Port Arthur LNG Phase II proceeding before FERC in Docket No. CP20-55[15] and could have at any time sought leave to intervene from the time that the Non-FTA Application was filed. Accordingly, Sierra Club had both *constructive* notice of the Application from the DOE/FECM's March 30, 2020 Notice published in the Federal Register and *actual* notice evidenced from its participation in the Port Arthur LNG Phase II FERC proceeding *at least as early as February 2021* when it filed comments with FERC. PALNG2's Non-FTA Application in the instant proceeding was noted in the record before FERC,[16] and Sierra Club, as an organization that by now should be imputed with the sophistication of a seasoned participant in proceedings involving LNG facilities, was certainly aware of the pendency of this proceeding

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[14] *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG, Procedural Order on Late-Filed Pleadings, at 5 (Mar. 25, 2011).

[15] Comments of Sierra Club, FERC Docket No. CP20-55-000 (Feb. 16., 2021) (Accession No. 20210216-5276); Comments of Healthy Gulf, Bayou City Waterkeeper, Sierra Club, Texas Campaign for the Environment and Turtle Island Restoration Network, FERC Docket No. CP20-55-000 (Feb. 16, 2021) (Accession No. 20210216-5079); Comments and Exhibits of Sierra Club, FERC Docket No. CP20-55-000 (Feb. 17, 2021) (Accession No. 20210217-5017); Sierra Club Request for Extension of Public Comment Deadline, FERC Docket No. CP20-55-000 (Feb. 5, 2021) (Accession No. 20210205-5001).

[16] For example, the January 25, 2021 Environmental Assessment noted that "[o]n February 28, 2020, [PALNG2] filed an application with the DOE Office of Fossil Energy . . ." Port Arthur LNG Expansion Project Environmental Assessment, FERC Docket No. CP20-55-000 at 3. This discussion is explicitly cited in Sierra Club's comments on the EA. Comments and Exhibits of Sierra Club, FERC Docket No. CP20-55-000 at 15, note 71 (Accession No. 20210217-5017).

before the DOE/FECM and the impact of that proceeding on the interests Sierra Club identifies in its November 26, 2024 motion. Indeed, Sierra Club's February 2021 comments on the EA *explicitly* discuss PALNG2's Application before DOE/FECM.[17] Sierra Club's November 26, 2024 motion did not mention its actual knowledge of this proceeding at a much earlier stage, but that fact bears significantly in establishing the unreasonableness of Sierra Club's delay in pressing its motion for leave to intervene in this proceeding and assessing the thin case it makes for demonstrating good cause for its behavior.

The DOE's cases as to late intervention—unacknowledged by Sierra Club—are directly apposite and are crystal clear. In *Energía Costa Azul*, DOE/FECM rejected Sierra Club's late motion to intervene when it was 23 months late—less than *half* the time that has passed since the intervention date in this proceeding. In doing so, DOE/FECM admonished Sierra Club for its repeated disregard for the agency's procedural regulations governing late interventions and protests, emphasizing for yet another time:

> in unnecessarily delaying the issuance of final agency action, late filings are both unfairly prejudicial to the applicant (and any other parties) and disruptive to DOE's interests in administrative efficiency and fairness. As DOE previously observed, "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 delay." *Here, the 23-month delay far surpasses other late filings rejected by DOE in LNG export proceedings.* We thus conclude that accepting Sierra Club's motion to intervene and the joint protest at this time would be prejudicial to [the applicant], contrary to DOE precedent, and disruptive to this proceeding and DOE's administrative process.[18]

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[17] Comments and Exhibits of Sierra Club, FERC Docket No. CP20-55-000 at 15-17 (Accession No. 20210217-5017).

[18] *Energía Costa Azul*, DOE/FECM Order No. 4365-B, at 52–53. *See also Vista Pacifico*, DOE/FECM Order No. 4929, at 52-53 (reaching the same conclusion and rejecting Sierra Club's late motion to intervene and protest filed 21 months after DOE's deadline).

DOE reached an identical conclusion in *Golden Pass*, where Sierra Club sought to protest an application *18 months* after the comment date, noting that as far back as 2012, DOE had found that Sierra Club's unsupported, late motions to intervene would be prejudicial and disruptive.[19] Sierra Club's late intervention here, if approved, would likewise be prejudicial and disruptive.

Notwithstanding the multiple instances in which the DOE/FECM has instructed Sierra Club on the requirements of the agency's regulations regarding late interventions and protests, Sierra Club continues to insist that it finds no guidance in the agency's regulations on this matter and urges that it should be granted liberal leave to intervene and protest at any time before the agency issues a decision on the merits. This purported unfamiliarity with the obligations of DOE/FECM's regulations is remarkable, given that nearly the entire corpus of agency precedent developed to explain the operation of those regulations in the modern era of LNG exports has been developed to respond to Sierra Club's repeated disregard of those requirements. DOE/FECM cannot grant Sierra Club's late intervention without contradicting its own prior precedent, which DOE/FECM may not do without providing a reasoned explanation.[20] Given Sierra Club's unprecedented 55-month delay in the face of its demonstrated constructive and actual prior knowledge of its purported interest in this proceeding, the profound prejudice that tardiness has caused the applicant, and Sierra Club's utter failure to point to facts that could reasonably be cited as grounds for good cause for its delay, Sierra Club has established no basis for such a departure.

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[19] *Golden Pass LNG Terminal LLC*, DOE/FECM Order No. 3978-F, at 7–8 (citing *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961-A, FE Docket No. 10-111-LNG, Final Opinion and Order Granting Long-Term Authorization to Export Liquified Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations, at 25 (Aug. 7, 2012)). In *Sabine Pass*, Sierra Club filed its protest 16 months out-of-time, and DOE dismissed the motion finding that allowing a 16-month late protest "would unnecessarily delay the final agency action and unfairly prejudice the parties to the proceeding." DOE/FE Order No. 2961-A, at 26.

[20] *See, e.g., La. Pub. Serv. Comm. v. FERC*, 184 F. 3d 892, 897 (D.C. Cir. 1999) ("For [an] agency to reverse its position in the face of a precedent it has not persuasively distinguished is quintessentially arbitrary and capricious") (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983)).

Acknowledging neither the extraordinary length of its lateness nor DOE/FECM's instructive rejections in cases involving much shorter delays, Sierra Club cites to the DOE/FECM's acceptance of late interventions in a recent *Alaska LNG* proceeding, implying that the agency's action in that peculiar instance evidences some unrestrained inclination to permit intervention and the submission of protests at any stage of DOE/FECM's process despite the agency's prior statements. It does not. The DOE/FECM's decision in *Alaska LNG* is easily distinguishable. DOE/FECM referred to the procedural posture of the case as "unique" no less than three times.[21] In the rehearing phase of the proceedings, DOE issued a draft supplemental Environmental Impact Statement ("SEIS") to consider its LNG life-cycle study and had set a comment period on the draft. The movant filed comments on the draft SEIS and its motion to intervene during the comment period on the grounds that the draft SEIS raised an issue not before raised by DOE/FECM. The movant also limited its comments to the subject matter of the SEIS and agreed to accept the record as it stood. Not one of those things is present in the instant case. DOE/FECM has not issued a draft environmental document raising novel issues for comment related specifically to this proceeding. Indeed, DOE/FECM emphasized in *Alaska LNG* that it would enforce section 590.303(h) of its rules,[22] which provides that "[i]n the event that a motion for late intervention is granted, an intervenor shall accept the record of the proceeding as it was developed prior to the intervention."[23] Thus, DOE required the movant to limit its comments to the scope of the draft SEIS and required the movant to take the balance of the record as it stood at

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[21] *Alaska LNG Project LLC*, DOE/FECM Order No. 3643-C, Docket No. 14-96-LNG, Order Affirming and Amending DOE/FE Order No. 3643-A Following Partial Grant of Rehearing, at 17, 19, 21 (Apr. 13, 2023).

[22] 10 C.F.R. § 590.303(h).

[23] DOE/FECM Order No. 3643-C at 20.

the time.[24] Here, the entire purpose of Sierra Club's filing is to introduce new material into the record, without regard to any deadline, and years after the time for doing so has passed.

2. The required showing of good cause is separate from a showing of lack of prejudice

Section 590.303(d) of DOE's rules, quoted above, governs how the agency must evaluate late motions to intervene. There are two factors DOE must consider when evaluating a late motion to intervene. First, the movant must show that there is good cause for why it did not move to intervene by the published due date. Separately, DOE must *also* "consider[] the impact of granting the late motion [on] the proceeding." These two factors are written as two separate requirements. Therefore, Sierra Club must show both that there was good cause for not intervening in a timely manner and that intervention now will not prejudice PALNG2 and will not be disruptive to the proceedings.

Knowing that it cannot meet the standard for late intervention articulated in DOE's own cases discussed above, Sierra Club asserts a bizarre and indefensible theory that wrongly conflates "good cause" with "lack of prejudice,"[25] when the two concepts are separate and distinct prongs of the test for late intervention, and resorts to obscure federal cases looking at the concept of timeliness in wholly distinguishable contexts. In *Stallworth v. Monsanto Co.*,[26] the issue of timely intervention arose under the Civil Rights Act. *Stallworth* does not stand for the proposition made by Sierra Club. The court in *Stallworth* was not analyzing any concept of "good cause"; the phrase appears nowhere in the opinion. Instead, the court was applying a four-factor test to determine whether an intervention was "timely" under Federal Rule of Civil Procedure 24, of which potential prejudice to the opposing party was only one factor. The language quoted by Sierra Club was

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24 *Id.* at 19–20.
25 Sierra Club Filing at 4-5.
26 558 F.2d 257 (5th Cir. 1977).

made in relation to one factor out of four in the context of a situation where the opposing party and the lower court had withheld a broader public dissemination of notice of the case, which the *Stallworth* court found to be the factor that "tilt[ed] the scales" in favor finding the intervention timely.[27] None of these factors is present or applicable here.

Similarly, the court in *AmerisourceBergen Corp. v. Dialysist West, Inc*.,[28] is also inapposite. That case dealt with whether a complainant would be permitted to amend its complaint. The court expressly stated it was not analyzing the issue under the "good cause" standard,[29] and, in any event, found that granting the motion would be prejudicial given the amount of time that had passed.[30]

The FERC cases to which Sierra Club cites fare no better in supporting a position that conflates lack of prejudice with good cause or that FERC has no substantive requirements for late interventions. As an initial matter, DOE need not look to FERC cases when its own precedent, discussed above, is clear. With that said, just as it has misconstrued relevant DOE/FECM procedures under Section 3 of the NGA, Sierra Club is also wrong about the FERC's processes for permitting late intervention in the context of NGA Section 7 pipeline and Section 3 LNG facilities. FERC's 2017 *Mountain Valley Pipeline, LLC* order[31] does not help Sierra Club here. That case addressed an application for a certificate of public convenience and necessity to build a new interstate natural gas pipeline. Notably, to meet the good cause requirement established under Rule 214(d) of FERC's Rules of Practice and Procedure,[32] the movant in that case, a mining company in the vicinity of the new pipeline, described that it had been in communication with the

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27 *Id.* at 267.
28 465 F.3d 946 (9th Cir. 2006).
29 *Id*. at 952
30 *Id*. at 953.
31 161 FERC ¶ 61,043 (2017).
32 18 C.F.R. § 385.214(d).

pipeline about the proposal for some period of time, but at some point the pipeline cut off communications, which precipitated the need to file an intervention.[33] Further, the movant did not oppose the project, but requested that the pipeline work with the movant to address safety issues. On these facts, FERC granted the intervention.[34]

In any event, the cases cited by Sierra Club for the proposition that FERC routinely grants late intervention were superseded in 2018 when FERC articulated a renewed commitment to stringently applying all the requirements in its Rule 214(d) regarding late interventions similar to standards it applies in the context of reviewing hydropower licenses under Part I of the Federal Power Act. In 2018 in *Tennessee Gas*, FERC expressed escalating concern "with the increasing degree to which participants in natural gas certificate proceedings have come to file late motions to intervene without adequately addressing the factors set forth in [FERC's] regulations."[35] Noting that "going forward [the Commission] will be less lenient in the grant of late interventions," the Commission reiterated that a movant seeking out-of-time intervention would be "required to 'show good cause why the time limitation should be waived,'"[36] in addition to satisfying the other late intervention criteria under Rule 214(d).[37]

If there was any doubt of FERC's current strict requirements when evaluating late motions to intervene, those doubts were dispelled in *Venture Global CP2 LNG, LLC*.[38] In that case, FERC

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33 *See* Motion to Intervene and Limited Protest of ICG Eastern, LLC to Certificate Application for Proposed Mountain Valley Pipeline Project, FERC Docket No. CP16-10-000, at 4 (July 20, 2017) (Accession No. 20170720-5032).

34 161 FERC ¶ 61,043 at P 22. Sierra Club cites to two one-page 1994 FERC orders that granted late intervention without comment, but conducted no good cause analysis under FERC's late intervention regulation. *Superior Offshore Pipeline Co.*, 68 FERC ¶ 61089 (1994); *E. Am. Energy Corp. Columbia Gas Transmission Corp.*, 68 FERC ¶ 61087 (1994). In addition to providing no analysis under the relevant regulations, the orders provide no procedural posture, such as whether the motions were opposed. They are therefore of no real precedential value. In any event, these orders do not represent current FERC thinking on granting late interventions.

35 *Tenn. Gas Pipeline Co.*, 162 FERC ¶ 61,167 at P 49 (2018) (*Tennessee Gas*).

36 *Id*. at P 50.

37 *Id.*

38 189 FERC ¶ 61,148 (2024).

emphasized that demonstrating good cause for late intervention is the primary requirement and that if the movant does not show good cause, FERC need not even consider the other factors under its regulation:

> Under the Commission's regulations, a movant seeking late intervention must establish that there is good cause for its late filing. The Commission *may also* consider whether granting late intervention will delay the proceeding or prejudice the other participants and whether the movant is adequately represented by existing parties, *but in the absence of a showing of good cause the Commission need not consider these additional factors*.[39]

Furthermore, FERC expressly rejected the assertion that *Mountain Valley Pipeline* is precedential after FERC's 2018 clarification of its policy in *Tenneesee Gas* and stated that *Mountain Valley* no longer represents FERC policy on late interventions.[40]

Double E Pipeline, cited by Sierra Club, was in fact cited by FERC to justify its renewed commitment to Rule 214(d) and shows that FERC does not routinely grant late intervention and will require an explanation sufficient to justify why the movant did not intervene by the deadline—*i.e.*, good cause. In *Double E*, FERC stated:

> Courts have recognized that "the Commission has steadfastly and consistently held that a person who has actual or constructive notice that his interests might be adversely affected by a proceeding, but who fails to intervene in a timely manner, lacks good cause under Rule 214." Entities interested in becoming a party in Commission proceedings may not "sleep on their rights" and wait to see how issues might evolve before deciding whether to intervene to protect their interests.[41]

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39 *Id.* at P 11 (emphasis added; internal citations omitted).

40 *Id*. at P 14. It is notable that another party aligned with Sierra Club in the *Venture Global CP2* proceeding urged a similar argument to the one posed by Sierra club here, citing *Mountain Valley* and other proceedings that were decided after *Tennessee Gas* as evidencing a "liberal" approach to intervention. FERC clarified that those cited proceedings, which are also cited in Sierra Club's November 26 motion, did not undermine the Commission's current strict policy on requiring good cause to be demonstrated to permit late intervention. As the FERC explained, those cited cases involved intervention deadlines that occurred prior to the Commission's announced policy in *Tennessee Gas* or were otherwise not articulative of a contrary policy approach. *Id.* at PP 14-15.

41 *Double E Pipeline, LLC*, 173 FERC ¶ 61,074 at P 20 (2020).

In *Double E*, FERC denied the late motion to intervene on the ground that movant did not show good cause.[42]

In summary, as articulated in *Tennessee Gas* and reaffirmed only days ago in *Venture Global CP2*, FERC does not routinely grant late motions to intervene, strictly requires a showing of good cause independent of any other factors in its Rule 214(d) including prejudice, and most definitely does not equate good cause and lack of prejudice. Therefore, FERC precedent, which Sierra Club urges as persuasive, would also require DOE to reject Sierra Club's late motion to intervene.

3. Sierra Club's token attempt to show good cause is obviously inadequate.

Sierra Club's one-paragraph pretense of showing good cause for why it is filing now cannot withstand scrutiny.[43] Sierra Club acknowledges that it has other interests in this proceeding of which it was aware at the time of notice of the application,[44] but points to three "facts" that purportedly excuse its late intervention: the January 2024 so-called "LNG Pause"; the idea expressed in a DOE brief dated May 2024 that a shift in exports from the lower-48 to Alaskan exports could result in a lower domestic natural gas prices; and DOE's August 2024 decision in *NFE Altamira FLNG*, DOE/FECM Order No. 5156.[45] However, this thin attempt to show good cause lacks any substance or reasoning. As an initial matter, other than listing them, Sierra Club provides no further explanation as to how these "facts" justify a late intervention based on its interest. Sierra Club makes no attempt to discuss or justify why those events are meaningful or how they relate to the current arguments that Sierra Club tries to introduce into this proceeding. There is *nothing* for DOE/FECM or PALNG2 to evaluate under a good cause standard. Under a

42 *Id*. at PP 21-23.
43 Sierra Club Filing at 7–8.
44 *Id*.
45 *Id.* at 7.

similar set of facts, DOE/FECM rejected Sierra Club's late motion to intervene and protest.[46] Further, the new "facts" that Sierra Club relies upon are not new information at all. The LNG Pause announcement is a procedural announcement, which in *Louisiana v. Biden* DOE itself has asserted carries no legal effect.[47] DOE describes in its court pleadings that the LNG Pause is just an ordinary procedural update. If that is the case, the updating of studies should not have been something that Sierra Club could not have anticipated. To the extent DOE were to find otherwise here as a basis for a late intervention, such a finding would run contrary to the statements made to the *Louisiana v. Biden* court.[48] The statements made by the DOE/FECM in the May 2024 brief and the *NFE* decision merely make general statements about supply and demand. To the extent that Sierra Club perceives those statements as supportive of its positions, those arguments are no different from arguments Sierra Club has already pressed before the DOE/FECM long before this year or the April 29, 2020 intervention deadline in this proceeding. They do not raise new issues or arguments that Sierra Club could not have anticipated prior to the April 29, 2020 comment deadline.

More importantly, however, most of the arguments Sierra Club raised in its subsequent protest have nothing to do with these "facts," the balance of which pertain to pricing and demand, and are instead unrelated NEPA and other environmental issues that could have been raised during

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[46] *Energía Costa Azul*, DOE/FECM Order No. 4365-B, at 52-53; *see also Vista Pacifico*, DOE/FECM Order No. 4929, at 52-53.

[47] *See* Brief for Appellants, *Louisiana v. Biden*, 5th Cir. No. 24-30489, at 25 (Nov. 1, 2024) ("Rather than challenge a "particular and identifiable action" … they seek review of the manner and rate at which the Department is processing pending export applications.").

[48] Additionally, in its Notice Dismissing Request for Rehearing in *Commonwealth LNG, LLC*, Docket No. 19-134-LNG, DOE/FECM similarly stated that the LNG Pause was not an agency order, and therefore does not have "substantial effect on the parties which cannot be altered by subsequent administrative action," does not "threaten 'irreparable harm'" and does not "impos[e] an obligation, den[y] a right, or fix[] some legal relationship." *See Commonwealth LNG, LLC*, Notice Dismissing Request for Rehearing, Docket No. 19-134-LNG at 13-17 (Mar. 27, 2024). If the LNG Pause is now interpreted by DOE/FECM as serving as a basis for late intervention, it certainly would have a substantial effect on parties, threaten irreparable harm to PALNG2, and impose an obligation, deny a right, or fix some legal relationship.

the notice period. The majority of Sierra Club's arguments are nearly word-for-word retreads of arguments it has made in other proceedings and that have no bearing upon the list of "facts." Finally, it has been almost a year since the LNG Pause was initiated, and the other "facts" listed by Sierra Club took place in the spring and summer of this year. And yet, Sierra Club only filed its intervention in late November. Even if taken at face value, this shows Sierra Club continued to sit on any right to intervene it might have had; and it certainly shows Sierra Club has not been diligent.

Courts have looked skeptically at parties' attempts to show good cause to intervene late in energy proceedings based upon the type of information that Sierra Club now indicates. In *California Trout v. FERC*,[49] the U.S. Court of Appeals for the Ninth Circuit upheld FERC's decision to deny a party's late intervention in a hydropower case. The "new information" upon which the parties purported to base good cause for their untimely interventions was merely supportive of their previously advanced position. However, the "new information" did not "fundamentally change the issues or even the arguments advanced by those parties."[50] The court further held that the would-be intervenor's decision to wait a year after the emergence of the new information further undermined their showing of good cause in the FERC's proceeding. This is precisely the situation in which Sierra Club finds itself now. None of the "new information" that it now lists in its motion has raised new issues or arguments that Sierra Club could not have advanced prior to the April 29, 2020 comment deadline, and indeed the cited information is consistent with arguments Sierra Club had raised in other proceedings prior to the deadline.

[49] 572 F.3d 1003, 1019 (9th Cir. 2009). *California Trout* involved a hydroelectric license renewal proceeding. In *Tennessee Gas*, the Commission stated that it would be guided by its precedent in the hydroelectric context in evaluating whether good cause exists for out-of-time interventions in natural gas certificate proceedings. *See Tennessee Gas*, 162 FERC ¶ 61,167 at P 51 ("We will look to our orders issued in hydroelectric proceedings for guidance when evaluating whether good cause exists for late intervention.").

[50] 572 F.3d at 1019.

Further, its months-long delay in pressing to intervene following the occurrence of the cited events demonstrates that it has fallen well short of the degree of diligence that would support a finding of good cause in this case.

The circumstances of Sierra Club's motion and prior disregard of DOE/FECM's intervention regulations do not support a good faith effort to demonstrate good cause for late intervention in this proceeding. As the DOE/FECM has noted, Section 3 proceedings should not be unduly disrupted due to "inattentiveness or intentional delay."[51] Sierra Club's intervention and protest evidences elements of both. Given the lack of substance and internal consistency, the more likely reason for Sierra Club's late intervention is that Sierra Club wishes to disrupt these proceedings long after it had any rights to participate.

Relevant to the issue of disruption of the proceedings, DOE's regulations also require that any party granted a late intervention must accept the record *as it stands*: "[i]n the event that a motion for late intervention is granted, an intervenor shall accept the record of the proceeding as it was developed prior to the intervention."[52] Sierra Club's filing, if accepted, would violate that regulation. Sierra Club's filing is a naked attempt to transform what has been an uncontested proceeding *for almost five years* into a contested proceeding and to introduce new arguments and new material into the record at the eleventh hour. DOE/FECM should not encourage this type of flagrant disregard of its rules.

4. The prejudice to PALNG2 engendered by Sierra Club's unexcused delay is substantial.

In waiting almost half a decade after it learned of this proceeding to file to intervene and protest, Sierra Club has unquestionably slept upon any rights it might otherwise have asserted here.

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[51] *See, e.g., Sabine Pass Liquefaction, LLC*, Docket No. 10-111-LNG, Procedural Order on Late-Filed Proceedings at 5 (Mar. 25, 2011).

[52] 10 C.F.R. § 590.303(h).

In its failure to act timely both at the initial comment stage and after it learned of grounds that it now claims justify its untimeliness, Sierra Club has substantially prejudiced PALNG2, the DOE/FECM's process, and other stakeholders interested in the orderly disposition of this proceeding.

The prejudicial impact of granting the motion weighs strongly in favor of rejecting the filing. The DOE's review of PALNG2's application is at an advanced stage with a record developed over the past 4.5 years. The Environmental Assessment was issued approximately four years ago, and the Supplemental EA almost two years ago. FERC, for its part, has issued an authorization for the Expansion Project under Section 3 of the NGA and pursuant to DOE/FECM's 2014 Procedures, the application is now ready for final agency action. This has been acknowledged by DOE/FECM.[53] Sierra Club's decision to wait several months after the occurrence of the events that it now cites as justification for its late intervention have further prejudiced PALNG2. Sierra Club cites the January 26 LNG Pause announcement as a basis for its motion to intervene, but did not raise that contention until ten months later. As discussed elsewhere in this Answer, Sierra Club's characterization of that announcement as giving rise to its newfound right to intervene is contrary to the representations and rulings of the DOE/FECM. In delaying its motion to intervene based upon that event, Sierra Club has precluded PALNG2 from seeking recourse on the issue under Section 19 of the NGA, which requires requests for rehearing to be filed within 30 days of DOE/FECM's action. This has also precluded any participation of which it might have availed in litigation focused on that issue. Similar prejudicial concerns arise regarding Sierra Club's late citation to the *NFE* decision as a basis for its intervention. The only purpose that can be inferred from Sierra Club's intervention and protest at this stage is either to

[53] *See* Brief for Appellants, *Louisiana v. Biden*, 5th Cir. No. 24-30489, at 13-14 (Nov. 1, 2024).

require DOE/FECM to restart an administrative process that began years ago or to complain upon review that DOE/FECM has declined to do so. Sierra Club should not be heard to complain of the agency's purported inattentiveness to its claimed interests, when Sierra Club is the author of that result through its own inaction. This is particularly true where the delay was so unprecedently long and the showing of good cause so anemic. Moreover, DOE/FECM cannot grant Sierra Club's late intervention without contradicting its own prior precedent,[54] which the agency has no grounds to do in this case.

Sierra Club makes the extraordinary assertion that it should be permitted to intervene and protest at any point in an administrative proceeding prior to the instant that the agency has made a final decision. Adoption of this course of action would be disastrous for the regular conduct of administrative procedure and any rational decision-making body should reject it as disorderly and contrary to fairness and due process.[55]

Accordingly, PALNG2 respectfully submits that Sierra Club's motion to intervene and protest should be denied in its entirety.

B. Similarly, Sierra Club Fails to Show Good Cause Supporting Its Late-Filed Protest

Sierra Club has failed to demonstrate good cause for filing its protest ***almost five years*** after the April 29, 2020 deadline for protests to the application.

Section 590.304(e) of DOE's rules clearly 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,

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[54] *See, e.g., La. Pub. Serv. Comm. v. FERC*, 184 F. 3d 892, 897 (D.C. Cir. 1999).

[55] Contrary to Sierra Club's claims, such a liberal standard for late intervention has never been the norm, even prior to FERC's adoption of its *Tennessee Gas* policy. FERC's cases have generally held that early intervention soon after the deadline was usually not disruptive, but intervention at late stages was disruptive and should not be allowed. *See, e.g., Transok, L.L.C.*, 89 FERC ¶ 61,055 (1999); *Bradwood Landing LLC*, 126 FERC ¶ 61,035 (2009).

unless a later date is permitted by the Assistant Secretary ***for good cause shown***.[56]

As with its late intervention, Sierra Club attempts to paint a misleadingly lax portrait regarding the standards for timely protests. Sierra Club in particular should be well aware of the requirement to file protests within DOE/FECM's established deadline, both because Sierra Club is a sophisticated litigant that has intervened and participated in numerous export proceedings before DOE/FECM, and because DOE/FECM has already admonished Sierra Club on multiple occasions for submitting late-filed protests.

In *Magnolia LNG, LLC*, Sierra Club failed to file an intervention or protest within the comment period for a proposed amendment application. Nearly 38 months after the close of the comment period, Sierra Club filed a request for rehearing of DOE/FECM's order approving the amendment application. By filing its opposition to the amendment application out of time, DOE/FECM held that Sierra Club failed to comply with the requirements for filing a timely protest. DOE/FECM noted "Sierra Club's submissions in prior proceedings demonstrate its awareness of the requirement to file its protest [opposing an application] during the comment period set forth" in the Federal Register Notice.[57] DOE/FECM found that granting Sierra Club's protest "would upend DOE's established administrative process, undermining the public interest in administrative efficiency and finality and rendering its comment period meaningless. It would also exacerbate fairness and due process concerns . . ."[58] DOE/FECM reached the same conclusion in *Golden Pass LNG Terminal LLC*, denying Sierra Club's filing made 18 months after the close of the comment period.[59]

Similarly, in two other proceedings, *Energía Costa Azul* and *Vista Pacifico LNG*, Sierra

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56 10 C.F.R. § 590.304(e).
57 *Magnolia LNG, LLC*, DOE/FECM Order No. 3909-D at 7.
58 *Id.* at 8.
59 *See Golden Pass LNG Terminal LLC*, DOE/FECM Order No. 3978-F at 8-9.

Club filed late interventions and protests approximately two years after the close of the respective deadlines set by DOE/FECM in those proceedings. DOE/FECM found once again that Sierra Club—a participant in numerous LNG export proceedings—was on notice of DOE's regulations and procedures regarding timely protests.[60] DOE emphasized that "in unnecessarily delaying the issuance of final agency action, late filings are both unfairly prejudicial to the applicant (and any other parties) and disruptive of DOE's interests in administrative efficiency and fairness."[61] DOE reiterated that "at some point, the opportunity for interested parties to intervene as parties in the 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 delay."[62] DOE found that the almost two-year delay in these cases "far surpasses other late filings rejected by DOE in LNG export proceedings," and concluded that accepting the late-filed protest would be "prejudicial to [the applicant], contrary to DOE precedent, and disruptive to this proceeding and DOE's administrative process."[63]

These same concerns apply even more forcefully in this proceeding, where Sierra Club has waited almost ***five years*** to lodge its grossly delayed protest. Sierra Club's fig leaf attempt to show good cause for its late filings is wholly deficient. Sierra Club claims that developments arising after the April 29, 2020 intervention deadline warranted its filing at the eleventh hour—namely, DOE's LNG Pause announced almost a year ago, a brief filed in a D.C. Circuit proceeding almost half a year ago, and DOE's 3-month old decision in *NFE Altamira FLNG.* None of these developments are new, and in any event as further discussed below, none justify Sierra Club filing its protest at this stage of the proceeding because the issues Sierra Club raises in its protest are

60 *Energia Costa Azul*, Order No. 4365-B at 52; *Vista Pacifico LNG*, Order No. 4929 at 52.
61 Order No. 4365-B at 52; Order No. 4929 at 52.
62 Order No. 4365-B at 52; Order No. 4929 at 52.
63 Order No. 4365-B at 52-53; Order No. 4929 at 52-53.

either repackaged versions of arguments that Sierra Club has raised in various LNG export proceedings for years or have no bearing on the new "developments" cited by Sierra Club. Sierra Club has not demonstrated why it could not have raised these issues in a timely manner within the comment period designated by DOE/FECM in this proceeding. Accordingly, Sierra Club has not demonstrated good cause for its late protest.

Sierra Club incorrectly claims there would be no prejudice in allowing its late protest at this stage of the proceeding. This is patently false. Sierra Club's delay in this proceeding is more than twice as long as its delay in the *Vista Pacifico* and *Energía Costa Azul* proceedings, where DOE/FECM found the extremely late nature of Sierra Club's filings to be unfairly prejudicial to the applicants and disruptive of DOE's administrative process. Through its filing, Sierra Club attempts to convert an uncontested application into a contested one almost five years into the proceeding. Entertaining Sierra Club's arguments at this extremely late hour would be highly prejudicial to PALNG2 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 [PALNG2's] Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto."[64] The lodging of a protest at this extremely 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."[65] PALNG2 diligently worked to prepare a comprehensive application and has relied upon the orderly and timely administration of DOE's procedures. DOE/FEMC

[64] 85 Fed. Reg. at 17569.

[65] *Magnolia LNG, LLC*, DOE/FECM Order No. 3909-D at 8 (citing *Tenn. Gas Pipeline Co. v. FERC*, 871 F.2d 1099 (D.C. Cir. 1989)).

should not unfairly penalize PALNG2 by allowing Sierra Club to flout DOE's procedural regulations. Moreover, DOE/FECM cannot grant Sierra Club's late protest without contradicting its own prior precedent, which DOE/FECM may not do without providing a reasoned explanation.[66]

It is particularly prejudicial for parties to file late protests in proceedings such as export authorizations under Section 3 of the NGA, where the opponents of the proposed authorization explicitly bear the burden of demonstrating that the proposal should be denied. In export authorization proceedings, opponents and/or DOE/FECM itself must establish a record that supports a denial in order for the agency to reject an application. In the absence of such a showing, the proposal must be approved. In other words, an opponent such as Sierra Club is not just tasked with poking holes in a proposed export application, it must make a *prima facie* case that such an export is contrary to the public interest. The purpose of DOE/FECM's establishment of a comment period and deadline is to allow for the potential establishment and review of such a record. For the same reason that a prosecutor is not permitted to wait to begin its case until the judge is ready to give jury instructions, opponents to an export proceeding cannot be allowed to wait until the last moment to begin the process of establishing a record to carry their burden. It is doubtful that any administrative proceeding could ever be brought to a timely conclusion under such a framework.[67]

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66 *See, e.g., La. Pub. Serv. Comm. v. FERC*, 184 F. 3d 892, 897 (D.C. Cir. 1999).

67 *See, e.g.,* U.S. Dep't of Energy, Port Arthur LNG Phase II, LLC, Notice of Application, 85 Fed. Reg. 17568 (Mar. 30, 2020) (Noting a "decisional record on the Application will be developed through responses to this [Federal Register] Notice by parties, including the parties' written comments and replies thereto."); *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG, Procedural Order on Late-Filed Pleadings, at 5 (Mar. 25, 2011) ("[A]t some point, the opportunity for interested persons to intervene as parties in a proceeding must close. This is necessary to ensure that the resolution of a proceeding and the issuance of a final order are not unduly delayed by inattentiveness or intentional delay."); *Venture Global CP2 LNG,* LLC, 189 FERC ¶ 61,148 at P 37 ("Those objecting to a project [under NGA section 3] bear the burden of producing credible, contrary evidence that the project is inconsistent with the public interest, and the record in this proceeding does not contain such contrary evidence sufficient to overcome the presumption.").

In the absence of good cause shown and in light of the potentially prejudicial and disruptive impacts, Sierra Club's late-filed protest should be rejected.

III. SIERRA CLUB'S SUBSTANTIVE ARGUMENTS LACK MERIT AND FAIL TO DEMONSTRATE THAT THE APPLICATION IS INCONSISTENT WITH THE PUBLIC INTEREST

Sierra Club claims that PALNG2's proposed exports should be denied because they are contrary to the public interest. PALNG2 reiterates that DOE/FECM should dismiss Sierra Club's out-of-time protest as procedurally infirm, and accordingly, should not evaluate Sierra Club's arguments on the merits. Nevertheless, even if DOE/FECM were to substantively consider Sierra Club's protest, Sierra Club's arguments should be rejected because they variously mischaracterize the public interest standard, echo arguments that Sierra Club has made and DOE/FECM has rejected in the past, or make unsupported claims regarding the impacts of the proposed exports. Sierra Club has failed to make the strong showing necessary to demonstrate PALNG2's proposed exports are inconsistent with the public interest.

A. Public Interest Standard

The general standard for review of applications to export natural gas to Non-FTA countries is established by section 3(a) of the NGA.[68] In applying this provision, DOE/FECM has consistently found that section 3(a) creates a rebuttable presumption that proposed exports of natural gas are in the public interest.[69] DOE/FECM will grant a Non-FTA export application

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[68] 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.").

[69] *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.*,

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.[70]

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.[71] While nominally applicable to natural gas import cases, DOE/FECM has found these Policy Guidelines applicable to natural gas export applications, as well.[72] 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.[73]

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 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).

70 *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.

71 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].

72 *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.

73 Policy Guidelines at 6,685.

DOE/FECM's analysis has also been guided by DOE Delegation Order No. 0204-111.[74] 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."[75] Although the Delegation Order is no longer in effect, 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.[76]

Analyses performed and commissioned by 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. Approximately 1.5 years before PALNG2 filed the Application, NERA published another study ("2018 Study") examining the probability and macroeconomic impact of various lower-48 sourced LNG export scenarios.[77] Like the prior

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74 U.S. Department of Energy, Delegation Order No. 0204-111 (Feb. 22, 1982).

75 *Id.* at para. (b).

76 *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).

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

studies 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 assumptions for domestic and international supply and demand conditions to capture a wide range of uncertainty in the natural gas markets.[78] "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."[79] 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.[80]

In its Application, PALNG2 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, will improve the U.S. balance of trade, and will diversify

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78 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.

79 *Id.* at 14.

80 *Id*. at 18, 20.

global energy supplies.[81] The proposed exports will also provide environmental benefits by facilitating the replacement of higher-emitting fuel sources with cleaner burning natural gas.[82]

The claims Sierra Club raises in its protest fail to show that the proposed Non-FTA exports are inconsistent with the public interest. Puzzlingly, Sierra Club appears to suggest that DOE/FECM revert to its prior practice of issuing a conditional authorization denying the Application on non-environmental grounds. However, this suggestion is unwarranted, first because DOE/FECM amended its procedures in 2014 to end its practice of issuing conditional authorizations,[83] and second, because a conditional authorization is unnecessary as FERC has already completed its environmental review of the Expansion Project, in which DOE was a participating agency. No further information is required in the record at this late stage, and since no evidence has been provided showing PALNG2's proposed exports are inconsistent with the public interest, DOE/FECM should proceed with granting the Application.

B. Sierra Club's Claims Regarding Rising Domestic Energy Prices are Unsupported

Sierra Club claims that increased natural gas exports raise domestic energy prices and adversely affect U.S. households. Sierra Club's characterization of natural gas prices is misleading and fails to rebut the statutory presumption that the proposed exports are in the public interest.

As a preliminary matter, Sierra Club has not shown good cause to raise this issue at this stage of the proceeding. Notwithstanding its claim that "new" facts justify its late filing, Sierra Club has long argued in numerous proceedings (including at least as far back to its comments to DOE's 2012 LNG study) that LNG exports will increase domestic energy prices and cause

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81 Application at 19-32.

82 *Id.* at 32.

83 U.S. Dep't of Energy, *Procedures for Liquefied Natural Gas Export Decisions*, Final revised procedures, 79 Fed. Reg. 48132 (Aug. 15, 2014).

disproportionate impacts on U.S. households.[84] Sierra Club has not demonstrated why it could not raise these longstanding allegations in this proceeding prior to the April 29, 2020 deadline. In any event, as demonstrated below, Sierra Club's arguments regarding the impact of LNG exports on domestic energy prices are meritless and should be rejected.

Sierra Club's claim that U.S. LNG exports have caused rising domestic natural gas prices is unsupported. In its Application, PALNG2 provided a study prepared by ICF International ("ICF Report"), which confirmed that LNG exports associated with the Expansion Project "will result in a minimal impact on the price of natural gas for U.S. consumers over the analysis period."[85] The ICF Report found PALNG2's proposed exports would have "minimal impact on the U.S. supply availability and market price because the volume represents a small amount of the North American natural gas resources and total market demand."[86] Furthermore, the ICF Report concluded that the Expansion Project could lead to significant economic benefits in the form of increased jobs,

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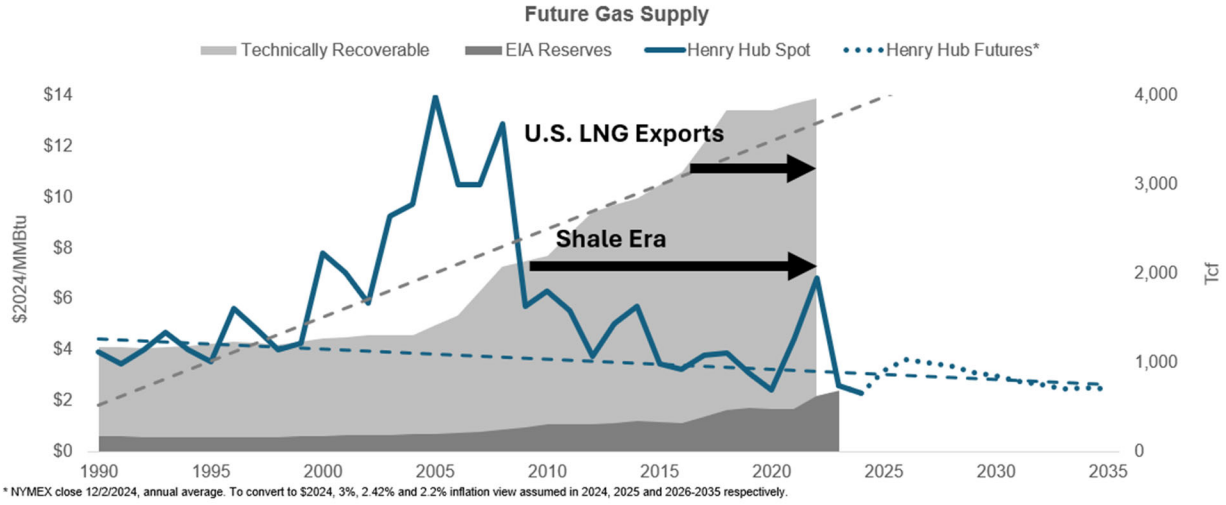
[84] *See, e.g.,* Sierra Club Comments on 2012 LNG Export Study, at 8 (Jan. 24, 2013) (arguing "LNG export raises gas prices and diverts investment from other sectors," and that U.S. households will not benefit from LNG exports), available at https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/export_study/Sierra_Club01_24_13.pdf. Sierra Club itself acknowledges these 2013 comments in its November 26, 2024 filing and argues the "principle [the 2013 comments] describes is still true." Sierra Club Filing at 2. Indeed, Sierra Club has consistently raised substantively identical arguments in proceedings over the past decade. *See, e.g.,* Sierra Club's Motion to Intervene, Protest, and Comments, *Dominion Cove Point LNG, LP*, FE Docket No. 11-128-LNG, at 9, 17 (Feb. 6, 2012) (alleging that applicant's proposed exports will "raise domestic gas prices, which . . . will harm consumers" and that "exporting domestic natural gas will increase gas demand and so will increase domestic gas prices"), *available at* https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2011/applications/Motion_to_Intervene_Sierra_Club_02_06_12.pdf; Sierra Club's Motion to Intervene, Protest, and Comments, *Venture Global Calcasieu Pass*, FE Docket No. 14-88-LNG, at 1, 20 (Jan. 9, 2015) (alleging "exports will also harm the public interest by increasing domestic gas prices and causing related economic damage" and that "increases in domestic gas prices will limit real wage growth, eliminate jobs in manufacturing and other domestic industries, disrupt communities, and regressively transfer wealth from working class families to large corporations."), *available at* https://www.energy.gov/sites/prod/files/2015/01/f19/Sierra%20Clubs%20Venture%20DOE%20phase%202%20MTI_0.pdf; Sierra Club Comments on 2018 LNG Export Study, at 2 (July 27, 2018) (alleging "[e]xports will harm *all* Americans by increasing gas prices, and thus prices paid for household energy consumption and by energy-intensive industries.") (emphasis in original; internal citations omitted), *available at* https://fossil.energy.gov/app/DocketIndex/docket/DownloadFile/582; *Freeport LNG Expansion, L.P.*, Order No. 4961, Docket No. 21-98-LNG at 62-64 (Mar. 3, 2023) (addressing protests by parties, including a 2021 protest filed by Sierra Club, alleging that LNG exports will lead to increased domestic gas prices).

[85] Application at 7.

[86] *Id.* at App. B (ICF Report), at 9.

economic activity, and tax revenues.[87] Sierra Club makes no attempt to refute or even address the ICF Report.

In making its claims that increasing U.S. LNG exports drive up domestic natural gas prices, Sierra Club points to the body of DOE studies, the latest Energy Information Administration's ("EIA") 2023 Annual Energy Outlook ("AEO"), and a 2021 FERC study as evidence.[88] In reality, 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.



Sources: (1) Reserves Data – U.S. 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 2, 2024.

A recent study released by the American Petroleum Institute and conducted by Energy Ventures Analysis ("EVA") found that that "[d]espite a record level of natural gas exports during the first six months of 2023, U.S. natural gas prices at Henry Hub averaged $2.48 per MMBtu, the lowest six-month average in over 35 years (outside of the COVID-19 pandemic)."[89] Moreover,

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87 *Id.* at 10.

88 Sierra Club Filing at 13-15. Sierra Club mischaracterizes the 2021 FERC report, which noted LNG exports as the primary driver for forecasted *demand* increase, but did not state this demand will "driv[e] gas price increases" as Sierra Club claims.

89 Energy Ventures Analysis, Impact Analysis of U.S. Natural Gas Exports on Domestic Natural Gas Pricing, at 2 (Mar. 2024) [hereinafter "EVA Study"], *available at* https://www.api.org/~/media/files/news/2024/03/18/api-eva-

by exclusively faulting U.S. LNG exports on recent price dynamics, Sierra Club ignores the complexity of the domestic and global natural gas markets and the fact that various factors have had acute effects on natural gas prices in recent years. The EVA found that unique post-COVID-19 pandemic circumstances and U.S. coal market exposure to global markets, not U.S. LNG exports, were the primary factors behind U.S. natural gas prices briefly increasing to 14-year highs in 2022.[90]

Sierra Club makes the argument that the DOE studies have affirmed that increasing exports increase gas prices. However, as Sierra Club acknowledges, DOE's studies confirmed that any potential price increases resulting from increased exports would be small.[91] Furthermore, prior forecasts, such as the EIA's Annual Energy Outlook 2017 ("AEO 2017"), under-estimated total U.S. consumption and over-estimated domestic gas prices. The AEO 2017 Reference case projected 2023 total U.S. consumption of 75 Bcf per day and Henry Hub gas prices of $4.28/MMBtu (in $2016).[92] Realized 2023 total U.S. consumption was materially higher at 89 Bcf per day, while Henry Hub gas prices were materially lower at $2.01/MMBtu ($2016).[93] This is because natural gas inventory, as measured by reserves and resources (see chart above), has substantially increased over this same period, resulting in significant available economic supply.

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lng-price-full-report Indeed, the United States is currently experiencing domestic natural gas prices that are *lower* than the levels DOE/FECM has deemed not inconsistent with the public interest in prior LNG export approvals. *See, e.g., Freeport*, Order No. 4961 at 62 (rejecting arguments that increased LNG exports will result in increased gas prices, and noting that the Energy Information Administration's Annual Energy Outlook predicted a Henry Hub price below $4/MMBtu throughout the projection period in most cases, and noting that the February 2023 Short-Term Energy Outlook projected Henry Hub prices averaging near $4/MMBtu for 2023 and 2024).

90 *See* EVA Study at 19-27.

91 See pages 24-29 of PALNG2's Application for a detailed discussion of findings regarding price impacts of LNG exports in DOE's 2012, 2014-2015, and 2018 studies, and in the ICF Report.

92 *See* Table 13, EIA AEO 2017 https://www.eia.gov/outlooks/aeo/data/browser/#/?id=13-AEO2017&sourcekey=0

93 See EIA Natural Gas Monthly Table 1 (https://www.eia.gov/naturalgas/monthly/) and Henry Hub spot prices (https://www.eia.gov/dnav/ng/hist/rngwhhdm.htm). Real prices were computed using the Consumer Price Index, published by the Bureau of Labor Statistics (https://www.bls.gov/cpi/).

Also, in recently issued orders, DOE/FECM has upheld the continuing validity of the 2018 economic study, explaining that "[t]he assumptions underlying the 2018 Study's findings remain consistent with more recent assessments of current and future natural gas supply, demand, and prices."[94] DOE/FECM also took administrative notice of the EIA's projections set forth in the AEO 2022. DOE/FECM noted that the AEO 2022 reference cases projected that by 2050, approximately 25% more natural gas would be produced than consumed in the United States. Based on this, DOE/FECM concluded that "the AEO 2022 Reference case is *even more supportive* of exports than the AEO 2017 Reference case without the CPP."[95] DOE/FECM also noted that with respect to price impacts, the AEO 2022 Reference case "projects an average Henry Hub natural gas price that is lower than the AEO 2017 Reference case without the CPP by 43%."[96] DOE/FECM concluded in those proceedings that both the 2018 Study and the AEO 2022 support a finding that the requested export volumes in those proceedings would not be inconsistent with the public interest. The most recent AEO 2023 Reference case continues to be more supportive of exports than the AEO 2017 Reference case and would not change the conclusions drawn above.[97]

Sierra Club further alleges that the impact of alleged domestic price increases are disproportionately shouldered by U.S. households. DOE/FECM has on several occasions considered and rejected similar arguments regarding distributional impacts.

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

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94 *See, e.g.*, *Energía Costa Azul*, DOE/FECM Order No. 4365-B at 54; *Vista Pacifico LNG*, DOE/FECM Order No. 4929 at 54.

95 DOE/FECM Order No. 4365-B at 55 (emphasis added); DOE/FECM Order No. 4929 at 55 (emphasis added).

96 DOE/FECM Order No. 4365-B at 59; DOE/FECM Order No. 4929 at 59.

97 U.S. Energy Information Administration, Annual Energy Outlook 2023 (Mar. 16, 2023), *available at* https://www.eia.gov/outlooks/aeo/narrative/index.php.

to net benefits to the U.S. economy."[98] While acknowledging that "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," DOE/FECM concluded that:

> 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.[99]

As DOE/FECM further explained, the Court of Appeals for the District of Columbia 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.[100] 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.'"[101]

The net benefits to the economy that DOE found in its 2018 Study continue to exist today, as confirmed by the 2024 EVA study. That study noted that "U.S. natural gas consumers have enjoyed the lowest natural gas prices in U.S. history over the last decade."[102] Additionally, the study concluded that increased U.S. gas exports "have and will continue to create massive

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98 U.S. Dep't of Energy, *Study on the Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study*, 83 Fed. Reg. 67251, 67266 (Dec. 28, 2018).

99 *Id.*

100 *Id.*

101 *See Sierra Club v. U.S. Dep't of Energy*, 703 Fed. Appx. 1, at *3 (DC Cir. 2017).

102 EVA Study at 16.

economic benefits for U.S. communities while providing global access to the reliable U.S. natural gas supply needed to further the global energy transition . . . ."[103] While continuing to make its unfounded claims that increased LNG exports will harm U.S. households, Sierra Club completely glosses over the vast benefits provided to local communities in the form of increased jobs and economic activity associated with LNG export projects.[104]

In sum, Sierra Club has failed to demonstrate that increased LNG exports associated with the Application will result in increased prices. Nor has Sierra Club provided evidence to demonstrate that LNG exports associated with the Application will have sufficiently adverse distributive impacts on U.S. households. Accordingly, Sierra Club has not provided the strong record evidence necessary to support a finding that the proposed exports are inconsistent with the public interest, and these arguments should be rejected.

C. Sierra Club's Comments on the Impacts of LNG Exports on U.S. Strategic Interests are also Baseless

Sierra Club next argues that PALNG2's proposed exports are not needed because U.S. allies are transitioning away from using natural gas and because, according to Sierra Club, DOE should actively encourage this trend.

Again, Sierra Club has not as a preliminary matter shown good cause for raising this issue in an untimely manner. Although Sierra Club cites DOE's decision in *NFE Altamira* as a "new" circumstance justifying its late filing, these issues have been raised by Sierra Club in past proceedings.[105] Accordingly, Sierra Club has not demonstrated good cause for why it is raising

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[103] *Id.* at 2.

[104] As the EVA study notes: "[t]he strong growth in U.S. natural gas production, transportation, and exports has brought substantial economic prosperity to regions (Haynesville, Permian, Bakken, Appalachia) previously known for high unemployment rates and low economic activity, benefitting local U.S. communities through royalty and tax payments, while increasing local employment." *Id.* at 6.

[105] Indeed, Sierra Club raised same these arguments in comments in the *NFE Altamira* proceeding two years ago, *see* Sierra Club's Motion to Intervene and Protest of NFE Altamira FLNG's Request for Export and Re-Export Authorization, Docket No. 22-110-LNG (Dec. 5, 2022), and Sierra Club has long advocated that DOE/FECM adopt

this issue at this late stage of the proceeding and its late filing must be rejected. In any event, Sierra Club's arguments are meritless and can be rejected on substantive grounds.

PALNG2 respectfully submits that in denying the applicant's request for a term through 2050, DOE/FECM's approach in *NFE Altamira* was inconsistent with the requirements of NGA section 3(a) and should not control in this proceeding. As consistently recognized by DOE/FECM and the courts, section 3(a) establishes a general statutory presumption favoring export authorizations. The statute *requires* DOE/FECM to issue an export authorization unless there is an *affirmative* showing that the requested authorization is inconsistent with the public interest.[106] In other words, in order to deny an export authorization, DOE/FECM bears the burden to overcome the presumption favoring exports based on evidence in the record.

For various reasons, DOE/FECM's approach in *NFE Altamira* violated these statutory requirements and DOE/FECM policy. As a preliminary matter, DOE/FECM did not make an

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a policy encouraging renewables development in Europe and importing countries, *see* Sierra Club's Motion to Intervene, Protest, and Comments, *Venture Global Calcasieu Pass, LLC*, FE Docket No. 14-88-LNG, at 59-63 (Jan. 9, 2015), *available at* https://www.energy.gov/sites/prod/files/2015/01/f19/Sierra%20Clubs%20Venture%20DOE%20phase%202%20MTI_0.pdf. Accordingly, there is no reason Sierra Club should have not anticipated these arguments prior to the April 29, 2020 deadline in this proceeding.

[106] *See, e.g., Sierra Club v. United States Dep't of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017) (""The Natural Gas Act provides that the Department 'shall' authorize exports to non-FTA nations '*unless* ... it finds that the proposed exportation ... will not be consistent with the public interest.' We have construed this as containing a 'general presumption favoring [export] authorization.'… Thus, there must be an 'affirmative' showing of inconsistency with the public interest' to deny the application."); *W. Virginia Pub. Servs. Comm'n v. U. S. Dep't of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982) ("[S]ection 3 sets out a general presumption favoring such authorization, by language which requires approval of an application unless there is an express finding that the proposed activity would not be consistent with the public interest."); *Panhandle Producers & Royalty Owners Ass'n v. Econ. Regul. Admin.*, 822 F.2d 1105, 1111–12 (D.C. Cir. 1987) ("Petitioner's departure point is the Administrative Procedure Act's directive that '[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.' But § 3 of the NGA does provide otherwise: ERA '*shall* issue ... [an import authorization] order upon application, *unless* ... it finds that the proposed exportation or importation will not be consistent with the public interest.' A presumption favoring import authorization, then, is completely consistent with, if not mandated by, the statutory directive. Section 3 is in this respect the reverse of § 7(e) of the NGA . . . While § 3 requires an affirmative showing of inconsistency with the public interest to *deny* an application, § 7 requires an affirmative showing of public convenience and necessity to *grant* one.") (emphasis in original) (internal citations omitted); *New England Fuel Inst. v. Econ. Regul. Admin.*, 875 F.2d 882, 889 (D.C. Cir. 1989) (finding a presumption favoring import authorization, then, is completely consistent with, if not mandated by, statutory directive and that such burden requires an affirmative showing of inconsistency with the public interest to deny an application.).

affirmative finding based on record evidence that the proposed exports over the full requested term would be inconsistent with the public interest, as it was required to do in order to deny the application pursuant to NGA Section 3(a).[107] In the absence of such an affirmative showing, DOE/FECM was not statutorily permitted to deny NFE Altamira's request to engage in exports through December 31, 2050. DOE/FECM neither made the finding it is required to make nor did it establish substantial evidence in the record to support such a finding. Its decision to deny the majority of the term requested by NFE Altamira was based upon its conclusion that it then lacked the information to determine that the export is not inconsistent with the public interest. This approach unlawfully misconstrues DOE/FECM's burden under NGA Section 3(a). If DOE/FECM lacks the information to determine that an export is not in the public interest, the NGA directs the agency to approve the export. Further, by focusing on Western Europe to the exclusion of other nations, DOE/FECM's decision is contrary to previous findings regarding more broadly targeted energy security. DOE has previously found that:

> An efficient, transparent international market for natural gas with diverse sources of supply provides both economic and strategic benefits to the United States and our allies. For example, in light of the recent Russian invasion of Ukraine, there are renewed concerns about energy security for *Europe and Central Asia*, particularly given the relative share of Russian natural gas supplies into those regions. By authorizing additional exports to non-FTA countries, *including to U.S. allies in Europe and elsewhere*, this Order [approving LNG exports] will enable [the authorization holder] to help mitigate energy security concerns once it begins exporting U.S. LNG. *More generally, to the extent U.S. exports diversify global LNG supplies and increase the volumes of LNG available globally, these additional exports will improve energy security for many U.S. allies and trading partners*.[108]

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[107] In fact, DOE/FECM found that based on "the evidence in the record and relevant precedent in earlier non-FTA export decisions [it] has not found an adequate basis to conclude that NFE Altamira re-exports of U.S.-sourced natural gas as LNG from Mexico for delivery to non-FTA countries will be inconsistent with the public interest." Order No. 5156 at 30.

[108] *Magnolia LNG LLC*, DOE/FECM Order No. 3909-C, FE Docket No. 13-132-LNG, Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 53 (Apr. 27, 2022) (emphasis added).

Furthermore, in reviewing export applications, DOE/FECM has historically reviewed a number of factors, including domestic natural gas supply and demand, natural gas prices, and international considerations (such as international trade benefits and energy security). There has not been an affirmative showing that any purported issues associated with LNG demand of U.S. allies outweigh the benefits of the proposed exports or otherwise render the Application inconsistent with the public interest.

Moreover, DOE/FECM has held that it "has never evaluated as part of its NGA section 3(a) analysis whether a particular LNG export application . . . is guaranteed to have 'real market need' for any or all of the requested export volumes."[109] As DOE has explained "a 'market need' inquiry is not required by the NGA or DOE's regulations . . ., is not compelled by DOE's NGA section 3(a) precedent and is at odds with the principles established in DOE's 1984 Policy Guidelines that DOE continues to apply."[110] This is consistent with the statutory presumption in favor of natural gas exports; a showing of market need would be superfluous. Sierra Club essentially claims that PALNG2's Application should be denied because there is allegedly no "market need" for the exports among the U.S.' European allies. The issue of whether such a market need exists is not a relevant inquiry under DOE's section 3(a) review and is insufficient to demonstrate that the Application is inconsistent with the public interest.

In any event, Sierra Club's references to a "world transitioning away from natural gas" are overstated and unsupported. Sierra Club cites the DOE's decision to reference the International Energy Agency ("IEA") reference case from the 2023 World Energy Outlook ("WEO") which

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[109] *Alaska LNG Project* LLC, Order 3463-D, Docket No. 14-96-LNG, Order Denying Request for Rehearing of DOE/FECM Order No. 3643-C Affirming and Amending DOE/FE Order No. 3643-A, at 50 (June 14, 2023).

[110] *Id.*

showed global demand for natural gas peaking this decade as evidence of this transition.[111] However, the Sierra Club fails to distinguish between global demand for natural gas and LNG. In the IEA's most recent WEO,[112] published in October 2024, the reference case forecasts global LNG demand will not peak until 2050 at the earliest, growing by approximately 10,029 Bcf or 52% from 2023 levels. In this same scenario, LNG rises from market share of 13% of global energy trade in 2023 to 19% by 2050.

In the 2024 WEO, the IEA has also upped its estimates on how much LNG the world will need. Under the 2024 reference scenario, the IEA now forecasts approximately 2,790 Bcf and 6,145 Bcf more LNG demand globally by 2030 and 2050 respectively, increases of 13% and 27% from the 2023 forecast. Even in the less realistic Announced Pledges Scenario (APS) which assumes all national energy and climate targets made by governments are met in full, the IEA has revised up global LNG demand by approximately 2,295 Bcf for 2030 and 1,554 Bcf by 2050, increases of 11% and 20% respectively from the 2023 forecast.

Sierra Club also contends that additional U.S. LNG exports are not required because U.S. allies in Europe are transitioning away from natural gas, citing DOE's decision to reference an April 2024 report by the European Commission's Agency for the Cooperation of Energy Regulators ("ACER") in *NFE Altamira FLNG* DOE/FE Order No. 5156. The ACER report concludes that gas consumption in the EU is on a downward trend due to electrification and decarbonization. However, once again the Sierra Club fails to distinguish between natural gas and LNG demand. In the reference case for its 2024 World Energy Outlook, BP forecasts European

[111] Sierra Club Filing at 16 (citing https://www.energy.gov/articles/unpacking-misconceptions-surrounding-does-lng-update).

[112] International Energy Agency, World Energy Outlook 2024 (Oct. 2024), *available at* https://www.iea.org/reports/world-energy-outlook-2024.

LNG demand peaking in the early-2030s.[113] Internationally recognized industry experts such as WoodMackenzie and Poten & Partners meanwhile both forecast European Union ("EU") LNG demand peaking in the mid-2030s.[114] All three outlooks, as well as the most recent forecast published by industry expert S&P Global Commodity Insights, forecast EU LNG demand to remain above 2023 levels into the 2040s.[115] Far from having already peaked, LNG will play an increasingly important role in Europe's energy mix as the region contends with declining domestic natural gas production while at the same time seeking to further extricate itself from dependence on Russian pipeline gas.

In a recent report, WoodMackenzie states:

> [t]he EU does have ambitious targets to reduce gas demand in the long term, but progress is slow, beyond renewable investments in the power sector, and there is increased consensus that gas demand will have more longevity than what policy makers hope for. US LNG imports will remain vital for a balanced EU gas market . . . (the) lack of additional US LNG developments risk EU having to depend on Russian LNG for the foreseeable future.[116]

Accordingly, Sierra Club's claims that U.S. LNG exports will not benefit U.S. allies or U.S. strategic interests are unfounded. Sierra Club has failed to provide the strong evidence required to rebut the presumption that PALNG2's proposed exports are not inconsistent with the public interest.

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[113] BP Energy Outlook 2024 (July 10, 2024), *available at* https://www.bp.com/en/global/corporate/energy-economics/energy-outlook.html.

[114] Wood Mackenzie Global Gas 10-year investment horizon outlook, *available at* https://my.woodmac.com/document/547542 and Poten & Partners Global LNG Outlook (Oct. 2024), *available at* https://portal.poten.com/lng/lng-market-outlook/.

[115] S&P Global Commodity LNG Supply Demand Gas (Aug. 2024), *available at* https://connect.ihsmarkit.com/document/show/phoenix/743784?connectPath=LNGLandingPage.Data&searchSessionId=dd6d4a26-4fe4-4a21-a03c-9603258d0048.

[116] Wood Mackenzie Asia LNG Demand Assessment prepared for ANGEA (Oct. 2024), *available at* https://angeassociation.com/policy-areas/asia-lng-demand-study/.

D. Sierra Club's Complaints Regarding Environmental Review of the Projects are Unsupported

Finally, Sierra Club argues that the Application cannot be approved by DOE/FECM without further environmental analysis. This argument fails on several grounds.

As a preliminary matter, once again, Sierra Club fails to demonstrate good cause for why it is raising these environmental arguments nearly five years after the comment deadline in this proceeding. Sierra Club cannot justify its environmental arguments based on the three "new" circumstances it cites in its November 26 filing,[117] none of which relate to environmental issues. Moreover, the environmental arguments Sierra Club raises in its protest have been raised in numerous proceedings in the past. Accordingly, Sierra Club has failed to demonstrate good cause for why it failed to raise these arguments on or before April 29, 2020, and its protest should be rejected as untimely.

Moreover, each of Sierra Club's environmental arguments is substantively baseless. First, Sierra Club argues that DOE/FECM cannot rely on the 2020 categorical exclusion, codified in 10 C.F.R. Part 1021 Part D Appendix B, B5.7, because the categorical exclusion is allegedly arbitrary and capricious. Each of Sierra Club's arguments as to the alleged invalidity of the categorical exclusion should be disregarded as an impermissible collateral attack on DOE's final rule, issued over four years ago.[118] Sierra Club took advantage of the opportunity to submit comments to the 2020 rulemaking,[119] and the instant proceeding is not the appropriate venue for Sierra Club to rehash its complaints against the categorical exclusion. Second, Sierra Club argues that the Application would not in any event qualify for the categorical exclusion because the proposed

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117 Sierra Club Filing at 7.

118 U.S. Dep't of Energy, *National Environmental Policy Act Implementing Procedures*, Final rule, 85 Fed. Reg. 78197 (Dec. 4, 2020).

119 *See* Comments of Sierra Club et al. on DOE-HQ-2020-0017-0001 (June 1, 2020), *available at* https://www.regulations.gov/comment/DOE-HQ-2020-0017-0016.

exports would violate Executive Order 14,008 and potentially cause significant impacts to environmentally sensitive resources. Both arguments are unsupported. While Sierra Club cites to Executive Order 14,008's policy goal that "[r]esponding to the climate crisis will require both significant short-term global reductions in greenhouse gas emissions and net-zero global emissions by mid-century or before," the Executive Order does not impose any actionable legal obligations upon PALNG2 or DOE that would prevent DOE/FECM from granting a categorical exclusion in this proceeding. Furthermore, in adopting the categorical exclusion, DOE/FECM recognized that associated transportation of natural gas by marine vessel is the only source of potential environmental impacts resulting from DOE's decision regarding authorizations under section 3 of the NGA, which normally does not pose the potential for significant environmental impacts.[120] Thus, Sierra Club has not persuasively shown that there would be a violation of any integral elements of the 2020 categorical exclusion if DOE/FECM were to grant such an exclusion in this proceeding.

Nevertheless, Sierra Club neglects to address that FERC has already conducted the NEPA review process for the Expansion Project, in which DOE was a participating agency. Whether or not DOE/FECM grants a categorical exclusion, it already has all the information required for it to, consistent with prior proceedings, adopt FERC's environmental review documents and issue a Finding of No Significant Impact.[121]

Finally, Sierra Club errs in arguing that DOE/FECM is required to review upstream and downstream greenhouse gas emissions ("GHG") as part of its NGA and NEPA review of the

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120 85 Fed. Reg. at 78198.

121 *See, e.g., Freeport LNG Expansion, L.P.*, DOE/FECM Order No. 4961, Docket No. 21-98-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 65-66 (Mar. 3, 2023) (issuing a Finding of No Significant Impact and adopting and incorporating by reference FERC's Environmental Assessment).

Application. Sierra Club mischaracterizes the D.C. Circuit's decision in *Sabal Trail* when it claims that decision compels DOE/FECM to consider upstream production or downstream end-use effects in connection with DOE's approval of LNG exports. On the contrary, DOE/FECM has consistently found, and the D.C. Circuit has upheld, that effects associated with increased natural gas production and downstream emissions are not reasonably foreseeable under NEPA and are not required to be considered by DOE/FECM under either the NEPA or NGA.[122]

Additionally, with respect to induced natural gas production, DOE/FECM has found that the "denial of . . . exports under NGA section 3(a) based on the environmental impacts associated induced production would be too blunt an instrument to address these environmental concerns efficiently" as the public interest would be better served by addressing such environmental concerns through federal, state, or local regulations.[123] Indeed, through a combination of regulation and industry efforts, with the passing of the Inflation Reduction Act in 2022 and rulemakings by the U.S. Environmental Protection Agency, U.S. oil and gas emissions are amongst the most regulated in the world. Such regulatory actions have largely been received positively by industry participants, many of which have already undertaken voluntary initiatives improve monitoring and reduce emissions.

With respect to GHG emissions, DOE/FECM has noted that net global emission impacts of increased exports will be affected by market dynamics and potential interventions in importing countries, which has resulted in difficulty modeling the net change that a given amount of U.S. LNG exports will have on global GHG emissions. Accordingly, DOE/FECM has found that it is

122 *See, e.g., Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 197-203 (D.C. Cir. 2017)
123 *See, e.g.*, *Freeport LNG*, DOE/FECM Order No. 4961 at 67.

unable to conclude whether an increase in exports associated with a given application will increase global GHG emissions "in a material or predictable way."[124]

Lastly, Sierra Club fails to recognize the role that natural gas played in the United States' decarbonization journey and the impact that it has and could continue to have in decarbonizing economies around the world by reducing coal and other fossil fuel usage in their energy sectors. Europe, in particular, reduced emissions by 31% in 2022 relative to 1990 levels largely due to shifts in energy production, including coal phase-out.[125] Such an omission is directly related to Sierra Club's claim that DOE's analyses do not inform the public that facilities that use U.S. LNG (e.g., power plants) are "high-carbon" and "intensive." Such an argument is invalid, as portraying the use of U.S. LNG as a significant source of emissions is misleading when those emissions are considerably lower than those of the viable alternatives.

Sierra Club has not made a persuasive demonstration in its protest that DOE/FECM must engage in any further environmental review of the project, or that any environmental information in the record shows that PALNG2's proposed exports are inconsistent with the public interest.

IV. CONCLUSION

For the foregoing reasons, PALNG2 respectfully requests that DOE/FECM dismiss Sierra Club's late-filed motion to intervene and late-filed protest. Should DOE/FECM permit the late-

[124] *See, e.g., id.* at 69.

[125] EEA Total Net Greenhouse Gas Emission Trends and Projections in Europe (Oct. 31, 2024), *available at* https://www.eea.europa.eu/en/analysis/indicators/total-greenhouse-gas-emission-trends.

filed protest, PALNG2 respectfully submits that each of Sierra Club's arguments are meritless and should be rejected, as detailed above.

Respectfully submitted,

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Counsel for Port Arthur LNG Phase II, LLC

Dated: December 11, 2024

VERIFICATION

I, Sigurd Lars Carlson, declare that I am Vice President – Project Development for Port Arthur LNG Phase II, LLC and am duly authorized to make this Verification; that I have read the foregoing instrument and that the facts therein stated are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in San Diego, California on December 11, 2024.

/s/ Sigurd Lars Carlson
Sigurd Lars Carlson
Vice President – Project Development
Port Arthur LNG Phase II, LLC
488 8th Avenue
San Diego, CA 92101

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 11th day of December, 2024.

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