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OFFICE OF FOSSIL ENERGY**

4:24pm, Nov. 10, 2015

**IN THE MATTER OF:**

**SABINE PASS LIQUEFACTION, LLC            )  
  )       **FE DOCKET NO. 15-63-LNG**  
  )**

**ANSWER OF SABINE PASS LIQUEFACTION, LLC,  
IN OPPOSITION TO  
SIERRA CLUB MOTION TO INTERVENE, PROTESTS, AND COMMENTS**

Pursuant to Sections 590.302(b), 590.303(e), and 590.304(f) of the Department of Energy’s (“DOE”) regulations,<sup>1</sup> Sabine Pass Liquefaction, LLC (“SPL”) hereby submits this Answer in opposition to Sierra Club’s Motion to Intervene, Protest, and Comments (“Sierra Club Motion”) filed on October 26, 2015, in the above-captioned proceeding. In support of this Answer, SPL states the following:

**I  
BACKGROUND**

**A.     SPL’s Existing Authorizations**

On August 7, 2012, DOE’s Office of Fossil Energy (“DOE/FE”) issued a Final Opinion and Order granting SPL’s application under Section 3 of the Natural Gas Act (“NGA”)<sup>2</sup> for long-term, multi-contract authorization to export up to the equivalent of 803 billion cubic feet (“Bcf”) per year (“Bcf/y”)—2.2 Bcf per day (“Bcf/d”)—of liquefied natural gas (“LNG”) from Stages 1 and 2 of the Sabine Pass Liquefaction Project (“Liquefaction Project”) currently under construction at the Sabine Pass LNG Terminal (“SPLNG Terminal”) in Cameron Parish,

<sup>1</sup> 10 C.F.R. §§ 590.302(b), 590.303(e), 590.304(f) (2015).

<sup>2</sup> 15 U.S.C. § 717b (2012).

Louisiana, to nations with which the United States has not entered into a free trade agreement (“FTA”) providing for national treatment for trade in natural gas (“non-FTA nations”).<sup>3</sup> Previously, DOE/FE had issued a conditional order granting SPL such authorization in May 2011, specifically conditioning it upon the Federal Energy Regulatory Commission’s (“FERC”) “satisfactory completion” of its environmental review process under the National Environmental Policy Act (“NEPA”),<sup>4</sup> and “on issuance by DOE/FE of a finding of no significant impact [(“FONSI”)] or a record of decision pursuant to NEPA.”<sup>5</sup> FERC issued an Environmental Assessment (“EA”) under NEPA for the Liquefaction Project in December 2011,<sup>6</sup> and an order authorizing its construction under NGA Section 3 in April 2012;<sup>7</sup> DOE/FE, acting as a cooperating agency under NEPA,<sup>8</sup> issued a FONSI in August 2012.<sup>9</sup>

In October 2013, SPL filed an application with FERC to increase the maximum production capacity of the Liquefaction Project to reflect the peak LNG production and export

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<sup>3</sup> *Sabine Pass Liquefaction, LLC, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations*, DOE/FE Order No. 2961-A, FE Docket No. 10-111-LNG (Aug. 7, 2012) [hereinafter *Sabine Pass Final Non-FTA Order*].

<sup>4</sup> 42 U.S.C. §§ 4321–4347 (2012).

<sup>5</sup> *Sabine Pass Liquefaction, LLC, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas From Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations* 43, DOE/FE Order No. 2961, FE Docket No. 10-111-LNG (May 20, 2011). DOE/FE had also previously granted SPL authorization to export up to 803 Bcf per year of LNG from the SPLNG Terminal for a thirty-year term to any nation with which the United States currently has, or in the future enters into, an FTA providing for national treatment for natural gas (“FTA nations”). See *Sabine Pass Liquefaction, LLC, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Free Trade Nations*, DOE/FE Order No. 2833, FE Docket No. 10-85-LNG (Sept. 7, 2010).

<sup>6</sup> See 77 Fed. Reg. 277 (Jan. 4, 2012).

<sup>7</sup> FERC authorized the construction and operation of the Liquefaction Project consisting of four LNG production trains (Stages 1 and 2). See *Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.*, 139 FERC ¶ 61,039 (2012), *reh’g denied*, 140 FERC ¶ 61,076 (2012); see also *Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.*, 144 FERC ¶ 61,099 (2013).

<sup>8</sup> See 40 C.F.R. §§ 1501.6, 1503.2, 1506.3 (2015) (detailing rights and responsibilities of cooperating agencies, including right to adopt lead agencies’ NEPA analyses).

<sup>9</sup> DOE/FE, *Finding of No Significant Impact for Sabine Pass Liquefaction, LLC Regarding Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations*, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG (Aug. 7, 2012).

capability of the liquefaction trains under optimal operating conditions. On February 20, 2014, FERC issued an order approving a combined maximum production capacity for Stages 1 and 2 of the Liquefaction Project of approximately 20 mtpa, or 1,006 Bcf/y.<sup>10</sup> This annual LNG production capacity represents the combined, maximum or peak capacity of the four LNG trains based on the final, optimized design of the Liquefaction Project. Subsequently, on February 12, 2015, DOE/FE issued an order authorizing SPL to export up to an additional 203 Bcf/y of LNG from the Liquefaction Project, the additional volumes resulting from the optimized design, to FTA nations, for a twenty-five-year period.<sup>11</sup>

## **B. The Instant Application**

On April 20, 2015, SPL submitted an application to DOE/FE under Section 3 of the NGA, in FE Docket No. 15-63-LNG, for authorization to export up to an additional 203 Bcf/y of LNG (or 0.56 Bcf/d) from the Liquefaction Project to non-FTA nations, for a twenty-year period (the “Application”).<sup>12</sup> The request for additional export authorization is intended to align the volumes authorized for export to non-FTA nations with the liquefaction production capacity of the Liquefaction Project already approved by FERC.<sup>13</sup>

The Application requested that DOE/FE grant a Categorical Exclusion under NEPA because no additional facilities are required to export these volumes beyond those already authorized by FERC. Accordingly, the requested export authorization “does not involve any

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<sup>10</sup> *Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.*, 146 FERC ¶ 61,117 (2014), *reh’g denied*, 148 FERC ¶ 61,200 (2014) [hereinafter *2014 FERC Order*].

<sup>11</sup> *Sabine Pass Liquefaction, LLC, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from Sabine Pass LNG Terminal in Cameron Parish Louisiana, to Free Trade Agreement Nations*, DOE/FE Order No. 3595, FE Docket No. 14-92-LNG (Feb. 12, 2015).

<sup>12</sup> Application of Sabine Pass Liquefaction, LLC for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (FE Docket No. 15-63-LNG).

<sup>13</sup> *See id.* at 2, n.5.

new construction or modifications to existing facilities.”<sup>14</sup> The Application further contains a discussion regarding how the requested increase in exports is consistent with the public interest, and an appendix discussing the justifications for increased LNG exports vis-à-vis the U.S. domestic economy.<sup>15</sup>

Notice of the Application (“NOA”) was published in the Federal Register on August 26, 2015. The NOA provided, among other things, that protests and motions to intervene in the proceeding be filed by no later than October 26, 2015.<sup>16</sup> Sierra Club submitted its Motion on October 26, 2015.

## II ANSWER

Sierra Club has repeatedly sought to intervene, comment, protest, and request reconsideration in proceedings relating to the Liquefaction Project before both DOE/FE and FERC. Notably, both DOE/FE and FERC have rejected the contentions of the Sierra Club in each and every proceeding. SPL hereby refers to and incorporates by reference the numerous filings that have already been made by SPL and its fellow subsidiaries of Cheniere Energy, Inc. in response to Sierra Club in those proceedings.<sup>17</sup> Additionally, the same day that it submitted

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<sup>14</sup> *Id.* at 9.

<sup>15</sup> *See id.* at 5-6, 12-21.

<sup>16</sup> 80 Fed. Reg. 51,792 (Aug. 26, 2015).

<sup>17</sup> *See* Answer of Sabine Pass Liquefaction, LLC in Opposition to Out-of-Time Intervention of Sierra Club, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG (May 3, 2012); Answer of Sabine Pass Liquefaction, LLC in Opposition to Motion of Sierra Club for Stay, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG (Sept. 21, 2012); Answer of Sabine Pass Liquefaction, LLC in Opposition to Motion to Supplement the Record, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG (Nov. 13, 2012); Answer of Cheniere Marketing, LLC to Motions to Intervene, Protest and Comments, *Cheniere Marketing, LLC*, FE Docket No. 12-97-LNG (Jan. 10, 2013); Answer of Sabine Pass Liquefaction, LLC, in Opposition to Motions to Intervene, Protest, and Comments, *Sabine Pass Liquefaction, LLC*, FE Docket Nos. 13-30-LNG & 13-42-LNG (Oct. 8, 2013); *see also* Motion to Oppose Late Intervention of Sierra Club, *Sabine Pass Liquefaction, LLC & Sabine Pass LNG, L.P.*, FERC Docket No. CP11-72-000 (Mar. 23, 2012), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=12925559>; Answer of Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P. in Opposition to Motion for Stay, *Sabine Pass Liquefaction, LLC & Sabine Pass LNG, L.P.*, FERC Docket No. CP11-72-000 (May 29, 2012), available at <http://elibrary.ferc.gov/idmws/common/>

the Sierra Club Motion that is the subject of this Answer, Sierra Club made an almost identical filing in the pending DOE/FE docket of another Cheniere entity, Corpus Christi Liquefaction, LLC.<sup>18</sup>

The Sierra Club Motion here, like its prior filings, consists almost entirely of generalized assertions regarding the putative environmental effects of induced natural gas production that will supposedly result from LNG exports in general, rather than an argument specific to the Application. In fact, as explained in the Application, the requested authorization to export 203 Bcf/y more of LNG requires no additional facility construction or modification; moreover, the potential environmental impacts associated with the export of additional volumes of LNG from the Liquefaction Project have already been considered by FERC, as part of its approval of SPL's request to increase the Liquefaction Project's authorized maximum capacity from 2.2 Bcf/d to approximately 2.76 Bcf/d (an increase of 0.56 Bcf/d).<sup>19</sup> Sierra Club's protest also relies on assertions regarding putative increases in domestic gas prices and economic harms that it asserts follow from LNG exports. But again, Sierra Club does not rely on information specific to the

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[OpenNat.asp?fileID=12994824](http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=12994824); Answer of Cheniere Creole Trail Pipeline, L.P. in Opposition to Out-of-Time Motion to Intervene of Sierra Club and Response to Comments, *Cheniere Creole Trail Pipeline, L.P.*, FERC Docket No. CP12-351-000 (Nov. 1, 2012), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13101228>; Answer to Out-of-Time Motion to Intervene of Sierra Club and Response to Comments, *Sabine Pass Liquefaction, LLC & Sabine Pass LNG, L.P.*, FERC Docket No. CP13-2-000 (Feb. 19, 2013), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13184492>; Answer of Cheniere Creole Trail Pipeline, L.P. in Opposition to Motion for Stay, *Cheniere Creole Trail Pipeline, L.P.*, FERC Docket No. CP12-351-000 (Apr. 9, 2013), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13229191>; Answer of Sabine Pass Liquefaction Expansion, LLC, Sabine Pass Liquefaction, LLC, Sabine Pass LNG, L.P., and Cheniere Creole Trail Pipeline, L.P., to Sierra Club's Motion to Intervene, Protest, and Comments, *Sabine Pass Liquefaction Expansion, LLC, Sabine Pass Liquefaction, LLC, Sabine Pass LNG, L.P. & Cheniere Creole Trail Pipeline, L.P.*, FERC Docket Nos. CP13-552-000 & CP13-553-000 (Nov. 15, 2013), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13395513>; Answer of Sabine Pass Liquefaction, LLC, and Sabine Pass LNG, L.P., to Sierra Club's Motion to Intervene, Protest, and Comments, *Sabine Pass Liquefaction, LLC & Sabine Pass LNG, L.P.*, FERC Docket No. CP14-12-000 (Nov. 29, 2013), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13403910>.

<sup>18</sup> See *In re Corpus Christi Liquefaction, LLC*, Sierra Club Motion to Intervene Protests, and Comments, FE Dkt. No. 15-97-LNG (Oct. 26, 2015).

<sup>19</sup> See 2014 FERC Order, *supra* note 10; see also Application, *supra* note 12, at 10 (citing to 2014 FERC Order).

Application to support its objections, and its argument is contrary to DOE/FE's repeated conclusion that NEPA does not require DOE/FE to consider effects that are "speculative" and not "reasonably foreseeable." SPL submits the following further responses to the Sierra Club Motion:

**A. Sierra Club's Intervention Should Be Denied**

Sierra Club has failed to articulate a sufficient interest in the proceedings to warrant intervention. Sierra Club asserts an interest in the "environmental consequences of any gas exports from the Cheniere project, including emissions and other pollution" and "damage to air, land, and water resources caused by [] increasing development," because "Sierra Club members live and work throughout the area that will be affected by the export proposal," and in "the domestic gas fields that will likely see increased production."<sup>20</sup> But this sweeping assertion is not supported by the evidence on which Sierra Club relies. Instead, the single declaration on which Sierra Club relies indicates only that "[a]s of October 2015, Sierra Club has 2,880 members in Louisiana and 629,261 members overall."<sup>21</sup> This does not remotely support Sierra Club's far more specific claim that its members live in the specific areas relevant to this Application, and will therefore be impacted individually by the increased LNG export authorization requested in the Application.

Furthermore, to the extent that Sierra Club is attempting to claim an interest in the siting, construction, and operation of the Liquefaction Project, those matters are within the exclusive jurisdiction of FERC and FERC has already issued such authorization.<sup>22</sup> It would thus be duplicative and unnecessary to allow Sierra Club to intervene on the basis of its claimed interest

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<sup>20</sup> *Sierra Club Motion*, at 1-2.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *See* 15 U.S.C. § 717b (e)(1); *cf.* *Sierra Club Motion*, at 2 (listing the purported "environmental damage associated with construction and operation of the facility and associated infrastructure" as one of its interests).

in the siting, construction, and operation of the Liquefaction Project, a process over which DOE/FE has no authority or control; and Sierra Club would in no way be impaired or impeded in protecting that interest if denied intervention here.<sup>23</sup>

## **B. Sierra Club’s Protest Should Be Rejected**

Sierra Club has failed to set forth any relevant studies or other evidence sufficient to overcome the presumption that granting the Application would be consistent with the public interest. Instead, the Sierra Club Motion consists almost entirely of a recitation of arguments that have been previously rejected by DOE/FE,<sup>24</sup> and relies on a mischaracterization of the NGA Section 3 standard for evaluating export applications. Contrary to Sierra Club’s position, Section 3 establishes a presumption in favor of granting export authorization; it is Sierra Club’s burden to show that the requested export authorization is *not* in the public interest, not SPL’s burden to show that it is.

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<sup>23</sup> Fed. R. Civ. P. 24(a)(2).

<sup>24</sup> See *Sabine Pass Final Non-FTA Order*, *supra* note 3, at 9–28, 5 (denying Sierra Club’s motion to intervene out-of-time, and concluding, “based on a review of the complete record in the FERC proceeding and the arguments raised in the instant proceeding by the Sierra Club, that there is no need or sufficient justification to supplement the environmental review conducted by the FERC”); see also *Dominion Cove Point LNG, LP, Final Opinion and Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Cove Point LNG Terminal in Calvert County, Maryland, to Non-Free Trade Agreement Nations*, at 35–43, 44–45, 46–100, FE Docket No. 11-128-LNG, DOE/FE Order No. 3331-A (May 7, 2015) [hereinafter *Cove Point Non-FTA Order*] (addressing Sierra Club arguments in opposition to export application); *Freeport LNG Expansion, L.P., et. al., Final Opinion and Order 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 37–42, 43–44, 46–99, FE Docket No. 11-161-LNG, DOE/FE Order No. 3357-B (Nov. 14, 2014) [hereinafter *Freeport Non-FTA Order*](same); *Cameron LNG LLC, 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 25–31, 33–34, 36–88, FE Docket No. 11-162-LNG, DOE/FE Order No. 3391-A (Sept. 10, 2014) [hereinafter *Cameron Non-FTA Order*](same); *Jordan Cove Energy Project, L.P., Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Jordan Cove LNG Terminal in Coos Bay, Oregon to Non-Free Trade Agreement Nations*, at 60–66, 73–79, 136–41, FE Docket No. 12-32-LNG, DOE/FE Order No. 3413 (Mar. 24, 2014) [hereinafter *Jordan Cove Non-FTA Order*](same).

## 1. DOE/FE Should Grant SPL's Request for a NEPA Categorical Exclusion

Sierra Club argues that SPL's request for authorization to export an additional 203 Bcf/y of LNG does not fall within the definition of a "categorical exclusion" as recognized under DOE/FE's regulations.<sup>25</sup> Under DOE/FE regulations and the Council on Environmental Quality's ("CEQ") regulations and guidance, a categorical exclusion is appropriate for categories of action that "do not individually or cumulatively have a significant effect on the human environment," and where there are no "extraordinary circumstances" warranting further review.<sup>26</sup> The FERC regulations —unlike those of DOE/FE—do not allow for a categorical exclusion. Thus, as noted in the Application, FERC *has already* considered the "potential environmental impacts" associated with the additional volumes of LNG contemplated by the Application.<sup>27</sup> The proposed increased production capacity simply "represents the maximum or peak LNG production and export capability of the liquefaction trains under optimal operating conditions."<sup>28</sup> FERC approved SPL's request to increase the Liquefaction Project's authorized maximum production and export capacity from 2.2 Bcf/d to approximately 2.76 Bcf/d—the same 0.56 Bcf/d increase request in the current Application—because FERC determined that the requested increase in production did "*not constitute a major federal action significantly affecting the quality of the human environment.*"<sup>29</sup>

Thus, a categorical exclusion is appropriate here given that there is no construction or expansion of facilities necessary to accomplish the requested export. Moreover, FERC has

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<sup>25</sup> See 40 C.F.R. § 1508.4 (2015); 10 C.F.R. Part 1021, Subpart D, Appendix B, B5.7.

<sup>26</sup> See 40 C.F.R. § 1508.4; see also *Final Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews Under the National Environmental Policy Act*, 77 Fed. Reg. 14,473 (2012).

<sup>27</sup> See *2014 FERC Order*, *supra* note 10, at PP. 13-21.

<sup>28</sup> See Application, *supra* note 12, at 9-10.

<sup>29</sup> *2014 FERC Order*, *supra* note 10, at P 20 (emphasis added); see also Application, *supra* note 12, at 10.



already determined that the increased production capacity to allow for the Application’s requested exports does not constitute a major federal action. Sierra Club has not identified any “extraordinary” circumstances that would require further review; nor has it identified why DOE/FE could expect to reach a conclusion different from that reached by FERC.<sup>30</sup> In fact, far from this being an “extraordinary” situation, DOE/FE has recently applied the categorical exclusion set out in B5.7 in the context of proposed LNG exports from the United States under similar circumstances where no new construction was required.<sup>31</sup> Thus, in these circumstances, a categorical exclusion may be properly applied to a request for additional LNG export authorization.<sup>32</sup>

## **2. Sierra Club Fails to Overcome the Presumption that SPL’s Application is Consistent with the Public Interest**

Sierra Club once again misstates the standard for evaluating export applications when it states that “Section 3 of the Natural Gas Act provides that DOE/FE cannot authorize exports unless it finds the exports to be in the public interest.”<sup>33</sup> That is not the standard. Section 3 of the NGA directs that DOE/FE “*shall issue*” an order authorizing the export to a foreign country “*unless ... [DOE/FE] finds that the proposed exportation ... will not be consistent with the*

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<sup>30</sup> Cf. *Sierra Club Motion*, at 10, 14.

<sup>31</sup> See *Carib Energy (USA) LLC, Categorical Exclusion Determination CX-011992*, DOE/FE Docket No. 11-141-LNG (May 30, 2014). See also *ConocoPhillips Alaska Natural Gas Corp., Categorical Exclusion Determination*, DOE/FE Docket No. 13-155-LNG (Apr. 3, 2014) (applying a categorical exclusion to ConocoPhillips’ application to engage in exports of LNG to Non-FTA Nations under circumstances which require no new facilities or modifications to existing facilities).

<sup>32</sup> See 10 C.F.R. Part 1021, Subpart D, Appendix B, B5.7 (allowing categorical exclusion for “[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction”).

<sup>33</sup> See *Sierra Club Motion*, at 3.

public interest.”<sup>34</sup> As DOE/FE has recognized multiple times, this language “creates a statutory presumption in favor of approval of an export application.”<sup>35</sup>

Sierra Club later acknowledges this presumption, but argues that the presumption only applies to “purely economic impacts” and that “DOE cannot extend this presumption to environmental impacts.”<sup>36</sup> But, as noted, that is not what Section 3 of the NGA provides. Rather, Section 3 directs that DOE/FE “shall issue such order” authorizing LNG export “unless” the “proposed exportation” is not “consistent with the public interest.”<sup>37</sup> Both environmental and economic impacts are within the “public interest” inquiry, but, contrary to Sierra Club’s position, Section 3 does not differentiate between the two; instead, Section 3 provides that an application to export LNG “shall” be granted “unless” it is shown that “the proposed exportation” will not be consistent with “the public interest.”<sup>38</sup>

Moreover, DOE/FE has previously rejected Sierra Club’s attempts to rebut this presumption by pointing to information that is not specific to the particular export application at issue, finding this insufficient to “overcome the statutory presumption.”<sup>39</sup> Because Sierra Club relies on the same broad arguments and non-specific assertions, DOE/FE should follow its recent precedent and deny Sierra Club’s protest here as well. To the extent Sierra Club is arguing for

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<sup>34</sup> 15 U.S.C. § 717b(a) (emphasis added).

<sup>35</sup> *Phillips Alaska Natural Gas Corp. and Marathon Oil Co., Order Extending Authorization to Export Liquefied Natural Gas from Alaska*, DOE/FE Order No. 1473 at 13, FE Docket No. 96-99-LNG (Apr. 2, 1999) (citing *Panhandle Producers and Royalty Owners Ass’n v. Econ. Regulatory Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

<sup>36</sup> *See Sierra Club Motion*, at 5-6.

<sup>37</sup> 15 U.S.C. § 717b(a).

<sup>38</sup> *Id.*

<sup>39</sup> *See Cove Point Non-FTA Order*, *supra* note 24, at 81-100; *Freeport Non-FTA Order*, *supra* note 24, at 82-99; *Cameron Non-FTA Order*, *supra* note 24, at 71-88; *Jordan Cove Non-FTA Order*, *supra* note 24, at 136-146.

wholesale changes to DOE/FE's NGA Section 3 process,<sup>40</sup> such arguments are beyond the scope of an individual application.

### **3. Sierra Club's NEPA Arguments Should Be Rejected**

Sierra Club protests putative environmental and economic “harms” that it asserts would result from the Application’s requested 203 Bcf/y increase in LNG exports: Sierra Club relies heavily on environmental impacts associated with presumed induced shale gas production, and all presumptive direct, indirect and cumulative impacts associated with all proposed export projects.<sup>41</sup> It also relies on putative micro- and macro-economic harms that will supposedly be caused by all LNG exports.<sup>42</sup> Many of these arguments are irrelevant, while others are misplaced because FERC—not DOE/FE—is generally the lead agency for purposes of conducting NEPA analyses. In the instant case, FERC has already performed its NEPA review and has approved the capacity associated with the incremental volumes for which export authorization is requested in the Application.

#### **a. Sierra Club's Environmental Arguments Are Substantively Flawed**

Even assuming *arguendo* that Sierra Club’s environmental arguments were well taken as a procedural matter in the context of a DOE/FE proceeding regarding an LNG export authorization, their substance is unsupported by facts, regulations, and precedent.

##### **i. There is No Basis for a Programmatic Environmental Impact Statement**

Sierra Club acknowledges that DOE/FE has consistently refused to evaluate LNG export projects through a programmatic EIS, instead determining to “adjudicate each export application

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<sup>40</sup> See, e.g., *Sierra Club Motion*, at 6.

<sup>41</sup> See *id.* at 15-21.

<sup>42</sup> See *id.* at 21-26.

individually.”<sup>43</sup> To the extent Sierra Club continues to argue for a programmatic EIS, that request should be rejected for all the reasons it has already been rejected by DOE/FE.

First, it is common practice for FERC to evaluate the environmental impacts of proposed expansions that increase LNG terminal capacity through an EA under NEPA in cases where the previously-approved project is still under construction.<sup>44</sup> Furthermore, DOE’s NEPA regulations define a programmatic EIS as a “broad-scope EIS ... that identifies and assesses the environmental impacts of a DOE program.”<sup>45</sup> Courts have stated that a programmatic EIS reflects the “broad environmental consequences attendant upon a wide-ranging federal program.”<sup>46</sup> The rationale for preparing a programmatic EIS is that a coordinated federal program is likely to generate “disparate, yet related, impacts.”<sup>47</sup>

The SPL proposed project is not part of a coordinated federal program directed by DOE/FE (or any other federal entity) on a regional or national level, they are not part of an orchestrated series of projects directed by a single decision-maker, such as the federal government, and DOE/FE’s review and approval of projects under the NGA does not constitute a coordinated federal program. Instead, SPL is just one of numerous companies that have

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<sup>43</sup> See *id.* at 10.

<sup>44</sup> See, e.g., 68 Fed. Reg. 6911 (Feb. 11, 2013) (Elba Island Expansion Project); 71 Fed. Reg. 27,493 (May 11, 2006) (SPLNG Terminal Phase II Project); 71 Fed. Reg. 36,769 (June 28, 2006) (Freeport LNG Phase II Project); 71 Fed. Reg. 68,599 (Nov. 27, 2006) (Cameron Terminal Expansion Project); see also *Floridian Nat. Gas Storage Co.*, 140 FERC ¶ 61,167 (2012); *E. Cheyenne Gas Storage, LLC*, 140 FERC ¶ 62,083 (2012); *Monroe Gas Storage Co.*, 133 FERC ¶ 62,203 (2010); *MoBay Storage Hub, LLC*, 131 FERC ¶ 61,152 (2010); *PetroLogistics Nat. Gas Storage, LLC*, 130 FERC ¶ 62,273 (2010); *Midcontinent Express Pipeline, LLC*, 128 FERC ¶ 61,253 (2009); *Wyckoff Gas Storage Co.*, 124 FERC ¶ 62,192 (2008); *Empire Pipeline, Inc.*, 124 FERC ¶ 62,177 (2008); *Caledonia Energy Partners, L.L.C.*, 119 FERC ¶ 62,012 (2007).

<sup>45</sup> 10 C.F.R. § 1021.104(b) (2015).

<sup>46</sup> *Found. on Econ. Trends v. Heckler*, 756 F.2d 143, 159 (D.C. Cir. 1985) (quoting *Nat’l Wildlife Fed’n v. Appalachian Reg’l Comm’n*, 677 F.2d 883, 888 (D.C. Cir. 1981)).

<sup>47</sup> *Nat’l Wildlife Fed’n*, 677 F.2d at 888.

proposed to site, construct, and operate LNG export facilities and to engage in LNG exports to FTA and Non-FTA nations. Therefore, there is no basis for a programmatic EIS in this instance.

**ii. Sierra Club’s Position that the Effects of Induced Additional Production of Natural Gas Must Be Considered in the Environmental Analyses Should Be Rejected**

Just as it has unsuccessfully alleged in other export authorization proceedings, Sierra Club here argues that “NEPA and the NGA ... require DOE/FE to consider the effects” of increased LNG production as part of its assessment of the current Application.<sup>48</sup> This same position has been consistently rejected, and should be here, too.

First, both FERC and DOE/FE have rejected the notion that induced gas production constitutes an “indirect effect” requiring consideration under NEPA because any such induced production is not “reasonably foreseeable.”<sup>49</sup> “Indirect effects” under NEPA are those that “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”<sup>50</sup> Courts have emphasized that cognizable indirect effects “are those ‘which are caused by the action,’”<sup>51</sup> with the Supreme Court explaining that “a ‘but for’ causal relationship

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<sup>48</sup> See, e.g., *Sierra Club Motion*, at 16 (“LNG exports will induce additional production in the United States.”).

<sup>49</sup> See *Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.*, 139 FERC ¶ 61,039, at PP 94–99 (2012) (“[I]mpacts which may result from additional shale gas development are not ‘reasonably foreseeable’ as defined by the [Council on Environmental Quality (‘CEQ’)] regulations.”); see also *Sabine Pass Final Non-FTA Order*, *supra* note 3, at 28 (“DOE/FE accepts and adopts the Commission’s determination that induced shale gas production is not a reasonably foreseeable effect for purposes of NEPA analysis, for the reasons given by the Commission.”).

<sup>50</sup> 40 C.F.R. § 1508.8(b) . To the extent that Sierra Club couches its arguments in terms of the “cumulative impacts” of other LNG export projects inducing natural gas production, these too would be indirect effects that must be reasonably foreseeable to be cognizable under NEPA. “Cumulative impact” is defined as “the impact on the environment which results from the incremental impact of the proposed action when added to other past, present, or reasonably foreseeable future actions.” *Id.* § 1508.7. The terms, “impact” and “effect” are interchangeable. See *id.* § 1508.8. “Effects” can be both “direct” and “indirect.” See *id.* Thus, inducement of additional natural gas production would have to be a “reasonably foreseeable” indirect effect of a “reasonably foreseeable” LNG export project in order to be cognizable under NEPA.

<sup>51</sup> *City of Shoreacres v. Waterworth*, 420 F.3d 440, 452 (5th Cir. 2005) (quoting 40 C.F.R. § 1508.8(b) (emphasis added)).

is insufficient to make an agency responsible for a particular effect under NEPA.”<sup>52</sup> Instead, “a plaintiff mounting a NEPA challenge must establish that an alleged effect will ensue as a ‘proximate cause,’ in the sense meant by tort law, of the proposed agency action.”<sup>53</sup> Agencies need not consider “speculative” effects.<sup>54</sup> DOE/FE should follow this well-trodden path here and reject Sierra Club’s attempt to evade settled precedent.<sup>55</sup>

Moreover, any induced natural gas production does not constitute a “cumulative impact” under NEPA that must be considered in an EIS. FERC has had multiple opportunities to consider Sierra Club’s argument that the environmental effects of induced production must be considered in the cumulative impacts analysis for proposed natural gas infrastructure projects—including the Liquefaction Project—and has consistently rejected this position on the grounds that shale development and its associated effects are not sufficiently causally related to the proposed project.<sup>56</sup> Just as FERC has found previously that the environmental effects of induced

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<sup>52</sup> *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004); *see also Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (stating that Congress intended that “the terms ‘environmental effect’ and ‘environmental impact’ in [NEPA] § 102 be read to include a requirement of a reasonably close causal relationship between a change in the physical environment and the effect at issue”).

<sup>53</sup> *City of Shoreacres*, 420 F.3d at 452 (citing *DOT v. Pub. Citizen*, 541 U.S. 752 (2004)).

<sup>54</sup> *E.g., Webster v. USDA*, 685 F.3d 411, 429 (4th Cir. 2012) (citing *Wyoming v. USDA*, 661 F.3d 1209, 1253 (10th Cir. 2011)); *Sierra Club v. Marsh*, 976 F.2d 763, 768 (1st Cir. 1992).

<sup>55</sup> *Cf. Sierra Club Motion*, at 16 (noting that “DOE has previously stated that it is uncertain where additional production induced by exports would occur”).

<sup>56</sup> *See, e.g., Sabine Pass Liquefaction, LLC & Sabine Pass LNG, L.P.*, 144 FERC ¶ 61,099, at P 46 (2013) (reaffirming “that impacts which may result from additional gas development are not reasonably foreseeable, as defined in CEQ regulations, and that any additional shale gas development is not an effect of the project for purposes of a cumulative impacts analysis”); *Cheniere Creole Trail Pipeline, L.P.*, 142 FERC ¶ 61,137, at P 54 (2013) (rejecting Sierra Club’s argument “that the resulting increase in gas production activities will be an indirect effect of the proposed project that the [EA] should have addressed”); *see also Transcontinental Pipe Line Co.*, 143 FERC ¶ 61,132, at PP 54–55 (2013) (citing *Pub. Citizen*, 541 U.S. at 767); *Tenn. Gas Pipeline Co., L.L.C.*, 139 FERC ¶ 61,161, at PP 182–93 (2012); *Tex. E. Transmission, LP*, 139 FERC ¶ 61,138, at PP 70–73 (2012); *Cent. N.Y. Oil & Gas Co.*, 137 FERC ¶ 61,121, at PP 81–107 (2011), *reh’g denied*, 138 FERC ¶ 61,104, at PP 33–56 (2012), *aff’d sub nom. Coal. for Responsible Growth and Res. Conservation v. FERC*, 485 Fed. App’x. 472 (2d Cir. 2012).

production were neither “‘reasonably foreseeable’” nor an “‘effect’” for purposes of a NEPA cumulative impacts analysis,<sup>57</sup> the same is true here.

Sierra Club attempts to support its position by arguing that the 2014 EIA Export Study<sup>58</sup> shows that “the exports at issue *in this application* will cause an increase in domestic gas production equivalent to ‘about 61% to 84% of the increase in natural gas demand from LNG exports.’”<sup>59</sup> That study says no such thing. Instead, the 2014 EIA Export Study—and particularly the portion that Sierra Club cites—refers to LNG exports nationwide, not to any particular LNG project, and certainly not to the specific authorization to export an additional 203 Bcf/y LNG that is the subject of the Application.<sup>60</sup> Furthermore, the 2014 EIA Export Study “recognize[d] that projections of energy markets over a 25-year period are highly uncertain and subject to many events that cannot be foreseen,” and that this was “particularly true” as to LNG exports.<sup>61</sup> Sierra Club cannot, and has not, established that the Liquefaction Project or the Application’s current request for additional export authorization, will cause any of the predicted increase in natural gas production, much less any of the environmental harms that Sierra Club posits.<sup>62</sup> In short, Sierra Club does not point to any evidence to justify DOE/FE departing from its (and FERC’s) long-followed understanding that induced natural gas production is not a “‘reasonably foreseeable’” indirect or cumulative effect under NEPA.

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<sup>57</sup> *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039, at P 96 (2012).

<sup>58</sup> See U.S. Energy Information Administration, *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets*, <http://www.eia.gov/analysis/requests/fe/> (Oct. 29, 2014) [hereinafter *2014 EIA Export Study*].

<sup>59</sup> See *Sierra Club Motion*, at 16 (emphasis added) (citing *2014 EIA Export Study*, at 12).

<sup>60</sup> See *2014 EIA Export Study*, *supra* note 58, at 12, 16-17.

<sup>61</sup> *Id.* at 10.

<sup>62</sup> *Cf.*, *Sierra Club Motion*, at 16-21.

## **b. Sierra Club’s Economic Arguments Should be Rejected**

Sierra Club raises numerous “economic harms” that will purportedly follow from increased LNG exports.<sup>63</sup> Sierra Club alleges that increased LNG exports will “decrease wages,” “make most US families worse off,” lead to “job losses” or “short-term jobs,” “boom-bust cycle[s],” and “higher energy rates.”<sup>64</sup>

But Sierra Club fails to present sufficient evidence on any of these points to rebut the presumption that the Liquefaction Project is in the public interest. Indeed, Sierra Club’s contentions are based on long-term, nationwide (or foreign) domestic statistical estimates of aggregate natural gas market dynamics.<sup>65</sup> Further, the 2012 NERA Report found that “[a]ll export scenarios are welfare-improving for U.S. consumers.”<sup>66</sup> And a 2014 update to the 2012 NERA Report confirmed that “[a]cross the scenarios [analyzed], U.S. economic welfare consistently increases as the volume of natural gas exports increases. This includes scenarios in which there are unlimited exports.”<sup>67</sup>

Sierra Club contends that exports will lead to “job losses.”<sup>68</sup> However, Sierra Club’s predictions of “job losses” and “‘resource curse’ effects” and the creation of “shorter-term” jobs (along with its other allegations) do not follow—and Sierra Club does not provide any support that they do follow—from the Liquefaction Project itself, which is projected to create, and has already created during the construction process, a significant number of jobs. And Sierra Club

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<sup>63</sup> See *id.*, at 21-26.

<sup>64</sup> See *id.*, at 21-25.

<sup>65</sup> See, e.g., *id.*, at 22 n.47 (relying on a study of natural gas export impacts on the Australian economy).

<sup>66</sup> NERA Economic Consulting, *Macroeconomic Impacts of LNG Exports from the United States*, at 55 (2012) available at [http://energy.gov/sites/prod/files/2013/04/f0/nera\\_lng\\_report.pdf](http://energy.gov/sites/prod/files/2013/04/f0/nera_lng_report.pdf) [hereinafter *2012 NERA Report*].

<sup>67</sup> NERA Economic Consulting, *Updated Macroeconomic Impacts of LNG Exports from the United States*, at 7 (Mar. 24, 2014), available at [http://www.nera.com/content/dam/nera/publications/archive2/PUB\\_LNG\\_Update\\_0214\\_FINAL.pdf](http://www.nera.com/content/dam/nera/publications/archive2/PUB_LNG_Update_0214_FINAL.pdf) [hereinafter *2014 NERA Report*].

<sup>68</sup> See *Sierra Club Motion*, at 22.



further does not provide support that the requested increase in export authorization *sought in the current Application* would cause these effects. Instead, much of the job-loss and other economic harms that Sierra Club contends will result from additional exports would theoretically be attributable to induced production of natural gas.<sup>69</sup> Therefore those alleged effects would not be a cognizable indirect effect of the Liquefaction Project.<sup>70</sup> In any event, the 2014 NERA Report concluded that, in all scenarios analyzed, LNG exports would *reduce* the rate of U.S. unemployment compared to scenarios in which exports did not occur.<sup>71</sup>

Sierra Club further argues that “LNG exports” will “benefit only a few Americans, who are generally already wealthy and who own shares of companies in a few industries[.]”<sup>72</sup> Sierra Club’s professed concern for the working class apparently does not prevent it from opposing a project that would support thousands of construction jobs. LNG exports would create two additional sources of income, in the form of higher export revenues and higher natural gas income.<sup>73</sup> The 2014 NERA Report found that U.S. households’ real income and welfare would

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<sup>69</sup> See, e.g., *Sierra Club Motion*, at 22-23 (discussing “the ‘resource curse’ and boom-bust cycle that plagues extractive economies”). DOE/FE has responded that, “[t]o the extent that the ‘bust’ cycles Sierra Club envisions are brought on by price declines that render existing resources uneconomic to produce, we do not see compelling evidence that the exports will exacerbate this risk,” and that, “[i]f anything, it seems more likely that . . . export[s] to non-FTA countries will deepen and diversify the market for U.S.-produced natural gas, making the potential for a precipitous price-driven downturn in production activities less likely, not more likely.” *Jordan Cove Non-FTA Order*, *supra* note 24, at 139. See also *Sierra Club Motion*, at 22 (predicting “[d]omestic gas price increases”); *id.* at 23 (arguing that “gas producing regions” will be worse-off “despite short-term job growth as a result of increases in gas production”); *id.* (“the gas production jobs that exports will create are typically short-term jobs”); *id.* (predicting “adverse effects” on rate payers in “communities where production occurs”).

<sup>70</sup> See *Sierra Club Motion*, at 22-23.

<sup>71</sup> See *2014 NERA Report*, *supra* note 67, at 114 (“We find that, depending on the speed at which export capacity is built, the unemployment rolls could be reduced by as many as 45,000 workers on average over the period from 2013 to 2018.”).

<sup>72</sup> See *Sierra Club Motion*, at 24.

<sup>73</sup> *2012 NERA Report*, *supra* note 66, at 7.

consistently increase as the volume of LNG exports increase.<sup>74</sup> And though Sierra Club attempts to pin these predicted harms on the additional requested exports at issue in the Application,<sup>75</sup> it does not provide any actual support for these claims. Thus, Sierra Club has not presented any evidence showing negative distributional consequences to any particular socioeconomic sector.<sup>76</sup>

Finally, Sierra Club asserts that “exports would cause a net reduction in GDP,” in part because NERA’s report reaching the opposite conclusion “excluded numerous other factors that would further drive down GDP.”<sup>77</sup> This is the same argument that Sierra Club has raised before, and it is wrong for the same reasons.<sup>78</sup> As DOE/FE has explained, “[t]he NERA study presented the macroeconomic impacts of LNG exports using the different statistical measures [of] price, welfare, GDP, aggregate consumption, aggregate investment, natural gas export revenues, sectoral output, and wages and other household incomes. NERA did not confuse the concepts of welfare growth and GDP growth.”<sup>79</sup>

Nor is there any basis for the argument that LNG exports will reduce GDP, as the 2012 NERA Report predicted positive impacts under all modeled scenarios.<sup>80</sup> The 2014 NERA

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<sup>74</sup> 2014 NERA Report, *supra* note 67, at 7 (“Although there are costs to consumers in the form of higher energy prices and lower consumption ... these costs are more than offset by increases in export revenues, along with wealth transfers from overseas received in the form of payments for liquefaction services. The net result is an increase in U.S. households’ real income and welfare.”).

<sup>75</sup> See, e.g., *Sierra Club Motion*, at 22-23 (“Available evidence, including the NERA Study DOE commissioned, indicates that the exports Cheniere proposes will decrease wages and make most families worse off.”).

<sup>76</sup> Indeed, DOE/FE has dismissed this same argument by Sierra Club, finding that Sierra Club had failed to present compelling evidence of distributional consequences “so negative as to outweigh net positive benefits to the U.S. economy as a whole. . . .” *Lake Charles Exports, LLC, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Lake Charles Terminal to Non-Free Trade Agreement Nations* 87, FE Docket No. 11-59-LNG, DOE/FE Order No. 3324 (Aug. 7, 2013) [hereinafter *Lake Charles Non-FTA Order*].

<sup>77</sup> See *Sierra Club Motion*, at 25.

<sup>78</sup> See *Sabine Pass Liquefaction, LLC, Sierra Club Motion to Intervene, Protest, and Comments*, at 68-69, FE Dkt. No. 13-121-LNG (Apr. 14, 2014).

<sup>79</sup> *Lake Charles Non-FTA Order*, *supra* note 76, at 78.

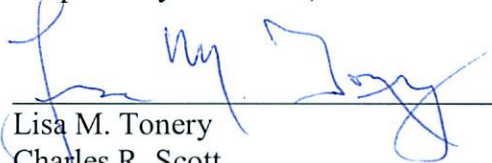
<sup>80</sup> See 2012 NERA Report, *supra* note 66, at 56–57.

Report confirms as much: it concludes that, in all of the scenarios analyzed, the United States would experience net economic benefits resulting from increased LNG exports relative to a scenario in which LNG exports do not occur—as measured by a broad metric of economic welfare, or by more common measures such as real household income or real GDP.<sup>81</sup> Indeed, as to GDP specifically the 2014 NERA Report’s scenarios projected potential increases of as much as \$86 billion by 2038.<sup>82</sup>

### III CONCLUSION

For the foregoing reasons, the Sierra Club Motion should be denied.

Respectfully submitted,



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Dated: November 10, 2015

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<sup>81</sup> See 2014 NERA Report, *supra* note 67, at 7.

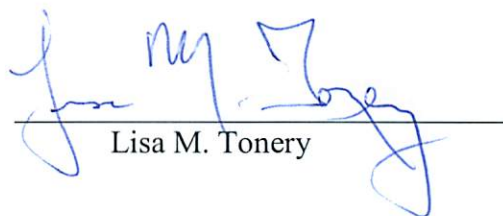
<sup>82</sup> *Id.* at 94.

**VERIFICATION**

State of New York )

County of New York )

BEFORE ME, the undersigned authority, on this day personally appeared Lisa M. Tonery, who, having been by me first duly sworn, on oath says: that she is the Attorney for Sabine Pass Liquefaction, LLC., and is duly authorized to make this Verification; that she has read the foregoing instrument; and that the facts therein stated are true and correct to the best of her knowledge, information, and belief.

  
\_\_\_\_\_  
Lisa M. Tonery

SWORN TO AND SUBSCRIBED before me on the 10<sup>th</sup> day of November, 2015.

Name:   
Title: Notary Public

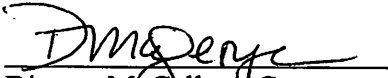
My Commission expires:

**DIONNE McCALLUM-GEORGE**  
Notary Public, State of New York  
No. 01MC6249522  
Qualified in Queens County  
Commission Expires Oct. 11, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at New York, N.Y., this 10th day of November, 2015.

  
Dionne McCallum-George  
*Legal Secretary on behalf of  
Sabine Pass Liquefaction, LLC*