

July 11, 2016

U.S. Department of Energy
Office of the General Counsel
1000 Independence Ave. SW.
Room 6A245
Washington, DC 20585

Submitted via regulations.gov and email



Re: DOE Request for Information on Modification and Streamlining of Regulations

Please accept the following comments submitted on behalf of Sierra Club in response to the Department of Energy's (DOE) Request for Information on Reducing Regulatory Burden, 81 Fed. Reg. 28,736 (May 10, 2016).

Sierra Club encourages DOE to revise 10 C.F.R. § 590.303, governing interventions in Natural Gas Act import and export proceedings, to include a provision similar to Federal Energy Regulatory Commission ("FERC") rule 380.10(a)(1)(i). FERC, unlike DOE, categorically permits motions to intervene to be filed *both* in response to an initial application *and*, crucially, in conjunction with comments on a draft environmental impact statement prepared pursuant to the National Environmental Policy Act ("NEPA"). Specifically, FERC's rule provides that:

In addition to submitting comments on the NEPA process and NEPA related documents, any person may file a motion to intervene in a Commission proceeding dealing with environmental issues under the terms of [18 C.F.R.] § 385.214 of this chapter. Any person who files a motion to intervene on the basis of a draft environmental impact statement will be deemed to have filed a timely motion, in accordance with § 385.214, as long as the motion is filed within the comment period for the draft environmental impact statement.

18 C.F.R. § 380.10(a)(1)(i).

Allowing intervention in conjunction with comments on NEPA review will further the goal of public participation without imposing additional burdens on the DOE process. This change will further public participation because members of the public may not know that they will be potentially affected by the environmental impacts of proposed projects until those impacts are disclosed in the draft Environmental Impact Statement. Even members of the public who are aware of proposed projects may not understand the potential extent of impacts prior to the draft EIS.

Allowing intervention in conjunction with comments on the EIS will also reduce the burden imposed by interventions regarding applications that may never reach the NEPA review stage. Under the current rules, Sierra Club has been compelled to intervene, as a protective measure, in multiple dockets for projects that, years later, were withdrawn prior to reaching the point of environmental review,¹ and in other dockets that, although not yet formally withdrawn, have lingered for years without even initiation of FERC pre-filing procedures or any hint of environmental review.² These interventions needlessly burden intervenors and the DOE staff who are required to process these interventions.

On the other hand, allowing intervention at the NEPA stage will not prejudice applicants or the DOE proceedings. Under current DOE practice, DOE appears not to engage in *any* review of natural gas import or export applications prior to completion of NEPA review—a practice consistent with NEPA’s command to engage in environmental review “at the earliest possible time.” 40 C.F.R. § 1501.2. Insofar as no activity whatsoever occurs prior to completion of NEPA review, commencing participation at the NEPA stage poses no risk of burdening the proceedings. Even if DOE were to return to its prior (and, in Sierra Club’s view, inappropriate) practice of conditionally evaluating non-environmental issues prior to environmental review, there would be no prejudice or burden resulting from allowing subsequent intervenors to raise environmental issues. *Compare* 18 C.F.R. § 380.10(a)(1)(ii) (“Any person that is granted intervention after petitioning becomes

¹ See Gulf Coast LNG Export, DOE/FE Docket 12-05-LNG (Sierra Club intervention filed August 3, 2012, application withdrawn June 27, 2016); Excelerate Liquefaction Solutions, DOE/FE Docket 12-146-LNG (Sierra Club intervention filed Feb. 4, 2013, application withdrawn Oct. 13, 2015).

² *Compare* Freeport McMoRan Energy, DOE/FE Docket 13-26 (Sierra Club Intervention filed Aug. 5, 2013), EOS, DOE/FE Docket 13-116-LNG (Sierra Club intervention filed Feb. 7, 2014), Barca LNG, DOE/FE Docket 13-118 (Sierra Club intervention filed Feb. 7, 2014), Waller LNG, DOE/FE Docket 13-153-LNG (Sierra Club intervention filed Sept. 9, 2014) *with* FERC, *North American LNG Export Terminals: Proposed* (July 11, 2016), <http://ferc.gov/industries/gas/indus-act/lng/lng-proposed-export.pdf> and attached as Exhibit 1.

a party to the proceeding and accepts the record as developed by the parties as of the time that intervention is granted.”).

Finally, in amending its rules to allow for intervention in conjunction with comments on NEPA review, DOE must clarify that where DOE seeks to satisfy NEPA by acting as a cooperating agency, with FERC as the lead agency for environmental review, *see* 15 U.S.C. § 717n(b), 42 U.S.C. § 7172(a)(2)(B), DOE will accept interventions in the *DOE* docket filed concurrently with comments submitted to *FERC* regarding the coordinated draft EIS prepared by FERC.

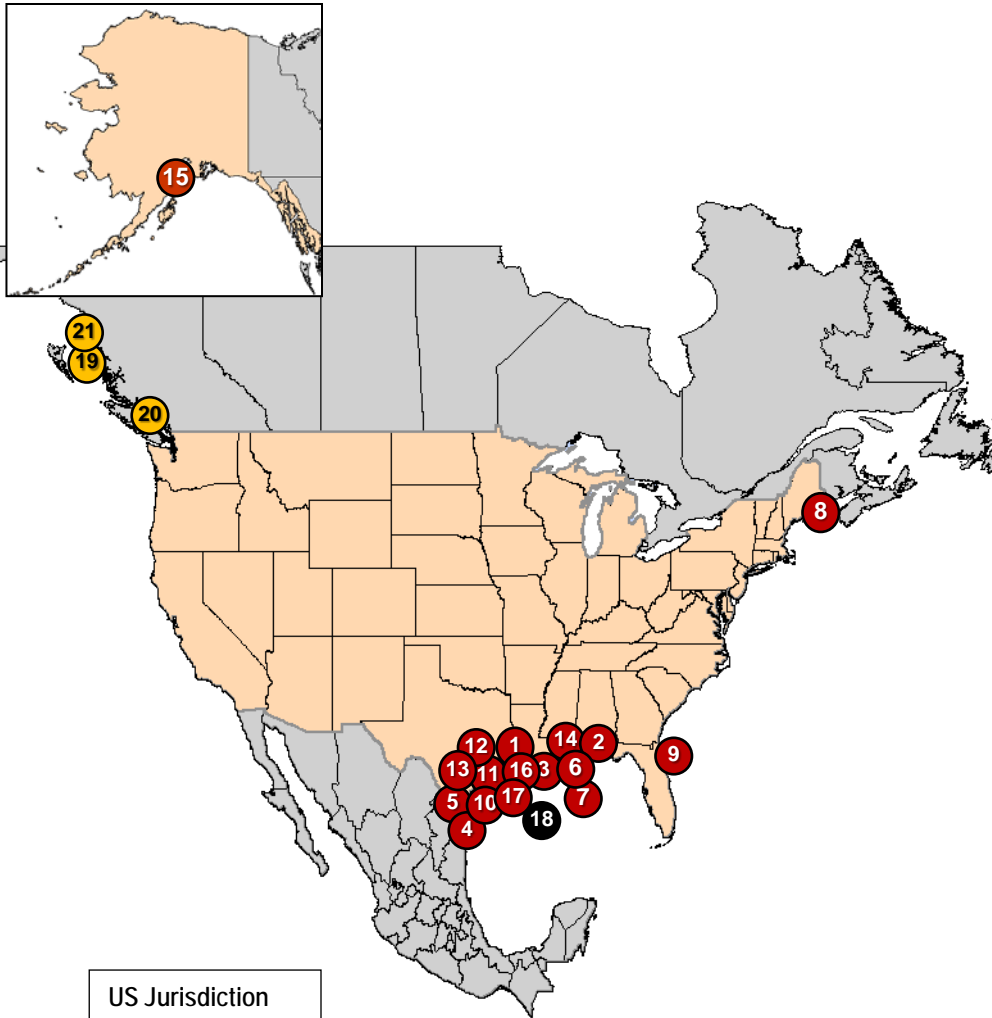
Sierra Club thanks you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nathan Matthews', with a long horizontal flourish extending to the right.

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North American LNG Export Terminals *Proposed*



US Jurisdiction

- FERC
- MARAD/USCG

As of July 11, 2016

PROPOSED TO FERC

Pending Applications:

1. Sabine Pass, TX: 2.1 Bcfd (ExxonMobil – Golden Pass) (CP14-517)
2. Pascagoula, MS: 1.5 Bcfd (Gulf LNG Liquefaction) (CP15-521)
3. Cameron Parish, LA: 1.41 Bcfd (Venture Global Calcasieu Pass) (CP15-550)
4. Brownsville, TX: 0.55 Bcfd (Texas LNG Brownsville) (CP16-116)
5. Brownsville, TX: 3.6 Bcfd (Rio Grande LNG – NextDecade) (CP16-454)

Projects in Pre-filing:

6. Plaquemines Parish, LA: 1.07 Bcfd (CE FLNG) (PF13-11)
7. Plaquemines Parish, LA: 0.30 Bcfd (Louisiana LNG) (PF14-17)
8. Robbinston, ME: 0.45 Bcfd (Kestrel Energy – Downeast LNG) (PF14-19)
9. Jacksonville, FL: 0.075 Bcf/d (Eagle LNG Partners) (PF15-7)
10. Brownsville, TX: 0.94 Bcfd (Annova LNG Brownsville) (PF15-15)
11. Port Arthur, TX: 1.4 Bcfd (Port Arthur LNG) (PF15-18)
12. Freeport, TX: 0.72 Bcfd (Freeport LNG Dev) (PF15-25)
13. Corpus Christi, TX: 1.4 Bcfd (Cheniere – Corpus Christi LNG) (PF15-26)
14. Plaquemines Parish, LA: 2.80 Bcfd (Venture Global LNG) (PF15-27)
15. Nikiski, AK: 2.55 Bcfd (ExxonMobil, ConocoPhillips, BP, TransCanada and Alaska Gasline) (PF14-21)
16. Cameron Parish, LA: 1.84 Bcfd (G2 LNG) (PF16-2)
17. Calcasieu Parish, LA: 4.0 Bcfd (Driftwood LNG) (PF16-6)

PROPOSED TO U.S.-MARAD/COAST GUARD

18. Gulf of Mexico: 1.8 Bcfd (Delfin LNG)

PROPOSED CANADIAN SITES

19. Kitimat, BC: 1.28 Bcfd (Apache Canada Ltd.)
20. Douglas Island, BC: 0.23 Bcfd (BC LNG Export Cooperative)
21. Prince Rupert Island, BC: 2.74 Bcfd (Pacific Northwest LNG)