

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF )  
 )  
Energía Costa Azul, S. de R.L. de C.V. ) FE Docket No. 18-145-LNG  
 )

**Motion to Intervene of Sierra Club and Protest of Sierra Club and Centro Mexicano para la Defensa del Medio Ambiente, A.C.**

In the above-captioned docket, Energía Costa Azul, S. de R.L. de C.V. (“ECA” or “the Applicant”) requests long-term, multi-contract authorization to export domestically-produced natural gas from the United States to Mexico through existing and future cross-border pipeline facilities and, after liquefaction in Mexico, to re-export.<sup>1</sup> The application in question requests authorization to export approximately 182 billion cubic feet per year (Bcf/y) through existing or future cross border pipelines, of which about 21 Bcf/yr is to be used as fuel for pipeline operation or liquefaction processes, and 161 Bcf/yr as feedstock (to be liquefied) for ECA’s proposed Large-Scale Project (Project) facility near Ensenada, Mexico. Sierra Club moves to intervene in this docket, and Sierra Club and Centro Mexicano para la Defensa del Medio Ambiente, A.C. (“DAN”) protest this application, pursuant to 10 C.F.R. §§ 590.303(b) and § 590.304.

**I. Intervention**

DOE’s rules do not articulate any particular standard for timely intervention, and as such, intervention should be granted liberally. DOE merely requires would-be-intervenors to set out

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<sup>1</sup> Environmental Assessment, Energía Costa Azul, S. de R.L. de C.V. ECA Large-Scale Project: Design Increase (Oct. 28, 2022), *available at* <https://www.energy.gov/sites/default/files/2022-10/FINAL%20Environmental%20Assessment%20-%20Energ%C3%ADa%20Costa%20Azul%2010-28-22.pdf> (“EA”).

the “facts upon which [their] claim of interest is based” and “the position taken by the movant.” 10 C.F.R. § 590.303(b)-(c). As explained in the following section, Sierra Club’s position is that the application should be denied or, in the alternative, heavily conditioned. Sierra Club’s interests are based on the impact the proposed additional exports will have on its members and mission.

The requested exports will harm Sierra Club members by increasing the prices they pay for energy, including both gas and electricity. As DOE and the Energy Information Administration have previously explained, each marginal increase in export volumes is also expected to further increase domestic energy prices.

The proposed exports will further harm Sierra Club members by increasing gas production and associated air pollution, including (but not limited to) emission of greenhouse gases and ozone precursors. As DOE has recognized, increasing LNG exports will increase gas production,<sup>2</sup> and increasing gas production increases ozone pollution, including risking creation of new or expanded ozone non-attainment areas or exacerbating existing non-attainment.<sup>3</sup> Sierra Club has many members throughout the southwest, including within the Permian Basin region and other areas that will likely be impacted by increased gas production.

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<sup>2</sup> See, e.g., U.S. EIA, Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets (Oct. 2014) at 12, *available at* <https://www.eia.gov/analysis/requests/fe/pdf/lng.pdf> (explaining that “[n]atural gas markets in the United States balance in response to increased LNG exports mainly through increased natural gas production,” and “[a]cross the different export scenarios and baselines, higher natural gas production satisfies about 61% to 84% of the increase in natural gas demand from LNG exports,” with “about three-quarters of this increased production [coming] from shale sources.”).

<sup>3</sup> U.S. DOE, Final Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States (Aug. 2014) at 27-32, *available at* <https://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf> (“Addendum”).

Furthermore, increasing LNG exports will impact Sierra Club and its members because of the additional greenhouse gases emitted throughout the LNG lifecycle, from production, transportation, liquefaction, and end use. The impacts from climate change are already harming Sierra Club members in numerous ways. Coastal property owners risk losing property to sea level rise. Extreme weather events, including flooding and heat waves, impact members' health, recreation, and livelihoods. Increased frequency and severity of wildfires emit smoke that impacts members' health, harms ecosystems members depend upon, and threatens members' homes. Proposals, such as this one, that encourage long-term use of carbon-intensive fossil fuels will increase and prolong greenhouse gas emissions, increasing the severity of climate change and thus of these harms.

In summary, the proposed increase in natural gas export and LNG re-export will harm Sierra Club its members in numerous ways. Sierra Club accordingly contends that the application should be denied or conditioned, as further described in the following protest.

Pursuant to 10 C.F.R. § 590.303(d), Sierra Club identifies the following person for the official service list:

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## II. Protest

The requested for authorization to export natural gas for re-export should be denied because it is contrary to the public interest. 15 U.S.C. § 717b(a). As DOE previously explained, “when reviewing an application for export authorization,” DOE evaluates “economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others.”<sup>4</sup> Here, these factors weigh against the application.

### A. Domestic Energy Prices and Supply

DOE has historically given particular emphasis to “the domestic need for the natural gas proposed to be exported” and “whether the proposed exports pose a threat to the security of domestic natural gas supplies.”<sup>5</sup> As recent data shows, exports are increasingly linking domestic gas prices to prices in the global market. These increases harm American households and energy intensive industry. ECA’s application fails to address this data, which demonstrate that approving export from this project is not in the public interest.

#### 1. The Freeport LNG explosion further affirms that the ECA project will increase domestic gas prices, harming customers.

A recent explosion and fire at the Freeport LNG facility—and the resulting drop in domestic gas prices—provided stark confirmation that increasing LNG exports will cause real and significant increases in domestic gas prices. Thus, the Freeport LNG explosion demonstrates that the requested export authorization is not in the public interest.

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<sup>4</sup> DOE/FE Order No. 3357-B (Freeport LNG), at 9 (Nov. 14, 2014), *available at* <https://www.energy.gov/sites/prod/files/2014/11/f19/ord%203357-B.pdf>.

<sup>5</sup> DOE/FE Order No. 3357-B at 10; 85 Fed. Reg. at 52,243 (“In evaluating the public interest, DOE takes seriously the potential economic impacts of higher natural gas prices.”).

Less than six months ago, on June 8, 2022, an explosion and fire at the Freeport LNG facility caused an immediate shut down of operations.<sup>6</sup> Fortunately, no one was injured during the incident, but the initial report by the Pipeline and Hazardous Materials Safety Administration (PHMSA) concluded that “[c]ontinued operation of Freeport’s LNG export facility without corrective measures may pose an integrity risk to public safety, property or the environment.”<sup>7</sup> For these reasons, Sierra Club and over 130 other organizations recently sent a letter asking President Biden, among other things, to “[d]irect DOE to find gas exports not in the public interest due to their climate and safety repercussions and to stop approving new applications.”<sup>8</sup> Preliminary findings point to “excess pressure in an LNG transfer pipeline that moves LNG from the facility’s storage tank to the terminal’s dock facilities” as the source of the fire.<sup>9</sup> The facility cannot resume operations until an independent investigation of the extent of the damage to the facility and LNG storage tanks is conducted and PHMSA approves a plan to repair the damage.<sup>10</sup> Thus, Freeport will not return to service until January 2023, though full operations may not begin until March 2023.<sup>11</sup>

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<sup>6</sup> U.S. Energy Information Administration, Fire Causes Shutdown of Freeport Liquefied Natural Gas Export Terminal (June 23, 2022), <https://www.eia.gov/todayinenergy/detail.php?id=52859> [hereinafter “EIA, Freeport Fire”] (attached).

<sup>7</sup> Gary McWilliams, U.S. Regulator Bars Freeport LNG Plant Restart Over Safety Concerns, REUTERS (July 1, 2022), [https://www.reuters.com/business/energy/us-regulator-finds-unsafe-conditions-freeport-lng-export-facility-bars-restart-2022-06-30/#:~:text=HOUSTON%2C%20June%2030%20\(Reuters\),an%20outside%20analysis%20is%20complete](https://www.reuters.com/business/energy/us-regulator-finds-unsafe-conditions-freeport-lng-export-facility-bars-restart-2022-06-30/#:~:text=HOUSTON%2C%20June%2030%20(Reuters),an%20outside%20analysis%20is%20complete) [hereinafter “U.S. Regulator Bars Freeport LNG Plant Restart”] (attached).

<sup>8</sup> Coalition letter to Biden on Freeport explosion, June 23, 2022 (attached).

<sup>9</sup> EIA, Freeport Fire, *supra* note 6.

<sup>10</sup> U.S. Regulator Bars Freeport LNG Plant Restart, *supra* note 7.

<sup>11</sup> *Freeport LNG Provides Update on Initial Restart of its Liquefaction Facility*, Freeport LNG (Nov. 28, 2022),

Most relevant here, the Freeport explosion demonstrates a clear and significant connection between LNG exports and domestic gas prices. The EIA has estimated that the Freeport shutdown took roughly 17% (or 2 billion cubic feet per day) of the total U.S. LNG export capacity offline.<sup>12</sup> Immediately after the explosion was reported, domestic gas prices fell by 16 percent,<sup>13</sup> highlighting the direct connection between gas exports and domestic prices and supply. Despite this initial drop, domestic gas prices remain exceptionally high as a result of LNG exports, as discussed in the next section. DOE must address the Freeport LNG explosion, and the demonstrated connection between LNG exports and domestic prices, in its public interest analysis.

## **2. Winter 2021-2022 gas prices demonstrate that LNG exports are harming US consumers.**

The price impacts of LNG exports are harming Americans *now*. Wholesale gas prices for the winter of 2021-2022 were vastly higher than for the prior winter, and FERC concluded that the increase was driven largely by competition with demand for LNG exports.<sup>14</sup> The Wall Street

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[http://freeportlng.newsrouter.com/news\\_release.asp?intRelease\\_ID=9753&intAcc\\_ID=77](http://freeportlng.newsrouter.com/news_release.asp?intRelease_ID=9753&intAcc_ID=77) (attached).

<sup>12</sup> EIA, Freeport Fire, *supra* note 6.

<sup>13</sup> Pippa Stevens, Natural Gas Plummet as Freeport Delays Facility Restart Following Explosion, CNBC (June 14, 2022), <https://www.cnbc.com/2022/06/14/natural-gas-plummet-as-freeport-delays-facility-restart-following-explosion.html> (attached).

<sup>14</sup> FERC, Winter Energy Market and Reliability Assessment Presentation (Oct. 21, 2021) at 2, *available at* <https://ferc.gov/sites/default/files/2021-10/Winter%20Assessment%202021-2022%20-%20Report.pdf> (attached); *accord id. at 11*. See also Clark Williams-Derry, IEEFA U.S.: Booming U.S. natural gas exports fuel high prices, IEEFA.ORG (Nov. 4, 2021), <https://ieefa.org/ieefa-u-s-declining-demand-lower-supply-dont-explain-rapidly-rising-gas-prices/> (attached).

Journal,<sup>15</sup> S&P Global Platts Analytics,<sup>16</sup> the Institute for Energy Economics and Financial Analysis, and others agreed that LNG exports were driving up domestic gas prices. Indeed, FERC identified LNG exports as the “primar[y]” source of the additional demand that drove recent gas price increases.<sup>17</sup> And these price increases are severe. For the winter of 2021-2022, benchmark futures prices at the Henry Hub increased 103% relative to the prior winter,<sup>18</sup> with larger increases elsewhere, including more than quadrupling of the price at the Algonquin Citygate outside Boston,<sup>19</sup> as illustrated in this chart from FERC:<sup>20</sup>

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<sup>15</sup> Collin Eaton & Katherine Blunt, Natural-Gas Exports Lift Prices for U.S. Utilities Ahead of Winter, WALL ST. J., Nov. 7, 2021, <https://www.wsj.com/articles/natural-gas-exports-lift-prices-for-u-s-utilities-ahead-of-winter-11636281000>.

<sup>16</sup> Kelsey Hallahan, Henry Hub could reach \$12-\$14 this winter as capital discipline limits supply growth: Platts Analytics, S&P GLOBAL PLATTS, Oct. 14, 2021, <https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/101421-henry-hub-could-reach-12-14-this-winter-as-capital-discipline-limits-supply-growth-platts-analytics>.

<sup>17</sup> FERC, Winter Energy Market and Reliability Report, *supra* note 14 at 2.

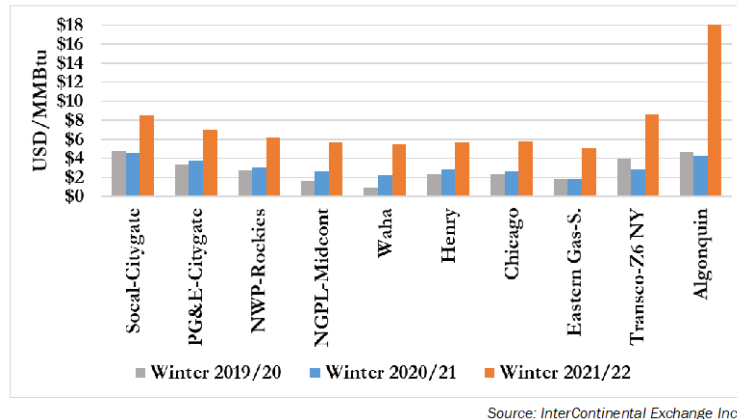
<sup>18</sup> *Id.* at 2, 11.

<sup>19</sup> *Id.* at 12.

<sup>20</sup> FERC, 2021-2022 Winter Energy Market and Reliability Assessment (Oct. 21, 2021) at 10, available at [https://ferc.gov/sites/default/files/2021-10/Winter%20Assessment%202021-2022\\_Presentation.pdf](https://ferc.gov/sites/default/files/2021-10/Winter%20Assessment%202021-2022_Presentation.pdf) (attached).

## Winter Futures Prices Increased at Nearly Every Major U.S. Trading Hub

Average U.S. Natural Gas Futures Prices Across Major Hubs for November - February



These price increases harm both households and industrial energy consumers. The EIA predicted that homes that use gas for heat would spend 30% more in the winter of 2021-2022 than they spent the prior winter.<sup>21</sup> The Industrial Energy Consumers of America, which represents manufacturers that use at least 1 million MMBtu of energy per year,<sup>22</sup> has repeatedly written to DOE about how export-driven gas prices increases are harming domestic industry.<sup>23</sup> From an economic perspective, LNG exports are simply making most Americans worse off: all Americans must pay energy bills, but few own shares (even indirectly, through pension plans and the like) in the gas companies that are benefiting from high gas prices and LNG sales.<sup>24</sup> DOE is

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

<sup>22</sup> “Membership Info,” IECA, <https://www.ieca-us.com/membership-info/> (last accessed Nov. 22, 2022).

<sup>23</sup> *See, e.g.*, Letter from Paul N. Cicio to Jennifer Granholm (Nov. 22, 2021), *available at* [https://www.ieca-us.com/wp-content/uploads/11.22.21\\_LNG\\_-\\_Why-a-Safety-Valve-is-Needed\\_FINAL.pdf](https://www.ieca-us.com/wp-content/uploads/11.22.21_LNG_-_Why-a-Safety-Valve-is-Needed_FINAL.pdf).

<sup>24</sup> Synapse Energy Economics, Inc., *Will LNG Exports Benefit the United States Economy?* (Jan. 23, 2013) at 9, *available at* [https://fossil.energy.gov/ng\\_regulation/sites/default/files/programs/gasregulation/authorizations/e](https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/e)



charged with protecting the “public” interest, 15 U.S.C. § 717b(a); that is, the interest “of ... all or most of the people” in the United States. *Public*, Merriam-Webster Unabridged Dictionary.<sup>25</sup> DOE has previously recognized that “the distributional consequences of an authorizing decision” may be so negative as to demonstrate inconsistency with the public interest despite “net positive benefits to the U.S. economy as a whole.”<sup>26</sup> Accordingly, unless DOE addresses distributional concerns, DOE will have failed to consider an important part of the problem. But to date, DOE has never grappled with the distributional impacts of LNG exports: DOE has acknowledged that LNG exports have some positive and some negative economic impacts,<sup>27</sup> but DOE has not addressed the fact that those who suffer the harms are not the same as those who enjoy the benefits, or that the former are more numerous and generally less advantaged than the latter. In particular, research shows that low-income, Black, Hispanic, and Native American households all face dramatically higher energy burdens—spending a greater portion of their income on energy bills—than the average household.<sup>28</sup> Increased gas prices will exacerbate the existing energy burden disparities, placing these households at even further risk. Especially in light of this

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xport\_study/Exhibits\_1-20.pdf (attached) (Initially submitted as Exhibit 5 to Comments of Sierra Club *et al.* on the 2012 NERA macroeconomic report).

<sup>25</sup> <http://www.merriam-webster.com/dictionary/public> (last visited Dec. 7, 2021).

<sup>26</sup> DOE/FE Order 3638-A (Corpus Christi) at 45 (May 26, 2016), *available at* [https://fossil.energy.gov/ng\\_regulation/sites/default/files/programs/gasregulation/authorizations/2012/applications/12-97-LNG\\_CMI\\_Corpus\\_Rehearing\\_May\\_26.pdf](https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2012/applications/12-97-LNG_CMI_Corpus_Rehearing_May_26.pdf)

<sup>27</sup> *See, e.g.*, NERA Economic Consulting, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (June 7, 2018) at 19, 21, 64, 67, *available at* <https://cms.doe.gov/sites/prod/files/2018/12/f58/2018%20Study.pdf>.

<sup>28</sup> American Council for an Energy-Efficient Economy, *How High are Household Energy Burdens?* (Sept. 2020), *available at* <https://www.aceee.org/sites/default/files/pdfs/u2006.pdf> (attached). Accord Eva Lyubich, *The Race Gap in Residential Energy Expenditures* (June 2020), *available at* <https://haas.berkeley.edu/wp-content/uploads/WP306.pdf> (attached).

administration's emphasis on environmental justice, the distributional and equity impacts of export-driven gas price increases require careful consideration.

DOE has previously relied on modeling of how energy markets will balance in response to increased LNG exports, and on studies of the macroeconomic effects of such balancing. The current surge in gas prices calls those prior analyses into question, and DOE cannot approve additional exports without carefully examining the continuing validity of those analyses. We understand that DOE and the EIA is currently revisiting the 2012 and 2014 LNG export studies, with an updated analysis expected in the spring of 2022.<sup>29</sup> At a minimum, DOE should not approve further export applications until this study is complete.

DOE must be particularly cautious given DOE's refusal, to date, to exercise supervisory authority over already-approved exports. Although DOE retains authority to amend and/or rescind existing export authorizations, 15 U.S.C. § 717o, DOE has stated its reluctance to exercise such authority.<sup>30</sup> But if export applications are, in effect, a one-way ratchet on export volumes, DOE cannot issue such authorizations carelessly.

The Natural Gas Act's "principle aim[s]" are "encouraging the orderly development of plentiful supplies of natural gas at reasonable prices and protecting consumers against exploitation at the hands of natural companies," with the "subsidiary purposes" of addressing "conservation, environmental, and antitrust issues."<sup>31</sup> At present, LNG exports are not achieving

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<sup>29</sup> <https://www.energy.senate.gov/hearings/2021/11/full-committee-hearing-on-domestic-and-international-energy-price-trends> (testimony of Stephen Nalley at 47:50 to 48:15)

<sup>30</sup> See Policy Statement Regarding Long-Term Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries, 83 Fed. Reg. 28,841 (June 21, 2018). Although DOE has not exercised this authority yet, DOE *should* carefully consider doing so, given the severe impact already-authorized exports are having on domestic gas prices.

<sup>31</sup> *Minisink Residents for Env'tl. Pres. & Safety v. FERC*, 762 F.3d 97, 101 (D.C. Cir. 2014) (cleaned up).

these purposes. DOE's uniform approval of all export applications has not protected consumers from exploitation at the hands of gas companies, and LNG exports are not leading to reasonable gas prices. Accordingly, even putting aside the numerous and severe environmental impacts of increased LNG exports that will result from the approval of this increase in export of natural gas, ECA's application is inconsistent with the public interest and should be denied.

### **B. Existing Pipeline Capacity is Insufficient**

DOE must examine whether or not the existing pipeline capacity within the U.S. is sufficient to transport the export volume in question, rather than just assume that capacity exists or deal with the problem at a later date. The EA provides no evidence that existing pipeline capacity will be sufficient to transport the 182 Bcf/yr requested by this application. There is no discussion or analysis of environmental impacts that will occur if construction and operation of new pipelines is required for transporting the full volume requested.

The EA purports that "there is nearly 15 billion cubic feet per day (Bcf/d) of existing physical cross-border pipeline capacity between the United States and Mexico, including nearly 7 Bcf/d of capacity in California, Arizona, and West Texas, and approximately 8 Bcf/d in South Texas,"<sup>32</sup> but does not account for what percent of this current capacity not already planned to be utilized by other projects or end uses will be utilized by ECA. In its application, ECA notes that "the physical export capacity through existing border-crossing pipeline facilities extending between the United States and Mexico exceeds the amount requested in this application."<sup>33</sup>

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<sup>32</sup> Energía Costa Azul, S. de R.L. de C.V. Environmental Assessment (DOE/EA-2193), 7 [hereinafter "EA"].

<sup>33</sup> Energía Costa Azul, S. de R.L. de C.V., Application to Amend Long-Term, Multi-Contract Authorizations to Export Natural Gas to Mexico and to Export Liquefied Natural Gas from Mexico to Free Trade Agreement and Non-Free Trade Agreement Nations (ECA Large-Scale Project) (Design Increase), Docket No. 18-145-LNG (Sept. 18, 2020) 8, <https://www.energy.gov/sites/prod/files/2020/09/f79/Energia%20Costa%20Azul%20->

However, while the overall pipeline capacity may exist, the application and EA fail to account for how much of this capacity is already spoken for through existing projects and contracts. If pipeline construction is required to transport this volume and will be necessary at a later date, DOE cannot segment the NEPA review of this export approval and the environmental impacts stemming from needed pipeline construction.

“An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.” *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014). “Actions are ‘connected’ if they trigger other actions, cannot proceed without previous or simultaneous actions, or are ‘interdependent parts of a larger action and depend on the larger action for their justification.’” *Id.* at 1309 (quoting 40 C.F.R. § 1508.25(a)(1) (1978)). “Cumulative” actions “have cumulatively significant impacts and should therefore be discussed in the same impact statement.” *Id.* (quoting § 1508.25(a)(2)). The purpose of this broad scope is to “ensure[]” a federal agency “can assess the true costs of an integrated project when it is best situated to evaluate different courses of action and mitigate anticipated effects.” *City of Boston Delegation v. FERC*, 897 F.3d 241, 251-52 (D.C. Cir. 2018). Prohibiting segmentation “prevents agencies from dividing one project into multiple individual actions each of which individually has an insignificant environmental impact, but which collectively have a substantial impact,” and furthers NEPA’s goal of instilling “a more comprehensive approach so that long term and cumulative effects of small and unrelated decisions could be recognized, evaluated and either avoided, mitigated, or accepted as the price to be paid for the major federal action under consideration.” *Del. Riverkeeper*, 753 F.3d at 1314

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%20Design%20Increase%2018-145- LNG.pdf.

(internal quotations and modification omitted). Evaluating the actions separately risks “foreclos[ing] the opportunity to consider alternatives,” such as whether, in light of the totality of impacts, a lower-capacity alternative would better serve the public interest. *Del. Riverkeeper*, 753 F.3d at 1315 (internal quotation omitted).

DOE must demonstrate that no additional pipeline capacity is needed before it approves this project. If construction of additional pipelines or pipeline upgrades is necessary to carry the full volume requested by ECA, those projects cannot be segmented and viewed separately from this approval.

### **C. Indirect Effects**

The conclusion that the ECA project will not have significant greenhouse gas emissions is, on its face, conclusory. By relying on an environmental assessment (“EA”), rather than preparing an environmental impact statement, DOE is concluding that all impacts from approving this export will be insignificant. But DOE has failed to demonstrate that the upstream and downstream effects are actually insignificant. While DOE explicitly incorporates by reference DOE’s prior Environmental Addendum conducted in 2014, which looks at all upstream effects, and Lifecycle GHG Reports, these inclusions do little when used to support a document that, by its definition, rests on an affirmative conclusion that all impacts will be insignificant, while not actually demonstrating whether or not that conclusion is accurate.

DOE violated NEPA by arbitrarily concluding that the impacts of its authorization of exports and re-export would be insignificant, such that a full environmental impact statement (“EIS”) was not required. DOE acknowledged that natural gas production poses a range of environmental impacts, but DOE did not “attempt to identify or characterize the incremental

environmental impacts that would result from LNG exports.”<sup>34</sup> Absent such characterization, DOE failed to provide a rational basis for its Finding of No Significant Impact.

NEPA requires an EIS, rather than a more abbreviated EA, for all proposed “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C). In determining whether effects will potentially be significant, and thus whether an EIS is required, an agency must consider not only the magnitude of the effects on public health and the environment, but also the extent to which those effects are controversial, uncertain, cumulatively significant, or in potential conflict with “Federal, State, Tribal, or local law protecting the environment.” 40 C.F.R. § 1501.3(b). Overall, the threshold for “significance” is “low;” an EIS must be prepared if there are even “substantial questions” regarding the severity of impacts. *Cal. Wilderness Coal. v. DOE*, 631 F.3d 1072, 1097 (quotation omitted). Where an agency seeks to avoid preparation of an EIS by claiming that impacts will be insignificant, the agency bears the burden of “mak[ing] a convincing case for its finding.” *Grand Canyon Trust v. FAA*, 290 F.3d 339, 340-41 (D.C. Cir. 2002) (citations and quotations omitted).

Furthermore, DOE has adopted a specific presumption that LNG exports require an EIS. DOE has determined that “[a]pprovals or disapprovals of authorizations to import or export natural gas” involving construction or significant modification of export facilities, or even a “major increase in the quantity of [LNG] imported or exported” from existing facilities, will “normally require [an] EIS.” 10 C.F.R. Pt. 1021 Subpt., D App. D, D8-D9. “[R]egulations of this type ... presume[] that an EIS will normally be prepared ..., thereby imposing on the [agency] the burden of establishing why that presumption should not apply in this particular case.” *Davis v. Mineta*, 302 F.3d 1104, 1117 (10th Cir. 2002).

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<sup>34</sup> EA at 9.

Here, DOE did not even attempt to rebut this presumption. DOE has never addressed it, nor did DOE explain why the effects of the exports approved here are likely to be different from the “normal” case, which DOE already determined would require an EIS. Moreover, DOE’s Addendum demonstrates that gas production has potentially significant impacts.<sup>35</sup> For example, the Addendum concludes that increased gas production “may” increase ozone levels and “may” frustrate some areas’ efforts to reduce pollution to safe levels. Addendum at 27-28. The Addendum acknowledges that gas production could cause “significant impacts on local water resources” unless conducted in conformity with regulations and best management practices, but DOE provides no discussion of how commonly these practices are actually observed. *Id.* at 19; *New York v. Nuclear Regulatory Comm’n*, 681 F.3d 471, 481 (D.C. Cir. 2012) (“merely pointing to [a] compliance program is in no way sufficient to support a scientific finding” of no “significant environment[al] impact.”). The Addendum recognized that the natural gas industry emits 23% of all U.S. methane, and 2% of all U.S. greenhouse gases. Addendum at 33. Similarly, oil and gas production together “represent[] about 21 percent of nationwide [volatile organic chemical] emissions.” *Id.* at 20.

Export-induced gas production will aggravate and contribute to these impacts, and the record provides no basis for concluding that the contribution will be insignificant. NEPA allows an agency to avoid an EIS only when the agency can affirmatively conclude, beyond substantial question, that the impacts will be insignificant. As to other impacts, DOE admits that the Addendum made no effort to “identify or characterize” the extent to which exports, by increasing gas production, would aggravate the above impacts. *Id.* at 198. In summary, DOE did not even

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<sup>35</sup> <https://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf> (“Addendum”).

attempt to “make a convincing case” for finding that the impacts of export-induced gas production would be insignificant. *Grand Canyon Trust*, 290 F.3d at 340-41.

### III. Conclusion

For the reasons stated above, Sierra Club’s motion to intervene in this docket should be granted. The proposed export increase is not consistent with the public interest and should be denied. DOE must not approve the application without reviewing whether current gas price spikes call into question DOE’s prior analyses and assumptions about the effects of increased exports on domestic gas production and prices. Nor can DOE approve the application without taking a hard look at foreseeable environmental impacts occurring throughout the LNG lifecycle.

Ultimately, the United States and nations around the globe have set ambitious but necessary goals for reducing greenhouse gas emissions during the proposed authorization period. Expanded gas exports and use cannot be reconciled with those goals, and this proposal should be denied.

/s/ Rebecca McCreary  
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<https://www.dan.org.mx/>



UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF )  
 )  
Energía Costa Azul, S. de R.L. de C.V. ) FE Docket No. 18-145-LNG  
 )

**SIERRA CLUB CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE**

Pursuant to 10 C.F.R. § 590.103(b), I, Rebecca McCreary, hereby certify that I am a duly authorized representative of the Sierra Club, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy and Carbon Management, on behalf of the Sierra Club, the foregoing documents and in the above captioned proceeding.

Executed at Boulder, CO on November 28, 2022.

/s/ Rebecca McCreary  
Rebecca McCreary  
Associate Attorney  
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**CENTRO MEXICANO PARA LA DEFENSA DEL MEDIO AMBIENTE, A.C.  
CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE**

Pursuant to 10 C.F.R. § 590.103(b), I, Fernando Ochoa Pineda, hereby certify that I am a duly authorized representative of Centro Mexicano para la Defensa del Medio Ambiente, A.C., and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy and Carbon Management, on behalf of the Centro Mexicano para la Defensa del Medio Ambiente, A.C., the foregoing documents and in the above captioned proceeding.

Executed on November 28, 2022.

/s/ Fernando Ochoa Pineda  
Fernando Ochoa Pineda  
Executive Director  
Centro Mexicano para la Defensa  
del Medio Ambiente, A.C.  
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IN THE MATTER OF )  
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 )

**SIERRA CLUB VERIFICATION**

Pursuant to 10 C.F.R. § 590.103(b), I, Rebecca McCreary, hereby verify under penalty of perjury that I am authorized to execute this verification, that I have read the foregoing document, and that the facts stated therein are true and correct to the best of my knowledge.

Executed at Boulder, CO on November 28, 2022.

/s/ Rebecca McCreary  
Rebecca McCreary  
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**CENTRO MEXICANO PARA LA DEFENSA DEL MEDIO AMBIENTE, A.C.  
VERIFICATION**

Pursuant to 10 C.F.R. § 590.103(b), I, Fernando Ochoa Pineda, hereby verify under penalty of perjury that I am authorized to execute this verification, that I have read the foregoing document, and that the facts stated therein are true and correct to the best of my knowledge.

Executed on November 28, 2022.

/s/ Fernando Ochoa Pineda  
Fernando Ochoa Pineda  
Executive Director  
Centro Mexicano para la Defensa  
del Medio Ambiente, A.C.  
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