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November 20, 2023

Via E-Filing to FERGAS@HQ.DOE.GOV

Office of Fuels Programs
Fossil Energy
Office of Fossil Energy and Carbon Management
U.S. Department of Energy
Docket Room 3F-056, FE-50
Forrestal Building
1000 Independence Avenue, SW
Washington, DC 20585

Re: Docket No. 23-87-LNG
Answer of Lake Charles Exports, LLC in Opposition to the Late Motions to
Intervene and Protest of Sierra Club et al. and Motion to Intervene and Protest of
Public Citizen

Dear Madam or Sir:

Please accept for filing in Docket No. 23-87-LNG, pursuant to 10 C.F.R. §§ 590.302(b), 590.303(e) and 590.304(f) (2023), the attached Answer of Lake Charles Exports, LLC in Opposition to: (i) Motion to Accept Attachments to Timely-Filed Motion to Intervene and Protest of For a Better Bayou, Habitat Recovery Project, Healthy Gulf, Louisiana Bucket Brigade, Micah Six Eight Mission, and Sierra Club, Docket No. 23-87-LNG (Nov. 7, 2023); (ii) Motion to Intervene and Protest of For a Better Bayou, Habitat Recovery Project, Healthy Gulf, Louisiana Bucket Brigade, Micah Six Eight Mission, and Sierra Club, Docket No. 23-87-LNG (Nov. 7, 2023); and (iii) Intervention and Protest of Public Citizen, Inc., Docket No. 23-87-LNG (Nov. 6, 2023).

If you have any questions regarding this filing, please do not hesitate to contact me at (202) 220-6922 or tknight@lockelord.com. Thank you for your assistance.

Respectfully submitted,

/s/ Thomas E. Knight

Thomas E. Knight

Counsel for Lake Charles Exports, LLC

Attachment

I.
BACKGROUND

On August 18, 2023, LCE submitted a fully supported application for long-term multi-contract authorization to export up to 851 Billion cubic feet per year (“Bcf/year”) of liquefied natural gas (“LNG”) produced from domestic sources (“Application”). LCE sought this authorization to export LNG by vessel from the existing import terminal site in Lake Charles, Louisiana (“Lake Charles Terminal”) for a term ending on December 31, 2050 to any country with which the United States does not have a Free Trade Agreement (“FTA”) requiring national treatment for trade in natural gas with which trade is not prohibited by United States law or policy (“non-FTA countries”). LCE already is authorized to export the requested 851 Bcf/year of LNG from the Lake Charles Terminal for a term ending on December 31, 2050 pursuant to orders wherein DOE/FECM held that the export of this amount of LNG is not inconsistent with the public interest under section 3 of the Natural Gas Act (“NGA”) and that such exports “are likely to generate net economic benefits for the United States.”⁴ The Application does not involve new construction or physical or operational changes to LCE’s project to provide for liquefaction and export facilities (“Liquefaction Project”) from the existing LNG import terminal and regasification facility at the Lake Charles Terminal as previously authorized.

On September 5, 2023, the Application was published in the Federal Register and the notice established a sixty (60) day comment period.⁵ The Federal Register mandated that motions to

⁴ *Lake Charles Exports, LLC*, DOE/FE Order No. 3324-A at 122 (issued Jul. 29, 2016); *see also Lake Charles Exports, LLC*, DOE/FE Order No. 4011 (issued Jun. 29, 2017); *Lake Charles Exports, LLC*, DOE/FECM Order Nos. 2987-B, 3324-E and 4011-D (issued Nov. 1, 2023).

⁵ Department of Energy, Docket No. 23-87-LNG, *Lake Charles Exports, LLC*; Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, 88 FR 60670 (Sep. 5, 2023).

intervene and protests were to be filed no later than 4:30 p.m., Eastern time, November 6, 2023.⁶ During the comment period, approximately ninety-one timely letters in support of the Application were submitted to DOE/FECM.

On November 6, 2023, the last day of the comment period, Public Citizen filed its intervention and protest. Sierra Club submitted its motions to intervene and protest after the November 6, 2023 deadline.

DOE/FECM's eDocket website for this proceeding also lists "12,853 Comments Submitted by Sierra Club on Behalf of 12,853 Individuals," which are characterized as Letters in Opposition (Late Submission) filed on November 7, 2023. Section 590.103(a) of DOE's regulations states that a "document shall be considered officially filed with FE when it has been received and stamped with the time and date of receipt by the Office of Fuels Programs, FE."⁷ None of these Letters in Opposition are stamped with the time and date of receipt by DOE/FECM. Therefore, none of these Letters in Opposition (Late Submission) can be considered officially filed.

II.
ANSWER IN OPPOSITION TO SIERRA CLUB'S LATE MOTIONS TO INTERVENE
AND PROTEST

A. Sierra Club's Motion to Accept Attachments fails to comply with DOE's regulations and it should be rejected.

DOE/FECM should reject Sierra Club's Motion to Accept Attachments as procedurally defective. Section 590.302(a) of DOE's regulations requires that a movant's motion comply with Section 590.103 of DOE's regulations.⁸ Section 590.103(b) requires that "[e]ach document filed with FE shall contain a certification that a copy has been served as required by § 590.107 and

⁶ *Id.*

⁷ 10 C.F.R. § 590.103(a) (2023).

⁸ *Id.* at § 590.302(a) ("All written motions shall comply with the filing requirements of § 590.103.").

indicate the date of service.”⁹ Sierra Club’s Motion to Accept Attachments does not contain a certificate of service as required by DOE’s regulations. Although Sierra Club served a copy of its motion on LCE via email, such service does not cure Sierra Club’s fatal flaw of disregarding DOE’s regulations requiring a certificate of service.

Just a few months ago, DOE/FECM reminded Sierra Club that a failure to file the required certificate of service “could result in rejection of your submission” and “repeated lack of compliance could result in rejection of your filing.”¹⁰ Sierra Club obviously had no regard for DOE/FECM’s earlier warning because it has yet again failed to follow DOE’s regulations. Due to the lack of the required certificate of service, Sierra Club’s filing is incomplete and has not been lawfully filed. DOE/FECM has explained at length “that persons seeking to participate in LNG export proceedings are expected to comply with DOE’s regulations set forth in 10 C.F.R. Part 590, including the service requirements.”¹¹ Sierra Club should not be permitted to repeatedly flout DOE’s regulations and its filing should be rejected.

B. Sierra Club’s Late Motions to Intervene and Protest fail to comply with DOE’s regulations and they should be rejected.

DOE/FECM also should reject Sierra Club’s late motions to intervene and protest as procedurally defective as they were filed after the November 6, 2023 deadline. Despite the ample sixty-day comment period, Sierra Club waited until 4:25 p.m. on November 6, 2023, a mere *five*

⁹ *Id.* at § 590.103(b).

¹⁰ *Mexico Pacific Limited LLC*, Docket No. 22-167-LNG, DOE/FECM’s Notice of INCOMPLETE SUBMISSION regarding Motion to Intervene and Protest of Sierra Club (issued Apr. 3, 2023).

¹¹ *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 4487 at 9 (issued Jan. 15, 2020) (DOE/FECM dismissed a movant’s notice of intervention, protest and comment for failure to comply with the service requirements); *see also Corpus Christi Liquefaction Stage III*, Docket No. 18-78-LNG, Order Dismissing Industrial Energy Consumers of America’s Notice of Intervention, Protest, and Comment at 5-6 (issued Apr. 10, 2019).

minutes before the close of the comment period, to begin to submit its motions to intervene and protest. Following its well-worn opposition strategy, Sierra Club began to submit its filing consisting of a document dump of over 2,600 pages. Sierra Club's filing consisted of fourteen emails with numerous email attachments. In its first email at 4:25 p.m. on November 6, 2023, Sierra Club explained that "[t]his is the first email, with additional emails to follow in order to include the attachments." Sierra Club labeled the email attachments as volumes I through X but did not indicate what attachments referenced in its motions were in each email attachment, making it impossible for DOE/FECM and LCE to reasonably decipher Sierra Club's filing.

Not surprisingly, given that it waited until the last minute to begin to submit its filing, Sierra Club was unable to complete its filing by the 4:30 p.m. Eastern time deadline. Sierra Club takes the unsupportable position that only the attachments to its filing were late because its first email was date stamped 4:29 p.m. Eastern time on November 6, 2023.¹² It is clear on its face that Sierra Club's motions to intervene and protest (sent via fourteen emails) include the attachments as one single filing. Sierra Club included a "List of Attachments" in its filings and refers to the attachments throughout its filing, as well as in its first transmittal email stating that "[t]his is the first email, with additional emails to follow in order to include the attachments." Nowhere did Sierra Club indicate that the multiple filings of attachments were separate filings distinct from the motions to intervene and protests. If the attachments are separate filings, then such filings fail to abide by DOE's filing requirements in 10 C.F.R. Part 590. DOE/FECM has to receive Sierra Club's entire filing by the deadline for it to be considered timely.

Section 590.303(d) of DOE's regulations states that "[m]otions to intervene may be filed at any time following the filing of an application, but no later than the date fixed for filing such

¹² Sierra Club's Motion to Accept Attachments at 1.

motions or notices in the applicable FE notice or order ...”¹³ The Federal Register notice mandated that motions to intervene and protests were to be filed no later than 4:30 p.m., Eastern time, November 6, 2023.¹⁴ The Federal Register notice also put movants on notice that “[a]ll protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590, including the service requirements.”¹⁵ Sierra Club’s motions to intervene and protest (consisting of fourteen separate emails) were not filed by the deadline on November 6, 2023. Section 590.105(a) of DOE’s regulations provides that “[d]ocuments received after the regular business hours of 8 a.m. to 4:30 p.m. are deemed filed on the next regular business day.”¹⁶ Therefore, Sierra Club’s motions to intervene and protest were not filed until November 7, 2023.¹⁷

Section 590.303(d) of DOE’s regulations provide that DOE/FECM may accept a late filed intervention “for good cause shown and after considering the impact of granting the late motion of the proceeding.”¹⁸ Sierra Club fails to cite to this regulation or make any attempt to show good cause in its Motion to Accept Attachments. Instead, Sierra Club places the blame for its late filing on DOE/FECM’s required filing procedures, as well as its computer system’s inability to handle attachment files totaling over 2,600 pages that allegedly resulted in “at least five computer crashes

¹³ 10 C.F.R. § 590.303(d) (2023).

¹⁴ 88 FR 60670.

¹⁵ 88 FR 60671.

¹⁶ 10 C.F.R. § 590.105(a) (2023).

¹⁷ DOE/FECM’s eDocket website contains Sierra Club’s 84 attachments to its filing, each with a date stamp of 4:31 p.m. on November 6, 2023. Such data stamps are inconsistent with Sierra Club’s representation of when it emailed the filing attachments to DOE/FECM for filing. Sierra stated that “[u]ltimately, [it] sent the first volume of attachments (in PDF form) at 5:21 PM, less than an hour late, and the final volume of attachments by 6:38 PM.”). Sierra Club’s Motion to Accept Attachments at 1.

¹⁸ 10 C.F.R. § 590.303(d) (2023); *see also id.* at § 590.105(b) (“When a document is required to be filed with FE within a prescribed time, an extension of time to file may be granted *for good cause shown.*”) (emphasis added).

and other technical difficulties while creating the consolidated volumes.”¹⁹ Sierra Club even petitions DOE/FECM to change its regulations and filing requirements to accept “alternative filing methods, including returning to its prior practice, perhaps filers could use regulations.gov or another method that is less cumbersome than email.”²⁰ This attempt to shift blame to DOE/FECM is misguided. DOE’s regulations and the Federal Register notice set out that Sierra Club had three methods to submit a timely filing (electronically, via mail or hand delivery). It was Sierra Club that made the decision to start to make its filing electronically just minutes before the deadline, even though Sierra Club consistently had encountered filing difficulties in the past and was aware that filing electronically was not instantaneous. DOE’s regulations state that a “document shall be considered officially filed with FE when it has been received and stamped with the time and date of receipt by the Office of Fuels Programs, FE.”²¹ Sierra Club was well aware that the time that it electronically submits the filing is irrelevant because the filing is not considered filed until DOE/FECM *receives it and stamps it* with the time and date of receipt.²²

In lieu of attempting to show good cause for its late filing, Sierra Club declares that it “plans to take steps to ensure future filings do not suffer from the same technical difficulties.”²³ A pledge to follow DOE’s regulations in the future does not establish good cause for the filing at issue. Also, such a pledge rings hollow given Sierra Club’s past history of late filings. For example, in *Pangea LNG (North America) Holdings, LLC*, Sierra Club filed a Motion to Have

¹⁹ Sierra Club’s Motion to Accept Attachments at 1.

²⁰ *Id.* at 2.

²¹ 10 C.F.R. § 590.103(a) (2023).

²² DOE’s regulation is comparable to FERC’s regulation that states “[f]or purposes of statutes or regulations governing timeliness, a document filed via the Internet will be deemed to have been received by the Commission at the time the last byte of the document is received by the Commission.” 18 C.F.R. § 385.2003(c)(3) (2023).

²³ Sierra Club’s Motion to Accept Attachments at 2.

Late-Filed Exhibits Considered where it sought permission to file exhibits out-of-time due to its inability to timely submit them via email.²⁴ In its motion, Sierra Club acknowledged DOE/FECM's policy "to require receipt of exhibits by the filing deadline."²⁵ Thus, Sierra Club has been on notice for at least ten years that DOE/FECM requires receipt of a complete filing by the deadline established in the Federal Register.

Also, in Docket No. 22-39-LNG, Sierra Club filed its intervention and protest after DOE/FECM's deadline set out in the Federal Register. In that proceeding, Sierra Club argued that its filing was timely because it filed its motions to intervene and protest on 4:30 p.m. on the deadline date and that it was irrelevant that it filed the attachments after the deadline. Sierra Club argued that its filing was not untimely because "[t]hese attachments are submitted to DOE largely as a courtesy, for ease of reference."²⁶ Interestingly, Sierra Club did not take the same tack with DOE/FECM in this proceeding, instead admitting that the attachments are part of its filing but promising "to take steps to ensure future filings do not suffer from the same technical difficulties."²⁷

Sierra Club does not have carte blanche to continuously disregard DOE's regulations and make filings late, be it hours or months after the deadline. DOE/FECM set a sixty day notice

²⁴ Sierra Club's Motion to Have Late-Filed Exhibits Considered, FE Docket No. 12-184-LNG (May 6, 2013), *available at* https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2012/applications/Sierra_Club_MOOT05_06_13.pdf.

²⁵ *Id.* at 3. Applicant later filed to withdraw its application and DOE vacated a previous FTA order without ruling on Sierra Club's late intervention. *Pangea LNG (North America) Holdings, LLC*, DOE/FE Order No. 3227-A (issued Apr. 8, 2015).

²⁶ Motion for Leave to Answer and Answer, and in the Alternative, Motion for Leave to Intervene and Protest Out of Time, of Sierra Club, Center for Biological Diversity, Healthy Gulf, and Louisiana Bucket Brigade, *New Fortress Energy Louisiana FLNG LLC*, Docket No. 22-39-LNG at 3 (Aug. 10, 2022).

²⁷ Sierra Club's Motion to Accept Attachments at 2.

period in this proceeding that afforded interested persons more than enough time to make timely filings.²⁸ However, as DOE has explained “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.”²⁹ DOE/FECM has pointed out that “Sierra Club’s submissions in prior proceedings demonstrate its awareness of the requirement to timely file....”³⁰ In fact, over ten years ago, DOE/FECM explicitly held in *Sabine Pass* that “Sierra Club, like other members of the public, had a responsibility to comply with the filing deadlines established in the Notice of Application if it wanted to raise issues regarding the environmental impacts of granting the instant application.”³¹

DOE/FECM should reject the Motion to Accept Attachments. Sierra Club is a prolific and sophisticated federal agency filer. It has developed an opposition strategy that consists of deliberately waiting until the last minute to file voluminous and disorganized materials in the agency docket so that the applicant has reduced time to prepare a response. When Sierra Club encounters technical issues inherent in such a last minute strategy, it argues that its foreseeable violation of DOE regulations is immaterial and has “no meaningful impact on DOE’s, the applicant’s, or other interests persons’ ability to review or understand” its filing.³²

DOE/FECM should reject this attempt to “spam” DOE/FECM and LCE. LCE is directly impacted and prejudiced by Sierra Club’s decision to wait until the last minute to file its

²⁸ See *Magnolia LNG, LLC*, DOE/FECM Order No. 3909-D at 6 (issued Jun. 24, 2022) (DOE sets a lengthy sixty day notice period “in recognition of the need to afford the public sufficient time to consider the precedential nature of the proceeding.”).

²⁹ *Id.* (quoting *Sabine Pass Liquefaction, LLC*, Docket No. 10-111-LNG, Procedural Order on Late File Proceedings at 5 (issued Mar. 25, 2011)).

³⁰ *Id.* at 7.

³¹ *Golden Pass LNG Terminal LLC*, DOE/FECM Order No. 3978-F at 7 (issued Jun. 24, 2022) (quoting *Sabine Pass Liquefaction, LLC*, Order No. 2961-A at 25 (issued Aug. 7, 2012)).

³² Sierra Club’s Motion to Accept Attachments at 1-2.

documents. Due to the hasty and disorganized manner through which Sierra Club filed the attachments, LCE was forced to try to piece together the 84 unlabeled attachments to make some sense out of the submission. Sierra Club's disorganization also caused an eight day delay in the posting of the filing on the public docket and thus caused LCE additional prejudice in not having online reference access to the filing or attachments as it prepared its answer. Sierra Club's post-deadline emails and Box.com invitations to DOE/FECM and LCE do not adequately mitigate the negative impact on DOE/FECM and LCE of Sierra Club's willful disregard of DOE's regulations. Nor would it be appropriate for LCE to file a motion to request additional time to respond to Sierra Club's late filing considering its request for expedited consideration of the Application. Sierra Club deliberately made it difficult for LCE to parse the filing so that it would have less time to develop a response under DOE's regulations.³³ DOE/FECM should make clear to Sierra Club that it is impermissible to deliberately wait until the last minute to submit its voluminous filings in such a haphazard manner.

More importantly, DOE/FECM should take into consideration the negative impact of Sierra Club's actions on DOE/FECM's processing of this proceeding. DOE/FECM has stated that "late filings are both unfairly prejudicial to the applicant (and any other parties) and disruptive to DOE's interests in administrative efficiency and fairness."³⁴ In rejecting Sierra Club's previous late filings, the Federal Energy Regulatory Commission ("FERC") held that liberally allowing late filings harms the administrative process by "[compromising] the certainty provided to entities

³³ See *Corpus Christi Liquefaction Stage III*, FE Docket No. 18-78-LNG, Order Dismissing Industrial Energy Consumers of America's Notice of Intervention, Protest, and Comment at 4 (issued Apr. 10, 2019) (Quoting applicant's opposition to motion to intervene, "[w]hen organized groups like IECA ignore DOE/FE's intervention and service requirements, applicants are undeniably prejudiced by the loss of time to prepare an appropriate response.").

³⁴ See *Energia Costa Azul, S. de R.L. de C.V.*, DOE/FECM Order No. 4365-B at 52 (issued Dec. 20, 2022).

interested in Commission proceedings ... and those that play by the rules would run a constant risk that the Commission might allow others to do otherwise.”³⁵

Sierra Club has shown little regard for DOE/FECM’s regulations in this proceeding and in its past dealings with DOE/FECM. Because Sierra Club chose to continue to abuse the agency’s processes, it should have to suffer the consequences of its failure to timely submit its filing. Therefore, Sierra Club’s late filing should be rejected.

III.

ANSWER IN OPPOSITION TO MOTIONS TO INTERVENE

A. Sierra Club’s late motions to intervene and Public Citizen’s motion to intervene do not meet the standards mandated by DOE’s regulations and each of them should be denied.

A movant for intervention must comply with Section 590.303 of DOE’s regulations. The regulation requires that such movant shall “set[] out *clearly and concisely the facts upon which the petitioner’s claim of interest is based.*”³⁶ DOE requires that “[a] motion to intervene shall state, to the extent known, the position taken by the movant and the factual and legal basis for such positions in order to advise the parties and the Assistant Secretary as to the specific issues of policy, fact, or law to be raised or controverted.”³⁷ DOE’s regulations define an “interested person” as “a person ... whose interest in a proceeding goes beyond the general interest of the public as a whole and includes ... individuals ... with a proprietary, financial or other special interest in the outcome

³⁵ *Cameron LNG, LLC et al.*, 148 FERC ¶ 61,237 at P 20 (2014) (FERC denied Sierra Club’s request for rehearing that was filed 26 seconds after the deadline, rejecting Sierra Club’s argument that its 26 second late filing should be accepted as de minimis.); *see also Londonderry Neighborhood Commission v. FERC*, 273 F.3d 416, 425 (1st Cir. 2001) (“Nevertheless, delivery delays [when using the U.S. mail] occur with some frequency, and there is no reason why [petitioner] had to wait until the last minute to file its petition.”).

³⁶ 10 C.F.R. § 590.303(b) (2023) (emphasis added).

³⁷ *Id.* at § 590.303(c).

of a proceeding.”³⁸ Finally, DOE/FECM put all prospective movants on notice in this proceeding that “[a]ll ... motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590[.]”³⁹ Each of the motions to intervene filed in this proceeding fail to meet DOE’s regulatory standards and should be denied.

1. Public Citizen. Public Citizen states that it “moves to intervene in this proceeding” and then explains that it is a “national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers” with “over 500,000 members and supporters across the United States.”⁴⁰ It claims that it “frequently intervene[s] in U.S. Department of Energy proceedings involving the export of electricity and natural gas.”⁴¹ While this is more information than Public Citizen included in its motion to intervene in the *Port Arthur LNG, LLC* proceeding that DOE/FECM denied,⁴² Public Citizen still fails to meet DOE/FECM’s standard to set out for this proceeding “the facts upon which the petitioner’s claim of interest is based.”

Public Citizen makes no effort to establish its claim of interest in this proceeding with respect to the Liquefaction Project. Public Citizen does not even claim that any of its members are in the vicinity of the Lake Charles Terminal. Although it argues that exports of LNG will result in higher domestic energy prices, Public Citizen does not claim that it has an interest in seeking lower domestic energy prices for its members and supporters across the United States. Public Citizen merely claims to represent “the interests of household consumers.” Such a claim at most

³⁸ *Id.* at § 590.102(h).

³⁹ 88 FR 60671.

⁴⁰ Public Citizen’s Motion to Intervene/Protest at 1.

⁴¹ *Id.*

⁴² *Port Arthur LNG, LLC*, DOE/FECM Order Nos. 3698-C and 4372-B at 11 (issued Apr. 21, 2023).

establishes that Public Citizen’s interest concerns LNG exports generally but does not “go[] beyond the general interest of the public as a whole” or that it has a “special interest in the outcome of a proceeding.”⁴³ Public Citizen’s motion to intervene should be denied for failure to meet DOE’s intervention standards.

2. **For a Better Bayou.** For a Better Bayou states that it is a community-based organization in Southwest Louisiana with a mission to “hold[] the fossil fuel industry accountable for the harm it causes to people and the environment[.]”⁴⁴ More specifically, it claims that its work and mission will be impacted because the Liquefaction Project’s alleged air and water pollution “will deter members from engaging in outdoor activities in the region.”⁴⁵ For a Better Bayou neither provides any information on its members nor represents that its members currently engage in outdoor activities in the vicinity of the Lake Charles Terminal. It appears that For a Better Bayou is generally opposed to the “fossil fuel industry” and that is the reason for its intervention in this proceeding. For a Better Bayou failed to set out the facts upon which its claim of interest is based for this proceeding and, therefore, DOE/FECM should deny its late motion to intervene.

3. **Habitat Recovery Project.** Habitat Recovery Project states that it “represents a community-focused conservation movement dedicated to restoring ... wildlife habitats ... through supporting and benefitting the communities around them.”⁴⁶ It then concludes that construction and operation of the Liquefaction Project will directly affect its work.⁴⁷ Habitat Recovery Project only offered a vague description of itself with no information on its members (or if there are any

⁴³ See 10 C.F.R. § 590.102(h) (definition of “interested person,” which Public Citizen does not qualify as).

⁴⁴ Sierra Club’s Late Motions to Intervene/Protest at 7.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

members) and no information on where its performs its work or what that work entails. Such generalized and conclusory statements do not meet DOE's requirement to set out the facts upon which its claim of interest for this proceeding is based. Therefore, DOE/FECM should deny Habitat Recovery Project's late motion to intervene.

4. **Healthy Gulf.** Healthy Gulf states that it has several hundred members in Louisiana and it works to protect the integrity of wetlands, waters, wildlife and other ecological resources throughout Louisiana and the Gulf Region.⁴⁸ It then concludes that its work will be directly affected by the construction and operation of the Liquefaction Project.⁴⁹ Healthy Gulf failed to explain if any of its Louisiana members are located in the vicinity of the Lake Charles Terminal or that its members will be impacted by this proceeding. It provided no information on what type of work it performs and does not explain how the Liquefaction Project will directly affect its work. Such generalized and conclusory statements do not meet DOE's requirement to set out the facts upon which its claim of interest for this proceeding is based. Therefore, DOE/FECM should deny Healthy Gulf's late motion to intervene.

5. **Louisiana Bucket Brigade.** Unlike its other joint movants, Louisiana Bucket Brigade states that it has members in the Lake Charles area who will be impacted.⁵⁰ But, Louisiana Bucket Brigade provides no explanation for why or how its Lake Charles area members will be impacted. Its conclusory statement does not meet DOE's requirement to set out the facts upon which its claim of interest for this proceeding is based. Therefore, DOE/FECM should deny Louisiana Bucket Brigade's late motion to intervene.

⁴⁸ *Id.* at 8.

⁴⁹ *Id.*

⁵⁰ *Id.*

6. **Micah Six Eight Mission.** Micah Six Eight Mission states it works to inform Louisiana residents on the adverse environmental impacts of the petrochemical and oil and gas industry and supports communities in Calcasieu and Cameron Parishes whose health and homes it claims are devastated by the petrochemical industry as well as the oil and gas industry.⁵¹ Micah Six Eight Mission provides no specifics on its work and merely makes a conclusory statement that its work is directly affected by the Liquefaction Project. Such generalized and conclusory statements do not meet DOE's requirement to set out the facts upon which its claim of interest for this proceeding is based. Therefore, DOE/FECM should deny Micah Six Eight Mission's late motion to intervene.

7. **Sierra Club.** Sierra Club claims that the "*requested extension* will harm Sierra Club's members by increasing the prices they pay for energy[.]"⁵² It also claims that the "*requested extension* will further harm Sierra Club members by increasing gas production and associated air pollution[.]"⁵³ Sierra Club sets out the facts upon which its claim of interest is based for the wrong proceeding. LCE is not requesting an extension in this proceeding. Sierra Club's cutting and pasting from another proceeding does not meet DOE's requirement to set out the facts upon which its claim of interest for this proceeding is based. Therefore, DOE/FECM should deny Sierra Club's late motion to intervene.

IV. ANSWER IN OPPOSITION TO PROTESTS

Public Citizen and Sierra Club have failed to affirmatively demonstrate that the proposed export of LNG from the Lake Charles Terminal is inconsistent with the public interest. Both

⁵¹ *Id.* at 9.

⁵² *Id.* at 5 (emphasis added).

⁵³ *Id.* (emphasis added).

protests repeat unsupported generalized arguments against the export of LNG that DOE/FECM and the courts have repeatedly reviewed and rejected. Having no basis for their claims, both Public Citizen and Sierra Club attempt to cast LCE and the Liquefaction Project in a negative light by citing past events that have no bearing on DOE/FECM's review of the Application. LCE provides this answer in opposition to the arguments raised by Public Citizen and Sierra Club and urges DOE/FECM to reject the arguments raised therein and proceed to issue an order granting the requested export authorization as required by NGA section 3(a) as the proposed export of LNG is not inconsistent with the public interest.

A. Neither Sierra Club nor Public Citizen has rebutted the presumption in favor of approval of the Application.

DOE/FECM's review of export applications to non-FTA countries is governed by section 3(a) of the NGA. NGA section 3(a) states that the Assistant Secretary of DOE/FECM "*shall issue* such [an export authorization] upon application, *unless*, after opportunity for hearing, [the Assistant Secretary] finds that the proposed exportation or importation will not be consistent with the public interest."⁵⁴ Under DOE/FECM policy, "[a]pplying the foregoing statutory language, DOE has consistently ruled that section 3(a) of the NGA creates a rebuttable presumption that proposed exports of natural gas are in the public interest."⁵⁵ To overcome this rebuttable

⁵⁴ 15 U.S.C. § 717b(a) (emphasis added).

⁵⁵ *Sabine Pass Liquefaction, LLC*, DOE/FE Docket 10-111-LNG, Opinion and Order Denying Request for Review Under Section 3(c) of the NGA at 4 (issued Oct. 21, 2010); *see also Panhandle Producers and Royalty Owners Assoc. v. Economic Reg. Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987) ("A presumption favoring import authorization, then, is completely consistent with, if not mandated by, the statutory directive."); *Sierra Club v. DOE*, 867 F.3d 189, 203 (D.C. Cir. 2017) ("We have construed [NGA section 3(a)] as containing a 'general presumption favoring [export] authorization.'"), quoting *W. Va. Pub. Servs. Comm'n v. DOE*, 681 F.2d 847, 856 (D.C. Cir. 1982); *Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1188 (D.C. Cir. 2023) (same).

presumption an opponent must *affirmatively demonstrate* that the proposal is inconsistent with the public interest.⁵⁶

Public Citizen misstates the relevant standard of review and alleges that the Application must be denied because it “fails to demonstrate that its request is consistent with the public interest.”⁵⁷ The plain language of NGA section 3(a) does not require that an application demonstrate that the proposed exportation is consistent with the public interest. Rather, such exports are presumed under the statutory construct to be consistent with the public interest and the burden is on an opponent, like Public Citizen, to affirmatively demonstrate inconsistency with the public interest. Not only has Public Citizen completely flipped the applicable standard of review, it also has fallen well short of rebutting the presumption in favor of exports.

Public Citizen’s protest is replete with irrelevant and spurious allegations regarding Energy Transfer’s compliance history that have no bearing on DOE/FECM’s consideration of the request for export authorization from the Lake Charles Terminal.⁵⁸ None of the alleged violations listed have anything to do with LCE or any facilities in the state of Louisiana. As explained further

⁵⁶ *Sabine Pass*, DOE/FE Docket 10-111-LNG, Opinion and Order Denying Request for Review Under Section 3(c) of the NGA at 5 (issued Oct. 21, 2010); *see also Phillips Alaska Natural Gas Corp. and Marathon Oil Co.*, DOE/FE Order No. 1473 at 13 (issued Apr. 2, 1999) (“Section 3 creates a statutory presumption in favor of approval of an export application, and the Department must grant the requested export [application] unless it determines the presumption is overcome by evidence in the record of the proceeding that the proposed export will not be consistent with the public interest.”); *Sierra Club*, 867 F.3d at 203 (“there must be ‘an affirmative showing of inconsistency with the public interest’ to deny the application” [under NGA section 3(a).]), quoting *Panhandle Producers and Royalty Owners Assoc.*, 822 F.2d at 1111.

⁵⁷ Public Citizen’s Motion to Intervene/Protest at 1; *see also id.* (Public Citizen’s statement that its Energy Program Director served as “a witness on the Department of Energy public interest standard in testimony before the U.S. Congress in February 2023.”).

⁵⁸ Public Citizen also raises unsupported claims with respect to China that do not warrant a response. *See* Public Citizen’s Motion to Intervene/Protest at 10-11. As required by DOE’s regulations, LCE has filed all contracts for review. In addition, DOE/FECM has never articulated a policy that authorizing LNG exports is inconsistent with the public interest and China is a non-FTA country (i.e., trade is not prohibited to China by U.S. law or policy).

herein, Public Citizen’s arguments with respect to domestic energy prices, NEPA review, and natural gas supply have all been thoroughly vetted and rejected by DOE/FECM in prior proceedings.

Like Public Citizen, Sierra Club also fails to affirmatively demonstrate, in its defectively late filing, that the proposed export of LNG from the Lake Charles Terminal would be inconsistent with the public interest. First, Sierra Club alleges without support that DOE/FECM should treat LCE’s new application as “an additional source of LNG exports[.]”⁵⁹ As LCE explained in the Application, the volumes requested are non-additive to the quantity already approved by DOE/FECM for the Lake Charles Terminal.⁶⁰ Sierra Club’s discussion of LCE’s prior request for an extension of the construction deadline is a red herring designed to cast the Liquefaction Project in a negative light and spur DOE/FECM to treat the Application as a request to export additional or new quantities of LNG. DOE/FECM should reject this invitation. Sierra Club raises a host of factors that it claims bear on the public interest, yet fails to acknowledge that DOE/FECM has repeatedly and recently rejected each of these arguments.

In its defectively late filing, Sierra Club repeats the same arguments against the export of LNG that it has advanced in most LNG export proceedings over the last decade. Each time, DOE/FECM has reviewed the arguments and rejected them. Most recently, DOE/FECM issued an order denying Sierra Club’s 2013 Petition for Rulemaking.⁶¹ In denying Sierra Club’s petition,

⁵⁹ Sierra Club’s Late Motions to Intervene/Protest at 3.

⁶⁰ See Application at 42 (“LCE’s existing authorized quantity (the same 851 Bcf/year of LNG that is the subject of this Application) already is included within the 47.29 Bcf/day of natural gas that DOE/FECM cumulatively has approved, which is within the upper limit of 52.8 Bcf/day that the 2018 Study found could be exported and will not be inconsistent with the public interest. The volumes requested in this Application are *non-additive* to the quantity already approved by DOE for the Lake Charles Terminal.”) (emphasis in original).

⁶¹ *Sierra Club, et al.*, Order Denying Petition for Rulemaking on Exports of Liquefied Natural Gas (issued Jul. 18, 2023).

DOE/FECM stated that it “has developed a robust regulatory program for reviewing non-FTA export applications through informal adjudications under the public interest standard of NGA section 3(a), as well as through numerous regulatory actions and technical analyses.”⁶² DOE/FECM noted that it has successfully defended its export decision-making process under both NGA section 3(a) and NEPA against legal challenges brought by Sierra Club.⁶³ In its petition for rulemaking, Sierra Club asked DOE/FECM to provide guidance on the same issues it raises in its Late Motions to Intervene/Protest in this proceeding: (1) environmental review; (2) environmental consequences of increased natural gas production; (3) the likelihood of export-driven shifts in the domestic natural gas market; and (4) the net climate and environmental impact of using LNG.⁶⁴ DOE/FECM affirmed the applicable standard of review under NGA section 3(a) and also its practice of incorporating record evidence (including its studies) into its review of each application.⁶⁵ In short, Sierra Club provided no information that would cause DOE/FECM to change its approach to approving LNG export applications.

Sierra Club’s arguments have fared no better in case-specific export authorization proceedings. In the most recent proceeding involving exports to non-free trade agreement countries, Sierra Club raised its usual arguments against the export of LNG.⁶⁶ DOE/FECM reviewed and rejected each argument in turn and noted that it had previously rejected these arguments when Sierra Club raised them in prior proceedings.⁶⁷ Sierra Club fails to acknowledge

⁶² *Id.* at 4 (citations omitted).

⁶³ *Id.*

⁶⁴ *Id.* at 7.

⁶⁵ *Id.* at 12-15.

⁶⁶ Motion to Intervene and Protest of Sierra Club and Natural Resources Defense Council, *Freeport LNG Expansion, L.P., et al.*, FE Docket No. 21-98-LNG (Dec. 7, 2021). Much of the language in the Sierra Club protest in Docket No. 21-98-LNG is duplicative of that in Sierra Club’s Late Motions to Intervene/Protest in this proceeding.

⁶⁷ *Freeport LNG Expansion, L.P., et al.*, DOE/FECM Order No. 4961 at 54 (issued Mar. 3, 2023).

the long line of precedent rejecting its arguments and provides no new or additional information that would cause DOE/FECM to reach different conclusions in this proceeding.

B. Sierra Club’s and Public Citizen’s claims regarding domestic natural gas supply and pricing impacts have been consistently reviewed and rejected by DOE/FECM.

Both Public Citizen and Sierra Club repeat in this proceeding arguments regarding domestic natural gas supply and pricing impacts that they have raised in other proceedings.⁶⁸ LCE does not dispute that DOE/FECM should use the most recently available information in assessing potential impacts on supply and pricing. However, the protests ignore that DOE’s own studies, and recent EIA data, have only further reinforced the conclusion that exports of LNG from the United States are not inconsistent with the public interest.

Specifically, in *Freeport LNG Expansion, L.P.* (DOE/FECM’s most recent grant of authorization to export LNG to non-FTA countries), DOE/FECM concluded, among other things, that the assumptions underlying its most recent study’s findings remain consistent with more recent assessments of current and future natural gas supply, demand, and prices.⁶⁹ There is simply no evidence to support the claims by Public Citizen or Sierra Club that the export of LNG will threaten domestic natural gas supply or cause significant price increases. The most recent data from the EIA, the 2023 Annual Energy Outlook, directly contradicts the claims in the protests.⁷⁰ According to the EIA, domestic natural gas consumption is forecasted to remain stable, and continued increased natural gas production will allow the U.S. to “remain a net exporter of petroleum

⁶⁸ Public Citizen’s Motion to Intervene/Protest at 6-8; Sierra Club’s Late Motions to Intervene/Protest at 12-19.

⁶⁹ *Freeport LNG Expansion*, DOE/FECM Order No. 4961 at 56 (citing Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports, conducted by NERA Economic Consulting on behalf of DOE (“2018 LNG Export Study”)).

⁷⁰ EIA, Annual Energy Outlook 2023, available at <https://www.eia.gov/outlooks/aeo/narrative/>.

products and natural gas through 2050 in all AEO2023 cases.”⁷¹ Accordingly, LCE’s proposed export authorization will not have a detrimental impact on the domestic supply of natural gas and, therefore, the Application is not inconsistent with the public interest.

The pricing claims in the protests are similarly unavailing. In rejecting the same arguments in its March 2023 *Freeport LNG Expansion* order, DOE/FECM concluded that “arguments concerning domestic price increases are not supported by the record evidence.”⁷² DOE/FECM reviewed the most recent EIA data as compared to the data underlying its prior studies and determined that its prior conclusions regarding price impacts had not changed. DOE/FECM should follow the same approach here and such review of the most recently available data will lead to the same conclusion. The 2023 EIA data reaffirms the conclusions contained in the 2018 LNG Export Study with respect to prices. Specifically, the 2023 data shows higher natural gas production coupled with decreased total consumption would mitigate impacts on pricing.⁷³

Sierra Club deliberately mischaracterizes the findings with respect to price impacts in EIA’s AEO 2023 *Issues in Focus: Effects of Liquefied Natural Gas Exports on the U.S. Natural Gas Market*.⁷⁴ Rather than supporting Sierra Club’s pricing argument, the EIA concluded that while “LNG export volumes affected the resulting annual average U.S. natural gas price (Table 1). . . [t]he resulting variation in natural gas prices in these three cases, however, was *narrower than recent in history and our AEO2023*, despite a wide variety of U.S. LNG export volumes.”⁷⁵

⁷¹ *Id.* at 6.

⁷² *Freeport LNG Expansion*, DOE/FECM Order No. 4961 at 64.

⁷³ EIA, Annual Energy Outlook 2023 at Tables 59 and 60, *available at* https://www.eia.gov/outlooks/aeo/tables_ref.php.

⁷⁴ Sierra Club’s Late Motions to Intervene/Protest at 15.

⁷⁵ AEO 2023 *Issues in Focus: Effects of Liquefied Natural Gas Exports on the U.S. Natural Gas Market*, *available at* https://www.eia.gov/outlooks/aeo/IIF_LNG/ (emphasis added).

DOE/FECM should conclude, as it did in its March 2023 *Freeport LNG Expansion* order, that pricing impacts have lessened since the 2018 LNG Export Study.

Sierra Club not only fails to acknowledge that DOE/FECM has rejected its pricing arguments, but does not even bother to revise such arguments before copying and pasting them from its protests in other unrelated DOE/FECM proceedings. Sierra Club argues that DOE/FECM's prior studies and LCE's Application fail to address recent developments, "which demonstrate that *an extension* is not in the public interest."⁷⁶ DOE/FECM should disregard this line of argument, which Sierra Club has lifted from its protests in unrelated extension of time proceedings.⁷⁷ DOE/FECM should act consistently with its precedent and review the latest information available, as such information conclusively demonstrates that the export of LNG will not have detrimental impacts on domestic natural gas supply or pricing.

C. LCE fully supported its request to incorporate existing DOE/FECM environmental documents and the findings underlying the final Environmental Impact Statement remain valid.

As explained in the Application, the potential environmental impacts were fully studied by FERC as the lead agency for NEPA review and set out in the final Environmental Impact Statement ("EIS"), which DOE/FECM affirmed and adopted in issuing the final non-FTA export authorization to LCE in Order No. 3324-A.⁷⁸ FERC's authorization of the Liquefaction Project is for the full design production capacity of the facilities, which matches the export quantity

⁷⁶ Sierra Club's Late Motions to Intervene/Protest at 12 (emphasis added).

⁷⁷ See Motion to Intervene and Protest of Sierra Club, et al., *Lake Charles Exports, LLC*, FE Docket Nos. 11-59-LNG, et al. at 11 (Aug. 11, 2022); Motion to Intervene and Protest of Sierra Club, et al., *Magnolia LNG, LLC*, FE Docket No. 13-132-LNG at 13 (Jul. 19, 2022).

⁷⁸ *LCE*, DOE/FE Order No. 3324-A at 127-28 ("For the reasons set forth below, DOE/FE has not found that the arguments raised in the FERC proceeding, the current proceeding, or the 2014 and 2015 LNG Export Study proceedings detract from the reasoning and conclusions contained in the final EIS. Accordingly, DOE has adopted the EIS (DOE/EIS-0491), and hereby incorporates FERC's reasoning and findings in this Order.").

requested herein.⁷⁹ A complete NEPA review for the full export amount requested has already been completed by FERC with DOE/FECM as a cooperating agency. In that NEPA review, including a full EIS, FERC concluded that “approval of the proposed facilities, if constructed and operated as described in the final EIS, is an environmentally acceptable action.”⁸⁰ LCE confirms that the Liquefaction Project area, which is a brownfield site containing the existing regasification and import terminal, has not experienced any significant changes and the environmental findings underlying the final EIS remain valid.⁸¹

In posting the Application to the public docket, DOE/FECM affirmed its practice that it “will consider the following environmental documents: Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States, 79 FR 48132 (Aug. 15, 2014); Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States, 79 FR 32260 (June 4, 2014); 2019 Update to Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States, 84 FR 49278 (Sep. 19, 2019).”⁸² DOE/FECM’s incorporation of its environmental studies to satisfy its obligations under NEPA has been affirmed on appeal to the D.C. Circuit.⁸³ Notwithstanding that each of its prior protests to DOE/FECM’s environmental studies has been rejected, Sierra Club once again claims that DOE/FECM “must revisit the deeply flawed analysis of the climate impacts of LNG exports from its general studies[.]”⁸⁴ Such argument amounts to an impermissible collateral attack on

⁷⁹ *Lake Charles LNG Co., LLC et al.*, 153 FERC ¶ 61,300 at n. 13 (2015), *reh’g denied*, 155 FERC ¶ 61,328 (2016).

⁸⁰ *Id.*, 153 FERC at P 139.

⁸¹ See Application at 47.

⁸² <https://www.energy.gov/fecm/articles/lake-charles-exports-llc-fecm-docket-no-23-87-lng>.

⁸³ *Freeport LNG Expansion*, DOE/FECM Order No. 4961 at 69-70 (describing Sierra Club’s unsuccessful appeals to the D.C. Circuit regarding DOE/FECM’s environmental analysis and GHG emissions approach).

⁸⁴ Sierra Club’s Late Motions to Intervene/Protest at 27.

DOE/FECM's prior orders, including its Response to Comments addressing precisely this Sierra Club argument.⁸⁵

Sierra Club simply chooses to ignore that both DOE/FECM and the D.C. Circuit have explicitly rejected its arguments with respect to impacts from the upstream production of natural gas to be exported and the treatment of potential downstream greenhouse gas ("GHG") emissions.⁸⁶ Neither Sierra Club nor Public Citizen advance any reason why DOE/FECM should take a different approach to review of environmental impacts, in particular GHG emissions, in this proceeding as compared to all other applications to export LNG from the lower 48 United States.

DOE/FECM also should reject Public Citizen's and Sierra Club's arguments with respect to the existing EIS for the Liquefaction Project. First, Sierra Club's arguments with respect to the validity of the EIS have already been considered and rejected by FERC as recently as last year when FERC affirmed that "[t]he authorization order's environmental analysis remains valid."⁸⁷ In granting an extension of time to construct the Liquefaction Project, FERC reviewed Sierra Club's arguments regarding "newly listed aquatic species" and concluded that the potential need for FERC to reinitiate consultation regarding newly-listed species "does not in and of itself render the environmental analysis stale or trigger the need for a supplemental environmental impact statement (EIS)."⁸⁸ FERC concluded that, should supplemental review be necessary, it would undertake such review and consultation before authorizing the commencement of construction.⁸⁹ There is

⁸⁵ See U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update – Response to Comments, 85 FR 72, 75 (Jan. 2, 2020).

⁸⁶ See *Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189 (D.C. Cir. 2017).

⁸⁷ *Lake Charles LNG Co., LLC et al.*, 179 FERC ¶ 61,086 at P 12 (2022).

⁸⁸ *Id.* at P 14.

⁸⁹ *Id.*

no basis for DOE/FECM to encroach upon FERC’s authority as lead agency under NEPA as requested by Public Citizen and Sierra Club.

In addition, in November 2023, DOE/FECM issued a supplement analysis (SA) for LCE’s application to extend its existing authorized export term through December 31, 2050.⁹⁰ In granting the amendment, DOE/FE noted that the “proposed action does not include any physical modifications to the Liquefaction Project.”⁹¹ DOE/FECM listed the following resources areas that were excluded from review: Soils; Water resources; Wetlands, Vegetation, Wildlife and aquatic resources; Land use, recreation, and visual resources; Socioeconomics; Cultural resources; and Reliability and safety. DOE/FECM then concluded that “[t]he EIS, prepared by FERC and adopted by DOE, thoroughly addresses potential impacts in each of these resource areas from construction and operation of the Project. An extension of the export authorizations to 2050 would involve no new construction or physical or operational changes; therefore, this SA does not address the resource areas listed above.”⁹² As the proposed export of LNG from the Lake Charles Terminal for a term ending December 31, 2050 does not involve new construction or physical or operational changes, DOE/FECM should similarly exclude these resource areas from any Supplement Analysis prepared for its review of the Application.

DOE/FECM next reviewed the following resource areas “solely in the context of the extended export authorization term and intervenor issues raised in this proceeding”: Geologic Hazards; Threatened, endangered, and other special status species; and Air quality and noise.⁹³ As

⁹⁰ Supplement Analysis for the Application of Lake Charles LNG Export Company, LLC and Lake Charles Exports, LLC to Extend Their Authorized Export Term Through December 31, 2050 (Nov. 2023) (“Supplement Analysis”).

⁹¹ *Id.* at 3.

⁹² *Id.* at 4; *see also Lake Charles Exports, LLC*, DOE/FECM Order Nos. 2987-B, 3324-E and 4011-D at 16 (issued Nov. 1, 2023).

⁹³ Supplement Analysis at 4.

part of the Supplement Analysis, DOE/FECM reviewed Sierra Club’s arguments regarding new information, newly-listed species, and GHG emissions, *which are the same arguments Sierra Club advances here.*⁹⁴

Resource Area	DOE/FECM Response to Sierra Club
Geologic Hazards	<ul style="list-style-type: none"> • DOE has considered potential impacts of flood/storm damage on the Liquefaction Project. • The IPCC study findings highlighted by Sierra Club are general findings that are not specific to any potential impacts of the proposed extension on the Liquefaction Project. Therefore, based on the information Sierra Club has presented, DOE would not alter its prior storm damage and floodplain analysis.
Threatened, endangered, and other special status species	<ul style="list-style-type: none"> • Based on the EIS, DOE finds that an extension of the term through 2050 would not cause significant impacts beyond those previously considered. • DOE has previously considered LNG vessel impacts on marine species. • DOE finds it reasonable to assume that Project-related ship traffic during the proposed extension period would be no greater than the authorized Project-related traffic during the existing authorization period. • DOE finds that no additional environmental review is required for this resource area.
Air quality and noise	<ul style="list-style-type: none"> • DOE has taken the requisite hard look at GHG emissions throughout the LNG lifecycle, including those that could take place during a longer period of export authorization. • The 2019 Update is an extensive “cradle-to-grave” assessment of GHG emissions from LNG exports over 20 and 100 year global warming time horizons. In January 2020, upon review of both the 2019 Update and the public comments received on that study, DOE determined that it saw “no reason to conclude that U.S. LNG exports will

⁹⁴ *Id.* at 4-12.

Resource Area	DOE/FECM Response to Sierra Club
	<p>increase global GHG emissions in a material or predictable way.”</p> <ul style="list-style-type: none"> • DOE finds that the energy market comparisons in the 2019 Update continue to be relevant. • Projections from the IEO 2023 validate the continued relevance through 2050 of DOE’s comparison of LNG and coal in the LCA GHG Analyses. • The methane leak rate used in the 2019 Update remains valid, and that the information Sierra Club presents does not represent significant new information that would require additional NEPA review at this time.

DOE/FECM concluded “that the new circumstances or information presented relevant to environmental concerns are not significant and therefore do not require a supplement to the Lake Charles Liquefaction Project Final Environmental Impact Statement (Aug. 2015)[.]”⁹⁵ DOE/FECM found that no changes to mitigation are proposed from the mitigation methods described in the EIS.⁹⁶

Sierra Club alleges that the Supplement Analysis is “irrelevant here” because LCE’s Application must be treated as an application to export “additional LNG, not simply an extension of LCE’s prior authorizations.”⁹⁷ As explained above, Sierra Club’s argument with respect to the export of additional LNG is wrong and deliberately misrepresents the facts of this proceeding. While the Supplement Analysis is tailored to LCE’s prior request to extend its export term to 2050, the same rationale would apply to any Supplement Analysis DOE/FECM determines to prepare in this case, namely (1) the instant request does not involve new construction or physical or

⁹⁵ *Id.* at 12.

⁹⁶ *Id.*

⁹⁷ Sierra Club’s Late Motions to Intervene/Protest at 10, n. 24.

operational changes; (2) the resource areas analyzed by DOE/FECM in the Supplement Analysis would similarly not be impacted by LCE's proposed exports through December 31, 2050; and (3) the EIS for the Liquefaction Project remains valid and applicable to the instant proceeding.

Neither Public Citizen nor Sierra Club have set forth any new information not previously considered and rejected by DOE/FECM nor have they made a compelling case for why DOE/FECM could reach a different conclusion with respect to the EIS than reached in the Supplement Analysis. A two-year extension of an export term raises the same underlying issues as a new authorization with respect to the relevant resource areas and DOE/FECM's analysis should mirror that in the Supplement Analysis. DOE/FECM's conclusion that the resource areas were fully studied and considered is equally applicable here.

D. Sierra Club and Public Citizen ignore the widespread support for and public benefits of the Liquefaction Project.

During the sixty-day public comment period, ninety-one comments in support of the Application were timely filed by representatives of Federal, state, parish and municipal government, law enforcement, community organizations, colleges, customers, contractors and businesses. United States Senator Bill Cassidy, M.D. (LA) explained that the "export of LNG from the existing Lake Charles Terminal will provide a significant boost to the regional economy while providing the world a cleaner source of energy."⁹⁸ United States Representative Garret Graves (LA) wrote that it is "vital for the well-being of the state of Louisiana and the entire country that the Department of Energy promptly approve the Lake Charles Export application."⁹⁹ Also, United States Representative Clay Higgins (LA) stated that the "timely approval of this application

⁹⁸ Letter in Support from U.S. Senator Cassidy, *Lake Charles Exports, LLC*, Docket No. 23-87-LNG (Nov. 6, 2023).

⁹⁹ Letter in Support from U.S. Congressman Graves, *Lake Charles Exports, LLC*, Docket No. 23-87-LNG (Nov. 2, 2023).

is imperative to advancing American energy projects and fostering an environment for investment and innovation.”¹⁰⁰ The Mayor of the City of Lake Charles, Louisiana, Nicholas E. Hunter, underscored that the Liquefaction Project will create hundreds of high-quality jobs for the region related to LNG operations, tug operations and ancillary services.¹⁰¹ EQT Corporation noted that “United States Secretary of Energy, Jennifer Granholm, stated in a letter to Federal Energy Regulatory Commission earlier this year that natural gas and the infrastructure that supports its use can play an important role in the clean energy transition. We agree and therefore support the U.S. LNG industry, including the Lake Charles LNG project.”¹⁰² The international benefits of the Liquefaction Project were highlighted by Kyushu Electric Power Company, Inc. in its letter of support in which it explained that Japan’s Ministry of Economy, Trade and Industry has recognized the importance of the Liquefaction Project in terms of ensuring Japan’s energy security.¹⁰³ The recent U.S.-Japan Energy Security Dialogue has affirmed the geopolitical benefits to the United States from supporting the energy security of Japan.¹⁰⁴

The letters in support of the Application only underscore the public benefits of exports from the Lake Charles Terminal. LCE continues to actively make progress on the Liquefaction Project, as evidenced by numerous recent news articles explaining the progress made:

¹⁰⁰ Letter in Support from U.S. Congressman Higgins, *Lake Charles Exports, LLC*, Docket No. 23-87-LNG (Oct. 27, 2023).

¹⁰¹ Letter in Support from Mayor Hunter, City of Lake Charles, *Lake Charles Exports, LLC*, Docket No. 23-87-LNG (Oct. 23, 2023).

¹⁰² Letter in Support from Mr. Shoemaker of EQT Corporation, *Lake Charles Exports, LLC*, Docket No. 23-87-LNG (Sep. 29, 2023).

¹⁰³ Letter in Support from Kyushu Electric Power Co., Inc., *Lake Charles Exports, LLC*, Docket No. 23-87-LNG (Oct. 24, 2023).

¹⁰⁴ See Joint Statement on the Second Annual Japan-U.S. Energy Security Dialogue, U.S. Department of State (Oct. 26, 2023) (Summarizing the October 2023 Japan-U.S. Energy Security Dialogue held in Palo Alto, California).

- S&P Global, “[Lake Charles LNG in talks with Japan's Kyushu Electric over long-term supply deal](#)” (October 2023)
- Yahoo! Finance, “[EQT in deal with Energy Transfer Louisiana Lake Charles LNG Export Plant](#)” (July 2023)
- LNG Prime, “[Energy Transfer Eyes Lake Charles LNG FID in Q2 2024](#)” (November 2023)

The widespread public support for the Liquefaction Project demonstrates that the proposed export of LNG as outlined in the Application would not be inconsistent with the public interest. On the other hand, Sierra Club inundated DOE/FECM’s eDocket by filing “12,853 Comments Submitted by Sierra Club on Behalf of 12,853 Individuals” after the comment deadline. These comments appear to be generated from a Sierra Club electronic write-in campaign advertised on its website and do not explain what connection or interest each of the commenters has to the Liquefaction Project. These form comments merely repeat and rehash arguments that have been previously considered and rejected by DOE/FECM and do not rebut the presumption that the export of LNG as requested by LCE in the Application is consistent with the public interest.¹⁰⁵

As discussed above, the comments legitimately and timely submitted during the public comment period provide overwhelming evidence that the export of LNG from the Liquefaction Project is not inconsistent with the public interest. In addition, as discussed above, none of the

¹⁰⁵ In fact, the form submissions blatantly misstate the applicable standard of review (“In order for the Department of Energy to approve these projects, they must be proven to be in the public interest.”). As explained at length above, exports of LNG are presumed to be consistent with the public interest unless an affirmative showing is made to the contrary. In addition, none of the 12,853 individuals represented in Sierra Club’s late filing list a Lake Charles, Louisiana zip code. In addition, numerous “individual comments” are duplicate submissions from the same name/zip code. For example, Signer No. 5038 and 11408 and Signer No. 2787 and 11191 are both duplicate submissions from signers in California.

form comments submitted by Sierra Club on behalf of various individuals were timely submitted and therefore should not be recognized for the purposes of DOE/FECM's review of the Application. As discussed in Sections A through D above in this Article IV of the Answer, LCE has rebutted the arguments raised by Sierra Club and Public Citizen to the effect that the proposed export of LNG from the Lake Charles Terminals is inconsistent with the public interest. Accordingly, for the reasons described in this Article IV, NGA section 3(a) requires that DOE/FECM grant the requested authorization.

V.
CONCLUSION

WHEREFORE, for the reasons set forth herein, Lake Charles Exports, LLC respectfully requests that DOE/FECM (i) deny Sierra Club's Motion to Accept Attachments; (ii) deny Sierra Club's late joint motions to intervene; (iii) deny Public Citizen's motion to intervene; and (iv) reject the arguments raised in the two protests. LCE reiterates its request that DOE/FECM incorporate the extensive record already developed and proceed to issue an order authorizing LCE's requested export authorization on or before February 19, 2024.

Respectfully submitted,

LAKE CHARLES EXPORTS, LLC

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Attorneys for Lake Charles Exports, LLC

Dated: November 20, 2023

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT**

Lake Charles Exports, LLC

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Docket No. 23-87-LNG


**VERIFICATION AND CERTIFIED STATEMENT OF AUTHORIZED
REPRESENTATIVE**

Washington, DC

BEFORE ME, the undersigned authority, on this day personally appeared Thomas E. Knight, who, having been by me first duly sworn, on oath says that he is an Attorney for Lake Charles Exports, LLC; that he is a duly authorized representative of Lake Charles Exports, LLC authorized to make this Verification and Certified Statement of Authorized Representative on behalf of Lake Charles Exports, LLC; that he is authorized to sign and file the foregoing instrument with the Department of Energy, Office of Fossil Energy and Carbon Management on behalf of Lake Charles Exports, LLC; and that he has read the foregoing instrument and that the facts therein stated are true and correct to the best of his knowledge, information and belief.


Thomas E. Knight

SWORN TO AND SUBSCRIBED before me on this 20th day of November, 2023.


Valerie Clark, Notary Public



My Commission expires: **VALERIE J. CLARK**
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires January 1, 2027

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

Lake Charles Exports, LLC

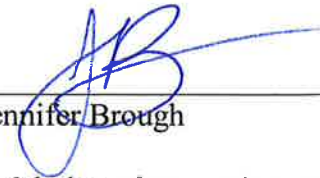
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Docket No. 23-87-LNG

VERIFICATION AND CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Washington, DC

BEFORE ME, the undersigned authority, on this day personally appeared Jennifer Brough, who, having been by me first duly sworn, on oath says that she is an Attorney for Lake Charles Exports, LLC; that she is a duly authorized representative of Lake Charles Exports, LLC authorized to make this Verification and Certified Statement of Authorized Representative on behalf of Lake Charles Exports, LLC; that she is authorized to sign and file the foregoing instrument with the Department of Energy, Office of Fossil Energy and Carbon Management on behalf of Lake Charles Exports, LLC; and 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.


Jennifer Brough

SWORN TO AND SUBSCRIBED before me on this 20th day of November, 2023.


Valerie Clark, Notary Public



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Lake Charles Exports, LLC

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Docket No. 23-87-LNG

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. §590.107, I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Department of Energy in this proceeding.

In addition to the official service list, I hereby certify that I have this day served the foregoing document upon the following persons:

Public Citizen, attn: Tyson Slocum (tslocum@citizen.org)

Sierra Club, attn: Louisa Eberle (louisa.eberle@sierraclub.org) and Nathan Matthews (nathan.matthews@sierraclub.org)

For a Better Bayou, attn: James Hiatt (James@betterbayou.net)

Habitat Recovery Project, attn: Alyssa Portaro (alyssaportaro@gmail.com)

Healthy Gulf, attn: Naomi Yoder (naomi@healthygulf.org)

Louisiana Bucket Brigade, attn: Shreyas Vasudevan (shreyas@labucketbrigade.org)

Micah Six Eight Mission, attn: Cynthia Robertson (cindy@micah68mission.org)

Dated at Washington, D.C. this 20th day of November, 2023.

/s/ Jennifer Brough
Jennifer Brough
Locke Lord LLP
701 8th Street NW, Suite 500
Washington, DC 20001
(202) 220-6965
jbrough@lockelord.com